

# Promoting Safe Communities



## Recommendations for the 115th Congress

National Juvenile Justice and Delinquency Prevention Coalition  
[www.promotesafecommunities.org](http://www.promotesafecommunities.org)  
2017 - 2018

OPPORTUNITIES FOR JUVENILE JUSTICE & DELINQUENCY PREVENTION REFORM

# Promoting Safe Communities: Recommendations for the 115<sup>th</sup> Congress

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REFORM**

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Promoting safe communities, ensuring the welfare of our children, and guaranteeing a fair and equitable justice system are shared goals and values. While there are realistic, sensible policies and programs that reflect these goals, our current justice system relies too heavily on incarceration. The United States ranks number one in the world in the incarceration of youth<sup>1</sup> -- wasting millions of dollars and lives in the process. What America needs is a vision of reform that embraces the rehabilitative purpose of the juvenile justice system in ways that not only increase public safety, but achieve better outcomes for our children and families and bring us closer to a legal system that is fair and just for all.

Although the number of juvenile arrests accounts for a small portion of the nation's crime and has declined nearly 55 percent since 2006, each year, police still make more than 578,000 juvenile arrests;<sup>2</sup> juvenile courts handle over 1 million cases;<sup>3</sup> and an estimated 200,000 youth are prosecuted in the adult criminal justice system.<sup>4</sup> Despite a steady drop in youth incarceration and out-of-home placements over the past decade, there are still far too many young people being locked up and placed away from home who could be handled more effectively in their own communities. The most recent data tell us that on any given day, just over 50,000 young people are confined in youth prisons and other confinement facilities,<sup>5</sup> and approximately 4,700 youth were held in adult jails and prisons.<sup>6</sup>

Current juvenile justice policies and practices too often ignore children's age and amenability to rehabilitation, cause long-term collateral consequences, waste taxpayer dollars, and violate our deepest held principles about equal justice under the law, due process, and the role of the juvenile justice system. Many state systems, lack sound culturally appropriate trauma-informed screening, assessment and care for mental health and drug treatment services, apply excessively harsh sanctions for minor and nonviolent adolescent misbehavior, exhibit racial and ethnic disparities, and implement discriminatory policies and practices toward lesbian, gay, bisexual, transgender, queer/questioning, and gender non-conforming (LGBTQ-GNC)<sup>7</sup> youth. They subject youth to institutional confinement that is inhumane and counterproductive.<sup>8</sup> They fail to filter out youth whose primary issues relate to mental illness or disability. They allow children to be prosecuted in the adult criminal justice system, where they may be required to serve decades, if not life, in an adult prison.

Too often, community safety is jeopardized when states and localities adopt costly and overly punitive approaches that are shown repeatedly to produce the worst outcomes for children, their families, and public safety, including high rates of re-offense and higher severity of offending due to justice system contact.<sup>9</sup> Because the most expensive, hardware-secure, deep end programs are often the least effective, it is fiscally responsible to support juvenile justice reforms that promote keeping the vast majority of youth in their homes, and for the few that may pose a serious threat to public safety, placement in smaller homelike facilities in their communities.<sup>10</sup>

Ineffective and unnecessarily harsh practices and policies continue despite the fact that recent Supreme Court decisions have held that children are fundamentally different from adults.<sup>11</sup> These rulings followed the Court's reasoning in *Roper v. Simmons*, which outlawed the death penalty for children in 2005, and relied on a growing body of adolescent development research proving the unique characteristics of children – their lessened culpability, their unique vulnerability to peer pressure, their lack of understanding of the consequences of their

actions and impulse control, and their particular capacity for rehabilitation – that led the Court to conclude that children are categorically less culpable than adults. As a result, the parameters for how we treat children in the U.S. justice system are forever changed and require a reexamination of policies and practices that ignore the fundamental differences between children and adults, and leadership that is consistent with these rulings.

Research over the past 25 years has increased our understanding of what works and how to best approach juvenile delinquency and system reform. Many jurisdictions across the country are implementing promising reforms, and there is an increasingly clear path for moving toward community and evidence-informed approaches to reducing adolescent crime while building an improved response to children who come in contact with the justice system. In September 2015, the National Conference of State Legislatures released a report highlighting successful reforms from around the country to restore jurisdiction to the juvenile court, divert youth from the system, shift resources from incarceration to community-based alternatives, address racial and ethnic disparities in justice systems, respond more effectively to the mental health needs of young offenders and improve re-entry and aftercare programs for youth.<sup>12</sup>

The 115<sup>th</sup> Congress has the opportunity and responsibility to support effective systems of justice for our youth and should begin by focusing on the following five priority areas:

- 1) Establish a Positive Vision for Juvenile Justice Reform
- 2) Reduce Reliance on Detention and Incarceration and Invest in Communities
- 3) Ensure Fairness and Equity for Justice-Involved Youth
- 4) Ensure Safety for Justice-Involved Youth
- 5) Help Youth Successfully Reenter Their Communities

## I. Establish a Positive Vision for Juvenile Justice Reform

If youth are to realize their full potential, society must invest in supports to families and communities that promote child and family wellness, such as quality education, healthcare, proper nutrition, recreation, employment, spiritual life, and access to basic infrastructure, such as transportation, emergency services, and housing. Services developed for youth should be asset- and developmentally-based, trauma-responsive, focused on opportunities, resources, coaching and supports so that youth can develop the competencies they need to mature and become well-adjusted adults. While most reform falls under the purview of states, tribes and local governments, a seminal 2014 report from the National Academy of Sciences details the important federal role in supporting state juvenile justice systems.<sup>13</sup>

Going forward, Congress must provide the clear direction and resources needed to facilitate reform in all States, tribal governments, territories, and the District of Columbia, that embodies the principles of adolescent development and is true to the rehabilitative purpose of the juvenile system. The federal government can and should be a partner with states and Indian tribes and territories in building on innovative and evidence-informed approaches to create and sustain juvenile justice systems that cost less in terms of both human suffering and financing, enhance public safety, prevent delinquency and court contact, and give court-involved youth the best possible opportunity to live safe, healthy, and fulfilling lives.

**Reauthorize and Strengthen the Juvenile Justice & Delinquency Prevention Act (JJDP)**

Signed into law by President Gerald Ford on September 7, 1974, and most recently reauthorized in 2002, the JJDP embodies a partnership between the federal government and the U.S. states, territories and the District of Columbia to protect children and youth in the justice system, to effectively address high-risk and delinquent behavior, and to improve community safety. Reauthorization of the JJDP is currently ten years overdue. Congress can and should reauthorize the JJDP to strengthen accountability; restore federal investment in juvenile justice; help states, tribes, and local government protect public safety; hold delinquent youth accountable; protect our children from harm; and provide prevention and rehabilitation services to reduce future delinquency. Since the last major 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.

Last Congress, bipartisan legislation<sup>14</sup> to reauthorize this landmark law passed the House of Representatives in September 2016, by a vote of 382-29. A similar bi-partisan bill was also approved by a voice vote in the Senate Judiciary Committee (S. 1169).<sup>15</sup> Both bills included provisions to strengthen the law's core protections by reducing the placement of youth in adult jails pre-trial, providing more structure to the requirement to decrease racial and ethnic disparities, and phasing out exceptions that allow the detention of youth who have engaged in status offense behaviors. They also promoted the use of alternatives to incarceration, improved conditions and educational services for incarcerated youth, and increased accountability. A bipartisan attempt to approve a final bill at the end of the 114<sup>th</sup> Congress was not successful. We call on Congress to complete this unfinished business and pass a bill this year.

**Reauthorize the Juvenile Accountability Block Grant (JABG)**

The JABG program, authorized under the Omnibus Crime Control and Safe Streets Act of 2002, is designed to help reduce youthful offending by supporting accountability-based programs that focus on youth in conflict with the law and state and local juvenile justice systems. The basic premise underlying the JABG program is to hold both the youth and the juvenile justice system accountable. In implementing the program, OJJDP works to support state efforts that reduce youthful offending through both youth-focused and system-focused activities that promote accountability. Funding for JABG was zeroed out in FY 2015. Bipartisan efforts to reauthorize this program at the end of the 114<sup>th</sup> Congress were not successful. We encourage the 115<sup>th</sup> to Congress to continue this work to reauthorize and restore funding for this important grant program.

**Restore and Increase Funding for the JJDP and Other Research-Driven Reforms**

Despite a universally recognized need to further reduce delinquency and improve juvenile justice systems, federal appropriations for key juvenile justice programs have steadily declined over the last 15 years, and only in the last couple of fiscal years has this decline slowed and started to show signs of recovery. Overall, federal funding available to support implementation of the JJDP and other state and local reforms has been cut in half since the law was last reauthorized in 2002. Congress has the unique opportunity to reverse this trend and promote and support evidence-informed practices and policies that prevent delinquency, reduce recidivism, promote positive youth development, keep children and communities safe and save money in the long-run. These are relatively modest, targeted federal investments in state, tribal, and local juvenile justice programs that can pay huge dividends in the form of

public safety, reduced recidivism, and better outcomes for youth, all of which would result in cost savings. Congress should restore juvenile justice funding to its FY 2002 levels, adjusted for inflation, and increase these investments over the next five years.

## **ACT4JJ Juvenile Justice Federal Funding Chart**

	<b>JJDP Title II</b>	<b>JJDP Title V</b>	<b>JABG</b>	<b>Mentoring</b>	<b>Other</b>	<b>Total</b>
FY02	\$88.8	\$94.3	\$249.5	\$16	\$91.5	\$546.9
FY03	\$83.3	\$46.1	\$188.8	\$15.9	\$110.5	\$451.4
FY04	\$83.2	\$79.2	\$59.4	0	\$2.5	\$306.7
FY05	\$83.3	\$79.4	\$54.6	\$14.9	\$9.9	\$346.5
FY06	\$79.2	\$64.4	\$49.5	\$9.9	\$30	\$338.7
FY07	\$79.2	\$64.4	\$49.5	\$9.9	\$30	\$338.7
FY08	\$74.3	\$61.1	\$51.7	\$70	\$32	\$383.6
FY09	\$75	\$62	\$55	\$80	\$20	\$374.7
FY10	\$75	\$65	\$55	\$100	\$37.5	\$423.5
FY11	\$62.3	\$54	\$45.7	\$83	\$31.2	\$276
FY12	\$40	\$20	\$30	\$78	\$94.5	\$262.5
FY13	\$44	\$20	\$25	\$90	\$100.5	\$279.5
FY14	\$55.5	\$15	\$0	\$85.5	\$88	\$244
FY15	\$55.5	\$15*	\$0	\$90	\$91	\$251.5
FY16	\$58	\$17.5**	\$0	\$90	\$104.7	\$270.16
FY17***	\$58	\$17.5**	\$0	\$90	\$104.7	\$270.16
<b>% Difference since last JJDP reauth</b>	<b>-34.6%</b>	<b>-81.4%</b>	<b>-100%</b>	<b>82.2%</b>	<b>12.6%</b>	<b>-50.6%</b>

*All sums reported are in millions.*

*\* Total is earmarked as follows: \$5 million for tribal youth, \$3 million for gang and youth violence education and prevention, \$6 million for community-based violence prevention initiatives, and \$1 million for the National Forum on Youth Violence Prevention.*

*\*\*This sum is earmarked as follows: \$10 million for tribal youth, \$5 million for gang and youth violence education and prevention, \$500,000 for a web portal for children of incarcerated parents, and \$2 million for girls in the juvenile justice system.*

*\*\*\*Short-term Continuing Resolution approved by Congress in December 2016 extends FY16 appropriations levels until April 28, 2017.*

### **Increase Coordination Between Juvenile Justice, Child Welfare Systems**

Many youth in both the juvenile justice and child welfare systems have a history of trauma, mental health conditions or substance use issues that require specialized treatment. Estimates indicate that as many as 55 percent of children in the juvenile justice system have had previous contact with the child welfare system, and one-third to one-half of dually involved youth are girls.<sup>16</sup> We support legislation like last Congress' bipartisan Child Outcomes Need New Efficient Community Teams (CONNECT) Act (S. 3193) that seeks to help states identify and respond to the needs of children who come into contact with both the juvenile justice and child welfare systems.

## II. Reduce Reliance on Detention and Incarceration & Invest in Communities

Decades of empirical studies of juvenile delinquency by scholars in the fields of criminology, child psychology, mental health, substance use, economics, and public health reveal that public dollars spent on effective prevention and early intervention programs reduce delinquency and strengthen families and communities. Adolescent development specialists and social scientists have also amassed extensive research showing how over-reliance on incarceration harms youth. It affects their ability to finish school, pursue higher education, seek employment, and stay out of trouble. Put simply overly-punitive policies that lead to the incarceration of more young people do not lower delinquency or prevent reoffending. One of the most harmful, ineffective and expensive forms of incarceration is the youth prison, the signature feature of nearly every state juvenile justice system. States devote the largest share of their juvenile justice resources to youth prisons at an estimated annual cost of over \$5 billion per year.<sup>17</sup> While youth incarceration has dramatically decreased over the past decade, almost all states still rely on these costly institutions and the harmful approach they embody. Instead of sustaining these failed institutions, tens of millions of dollars could be redirected toward community-based, non-residential alternatives to youth incarceration, and other youth-serving programs.

In October 2016, the National Institutes of Justice, in collaboration with Harvard University and the Annie E. Casey Foundation, released *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model*,<sup>18</sup> which explores recent research in developmental psychology and widespread reports of abuse in youth prisons and recommends that the current youth prison model should be replaced with community-based programs for the vast majority of youth, and for the very small number of youth who may pose a threat to public safety, small, home-like facilities in youths' communities that provide age-appropriate rehabilitation services. And the public agrees. In 2017, a national public opinion poll showed that Americans overwhelmingly support alternatives to incarceration, believe that youth have the capacity to change and can be held accountable for their actions without resorting to incarceration.<sup>19</sup>

Congress should embrace this approach and enact policies that support state efforts to dismantle the high-cost and ineffective youth prison model, replacing it with a continuum of culturally relevant, gender-responsive, developmentally appropriate, strength-based services, supports, and opportunities for youth and families in the communities most impacted by youth incarceration as alternatives to out-of-home placements and youth prisons. In the rare instances when youth must be in out-of-home placement, they should be placed in short-term therapeutic environments in youths' communities that will be of maximum service to youth. Rather than the congregate care institutions designed for adults, youth should be confined in small, home-like settings where their normal development, education, family connections, and peer supports are disrupted as little as possible. Every effort should be made to eliminate the potential for trauma caused by institutionalization.

**Support State and Local Efforts to Invest in Community-Based Alternatives to Incarceration**

Taxpayers spend thousands of dollars annually – and in some places hundreds of thousands of dollars a year—to securely confine a young person.<sup>20</sup> The most recent data show that 74 percent of youth committed and confined in 2013 were there for a nonviolent, non-person offense.<sup>21</sup> Often this money could be better spent on less costly, more effective alternatives. States as diverse as New York, Illinois, California, Connecticut, Arkansas, Ohio, Texas, South Dakota, Kansas, and the District of Columbia have undertaken initiatives to reduce their over-reliance on wasteful, unnecessary, and often dangerous incarceration of children.<sup>22</sup> Instead these states are investing in more effective non-residential, community-based approaches that address important public safety concerns and the well-being of youth and their families. We know that programs and services that institutions provide can almost always be done better in the community, often for less money and with better outcomes for youth and public safety.<sup>23</sup>

Congress should invest in a plan to cut youth incarceration and out-of-home placements in half by the end of 2020 by supporting state and local efforts to develop robust continuums of care for youth. The past two decades have generated evidence and examples from the states that juvenile justice systems can reduce the use of confinement and out-of-home placement, and generate better public safety and youth development outcomes.<sup>24</sup> Fiscal scarcity – particularly since the 2008 downturn – accelerated state and local approaches to meeting a young persons’ need in the community because it is a less expensive, more effective option than placing a youth out-of-the-home or in a confined space. While a catalyst for change, fiscal scarcity has also meant that community-based approaches have not been funded at at-scale. It is more effective, and less expensive, to invest in community-based solutions to youthful misbehavior than to push young people into the justice system. Congressional leaders should support a vision for investing in youth, rather than locking them up.

**Eliminate the Valid Court Order (VCO) Exception from the JJDP**

While the JJDP currently prohibits detaining youth for status offenses, like truancy and running away from home, there is a valid court order (VCO) exception to the Deinstitutionalization of Status Offenders (DSO) core requirement.<sup>25</sup> The VCO exception allows judges and other court personnel to detain youth adjudicated as status offenders if they violate a valid court order or a direct order from the court, such as “stop running away from home” or “attend school regularly.” Detaining and incarcerating non-delinquent, youth who have engaged in status offense behaviors is counter-productive: it is more costly and less effective than home and community-based responses. It interrupts education, pulls children away from family and community, and stigmatizes youth.<sup>26</sup> Research clearly shows that once detained, youth are also more likely to commit unlawful acts, potentially leading to “deeper” involvement in the system.

Girls are disproportionately affected by the VCO exception – they are more likely to be arrested for status offenses and to receive more severe punishment than boys.<sup>27</sup> Many girls, already traumatized before entering the justice system, are re-traumatized by violent and abusive experiences in detention.<sup>28</sup> While there is no data specific to LGBTQ-GNC youth and the use of the VCO exception, other research has shown that LGBTQ-GNC youth are twice as likely to be held in secure detention for status offenses such as truancy, warrants,



probation violations, running away, and prostitution.<sup>29</sup> In recognition of these and other dangers that youth face when they are detained for status offense behaviors, nearly half of all states have already stopped using the VCO exception. For example, Washington State is considering legislation this year to eliminate use of the VCO exception<sup>30</sup> and Kentucky has also undertaken serious efforts to curb its use in recent years. Although judges, court personnel, and advocates are working hard to effectively address the VCO exception on the state level, its mere existence in the JJDPa undermines the DSO core requirement and harms youth. Last Congress, we were pleased that several proposals were introduced to eliminate or phase out use of the VCO exception and we call on Congress to pass a bill this session that would eliminate the exception.

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

Recognizing the importance and cost effectiveness of prevention and early intervention strategies in helping at-risk youth stay out of the school-to-prison pipeline, and reducing incarceration and violence, Congress should support the bipartisan Youth Prison Reduction through Opportunity, Mentoring, Support and Education (Youth PROMISE) Act. The Youth PROMISE Act aims to reduce violence in communities that have a high concentration of youth at risk of school disengagement, social disconnection, and/or delinquent behavior by leveraging federal funds at the community level. The Youth PROMISE Act would enable inclusive groups of local stakeholders to determine the needs of their own communities and to address those needs with a suite of accountable, evidence informed programs. These empirically based prevention and intervention strategies, consisting of programs such as restorative justice practices, family strengthening programs, academic and school supports, positive youth development, and other evidence-informed interventions such as those identified in Blueprints for Violence Prevention,<sup>31</sup> are proven to reduce incarceration and recidivism, and to improve life outcomes for youth.

### **Support Family Engagement**

Recognizing the integral role families play in holding juvenile justice system stakeholders accountable for how they care for and supervise youth, and in assisting in a young person's rehabilitation and successful return to the community, Congress can do more to support families and keep them connected with justice system-involved youth. We call on Congress to authorize the establishment of an independent National Technical Assistance Center on Family Engagement to provide support to state and local justice and child-serving agencies interested in starting or expanding family engagement programs. Congress should also create incentives for Statewide Family Engagement Centers (SFECs) to integrate support services for families involved in the justice system. Finally, we recommend that Congress modify the existing requirement for membership on JJDPa State Advisory Groups (SAGs) to explicitly call for the inclusion of family members and to ensure that youth members have personal and proximate insight into the justice system.

### **Improve School Climate and Reduce Exclusionary Disciplinary Practices**

Academic success plays a crucial role in preventing delinquent behavior and promoting positive outcomes for youth and safer communities. Youth who drop out or are pushed out of school have fewer opportunities for gainful employment and are more likely to commit delinquent acts than youth who remain in school. Over the past two decades, expanded zero tolerance school disciplinary policies have too often led to suspensions, expulsions, arrests and push-out of students for a broad range of student behaviors that are not violent or a threat to school safety, but rather typical of normal adolescent development. The result of zero tolerance has too often been the disconnection from school and criminalization of youth -

particularly youth of color, LGBTQ-GNC youth, and youth with disabilities - for behaviors and infractions that can and should be addressed within schools, without pushing youth out of school or involving law enforcement and justice system referrals.

Additionally, excessive reliance on law enforcement in schools to maintain discipline can send youth into the juvenile and criminal justice systems for matters more appropriately handled by school personnel. As the presence of law enforcement and school resource officers (SROs) in schools has increased, arrests and referrals to the juvenile justice system from schools, generally, have also increased.<sup>32</sup> The presence of law enforcement in schools has effects that transform the school from an academic environment to a site of criminal law enforcement. This comes at the expense of students' rights and their education. Youth of color are especially vulnerable to over-policing in schools, which increase both the racial-academic divide and racially skewed arrest rates.<sup>33</sup>

Schools should instead be encouraged to redirect resources from hiring law enforcement to hiring school counselors, school psychologists, school social workers, and other mental health clinicians who can strengthen school-wide positive behavioral interventions, identify and treat problems that might contribute to youth violence, and improve coordination with community mental health and prevention services. Where schools are engaging SROs, school districts and law enforcement agencies should establish partnerships through Memorandums of Understanding that clearly articulate the role of the law enforcement officers in schools, require adolescent development and mental health awareness training, and establish explicit protocols for interactions with students and referral to services where necessary.

Congress should advance legislation that effectively disrupts the school-to-prison pipeline and the disciplinary policies and practices that can push students out of school and into the justice system. We also encourage Congress to reject proposals that would increase law enforcement presence in schools and/or unnecessarily and inappropriately increase the number of youth who come in contact with the justice system.

### **Improve Access to and Quality of Mental Health and Substance Use Services**

Juvenile justice systems also bear the burden of overwhelmed behavioral health systems and have become de facto treatment setting for many individuals under 18 who lack access to standard care. Seventy percent of youth detained in the juvenile justice system have diagnosable symptoms of a mental health disorder—three and a half times the rate among all individuals under the age of 18.<sup>34</sup> In one recent study, 61.2 percent of justice-involved youth screened positive for a substance use disorder; the study identified comorbid mental health and substance abuse disorders in 48.6% of these youth.<sup>35</sup>

Congress should advance proposals to help identify behavioral health (i.e. mental health and substance use disorders) needs early, including exposure to adverse childhood experiences, mental illness and substance use. Congress should expand access to innovative, culturally competent, and evidence-informed services and treatment, and to improve the quality of those services. And, Congress should create incentives for States to reduce the inappropriate detention or incarceration of youth with behavioral health needs by: 1) identifying vulnerable youth through consistent use of standardized screening and assessments; 2) diverting youth with mental health or substance use needs from detention and incarceration into home- and community-based placements and residential treatment where appropriate; and 3) making training and technical assistance available for law enforcement officers, judges, probation officers, and other decision makers.

Congress should also create incentives to 1) prohibit the use of isolation/solitary confinement of youth with mental health disorders in both juvenile and adult facilities; 2) eliminate gaps in medical coverage for incarcerated youth through policies such as requiring states to suspend rather than terminate Medicaid coverage when youth enter juvenile facilities; and 3) require individualized discharge plans to link youth to appropriate services immediately upon reentry, including mental health and substance use services and supports for the youth and his/her family.

### **Reauthorize and Increase Investment in the Runaway & Homeless Youth Act (RHYA)**

The RHYA, originally passed as part of the JJDPa and last reauthorized in 2008,<sup>36</sup> provides vital housing and services to runaway, homeless, and disconnected youth. There is a two-way relationship between youth homelessness and the justice system. Youth involved with the juvenile or adult criminal justice systems are more likely to report unstable housing and homeless youth report a high level of involvement with the justice system. One study of four U.S. cities found that 20 to 30 percent of homeless young adults had been arrested. Much of this is due to arrests that stem from activities associated with daily survival such as panhandling, loitering, or sleeping outdoors. In addition, homeless youth on the streets are often victims of commercial sexual exploitation and labor trafficking. Up to 77 percent of sex trafficked youth reported previously running away from home. We call on Congress to reauthorize this important law, increase funding for its three pillar programs (Street Outreach, Basic Centers and Transitional Living), and provide additional resources to address the needs of exploited and trafficked children.

## III. Ensure Fairness and Equity for Justice-Involved Youth

It is critical that our justice system operates fairly and equitably to serve all youth. Creating opportunities for youth of color, youth with disabilities, LGBTQ-GNC youth, girls, and other vulnerable populations to grow into healthy, productive adults is not only fair, it is a wise public safety strategy. It is well-documented that youth of color continue to be significantly over-represented in the juvenile justice system at every stage of the process from arrest to secure detention and confinement to transfer into the adult criminal justice system. In 2013, African-American youth were 5.7 times as likely to be detained as White youth; Native American youth were 2.6 times as likely and Latino youth were more than twice as likely.<sup>37</sup> Research demonstrates that youth of color are more frequently transferred to adult court than White youth. Moreover, youth of color are treated more harshly than White youth, even when charged with the same category of offense.<sup>38</sup> In fact, while the juvenile justice system has shrunk overall in the past decade, the racial and ethnic disparities have increased, demonstrating a need for intentional and deliberate attention on ending implicit and explicit biases. Youth with disabilities, including intellectual and developmental disabilities, are also being arrested and incarcerated at higher rates than their nondisabled peers.<sup>39</sup>

Girls and LGBTQ-GNC youth are over-incarcerated, particularly for misdemeanor crimes and/or status offenses. These youth often have experienced high levels of trauma which need to be addressed, not punished. Moreover, girls of color have the highest rates of confinement in juvenile facilities for non-violent status offenses typically associated with responses to underlying trauma – like truancy, curfew violations, and running away – that are only punishable because of a young person’s age. Native American girls are detained at a rate of 179 per 100,000, Black girls at a rate of 123 per 100,000, and Latinas at a rate of 47 per

100,000, while only 37 per 100,000 non-Hispanic white girls are confined for the same behaviors.<sup>40</sup> More and better data are necessary to better understand the extent of the problem and to develop solutions that reduce disparities for all impacted youth.

In light of *Roper*, *Graham*, *Miller*, and *J.D.B.*, youth justice policies that ignore the differences between youth and adults must be reexamined. In the wake of these Supreme Court decisions, 11 states have eliminated the use of life without parole or release sentences for children, including Alaska, Colorado, Connecticut, Delaware, Hawaii, Iowa, Kansas, Kentucky, Massachusetts, Montana, Nevada, South Dakota, Texas, Utah, Vermont, West Virginia, and Wyoming. The American Bar Association has called on states and the federal government to abolish life without parole sentences and give child offenders a meaningful opportunity to obtain release at a reasonable point during their incarceration. The United States has also been urged by the U.N. Committee Against Torture to eliminate the practice of sentencing its children to die in prison, as it stands in direct contradiction to Article 37 of the U.N. Convention on the Rights of the Child, which every nation-state has ratified except the United States and South Sudan. U.S. law continues to remain in violation of both the *Graham* and *Miller* Supreme Court decisions.

### *Recommendations for the 115<sup>th</sup> Congress*

#### **Strengthen the Disproportionate Minority Contact (DMC) Core Protection**

Currently, states must “address” racial and ethnic disparities 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. Through JJDPAs reauthorization, 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, gender, geography, and offense) to identify where disparities exist and the causes of those disparities; 4) collect data on the basis of Hispanic ethnicity. 5) develop and implement plans to address disparities that include measurable objectives for change; 6) evaluate progress toward reducing disparities; and 7) publicly report findings on an annual basis. It is also important to use accurate terminology. There are currently four states (Hawaii, New Mexico, California and Texas) that have a majority non-White population. More states will join them in the coming years. Congress should promote the use of language that reflects our youth and our nation’s changing demographics. The terms “disproportionate minority contact” and “minority youth” are outdated, and instead the terms “Racial and Ethnic Disparities (R.E.D.)” and “youth of color” should be utilized.

#### **Increase Funding and Support for Native Youth and Tribal Juvenile Justice Systems**

Congress must take action to ensure that, like all governments, tribes have access to flexible and consistent funding sources in order to develop institutions and programs that work to meet the needs of Native youth. American Indian and Alaska Native children are arrested at a rate of more than two-to-three times that of other youth and are also overrepresented in the juvenile justice system. One of the only sources of juvenile justice funding, federal support is necessary to ensure these young people have access to fair, appropriate and effective justice services in tribal communities. We support increases in funding for tribal juvenile justice and an increase in the authorization level for the Tribal Youth Program under Title V of the

JJDPAs. We also ask that the JJDPAs reauthorization include provisions that 1) provide notice of any juvenile child custody proceeding in state or county court involving a tribal youth so that Indian tribes can provide services and support to those youth during and after their interactions with the juvenile justice systems; 2) ensure the inclusion of tribal representatives on State Advisory Groups; 3) require states work with tribes on the design, content, and operation of juvenile justice programs to ensure they are culturally competent and meet the needs of tribal youth, with an emphasis on alternatives to incarceration and 4) help tribes to develop or revise trauma informed, culturally specific tribal codes to develop and improve tribal juvenile justice systems.

### **Ensure Fair Treatment of Youth With Disabilities**

Youth with disabilities represent the highest percentage of any sub-group of individuals in the juvenile justice and adult criminal systems. Studies have found that 65-70 percent of youth in the justice system meet the criteria for a disability, a rate that is more than three times higher than that of the general population. Additionally, at least 75 percent of youth in the juvenile justice system have experienced traumatic victimization, leaving them at-risk for mental health disorders such as posttraumatic stress syndrome.<sup>41</sup> Although the focus is often on individuals with mental health needs, also included in significant numbers are individuals with other disabilities including, but not limited to, sensory, physical, intellectual/developmental, traumatic brain injury, and combinations thereof.

Students with disabilities protected by the Individuals with Disabilities Education Act (IDEA) represent a quarter of students arrested and referred to law enforcement, even though they are only 12 percent of the overall student population. With the exception of Latino and Asian American students, more than one out of four boys of color with disabilities served by IDEA and nearly one in five girls of color with disabilities receives an out-of-school suspension.<sup>42</sup> Congress should fund a Protection and Advocacy Program for juvenile justice involved youth in order to ensure that youth with disabilities are not unfairly and disproportionately placed into the juvenile justice system due to unmet needs related to their disabilities, to assist with data collection and analysis of these cases, and to make certain these youth are treated fairly and humanely when they are placed out of the home.

### **Promote Nondiscrimination and Cultural Competence Regarding LGBTQ-GNC Youth**

Recent research finds that one in five youth in the juvenile justice system identify as LGBTQ-GNC and 85% of these youth are youth of color. LGBTQ-GNC youth are vulnerable to discrimination, profiling, and mistreatment in the juvenile and criminal justice systems. In fact, LGBTQ-GNC youth are twice as likely to end up in juvenile detention; 20% youth in juvenile justice facilities identify as LGBTQ-GNC compared to 7-9% of youth in general.<sup>43</sup> In their homes, schools, and communities, LGBTQ-GNC 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 LGBTQ-GNC youth enter the juvenile justice system as a direct result of family rejection. In addition, a 2011 study in *Pediatrics* found that adolescents who self-identified as LGBTQ-GNC 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>44</sup> In addition, LGBTQ-GNC youth experience victimization in juvenile facilities at higher rates than heterosexual youth. For example, youth identified as “non-heterosexual” are sexually victimized by other youth in juvenile facilities at 10 times the rate of heterosexual youth.<sup>45</sup>

Congress should create incentives for States to reduce the inappropriate detention of LGBTQ-GNC youth and address decision makers' lack of understanding of this population by: 1) ensuring that JJDP State Advisory Groups (SAGs) include experts on LGBTQ-GNC youth; 2) increasing research and information dissemination on this population; 3) making funding for training and technical assistance available for juvenile justice agencies, law enforcement officers, judges, probation officers, defense attorneys, prosecutors, 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, gender identity, and gender conformance.

### **Address the Specific Needs of Girls**

Girls are the fastest growing segment of the juvenile justice population and their pathway into the system is often very different from that of boys. For girls, physical, psychological, and sexual abuse is an overwhelming predictor for juvenile justice involvement. Once in the system, girls often fail to receive the services and support needed to heal from trauma and address destructive behaviors, and are instead re-traumatized and derailed from educational achievement.<sup>46</sup> The underlying gendered bias that all girl survivors experience is exacerbated for girls of color, who also experience intersectional bias related to racial stereotypes and cultural norms about appropriate feminine behavior.

In addition to eliminating the VCO exception from the JJDP, we recommend that Congress fund the National Girls Initiative to provide specific, targeted support for state efforts to implement best practices with respect to at-risk and system-involved girls. This could be coordinated with any girls' work already taking place as part of the state's 3-year plan required by Title II of the JJDP. We also encourage Congress to amend Title V of the JJDP to include gender-responsive programming as a priority area for states and localities applying for funding under this title. Title V focuses on reducing risks and enhancing protective factors to prevent at-risk youth from entering the juvenile justice system and to intervene with first-time, non-serious offenders to keep them out of the system. Because girls often enter the system for non-violent, status offenses, directing resources for gender-specific prevention and early intervention would be impactful.

Some girls entering the juvenile justice system, even on low-level status offenses, are victims of domestic child sex trafficking.<sup>47</sup> Congress should require state juvenile justice systems to screen children at intake to determine if they are victims of commercial sexual exploitation and trafficking, and incentivize states to divert these children away from the juvenile justice system and into appropriate community-based interventions and/or the child welfare system. To facilitate this process, Congress should appropriately fund programs for domestic child sex trafficking victims authorized by the Trafficking Victims Protection Act and the Justice for Victims of Trafficking Act that encourage the development of multidisciplinary, cross-system efforts designed to protect victims of child sex trafficking from juvenile justice involvement, including child trafficking victims who may be arrested on charges unrelated to prostitution or status offenses. Congress should also require states to collect and report data on the number of victims identified within their juvenile facilities.

Girls enter the juvenile justice system with pre-existing trauma. Congress should require states to collect data on the conditions of confinement that may exacerbate girls' trauma including use of restraints, strip searches, and solitary confinement or 'protective custody.' Finally, Congress should ban shackling of pregnant girls. Use of restraints during pregnancy, labor, delivery, and post-partum is a health risk. Congress should require states to document

the number of pregnant and parenting youth detained, incarcerated, or in out-of-home placements in the justice system, as well as the frequency of the use of restraints on them. The Department of Justice should compile the results in a publicly available report to Congress.

### **Police-Youth Interactions**

A 2015 report by the International Association of Chiefs of Police notes that nationally between 4 to 5 million youth ages 16-19 have face-to-face encounters with police each year, and these estimates do not include those children under 16 years of age.<sup>48</sup> These estimates also do not include the millions of children who experience police encounters simply by attending their public school, due to the major increase in the placement of school-based law enforcement officers in elementary, middle and high schools throughout the nation.

The May 2015 report by the President’s Task Force on 21<sup>st</sup> Century Policing further expresses the necessity of a developmental approach to law enforcement’s interaction with juveniles.<sup>49</sup> Recommendation 4.6 from the report states “Communities should adopt policies and programs that address the needs of children and youth most at risk for crime or violence and reduce aggressive law enforcement tactics that stigmatize youth and marginalize their participation in schools and communities.” Recommendation 4.7 emphasizes the importance of prioritizing youth leadership: “Communities need to affirm and recognize the voices of youth in community decision making, facilitate youth-led research and problem solving, and develop and fund youth leadership training and life skills through positive youth/police collaboration and interactions.” And includes the specific action item: “Communities and law enforcement agencies should restore and build trust between youth and police by creating programs and projects for positive, consistent, and persistent interaction between youth and police.”

Congress should support local law enforcement efforts in states to develop a comprehensive policy concerning police-youth interactions. This comprehensive Youth Policy would ensure police-youth interactions are informed by principles of child and adolescent development, an understanding of juvenile specific law, and a commitment to positive role-modeling and relationship building between law enforcement and youth consistent with procedural justice, and community, problem-oriented and bias-free policing.

### **Ensure Fair and Adequate Representation of System-Involved Youth**

Congress should support efforts to ensure that states are meeting constitutional requirements to provide access to quality legal counsel for children in the justice system. The presence of properly resourced, competent attorneys is essential to the integrity of the juvenile justice system. Although it has been 50 years since the United States Supreme Court decision *In re Gault*<sup>50</sup> extended the right to counsel to juveniles, a series of access issues remain in many parts of the country. In some areas, youth waive their right to counsel, often out of fear that their parents will be charged financially. In other areas, youth are not meaningfully advised of their right to counsel before being interrogated. Law, science and common experience all conclude that, compared to adults, youth have less information and experience needed to understand and exert their rights, and are significantly more vulnerable to giving false statements in response to routine interrogation by law enforcement. In still other places, youth spend days in custody without receiving a lawyer to represent them – with time limits for a prompt probable cause determination tolled for weekends and holidays. And finally youth in many jurisdictions are represented by attorneys who are too overloaded or under-resourced to provide adequate representation. These deficiencies have a profound impact in

producing racial disparities and unfairness in the system.<sup>51</sup>

### **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 to achieve this policy goal. Studies of youth brain development have found that the decision-making functions of the brain do not fully develop until much later than was previously believed to be the case. Despite this, some states still automatically try 16 and 17-year-olds as adults, simply because of their age and often due to the offense committed, even when that offense is nonviolent.<sup>52</sup> Last Congress' Record Expungement Designed to Enhance Employment Act of 2015 (REDEEM Act)<sup>53</sup> would have incentivized states to establish age 18 as a floor for original jurisdiction in adult criminal courts. We call on the Congress to reintroduce and pass the provisions on the age of adult court jurisdiction and to encourage States to raise the extended age of juvenile court jurisdiction to at least the age of 21.

### **Eliminate Life Without the Possibility of Parole or Release Sentences for Children Through the Use of a Judicial Review Process**

Congress should support efforts to bring the United States into compliance with both the *Graham* and *Miller* Supreme Court decisions, as well as Article 37 of the Convention on the Rights of the Child (CRC), by following the American Bar Association's recommendation and eliminating life without the possibility of release as a sentencing option for children. Legislative reform should create a judicial review mechanism that allows judges to periodically evaluate the sentence an individual was given as a child after no more than 15 years into the child's incarceration. During his or her consideration of modifying the original sentence, the judge should consider the following factors: (1) a review of educational and court documents; (2) participation in rehabilitative and educational programs while in prison; (3) age at the time of offense; (4) immaturity at the time of the offense; (5) ability to appreciate the risks and consequences of the conduct; (6) intellectual capacity; (7) level of participation in the offense; (8) history of trauma or involvement in the child welfare system; (9) efforts made toward rehabilitation; (10) any other evidence submitted by the individuals counsel; and (11) any other mitigating factors or circumstances.

## **IV. Ensure Safety for Justice-Involved Youth**

Far too often, incarcerated youth endure abusive conditions. Studies by the Bureau of Justice Statistics (BJS) have found that as many as one in ten youth in juvenile facilities report experiencing sexual abuse, with more than one in five non-heterosexual youth reporting such abuse.<sup>54</sup> The National Prison Rape Elimination Commission found that youth were one of the most at risk populations of sexual victimization in adult jails and prisons.<sup>55</sup> Furthermore, youth experience a high level of physical abuses, including use of pepper spray, sexual assaults by staff, hog-tying, shackling, and isolation.<sup>56</sup> 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.

The promise of a system that helps youth who have erred to get back on track is at direct odds with the practice of placing youth in the adult criminal justice system where they are exposed to harsh sentencing and conditions of confinement. Youth tried as adults suffer



lifelong consequences from their experience with adult court, and are often denied employment and educational opportunities.<sup>57</sup> Youth incarcerated after being tried in adult court are also more likely to be rearrested and rearrested sooner.<sup>58</sup> The adult criminal justice system cannot meet the developmental needs of youth, exposes youth to a wide array of physical and psychological harms, and contributes to increased recidivism. Congress should provide strong leadership for states to reduce, and eventually eliminate, their harmful and dangerous reliance on trying youth as adults.

## *Recommendations for the 115<sup>th</sup> Congress*

### **Strengthen JJDP A Jail Removal Core Protection to Keep Youth Out of Adult Facilities**

The original intent of the JJDP A was to recognize the unique needs of youth in the criminal justice system and establish a separate system to specifically address these needs. One of these unique needs for youth is protection from the dangers of adult jails and lockups. The jail removal core protection currently protects youth who are under the jurisdiction of the juvenile justice system by prohibiting these youth from being held in adult jails and lockups except in very limited circumstances, such as while waiting for transport to appropriate juvenile facilities. In these limited circumstances where youth are placed in adult jails and lock-ups, the sight and sound core protection limits the contact these youth have with adult inmates. Congress should pass a JJDP A reauthorization that would extend the jail removal and sight and sound protections to all youth under age 18, regardless of whether they are 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. Several states, such as Colorado, Indiana, and Oregon, have led the way in removing youth charged as adults from adult jails and prisons.<sup>59</sup>

### **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 needs 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 disallow the use of federal funds for the most dangerous practices, which create an unreasonable risk of physical injury, pain, or psychological harm to youth, such as solitary confinement. 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 use of isolation and restraint, and allow states to use JJDP A funds to develop independent monitoring bodies (e.g., creating ombudsmen programs, developing community monitoring panels, or partnering with Protection and Advocacy organizations) and other programs to improve conditions of confinement, including reducing unnecessary isolation and use of restraints.<sup>60</sup>

### **Approve Restrictions on Room Confinement**

Room confinement —also known as solitary confinement, isolation, segregation, seclusion, or separation —creates severe risks of harm to the mental and physical health of young people. We call on Congress to support efforts to ban the use of inappropriate room

confinement pre- and post-adjudication for discipline, punishment, retaliation, staffing shortages, administrative convenience, or any reason other than as a temporary response to behavior that poses a serious and immediate risk of physical harm to the young person or others. Proposals to reauthorize the JJDPa should prohibit the use of room confinement except in situations of serious and immediate risk of harm, in which case such use should be limited to no more than three hours. Congress should pass the bipartisan Maintaining Dignity and Eliminating Unnecessary Restrictive Confinement of Youths Act of 2017 (MERCY Act)<sup>61</sup> introduced earlier this year that would prohibit the solitary confinement of youth who are tried in the federal system and held in pretrial facilities or juvenile detention facilities, barring some extremely exceptional temporary circumstances.

### **Support Prison Rape Elimination Act (PREA) Implementation by Removing Youth from Adult Facilities**

Youth in the adult criminal justice system are at great risk of sexual abuse and suicide when housed in adult jails and prisons. Youth are also often placed in isolation and locked down 23 hours a day in small cells with no natural light. These conditions cause anxiety and paranoia, exacerbate existing mental disorders, and heighten the risk of suicide. The ACLU and Human Rights Watch issued a report, *Growing Up Locked Down*, which estimates that nearly 100,000 youth are in adult jails or prisons annually.<sup>62</sup> In addition, youth housed in adult jails are 36 times more likely to commit suicide than are youth housed in juvenile detention facilities.<sup>63</sup> In light of the overwhelming evidence that youth cannot be kept safe in adult facilities and that keeping youth in adult facilities is harmful to the youth and to public safety, all efforts should be made to remove youth from adult facilities.

The Prison Rape Elimination Act of 2003 (PREA) regulations, including the Youthful Inmate Standard which requires sight and sound separation of youth from adults in adult facilities and restricts the use of isolation and solitary confinement of youth, must be fully implemented in all the states. The smartest and most cost effective way to achieve compliance with this standard is by removing youth from adult jails and prisons. Congress must adequately fund PREA efforts to ensure nationwide compliance and we encourage Congress to exercise its oversight authority to make certain that states' implementation of the law is consistent with its intent to keep individuals in custody safe from sexual victimization and related harms.

## **V. Help Justice-Involved Youth Successfully Reenter Their Community**

Approximately 100,000 young people under age 18 leave youth prisons and other secure juvenile facilities and return to their communities each year.<sup>64</sup> Many youth are placed back into neighborhoods with few youth supportive programs, high crime rates, poverty, and poor performing schools. Yet many are not provided with the comprehensive reentry planning that would help them to succeed when they return to their communities. The U.S. Departments of Education and Justice have recommended that juvenile justice settings create individualized pre-release plans for youth immediately upon the youth's entry into a facility. Public safety is compromised when youth leaving out-of-home placements are not afforded necessary planning and supportive services upon reentering their communities, increasing the likelihood of recidivism.

Effective reentry services and aftercare for youth exiting juvenile justice facilities reduce recidivism and support their successful reintegration into families and communities.

Education, in particular, has been found to be essential to ensuring long-term reentry success for youth, yet as many as two-thirds do not return to school after release from secure custody. By fostering reintegration into school, mastery of independent life skills, and mental health and substance use treatment for those youth who need such assistance, reentry services built around each individual youth and his or her unique needs will help young people build the resiliency and positive development to divert them from harm and delinquent behaviors. Also, reentry preparation for youth who have been incarcerated for longer periods of time for serious felonies, or youth serving life without parole sentences that are no longer legally permitted, should be prepared for reentry during these longer periods of incarceration through access to education, job training, and other health and social programs.

If our nation expects to reduce recidivism, it must establish a national policy agenda that supports reentry services to connect youth with meaningful opportunities for self-sufficiency and community integration. Planning should begin prior to release and support services should follow the youth home. Policy and practice must be grounded in promising or evidence-based practices and involve cooperation among existing federal and State agencies, local stakeholders, juvenile justice experts, and reform advocates.

### *Recommendations for the 115<sup>th</sup> Congress*

#### **Reauthorize and Increase Funding for the Second Chance Act**

Congress should reauthorize and increase funding for the Second Chance Act to help provide necessary resources to support youth reentry services. In recent years, the percentage of funding dedicated to youth reentry services from the Second Chance Act has decreased. It is critical to maintain and continue these investments as a way to support youth access to reentry services at the local level, as well as to help ensure the successful reentry of youth, who otherwise could return to the juvenile justice or adult criminal justice system at great cost to themselves, their families, and taxpayers. Targeted resources and supports help to ensure reentering youth are afforded the opportunity to have positive life outcomes and are equipped with important and necessary skills. Federal re-entry funds also help to support innovative models that can be replicated elsewhere.

#### **Protect Juvenile Records and Reduce Collateral Consequences of Court Involvement**

Youth with juvenile records face major barriers to obtaining housing, education, employment, and other necessities. While many believe juvenile delinquency records are confidential and automatically destroyed when a youth turns 18, this is often not true, and there are extensive exceptions to confidentiality. Widespread and unregulated access to juvenile records undermines the confidential underpinnings of the juvenile court system and the ability of youth to work to move forward from their past mistakes. Confidentiality statutes and regulations vary widely across states, with a general trend of relaxing restrictions on access to information, and often confusing procedures to seal or expunge a prior record. Juvenile records contain highly sensitive information such as details about the child's family, education, social history, behavioral problems, mental health and/or substance use issues. This information is used to provide targeted treatment and rehabilitative services to individual youth, but can impede a young person's successful transition to adulthood if it is available to the public.<sup>65</sup> We call on Congress to pass provisions that improve juvenile record confidentiality, and sealing and expungement opportunities for youth.

### **Increase Educational Opportunities for Justice-Involved Youth**

Passage of the bipartisan Every Student Succeeds Act (ESSA) in late 2015 reauthorized the Elementary and Secondary Education Act, a landmark civil rights law that provides funding and program parameters for K-12 education. ESSA codified several important new protections for youth involved in or reentering from the juvenile justice system. Congress should continue to strengthen connections between the education and juvenile justice systems to ensure appropriate education for justice-involved youth. Paying for college is another challenge for justice-involved youth. Youth reentering from the juvenile and criminal justice systems and youth with criminal records often need financial support and other resources to support their work to obtain post-secondary education. Congress should provide this support, as well as remove relevant statutory and other barriers to higher education that are collateral consequences of justice system involvement.

### **Promote Access to Healthcare for Justice-Involved Youth**

Many youth in the justice system have serious physical and behavioral health needs. Prior to their incarceration, many access health services through Medicaid or the Children's Health Insurance Program (CHIP), but this coverage often is terminated upon entering a secure detention or correctional facility. Reapplying for benefits upon release may take up to 90 days to complete. This delay seriously threatens successful reentry 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 youth reoffending and experiencing recommitment to an institution. Congress should mandate suspension rather than termination of public insurance coverage for young people in the justice system to promote continuity of care.

### **Increase Funding for the Reintegration of Ex-Offenders (RExO) and the Face Forward Programs at Department of Labor**

Managed by the Employment & Training Administration at the U.S. Department of Labor, the Reintegration of Ex-Offenders (RExO) Program, funded at \$82 million in FY 2015, provides grants to nonprofit organizations for employment services for formerly incarcerated adults and young people with the aim of reducing recidivism and improving workforce outcomes. Authorized under Section 171 of the Workforce Investment Act (WIA) of 1998, RExO programs provide viable, living-wage pathways for persons with criminal records to successfully reenter society and become productive, law-abiding citizens. Importantly, the RExO Program recognizes the need for targeted reentry service for young people by including a \$20 million set-aside to assist formerly incarcerated youth from high-poverty, high-crime areas. RExO funds are used to prepare participants for jobs in high demand industries through career pathways and industry-recognized credentials. Successful reentry into the workforce can improve neighborhoods, strengthen families, and reduce crime. Research has demonstrated that employment is associated with lower rates of reoffending, and that higher wages are associated with lower rates of criminal activity. Additionally, the Face Forward Grant Program at the Employment & Training Administration at the U.S. Department of Labor supports a range of job training, mentoring, educational, expungement, diversion, and case management activities for youth. Congress should fully fund the RExO and Face Forward programs.

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

The Sex Offender Registration and Notification Act (SORNA), as currently applied to youth, contradicts research that shows that youth who commit sex-based offenses have significantly lower recidivism rates than adults and that sex offender registration for youth has no impact

on sexual offense recidivism or any deterrence effect, nor has it been demonstrated to improve public safety. Youth are also exceedingly amenable to treatment. SORNA has great potential to disrupt families and communities across the nation because public registration and notification stigmatizes the youth and their 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 behavior when they learn that their child may be required to register for life as a sex offender. Congress should amend the SORNA Title of the Adam Walsh Child Protection and Safety Act of 2006 to exclude adjudicated youth from sex offender registries and community notification practices.

## Endnotes

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- <sup>3</sup> Sickmund, M., Sladky, A., and Kang, W. (2015). "Easy Access to Juvenile Court Statistics: 1985-2013." Online. Available at: <http://www.ojjdp.gov/ojstatbb/ezajcs/>
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- <sup>6</sup> Minton, T. & Zeng, Z. (December 2016). *Jail Inmates in 2015*. Washington, D.C.: US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Available at: <https://www.bjs.gov/content/pub/pdf/ji15.pdf>. Carson, E. and Anderson, E. (December 2016). *Prisoners in 2015*. Washington, D.C.: US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Available at: <https://www.bjs.gov/content/pub/pdf/p15.pdf>.
- <sup>7</sup> LGBTQ-GNC is an acronym that stands for Lesbian, Gay, Bisexual, Transgender, Queer or Questioning – Gender Non Conforming. This document uses the acronym "LGBTQ-GNC" in the broadest sense possible. While there are many other acronyms that may reflect a more nuanced understanding of the breadth of identities that exist within the SOGIE (Sexual Orientation, Gender Identity or Expression) spectrum (e.g. LGBTQQIAA2-S), we chose LGBTQ-GNC for the sake of brevity and uniformity. Terminology is constantly evolving and because certain groups may gravitate to certain terms and abbreviations over others, it is therefore difficult to come to a commonly agreed-upon acronym that reflects all perspectives. This use of LGBTQ-GNC is intended to be as inclusive of all other identities as possible.
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- <sup>9</sup> Justice Policy Institute (December 2014). *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration*. Washington, DC. Available at: <http://www.justicepolicy.org/research/8477>. See also, Mendel, R. (2011). *No Place for Kids, The Case for Reducing Juvenile Incarceration*. Baltimore, MD: The Annie E. Casey Foundation. Available at: [www.aecf.org/noplaceforkids](http://www.aecf.org/noplaceforkids).
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- <sup>14</sup> See H.R. 5963, Supporting Youth Opportunity and Preventing Delinquency Act of 2016, introduced September 8, 2016 and approved by the full House Representatives, 382-29 on September 22, 2016.
- <sup>15</sup> See S. 1169, Juvenile Justice and Delinquency Prevention Reauthorization Act of 2015, introduced on April 30, 2015 and approved by voice vote by the Senate Judiciary Committee on July 23, 2015.
- <sup>16</sup> Huang, H., Ryan, J.P. and Herz, D. (January 2012) *The journey of dually-involved youth: The description and prediction of rereporting and recidivism*. *Children and Youth Services Review*. Volume 34, Issue 1, pp. 254–260. See also, Herz, D. et al. (March 2012). *Addressing the Needs of Multi-System Youth: Strengthening the Connection Between Child Welfare and Juvenile Justice*, Georgetown University Center for Juvenile Justice Reform, Washington, DC. Available at: [http://cjjr.georgetown.edu/wp-content/uploads/2015/03/MultiSystemYouth\\_March2012.pdf](http://cjjr.georgetown.edu/wp-content/uploads/2015/03/MultiSystemYouth_March2012.pdf).
- <sup>17</sup> Mendel, R. (2011). *No Place for Kids, The Case for Reducing Juvenile Incarceration*. Baltimore, MD: The Annie E. Casey Foundation. Available at: [www.aecf.org/noplaceforkids](http://www.aecf.org/noplaceforkids).
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- <sup>19</sup> GBA Strategies for Youth First. (January 2016 & 2017). Poll Results on Youth Justice Reform. Available at: <http://www.youthfirstinitiative.org>.
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**National Juvenile Justice and Delinquency Prevention Coalition:**

*The National Juvenile Justice and Delinquency Prevention Coalition (NJJJPC) is a collaborative array of youth- and family- serving, social justice, law enforcement, corrections, and faith-based organizations, working 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.*

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