



# Recommendations for Juvenile Justice Reform



Opportunities  
for Action in the  
112<sup>th</sup> Congress



February 15, 2011

On behalf of the National Juvenile Justice and Delinquency Prevention Coalition (NJJJPC), we are pleased to provide these recommendations addressing much-needed policy and administrative advances to the Members of the 112<sup>th</sup> Congress. This call for action prioritizes juvenile justice system reform and urges:

- Swift appointment of a permanent administrator for the Office of Juvenile Justice and Delinquency Prevention (OJJDP);
- Reauthorizing the Juvenile Justice and Delinquency Prevention Act (JJJPA); and
- Ensuring that implementation of the Prison Rape Elimination Act (PREA) meets the needs of detained youth.

Juvenile justice systems across the United States are in urgent need of reform. JJJPA reauthorization is four years overdue. Young people are being physically and sexually abused in our juvenile and adult facilities. President Obama and Congress must immediately appoint a strong OJJDP Administrator, set a clear direction for reform and provide resources to states to help keep our youth and communities safe. In addition, Attorney General Eric Holder needs to finalize PREA regulations and begin implementation. With strong bi-partisan leadership from the President and the Congress, these reforms are possible.

NJJJPC's recommendations are based on the consensus of more than 50 national organizations, including youth- and family- serving, social justice, law enforcement, corrections, and faith-based organizations, that work to ensure healthy families, build strong communities and improve public safety by promoting fair and effective policies, practices and programs for youth involved or at risk of becoming involved in the juvenile and criminal justice systems. NJJJPC achieves its mission by engaging this broad spectrum of opinion leaders and stakeholders, including the voices of those most affected by the juvenile justice system, to:

- advocate for sensible and safe solutions to crime and delinquency;
- build and leverage policy leadership in the field; and
- serve as a clearinghouse for research and best practices within our nation's juvenile and criminal justice systems.

Thank you for your time and consideration.

Sincerely,

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**T**he juvenile justice system in the United States is in urgent need of reform, and federal leadership is necessary. Juvenile delinquency rates are down across the nation. Despite this steady drop, too many young people have negative encounters with the juvenile system. 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. Far too many young people are securely detained for first-time, nonviolent offenses that would not be illegal if committed by an adult (i.e., status offenses such as truancy).<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 vulnerable to victimization and abuse by peers, older inmates, and staff.<sup>6</sup> The United States is also alone in imposing the sentence of life without the possibility of parole youth whose crimes were committed when they were under the age of 18. Recent estimates find that 2,589 people are currently serving a 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, causing long-term collateral consequences for youth, wasting taxpayer dollars, and violating 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 misconduct.

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, and there is an increasingly clear path for moving toward evidence-based approaches to reducing adolescent crime. Members of Congress have 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 steadily waned.<sup>8</sup> Funding levels for OJJDP have declined 90% since 2002. In addition, the Juvenile Justice and Delinquency Prevention Act (JJDP) is now four years overdue for reauthorization. To restore the federal government's leadership role on this issue, Congress must reauthorize the JJDP and ensure that OJJDP has the necessary funding and guidance to help States create and sustain juvenile systems that are cost effective, enhance public safety and treat court-involved youth in fair, humane and effective ways.

### *Recommendations for the 112<sup>th</sup> Congress*

#### **Reauthorize and Strengthen the JJDP**

Congress can and should use the reauthorization of the JJDP as an opportunity to strengthen accountability for federal spending, help States protect public safety, hold delinquent youth accountable, and provide rehabilitation services to youth to prevent future crime. The JJDP was last reauthorized in 2002, but few substantive changes were made at that time. Since the last substantive reauthorization of the JJDP nearly two decades ago, much more is known about what works and does not work to keep our communities safe and put youth on a better path. Congress should pass a JJDP reauthorization bill that will:

- Extend the *Jail Removal and Sight and Sound separation* core protections to all youth under the age of 18 held pretrial, whether charged in juvenile or adult court.
- Codify current State flexibility for housing youth convicted in adult court in juvenile facilities rather than adult prisons by modifying the definition of "adult inmate."
- Strengthen the *Disproportionate Minority Contact* (DMC) core protection by requiring States to take concrete steps to reduce racial and ethnic disparities in the juvenile justice system. The JJDP currently requires States to "address" DMC within their juvenile justice systems. This vague requirement has left State and local officials without clear guidance on how to reduce racial and ethnic disparities. Jurisdictions need to approach this work with focused, informed, and data-driven strategies.<sup>9</sup> Congress should improve the DMC core protection to ensure States: 1) establish coordinating bodies to oversee efforts to reduce disparities; 2) identify key decision points in the system and the criteria by which decisions are made; 3) create systems to collect local data at every point of contact youth have with the juvenile justice system (disaggregated by descriptors such as race, ethnicity

and offense) to identify where disparities exist and the causes of those disparities; 4) develop and implement plans to address disparities that include measurable objectives for change; 5) publicly report findings; and 6) evaluate progress toward reducing disparities.

- Strengthen the *Deinstitutionalization of Status Offenders (DSO)* core protection, which prohibits the locked detention of status offenders, by removing the valid court order (VCO) and Interstate Compact exceptions.
- Provide safe and humane conditions of confinement for youth in State or local custody by prohibiting use of JJDP funds for dangerous practices and encouraging States to adopt best practices and standards to eliminate dangerous practices and unnecessary isolation.
- Provide a research-based continuum of mental health and substance abuse services to meet unmet needs of court-involved youth and their families, including diversion and re-entry services.
- Assist States in compliance with the JJDP by establishing incentive grants to encourage States to adopt evidence-based and/or promising practices that improve outcomes for youth and their communities. For States that are deemed to be out of compliance with any of the core protections, Congress should require any JJDP funds withheld for non-compliance are set-aside and made available to those States as improvement grants to help them with those particular protections.
- Enhance the partnership between States and OJJDP by expanding training, technical assistance, research and evaluation and the partnership between OJJDP and Congress by encouraging transparency, timeliness, public notice, and communication.
- Incentivize juvenile justice systems to ensure that all policies, practices, and programs recognize the unique needs of girls by: 1) adding an accountability mechanism for States to meet the needs of female offenders; 2) ensuring expertise about girls on JJDP State Advisory Groups; 3) increasing research and information dissemination; and 4) providing direct funding to gender-specific prevention and treatment programs under JJDP Title V Delinquency Prevention grants.

### **Restore and Increase Funding for JJDP Programs**

Successful support of State efforts to reduce juvenile delinquency and protect youth in the system requires adequate federal assistance. Despite a universally recognized need to further reduce delinquency and improve juvenile justice systems, federal appropriations for key federal juvenile justice programs have suffered in the last decade. Since FY 2002, funding for the JJDP Title II State Formula Grants Program has declined 16%; Title V funding has declined 34%, with between 53% and 97% of dollars appropriated earmarked for non-JJDP programs;

and the operational budget for OJJDP has been eviscerated, down 90% from FY 2002 levels.<sup>10</sup>

Title II funds provide essential support for State and local agencies to develop and strengthen juvenile justice systems to reduce youth offending, meet vital standards for care and custody of juvenile offenders, and ensure community safety. Title V Incentive Grants for Local Delinquency Prevention Programs are the only federal statutory funding source dedicated solely to the prevention of youth crime and violence. These small grants fund a range of innovative and effective programs including nurse-home visitation programs, preschool/parent training programs, youth mentoring programs, truancy prevention, and dropout reduction strategies. Research shows that every dollar spent on evidence-based programs can yield up to \$13 in cost savings to the tax payer.<sup>11</sup> Each child who is prevented from engaging in repeat criminal offenses can save the community \$2.6 to \$4.4 million.<sup>12</sup>

Congress should restore federal investments in State and local juvenile justice reform efforts to FY 2002 levels, adjusted for inflation, and increase these investments over the next five years.

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

Decades of empirical study about 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 effective at reducing delinquency. Research also shows that broadening prosecutorial powers or stiffening criminal penalties for young people simply does not work to lower crime or prevent reoffending.<sup>13</sup> Public opinion polls similarly reveal that taxpayers overwhelmingly favor prevention, education, and rehabilitation programs over prosecution and incarceration of juveniles who are adjudicated delinquent.<sup>14</sup>

### *Recommendations for the 112<sup>th</sup> Congress*

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

Congress should pass the Youth Prison Reduction through Opportunities, Mentoring, Intervention, Support, and Education (PROMISE) Act to implement and fund evidence-based practices to prevent delinquency and gang involvement. Under the Act, local communities form PROMISE councils with representatives from schools, social services, health and mental health providers, community-based and faith-based organizations, court services and law enforcement. Each council assesses the community's needs and strengths, evaluates current funding priorities

– including local jail and prison expenditures – and then develops a comprehensive plan for implementing evidence-based and promising prevention and intervention strategies.

### **Meet the Needs of Youth with Disabilities**

Congress should create incentives to meet the needs of youth with disabilities involved in the justice system. Recent studies indicate that up to 70% of youth in the juvenile justice system have a diagnosable mental health disorder; 60% may also meet the criteria for a substance use disorder; and 27% experience disorders so severe that their ability to function is significantly impaired.<sup>15</sup> Juvenile justice agencies are ill-equipped to manage the mental health and substance abuse needs of youth effectively; the agencies themselves identify the following as barriers to their success: insufficient resources, inadequate administrative capacity, lack of appropriate staffing, and lack of training for staff.<sup>16</sup>

Congress should create incentives for States to reduce the inappropriate detention of youth with mental health needs by: 1) identifying vulnerable youth through consistent use of screening and assessments; 2) diverting youth with mental health needs from detention and incarceration into home- and community-based treatment; 3) making training and technical assistance available for law enforcement officers, judges, probation officers, and other decision makers; and 4) requiring individualized discharge plans to link youth to appropriate reentry services, including mental health and substance abuse services and supports for the youth and his/her family.

### **Protect the Rights of Lesbian, Gay, Bisexual and Transgender (LGBT) Youth**

Congress should pass federal protections against discrimination in all settings based on actual or perceived sexual orientation or gender identity and create incentives for States to appropriately and effectively respond to LGBT youth involved in the justice system. Recent research shows that up to 13% 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. Many LGBT youth enter the juvenile justice system as a direct result of family rejection. In addition, a recent study in *Pediatrics* found that adolescents who self-identified as LGBT were about 50% 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> Congress should create incentives for States to reduce the inappropriate detention of LGBT youth and address decision makers' lack of understanding of this population by: 1) ensuring that JJDPA State Advisory Groups memberships include experts on LGBT youth; 2) increasing research and information dissemination on this topic; 3) making training and technical assistance available for juvenile justice agencies, law enforcement officers, judges, probation

officers, and other decision makers; and 4) requiring all programs funded under JJDP and other OJJDP incentive grants to adopt policies prohibiting discrimination based on actual or perceived sexual orientation and gender identity.

### **Pass the RAISE UP Act**

Attachment to school is one of the strongest predictors of delinquency. Therefore every effort should be made to keep young people enrolled in and attending school. More than 5.2 million young people between the ages of 18 and 24 do not have a high school diploma, representing 17% of the population in this age group. Approximately 4.4 million young people ages 18-24, are neither in school nor working, nor have a degree beyond high school,<sup>19</sup> placing them at risk of long-term unemployment, poverty, and involvement in criminal activity. To remedy this, Congress should pass the RAISE UP Act (Reengaging Americans in Serious Education by Uniting Programs), which challenges every high school dropout to attain a high school diploma, a postsecondary credential, and a family supporting career – and provides them with the support to succeed.

## 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>20</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>21</sup> Reports of widespread abuses in juvenile institutions in California,<sup>22</sup> Indiana,<sup>23</sup> Mississippi,<sup>24</sup> Ohio,<sup>25</sup> Texas,<sup>26</sup> and other states demonstrate the importance of having federal laws in place to ensure the safety of children in custody. Documented abuses include the use of pepper spray, sexual assaults by staff, hog-tying, and subjecting youth to excessive restraint and isolation. Delinquent youth must be held accountable, but no court disposition, regardless of the offense, should ever include physical and mental abuse.

### *Recommendations for the 112<sup>th</sup> Congress*

#### **Remove the Valid Court Order (VCO) Exception to the JJDP**

In the original JJDP, Congress recognized that status offenses (e.g., truancy, curfew violations, and running away from home) are not criminal acts and, therefore, do not merit secure detention. Rather than resolve the factors that lead to a status offense, detention often aggravates these factors. When children are held in secure facilities they are often exposed to youth with more serious delinquency histories.<sup>27</sup> The DSO provision of the JJDP was designed to ensure that status offenders receive the services they need through the appropriate

human services agency rather than the justice system.<sup>28</sup> However, the valid court order (VCO) exception allows status offenders to be detained for violating a court order (i.e., attend school regularly). Girls are disproportionately affected by the VCO exception as they are 170% more likely than boys to be arrested for a status offense, and are more likely to be placed in secure confinement.<sup>29</sup> Many States no longer allow the incarceration of status offenders under the VCO exception, but it is still permitted in several states. Congress should remove the VCO and Interstate Compact exceptions from the DSO provision of the JJDPA. This will ensure that status offenders are served in more appropriate settings and will allow the juvenile justice system to focus on youth charged with delinquent offenses.

### **Improve Conditions of Confinement for Youth in Juvenile Facilities**

To address the recent and well-documented abuses in juvenile facilities nationwide, juvenile justice facility staff need to be trained on effective behavior-management techniques to respond to dangerous or threatening situations. Staffing and programming in facilities must be sufficient to reduce the likelihood of youth misconduct. Activities that create an unreasonable risk of physical injury, pain or psychological harm to juveniles should not be used in juvenile facilities. These activities include using chemical agents, fixed restraints, and psychotropic medications for purposes of coercion, punishment or convenience of staff. Congress should eliminate the use of federal funds for the most dangerous practices, which create an unreasonable risk of physical injury, pain, or psychological harm to youth. Congress should also fund training and technical assistance to help jurisdictions reduce the unnecessary use of isolation and restraint, require increased collection of data on isolation and restraint, and allow States to use JJDPA funds to develop independent monitoring bodies (e.g., creating ombudsmen programs, developing family monitoring panels, or partnering with Protection and Advocacy organizations) and other programs to reduce unnecessary isolation and restraint.

### **Pass the Family Justice Act**

There are no national standards in federal law or rule regulating conditions of confinement in facilities in the juvenile justice system, and there is little or no federal monitoring or oversight to hold these facilities accountable for how they care for and supervise youth.<sup>30</sup> The Family Justice Act, first introduced in 2010, would encourage oversight and accountability by increasing family engagement through a grant program that would provide funds to a qualifying non-profit in each State to establish monitoring panels that involve youth, families and other community members in developing better policies and practices to protect youth, support their rehabilitation and reduce recidivism.

### **Ensure that PREA Implementation Addresses the Needs of Detained Youth**

The Prison Rape Elimination Act of 2003 (PREA) was passed in recognition of the serious crisis of rampant sexual abuse in corrections and detention facilities

nationwide. Youth are especially vulnerable to this abuse, but the bulk of attention and resources devoted to PREA has focused on adult prisons and jails. PREA appropriations have never reached the levels approved by Congress when the law passed. As a result of limited funding, the State grant program – a key component in the statute – has been defunct since FY 2006. Congress should provide sufficient appropriations to implement PREA, including funds dedicated to reducing the sexual abuse of youth in secure facilities and in community corrections.

#### **Exempt Youth from the Prisoner Litigation Reform Act (PLRA)**

The PLRA was enacted to curb frivolous lawsuits brought by adult prisoners, but the law applies to all inmates, regardless of age or status. Unfortunately, the law has also kept countless serious constitutional claims from reaching the courts. Whether housed in a juvenile facility or with adults, detained youth are among the most vulnerable to constitutional violations, but they rarely file lawsuits.<sup>31</sup> Youth generally lack the literacy skills, knowledge of the court system and access to legal materials that would be needed to bring about litigation.<sup>32</sup> Moreover, youth under age 18 cannot file lawsuits on their own under federal law. As youth are not similarly situated to adults, the PLRA provisions should not apply to them. Rather than benefiting the public, the PLRA's application to youth actually reduces public safety by allowing serious abuses to occur without the availability of judicial recourse. Youth are sent to the juvenile justice system for rehabilitation, and these systems should be held accountable for improving lives and ensuring that they do not cause more harm. Congress should amend the PLRA to define "prisoner" as an adult, and exclude youth from the law's application.

#### **Keep Youth Off of National Public Sex Offender Registries**

Congress should amend Title I of the Adam Walsh Child Protection and Safety Act of 2006 – the Sex Offender Registration and Notification Act (SORNA) – to exclude youth adjudicated for certain sex-based offenses within the juvenile court from mandatory registration on a public offender registration. SORNA, as currently applied to youth, contradicts research that shows that youth who commit sex-based offenses are more amenable to treatment and have significantly lower recidivism rates than adults. SORNA also has great potential to disrupt families and communities across the nation because public registration and notification does not just stigmatize the youth; it stigmatizes the entire family, including the parents and other children in the home. Finally, SORNA has a chilling effect on the identification and proper treatment of youth who exhibit inappropriate sexual behavior. Instead of seeking appropriate treatment for their child, parents may be inclined to hide their child's problem when they learn that their child may be required to register for life as a sex offender.

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

An estimated 200,000 youth are tried, sentenced, or incarcerated in the adult criminal justice system every year across the United States.<sup>33</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 subsequent offenses tend to be more violent. According to the U.S. 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.<sup>34</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>35</sup> Youth are also often placed in isolation, locked down 23 hours a day in small cells with no natural light; 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>36</sup>

Most youth tried and convicted in the adult criminal justice system have been charged with a low-level, non-violent offense,<sup>37</sup> and yet still suffer the long-term consequences from an adult criminal conviction. These youth are often denied employment and educational opportunities,<sup>38</sup> which makes their transitions to adulthood difficult. If sentenced to an adult prison, approximately 80% of youth convicted as adults will be released from prison before their 21st birthday, and 95% will be released before their 25th birthdays.<sup>39</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. Congress and 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 112<sup>th</sup> Congress*

#### **Extend JJDP A Protections to Keep Youth Out of Adult Facilities**

Congress should amend the JJDP A to extend the Jail Removal and Sight and Sound protections of the Act to all youth, excluding those awaiting trial in juvenile or adult court. In the limited exceptions allowed under the JJDP A where youth can be held in adult facilities, they should have no sight or sound contact with adult inmates. Congress should also revise the definition of an “adult inmate” to codify the recent guidance issued by OJJDP. This guidance recommends excluding youth who, at the

time of the offense, were younger than age 18 and who have not yet reached the allowable age to be held at a juvenile facility under State law.

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

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

#### **Abolish the Practice of Sentencing Juveniles to Life without the Possibility of Parole (JLWOP) in the Federal System**

Young people who commit crimes—even serious crimes—have a great capacity to be rehabilitated. In May 2010, the U.S. Supreme Court recognized that youth are fundamentally different than adults by declaring it unconstitutional to sentence youth to life without parole for a non-homicide crime (*Graham v. Florida* 560 US 08-7412 [2010]). The reasoning the Court used to arrive at its conclusion is also applicable to young people convicted of homicide crimes, some of whom are in the federal system. Congress should end the practice of sentencing youth in federal court to life without parole and require a review after ten years for any person incarcerated in federal prison for a crime committed when they were under age 18.

## V. Support Youth Reentry

Approximately 100,000 young people under age 18 leave secure juvenile facilities and return to their communities each year.<sup>40</sup> Youth are often discharged from care back to families struggling with domestic violence, drug and alcohol abuse, and unresolved mental health needs. 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 positively develop in ways that 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.

### *Recommendations for the 112<sup>th</sup> Congress*

#### **Strengthen Focus on Youth in the Reauthorization of the Second Chance Act**

Federal commitment to improving reentry was evident in the passage of the Second Chance Act in 2008, authorizing \$165 million in federal spending on reentry, including competitive grants to government agencies and nonprofit organizations to provide employment assistance, substance abuse treatment, housing, family services, mentoring, victims support and other services that help reduce recidivism. While the Second Chance Act is a vehicle for improved reentry programs and services, its focus on young people is not guaranteed. Congress should increase Second Chance Act funding dedicated to youth.<sup>41</sup>

#### **Improve Education Opportunities for Youth Returning from Secure Placement**

Attendance at school is a strong protective factor against delinquency; youth who are engaged in school are much less likely to commit crime in the short-term and also in the long-term. Yet youth released from secure placement sometimes face serious barriers to resuming their education. Recent statistics show that more than half of youth in secure placements have not completed the eighth grade, and two-thirds of those leaving formal custody do not return to school.<sup>42</sup> Emphasis on returning to school upon exit from out-of-home placement should be a high priority for any reentry initiative because of the strong connection between school engagement and delinquency.

Despite the strong association between school truancy, dropouts and delinquency, reenrollment in school for youth exiting detention is sometimes challenged. Some schools place obstacles to reenrollment for formerly incarcerated youth because these youth are considered difficult to manage. In the absence of federal policy disallowing it, some States have enacted laws that create clear obstacles for youth attempting to re-enroll in high school upon reentry. Congress should use the Elementary and Secondary Education Act (ESEA) Reauthorization as an opportunity to begin addressing some of the education barriers that returning youth face and supporting the inclusion of incentives for jurisdictions to appropriately handle the educational needs of these vulnerable youth.<sup>43</sup>

#### **Suspend and Restore Medicaid and Other Health Benefits for Incarcerated Youth**

Youth in the justice system often have serious health and mental health needs. Prior to their incarceration many youth have access to health services through Medicaid or the State Children's Health Insurance Program (SCHIP), but some States terminate Medicaid eligibility when youth enter a secure detention or

correctional facility. When youth lose their Medicaid eligibility, they are forced to reapply for benefits upon their release, a process which may take up to 90 days to complete.<sup>44</sup> This delay seriously threatens successful reintegration to the community and often results in long delays in obtaining vital treatment, medication, and services at a time when they are most needed. Gaps in services significantly increase the risk of reoffending and recommitment to an institution.<sup>45</sup> Congress should clarify existing Medicaid law, amend the State Children's Health Insurance Program (SCHIP) statute to end the practice of terminating Medicaid when youth enter a secure detention or correctional facility, and provide for immediate reinstatement of coverage upon exit from the facility.

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- <sup>8</sup> For more information, see testimony of Shay Bilchik, former OJJDP Administrator, before the U.S. House of Representatives, Judiciary Committee, Subcommittee on Crime, Terrorism and Homeland Security on September 18, 2008 at <http://judiciary.house.gov/hearings/pdf/Bilchik080918.pdf>.
- <sup>9</sup> W. Haywood Burns Institute For Juvenile Justice and Fairness and Equality, *Working Locally to Reduce Disproportionality* Website Page, available at <http://www.burnsinstitute.org/reducing.html>.
- <sup>10</sup> Unlocking the Future of Juvenile Justice: A Policy Agenda for the 111th Congress (May 2009). Washington, DC, Coalition for Juvenile Justice, available at: [http://www.juvjustice.org/media/resources/public/resource\\_240.pdf](http://www.juvjustice.org/media/resources/public/resource_240.pdf)
- <sup>11</sup> Juvenile Detention Alternatives Initiative, *Detention Reform Brief 1: Detention Reform: A Cost-Saving Approach*, Annie E. Casey Foundation, available at [http://www.aecf.org/upload/PublicationFiles/jdai\\_facts1.pdf](http://www.aecf.org/upload/PublicationFiles/jdai_facts1.pdf). (2007)
- <sup>12</sup> Cohen, Mark A. and Piquero, Alex R., *New Evidence on the Monetary Value of Saving a High Risk Youth*, Vanderbilt Law and Economics Research Paper No. 08-07, available at SSRN: <http://ssrn.com/abstract=1077214>. (December 2007).
- <sup>13</sup> In recent years, a range of organizations have commissioned or conducted related research and reached similar conclusions, including the American Psychological Association, the Washington State Institute for Public Policy, the Social Development Research Group of Seattle, Washington, and the Office of Juvenile Justice and Delinquency Prevention. For more information, see <http://chhi.podconsulting.com/assets/documents/publications/NO MORE CHILDREN LEFT BEHIND.pdf>
- <sup>14</sup> Piquero, A. and Steinberg, L. (December 2007) *Models for Change, Systems Reform In Juvenile Justice, Rehabilitation Versus Incarceration of Juvenile Offenders: Public Preferences in Four Models for Change States*, available at: <http://www.modelsforchange.net/publications/186> (December 2007). *Potential for Change: Public Attitudes and Policy Preferences for Juvenile Justice Systems*

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*Reform, Models for Change, Systems Reform in Juvenile Justice*, available at <http://www.modelsforchange.net/publications/121>.

<sup>15</sup> Cocozza, J. et al. (September 2010). *Addressing the Mental Health Needs of Youth in Contact with the Juvenile Justice System in System of Care Communities: An Overview and Summary of Key Issues*. Technical Assistance Partnership for Child and Family Mental Health. Washington, DC. Available at: [http://www.tapartnership.org/docs/jjResource\\_overview.pdf](http://www.tapartnership.org/docs/jjResource_overview.pdf).

<sup>16</sup> Federal Advisory Committee on Juvenile Justice (2006). *Federal Advisory Committee on Juvenile Justice Annual Report 2006*, available at: <http://www.ncjrs.gov/pdffiles1/ojjdp/218367.pdf>.

<sup>17</sup> The Equity Project. (2009). *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts*. Legal Services for Children, National Juvenile Defender Center, & National Center for Lesbian Rights: Author.

<sup>18</sup> "Criminal Justice and School Sanctions against Non-heterosexual Youth: A National Longitudinal Study," Kathryn E.W. Himmelstein, B.A., and Hannah Bruckner, Ph.D. Pediatrics, January 2011 (published online December 6, 2010).

<sup>19</sup> Lovell, P. & Minow, J. (August, 2009). *Reclaiming Our Nation's Youth*. First Focus: Washington, DC. Available at: <http://www.firstfocus.net/sites/default/files/r.2009-8.6.lovell.pdf>.

<sup>20</sup> Beck, A.J., Guerino, P., and Harrison P.M. (January 2010). *Sexual Victimization In Juvenile Facilities Reported By Youth, 2008-09*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

<sup>21</sup> Beck, A.J. & Harrison, P.M. (2006). *Sexual Violence Reported By Correctional Authorities, 2005*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

<sup>22</sup> In California, authorities failed to provide adequate medical and mental health treatment and facility staff regularly used pepper spray on youth. Rothfeld, Michael, "Juvenile Prison System Needs Reform Lawyers Say," *Los Angeles Times* (February, 18, 2008); Boyd, Ralph, Investigative Findings Letter, U.S. Department of Justice, Civil Rights Division, available at [http://www.usdoj.gov/crt/split/documents/la\\_county\\_juvenile\\_findlet.pdf](http://www.usdoj.gov/crt/split/documents/la_county_juvenile_findlet.pdf) (April 9, 2003).

<sup>23</sup> In Indiana, staff sexually assaulted youth in one facility, and failed to protect youth from violence in several juvenile facilities. Kim, Wan, Investigative Findings Letter, U.S. Department of Justice, Civil Rights Division available at [http://www.usdoj.gov/crt/split/documents/marion\\_juve\\_ind\\_findlet\\_8-6-07.pdf](http://www.usdoj.gov/crt/split/documents/marion_juve_ind_findlet_8-6-07.pdf) (August 6, 2007); "Justice Department Reaches Settlement Regarding Conditions at Two Indiana Juvenile Justice Facilities," U.S. Fed. News Service available at [http://www.usdoj.gov/opa/pr/2006/February/06\\_crt\\_066.html](http://www.usdoj.gov/opa/pr/2006/February/06_crt_066.html) (February 8, 2006); Schlozman, Bradley, Investigative Findings Letter, U.S. Department of Justice, Civil Rights Division, available at [http://www.usdoj.gov/crt/split/documents/split\\_indiana\\_plainfield\\_juv\\_findlet\\_9-9-05.pdf](http://www.usdoj.gov/crt/split/documents/split_indiana_plainfield_juv_findlet_9-9-05.pdf) (September 9, 2005).

<sup>24</sup> In Mississippi, staff in state facilities hog-tied youth, put them in shackles, stripped youth and put them in dark rooms for 12 hours a day for up to one month at a time. Nossiter, Adam, "Lawsuit Filed Over Treatment of Girls at State Reform School in Mississippi," *New York Times*, available at <http://www.nytimes.com/2007/07/12/us/12prison.html> (July 12, 2007); "Mississippi Center Accused of Abuse," *Associated Press*, available at [http://www.usatoday.com/news/nation/2007-07-12-mississippi\\_N.htm](http://www.usatoday.com/news/nation/2007-07-12-mississippi_N.htm) (July 12, 2007).

<sup>25</sup> In Ohio, girls in a state facility were sexually assaulted by male staff. *Associated Press*, "Ohio Settles Suit Over Juvenile Jails," available at <http://www.cnn.com/2008/CRIME/04/04/ohio.youth.prisons.ap> (April 4, 2008); Investigative Findings Letter, U.S. Department of Justice, Civil Rights Division, available at [http://www.usdoj.gov/crt/split/documents/scioto\\_findlet\\_5-9-07.pdf](http://www.usdoj.gov/crt/split/documents/scioto_findlet_5-9-07.pdf) (May 9, 2007).

<sup>26</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," *The Dallas*

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*Morning News*, available at [http://www.dallasnews.com/sharedcontent/dws/news/texasouthwest/stories/DN-tyc\\_13tex.ART.State.Edition1.44911b8.html](http://www.dallasnews.com/sharedcontent/dws/news/texasouthwest/stories/DN-tyc_13tex.ART.State.Edition1.44911b8.html) (March 13, 2007); Becka, Holly, et al., "Young Inmates Endured 'Deplorable Conditions,'" *The Dallas Morning News*, available at <http://www.dallasnews.com/sharedcontent/dws/dn/latestnews/stories/100307dntextyc.35bdf47.html>, (October 3, 2007).

<sup>27</sup> Holman, Barry and Ziedenberg, Jason, *The Dangers of Detention; The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, Justice Policy Institute, p. 9, available at [http://www.justicepolicy.org/images/upload/06-11\\_REP\\_DangersOfDetention\\_JJ.pdf](http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf). (November, 2006)

<sup>28</sup> Senate Report Number 93-1011, at 5287-88 (1974).

<sup>29</sup> Zawacki, Susanna, *Girls Involvement in Pennsylvania's Juvenile Justice System*, Pennsylvania Juvenile Justice Statistical Bulletin p. 1. (October 2005).

<sup>30</sup> Beginning in 1995, OJJDP funded the Council of Juvenile Correctional Administrators (CJCA) to develop national performance-based standards (now called the PbS program) and more than 100 outcome measures reported twice a year to monitor conditions of confinement and the practices and services in juvenile institutions. For more information, go to <http://cjca.net/initiatives/performance-based-standards-pbs>. While more than 200 facilities voluntarily participate with the program, participation is not mandatory, so there is no federal oversight or enforcement for the remaining – more than 2,000 – juvenile detention and correctional facilities that do not participate with the program. Reference the National Evaluation and Technical Assistance Center, Fact Sheet on Juvenile Facilities (January 2010). Available on-line at [http://www.neglected-delinquent.org/nd/docs/factSheet\\_facilities.pdf](http://www.neglected-delinquent.org/nd/docs/factSheet_facilities.pdf).

<sup>31</sup> As of 1998, there were fewer than a dozen reported opinions directly involving challenges to conditions in juvenile detention centers, and around two dozen cases with unreported opinions or settlements. Michael J. Dale, "Lawsuits and Public Policy: The Role of Litigation in Correcting Conditions in Juvenile Detention Centers," 32 U.S.F. L. Rev. 675, 681-98 (1998). This figure contrasts strongly with the much larger number of reported and unreported opinions arising from challenges to adult prison conditions. The authors of this report are generally familiar with institutional litigation and can confirm that this large disparity persists.

<sup>32</sup> See *Alexander S. v. Boyd*, 876 F. Supp. 773, 790 (D.S.C. 1995) (holding that juvenile detainees had no constitutional right to a law library because, in light of their limited capacity, they "would not benefit in any significant respect from a law library, and the provision of such would be a foolish expenditure of funds"); accord, *Shookoff v. Adams*, 750 F.Supp. 288 (M.D.Tenn. 1990), *aff'd in pertinent part, reversed in part on other grounds sub nom. John L. v. Adams*, 969 F.2d 228 (6th Cir. 1992).

<sup>33</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>34</sup> U.S. 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>35</sup> National Prison Rape Elimination Commission, Report 18 (June 2009), available at <http://www.ncjrs.gov/pdffiles1/226680.pdf>.

<sup>36</sup> *Jailing Juveniles* (2007, November). Washington, DC: Campaign for Youth Justice.

<sup>37</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>38</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.

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<sup>39</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>40</sup> Snyder, H. (2004). "An Empirical Analysis of the Youth Reentry Population." *Youth Violence and Juvenile Justice* 2(1): 39-55.

<sup>41</sup> For more information see memo to Senate and House Judiciary Committee Staff from Robert F. Kennedy Juvenile Justice Collaborative, The Sentencing Project and National Network for Youth, June 21, 2010.

<sup>42</sup> Roy-Stevens, C. (2004). *Overcoming Barriers to School Reentry*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

<sup>43</sup> For more information on the educational barriers that youth face upon exit from secure placement, see: Feierman, J., Levick, M., and Mody, A. (2009). "The School to Prison Pipeline...and Back: Obstacles and Remedies for the Re-enrollment of Adjudicated Youth." *New York Law School Law Review* 54 (10), 1115-1129.

<sup>44</sup> Brown, C. (2001). "Jailing the Mentally Ill." *State Government News* 44 (4), 28.; Eiken, S. & Galantowicz, S. (2004). *Improving Medicaid Access for People Experiencing Chronic Homelessness: State Example*. Washington, D.C.: U.S. Department of Human Services, Centers for Medicare and Medicaid Services, Disabled and Elderly Health Programs Division.

<sup>45</sup> Bazelon Center for Mental Health Law (2007). *Creating New Options: Training for Corrections Administrators and Staff on Access to Federal Benefits for People with Mental Illness Leaving Jail or Prison*. Washington, D.C.: Bazelon Center for Mental Health Law.

