




Promoting Safe Communities



Recommendations for the Administration

National Juvenile Justice and Delinquency Prevention Coalition
www.promotesafecommunities.org
2015 - 2016

OPPORTUNITIES FOR JUVENILE JUSTICE & DELINQUENCY PREVENTION REFORM



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Juvenile justice systems across the United States are in urgent need of reform, and federal leadership is necessary to advance the pace of change. Despite a steady drop in juvenile 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. Although the number of juvenile arrests accounts for a small portion of the nation's crime and has declined more than 45 percent since 2004¹, each year, police still make more than 600,000 juvenile arrests;² juvenile courts handle roughly 1.2 million cases;³ and 250,000 youth are prosecuted in the adult criminal justice system.⁴ On any given night, nearly 55,000 children are placed in secure confinement in state juvenile justice systems, most for non-violent offenses. The vast majority are youth of color and/or youth with disabilities.⁵ An additional 6,000 children are held in adult jails and prisons each night,⁶ and an estimated 100,000 youth are admitted into local adult facilities and prisons each year.⁷

Current juvenile justice policies and practices too often ignore children's age, disability, and amenability to rehabilitation, cause long-term collateral consequences, waste taxpayer dollars, and violate our deepest held principles about equal justice under the law and the role of the juvenile justice system. Many state systems exhibit racial and ethnic disparities, pursue discriminatory policies and practices toward lesbian, gay, bisexual, and transgender (LGBT)⁸ youth, lack sound mental health and drug treatment services, and apply excessively harsh sanctions for minor and nonviolent adolescent misbehavior. 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.⁹ 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 youth in smaller programs in their homes or communities whenever possible.¹⁰

Ineffective and unnecessarily harsh practices and policies continue despite the fact that the United States Supreme Court has held three times in the last few years that children are different from adults. In its 2010 ruling in *Graham v. Florida*, the Court struck down life-without-parole sentences for youth convicted of non-homicide offenses. Two years later, the Court decided in *Miller v. Alabama* that mandatory life-without-parole sentences imposed on youth violate the 8th amendment ban on cruel and unusual punishment. In 2011, the Court ruled in *J.D.B. v. North Carolina* that law enforcement officials must consider the age of a suspect in determining whether Miranda warnings should be issued. These rulings followed the Court's reasoning in *Roper v. Simmons*, which outlawed the death penalty for children in 2005, and relied on growing bodies 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 this Administration and Congress to reexamine policies and practices that ignore the

fundamental differences between children and adults, and provide leadership to states that is consistent with these rulings.

With strong federal leadership, the pace of juvenile justice reforms can be accelerated. 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-based approaches to reducing adolescent crime. In August 2012, led by a bipartisan group of state lawmakers and governors, the National Conference of State Legislatures released a report highlighting successful efforts from around the country.¹¹ The Administration 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) Restore Federal Leadership in Juvenile Justice Policy
- 2) Support and Prioritize Prevention, Early Intervention, and Diversion Strategies
- 3) Ensure Safety and Fairness for Court-Involved Youth
- 4) Remove Youth from the Adult Criminal Justice System
- 5) Support Youth Reentry

I. Restore Federal Leadership in Juvenile Justice Policy

For more than a decade, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) has suffered a drastic depletion of funding and support, and the agency's role in providing national leadership has been greatly diminished.¹² Funding levels for OJJDP declined 83 percent from 1999 to 2010,¹³ and continue to be too low. In addition, the Juvenile Justice and Delinquency Prevention Act (JJDP), authorizing legislation for OJJDP and the statutory framework for federal investment in state reform, is more than seven years overdue for reauthorization. The National Academy of Sciences recently released a report detailing the important federal role in supporting state juvenile justice systems.¹⁴ Going forward, the Administration must provide the clear direction and resources needed to facilitate reform in all States, 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 in building on innovative and evidence-based approaches to create and sustain juvenile 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 opportunities to live safe, healthy, and fulfilling lives.

Recommendations for the Administration

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

As a national agency with access to and command of national resources, OJJDP is well positioned to focus on identifying, developing and promoting what works to reduce delinquency and advance youth, family and community success. OJJDP should continue to

evaluate the evidence base for promising programs, support increased research to explore and develop new evidence-based approaches, and discontinue federal funding for approaches that are ineffective at protecting public safety and harmful to youth, like boot camps and zero tolerance policies.

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 juvenile justice programs have declined over the last decade. Federal funding available to support implementation of the JJDPA and other state and local reforms has steadily dropped by more than half since the law was last reauthorized in 2002, and the appropriations caps contained in the Budget Control Act of 2011 have only accelerated the scope of the cuts.

ACT4JJ Juvenile Justice Federal Funding Chart

	<u>JJDPA Title II</u>	<u>JJDPA Title V</u>	<u>JABG</u>	<u>Mentoring</u>	<u>Other</u>	<u>Total</u>
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
% Difference since last JJDPA reauth	-37.5%	-84%	-100%	462.5%	0%	-54%

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.

We commend the Administration for attempting to reverse proposals to deeply cut and completely eliminate core juvenile justice funding. Yet, there is an absence of a strong voice to support for the juvenile justice formula grants that allow the federal government to partner with all 56 states, territories and DC – to do the greatest good for the greatest number.

We applaud the Administration's FY 2016 budget, which proposes \$142 million for three critical juvenile justice programs: \$70 million for Title II of the JJDP; \$42 million with no earmarks for Title V of the JJDP; and \$30 million for the Juvenile Accountability Block Grant (JABG). Given the critical nature of this modest federal investment, we continue to be disappointed that Congress has repeatedly recommended cuts to Title II funds, earmarked limited Title V funding for other purposes and eliminated JABG funding. The Title II, Part B state formula grants are particularly critical as they can be used for a wide variety of prevention and intervention activities in the states in addition to helping states comply with the core protections of the JJDP.

Finally, we support the Administration's proposed new investment in the SMART on Juvenile Justice Initiative, which incentivizes states to foster better outcomes for system-involved youth. This new program offers additional dollars to help states invest in alternatives to incarceration and reduce the racial and ethnic disparities in the system. This initiative also includes a focus on reducing the disparities in the system involving youth with disabilities, who are often also youth who are also disproportionately represented in terms of race and ethnicity. A handful of states have already taken action to reduce youth incarceration by placing limits on who can be incarcerated, investing in community-based alternatives, and closing youth prisons with positive results. For example, a recent report by the Council of State Governments found that system-involved Texas youth under community-based supervision were far less likely to reoffend than youth with very similar profiles who were confined in state correctional facilities.¹⁵

These are relatively modest, targeted federal investments in state 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. We encourage the Administration to continue to call for the restoration of juvenile justice funding to FY 2002 levels, adjusted for inflation, and an increase in these investments over the next five years.

Support Reauthorization and State Implementation of the JJDP

Reauthorization of the JJDP is currently more than seven years overdue. The Administration should issue a strong statement of support of S. 1169, the Juvenile Justice and Delinquency Prevention Reauthorization Act of 2015, which was introduced in the U.S. Senate on April 30, 2015. This bipartisan proposal builds on the reauthorization bill introduced in 2014,¹⁶ and legislation reported out of the Senate Judiciary Committee in the 111th Congress.¹⁷ S. 1169 includes provisions to strengthen the law's core protections by reducing the placement of youth in adult jails pre-trial, providing more structure to the law's requirement to decrease racial and ethnic disparities, and phasing out exceptions that allow the detention of youth who have engaged in status offense behaviors. The bill also promotes the use of alternatives to incarceration, improves conditions and educational services for incarcerated youth, and increases accountability. The Administration should issue a strong Statement of Administration Policy in support of the bill.

In addition, it has been more than 17 years since OJJDP has conducted a comprehensive review to update JJDP implementation regulations and guidance. This means that the amendments made to the JJDP in 2002 are not yet reflected in the regulatory guidance provided to states, nor do the regulations reflect current circumstances. OJJDP should

produce new regulations and federal guidance to help states effectively implement the JJDA core protections and other reforms.

Strengthen Federal/State Partnerships

The partnerships between the states and OJJDP should be strengthened by expanding training, technical assistance, research, and evaluation. Further, there should be greater transparency and accountability by making State plans and reports on compliance with the core protections publicly available on the OJJDP website.

Ensure That Program Policies and Practices Involve Families

We applaud the decision of the Federal Advisory Committee on Juvenile Justice to include youth members as formal members. It was very helpful to states for OJJDP to work with two of its training partners in developing a “Youth Involvement” curriculum for state advisory groups. In our view, the agency should continue to actively support greater youth and family involvement by providing ongoing resources and guidance. Specifically, we recommend allocating technical assistance resources to support family engagement, hiring a family member to help lead the effort going forward, and issuing new federal guidelines on family engagement in juvenile justice that include family acceptance and engagement efforts for LGBT youth.¹⁸ The Administration should appoint a formerly incarcerated youth and a family member to the Federal Coordinating Council on Juvenile Justice and OJJDP should re-instate the youth leadership advisory board convened during the Clinton Administration to help further advance training on youth involvement. We also recommend that the Administration support the inclusion of “family members” on the JJDA state advisory groups, in a manner that is well supported and consistent with the current JJDA “youth requirement.”

Set and meet national benchmarks to prevent and reduce youth violence and delinquency, and to increase healing and well-being.

The Attorney General’s National Task Force on Children Exposed to Violence’s report, *Defending Childhood*, released in December, 2012, provided a series of recommendations to help prevent and reduce child victimization from all forms of violence. The recommendations are designed to help children and youth heal from violence by elevating federal leadership, launching a national initiative, investing in national data collection, and funding trauma-informed services for children and youth. We applaud OJJDP for partnering with the Department of Health and Human Services since 2013 and issuing guidance encouraging states and tribal governments to integrate trauma-informed screening, assessment of child well-being, and functioning and evidence-based practices into their services to children and families. We encourage the Administration to continue to implement all of the Task Force recommendations, including creating national centers of excellence in response to children’s exposure to violence that will coordinate and fund standards for professional education and practices, and ongoing monitoring of trends and the translation of data; and that will bring together the scientific, clinical, technical, and policy expertise necessary to systematically ensure the success of violence prevention efforts.

Improve Data Collection

Race, Ethnicity, Gender and Disability

We commend OJJDP for recognizing the importance of research, evaluation, and data collection, however, states remain ill-equipped to gather and analyze the necessary data to document and assess disparity by race, ethnicity, gender, and disability. With proper resources and instruction, local communities would be able to develop gender, culturally, and linguistically appropriate services for youth and their families that also reflect the needs of youth with disabilities. Federal collection of data on LGBT students' experiences that would allow for the assessment and tracking of discipline disparities among LGBT students is needed to understand the extent to which LGBT youth are funneled into the pipeline based on their LGBT status. Better data collection would also help states and jurisdictions comply with the JJDP's Disproportionate Minority Contact (DMC) requirement to reduce disparity; allow jurisdictions to mark progress and note where DMC remains; and evaluate the impact of various initiatives on reducing DMC. OJJDP should prioritize improved data collection and meaningful use of those data through policy guidance, resource allocation, and training.

We would also like to recognize and support the efforts of several states in urging the FBI Criminal Justice Information Services Division to provide greater access to and analysis of data on ethnicity, in addition to race, with the goal of a national standard requiring both race and ethnicity reporting in the Uniform Crime Reporting (UCR) process. Only when such information is provided can states disaggregate data to look at many populations with accuracy, most notably Latino and Hispanic youth who are often incorrectly identified as "white" in standard reports. Data on girls of color is also often difficult to access and the Administration should expand its analysis to include better, more accurate information on this population of youth. We are pleased that S. 1169 includes a provision to add collection of ethnicity data in the JJDP and call on the Administration to support it.

Transfer to the Adult System

Even the most cursory data on youth prosecuted in the adult criminal justice system via judicial, statutory, or prosecutorial waiver mechanisms and age of jurisdiction laws are not collected or reported by most states, despite the widespread use of transfer to the adult system. The Administration has shown some positive movement in collecting this information at the federal level for the *Survey of Juveniles Charged in Criminal Courts* through the Bureau of Justice Statistics. Since only 13 states publicly report transfer data,¹⁹ this is a critical study that will shed light on what is happening to youth in the adult system across the country and can help inform the data collection that states should be undertaking. We call on the Administration to make certain this study is completed by 2016 and that resources are made available to help states update and improve their data collection systems in accordance with the study's findings and recommendations. The Administration should also require states to track the frequency and mechanisms with which youth are transferred to the adult system.

Establish October as Youth Justice Awareness Month

In recognition of the efforts of local and state jurisdictions to protect vulnerable children and keep communities safe, the Administration should declare October Youth Justice

Awareness Month (YJAM). Begun seven years ago by a family member in Missouri whose teenaged son committed suicide when he was locked up in an adult jail, YJAM provides the opportunity for families, advocates, policymakers, and the Administration to highlight issues facing youth incarceration in this country. Governors in Tennessee, Michigan and Pennsylvania have used YJAM to raise awareness about youth incarceration in their states. Other local municipalities in Multnomah County, OR and La Crosse County, WI have also issued proclamations supporting YJAM. Leveraging the national voice on this issue will increase awareness significantly and encourage communities and states to lift up promising practices that build community, reduce youth incarceration, and end the practice of trying, sentencing and incarcerating youth in the adult criminal justice system.

II. Support Prevention, Early Intervention, and Diversion Strategies

Decades of empirical studies of juvenile delinquency 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 reduce delinquency and strengthen families and communities. Research also shows that broadening prosecutorial powers, stiffening criminal penalties, and incarcerating more young people do not work to lower delinquency or prevent reoffending.²⁰ Similarly, public opinion polls find that taxpayers overwhelmingly favor paying for prevention, education, and rehabilitation over prosecution and incarceration of juveniles who are adjudicated delinquent.²¹

Recommendations for the Administration

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.²² 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.”²³ 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.²⁴ Research clearly shows that once detained, youth are also more likely to commit unlawful acts, potentially leading to “deeper” involvement in the system.²⁵

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.²⁶ Many girls, already traumatized before entering the justice system, are re-traumatized by violent and abusive experiences in detention.²⁷ While there is no data specific to LGBT youth and the use of the VCO exception, other research has shown that LGBT and gender non-conforming youth are twice as likely to be held in secure detention for warrants, probation

violations, prostitution, and status offenses such as truancy and running away.²⁸ In recognition of these and other dangers that youth face when they are incarcerated for status offense behaviors, nearly half of all states have already stopped using the VCO exception.²⁹ 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. We are pleased that S. 1169 includes a provision to phase out use of the VCO exception and we call on the Administration to support it.

Support Community-Based Alternatives to Reduce Over-Reliance on Incarceration of Youth

Taxpayers spend thousands of dollars annually – and in some places hundreds of thousands of dollars a year—to securely confine a young person.³⁰ The most recent data show that 62 percent of youth committed and confined in 2011 were there for a nonviolent, non-person offense.³¹ Often this money could be better spent on less costly, more effective alternatives. States as diverse as New York, Illinois, California, Arkansas, Ohio, Texas, and the District of Columbia have undertaken initiatives to reduce their over-reliance on wasteful, unnecessary, and often dangerous incarceration of children.³² 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.³³ Federal investments like the Administration’s SMART on Juvenile Justice Initiative can help support efforts like these and others across the country.

We also support the continuation of federal support for efforts like the Annie E. Casey Foundation’s Juvenile Detention Alternatives Initiative (JDAI) to reduce the unnecessary use of detention while maintaining public safety, and its new deep end work to reduce youth incarceration in state and private residential facilities. We call on the Administration to invest in a plan to cut youth incarceration and out-of-home placements in half by the end of 2019.

Improve School Safety and Reduce Exclusionary Disciplinary Practices

Academic success plays a crucial role in preventing delinquent behavior and promoting positive outcomes for youth with safer and more affirming 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. According to GLSEN’s *2013 National School Climate Survey*, 30 percent of LGBT students have skipped school over safety concerns (related to harassment or bullying). The potential outcome of this could result in school sanctions or criminal charges against truant students. According to the survey, students were also restricted from expressing themselves as LGBT at school, including being disciplined for public displays of affection that were not disciplined among non-LGBT students, wearing clothing or items supporting LGBT issues, or simply identifying as LGBT.³⁴

Over the past two decades, expanded punitive and zero tolerance school disciplinary policies have too often led to suspensions, expulsions 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. Beginning in the 1990s, schools across the nation created mandatory punishments for a long list of student behaviors, many of which are now required to be reported to the police. For example, in Pennsylvania, school-based arrests nearly tripled between 1999 and 2007, yet nearly all school-based referrals were misdemeanor offenses or non-delinquent.³⁵ The result of zero tolerance has too often been the disconnection from school and criminalization of youth - particularly youth of color, LGBT 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. One recent report found that in addition to the fact that boys and girls of color were subject to larger achievement gaps and harsher forms of discipline than their white counterparts, the racial disparity between girls was more pronounced than the disparity between boys.³⁶ A wave of recent school discipline reforms, which move away from zero tolerance and toward more supportive responses and services, underscore the ineffectiveness of a punitive, exclusionary approach toward students.³⁷

Additionally, excessive reliance on law enforcement and school resource officers in schools to maintain discipline can send youth into the juvenile and criminal justice systems for matters more appropriately handled by school personnel. When law enforcement officers are present in schools, there is often an increase in arrests for typical adolescent, nonviolent behavior, rather than for incidents that threaten the safety of other students or school personnel.³⁸ Without strong leadership and rules about the role of law enforcement, police are sometimes relied on to enforce rules that should be managed by school personnel, such as fistfights without injury, graffiti, disorderly conduct, and similar behaviors. Sending youth into the justice system for these minor offenses can result in a lifetime of negative collateral consequences, including significant barriers to education and employment.

In many school districts, an arrest or referral to the justice system also means suspension and expulsion from school and blocked reentry into school. Arrests, suspensions, expulsions, and barriers to school re-entry cut students off from positive interactions with adults in supportive settings such as school and cause a variety of negative life outcomes. 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.³⁹ The presence of law enforcement in schools has effects that transform the school from an academic environment to a site of criminal law enforcement. Issues that might otherwise be seen as discipline problems become policing matters once an officer is stationed in a school. This comes at the expense of students' rights and their education. Youth of color and youth with disabilities are especially vulnerable to over-policing in schools, which increase both the racial-academic divide and racially skewed arrest rates.⁴⁰ Youth who are members of both groups are especially vulnerable. Schools should instead be encouraged to invest more resources in school counselors, 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.

We support the collaboration between the Department of Justice and Department of Education on the *Supportive School Discipline Initiative* to address the “school-to-prison pipeline” and the disciplinary policies and practices that can push students out of school and into the justice system. We are especially supportive of the 2014 release of a school discipline guidance package that will assist states, districts and schools in developing practices and strategies to enhance school climate, and ensure those policies and practices comply with federal law. These documents have provided a springboard to reform for schools struggling to balance the needs of students.⁴¹

The Administration should require that federal grantees which operate schools identified as having elevated school-based arrest rates as a grant condition: 1) lose the opportunity to use discretionary federal funds to employ SROs; 2) are required to develop Memoranda of Understanding that ensure that SROs work is limited to traditional police activities and not discipline of non-violent student behavior; and, 3) require SROs in those schools to undergo training in specific, related topics, including but not limited to:

- IDEA discipline requirements,
- crisis management,
- cultural competency and implicit bias,
- data driven evidence based prevention (including such approaches as restorative justice, Positive Behavioral Interventions and Supports),
- de-escalation strategies,
- understanding and responding to the effects of trauma, and
- culturally responsive practice.

Representatives from the Department of Education, Office for Special Education Programs (OSEP), Office for Civil Rights (OCR), and the Department of Justice, Civil Rights Division should coordinate their efforts regarding enforcement of the statutes over which they have jurisdiction, so as to completely eliminate disproportionality in juvenile justice referrals for all groups of youth currently over-represented within the system, including but not limited to, youth with disabilities.

The Department of Education should enforce all schools’ obligation to report on School-Based Arrests and Referrals to Law Enforcement. This has been a requirement in the Civil Rights Data Collection (CRDC) since 2009-2010, but school districts grossly underreport these data. Student data on youth who enter the juvenile justice system, and their ultimate academic and attainment outcomes as well as the number of youth referred to court, ticketed, and arrested while on the school campus must be publicly reported annually from every school and district and disaggregated by socio-economic status, race, gender, disability (including IDEA and Section 504 eligibility), English Language Learner (ELL) status, and LGBT youth.

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

The Administration should advance proposals to help identify behavioral health (i.e. mental health and substance abuse disorders) needs early, including exposure to adverse childhood experiences, mental health needs and substance use. We encourage the Administration to support approaches that expand access to innovative, culturally competent, and evidence-based services and treatment, to improve the quality of those services, and to emphasize diversion for youth with behavioral health needs. Estimates range, but some studies have shown that as many as 70 percent of youth in the juvenile justice system have a diagnosable mental health disorder; 60 percent may also meet the criteria for a substance use disorder; and 27 percent experience disorders so severe that their ability to function is significantly impaired.⁴²

Juvenile justice agencies are often ill-equipped to manage the mental health and substance use 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.⁴³ This indicates a need for OJJDP to take a two-pronged approach regarding behavioral health, diverting youth with disabilities from juvenile justice processing into appropriate programming and improving capacity of juvenile justice systems to meet their needs, at the same time.

OJJDP should more strongly encourage diversion. Through funding from OJJDP and the MacArthur Foundation, research has identified models that succeed in diverting youth with behavioral health needs and maintaining community safety.⁴⁴ The Administration can build on this knowledge by commissioning a major study by OJJDP and the Substance Abuse and Mental Health Services Administration on the availability of behavioral health resources for youth who need them (both prior to and after involvement in the juvenile and criminal justice systems), the health benefits of diversion for youth, the operational and financial benefits of diversion for juvenile justice systems, and barriers to greater implementation of diversion across the country.

OJJDP also should support those youth with disabilities at all points of contact with law enforcement and juvenile justice. To accomplish this, we recommend further increasing training and technical assistance related to disability and also substance use, including best practices for law enforcement and probation officers, detention/corrections and community corrections personnel, court services personnel and others. Topics of particular importance include: identifying the signs and symptoms of disabilities, de-escalation techniques, availability and use of validated screening tools, appropriate referral to assessment and treatment, among others.

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.⁴⁵

OJJDP is uniquely positioned to take the lead in developing national standards for gender-responsive programming, staff training, and protocols. With an increase in the number of juvenile serving programs, detention centers and probation departments seeking accreditation from groups, such as the National Commission on Correctional Health Care, the Council on Accreditation, and the American Correctional Association, standards for juvenile programming, detention, and probation should include those directly related to gender-responsive practice.

OJJDP can also redouble its efforts to ensure that State Advisory Groups (SAGs) fulfill their 3-year plan requirement to address the needs of girls, and require that at least one SAG member have expertise in gender-specific challenges for girls, including sexual abuse and trauma, young motherhood, commercial sexual exploitation, and domestic minor sex trafficking, as well as effective interventions.

Through the National Girls Initiative, OJJDP should work to fulfill the need for evaluation and research on gender and culturally-specific, trauma-informed programs for girls, including updating the 1998 Inventory of State Best Practices (Guiding Principles for Promising Female Programming). We recommend that the Administration allocate \$10 million for a girls and juvenile justice program to provide specific, targeted support for state efforts to implement best practice with respect to at-risk and system-involved girls. This should include recognizing the diversity of sexual orientation, gender identity, and gender expression among girls, and recent data showing the high number of girls' in the juvenile justice system who identify as lesbian, bisexual, questioning, gender non-conforming, or transgender.⁴⁶

Promote Nondiscrimination and Cultural Competence Regarding LGBT Youth

Recent research shows that up to 20 percent of youth in juvenile detention identify as lesbian, gay, bisexual or gender non-conforming. Eighty-five percent of those youth are youth of color.⁴⁷ 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 LGB were about 50 percent more likely to be stopped by the police than other teenagers. In particular, girls who identified themselves as lesbian or bisexual reported about twice as many arrests and convictions as other girls who had engaged in similar behavior.⁴⁸

The Administration should establish explicit nondiscrimination requirements that are inclusive of protections based on actual or perceived sexual orientation, and gender identity, for federal grants for the juvenile justice system. The Administration should also promote and provide federal support for family acceptance efforts for LGBT youth, and include and address LGBT youth in all school discipline reform efforts, as well as promote LGBT cultural competence in Safe Schools/Healthy Students (SS/HS), a program widely recognized as a model for achieving effective collaboration across public education, local mental health, and juvenile justice. SS/HS evaluations should reflect efforts to meet the needs of LGBT students, including decreasing the rate of arrest and referral to the juvenile court of LGBT youth.

In addition, LGBT youth experience victimization in juvenile facilities at higher rates than heterosexual youth. For example, non-heterosexual youth are sexually victimized by other youth in juvenile facilities at 10 times the rate of heterosexual youth.⁴⁹ The Administration should support research and promote best practices for serving LGBT youth in community-based and out-of-home care, as well as urge stronger action to enforce the PREA requirements limiting isolation of LGBT youth and requiring individualized placement for transgender and intersex youth, with the youth's views on safety given higher priority than sex assigned at birth.

III. Ensure Safety and Fairness for Court-Involved Youth

Far too often, incarcerated youth endure abusive conditions. In a recent study by the Bureau of Justice Statistics (BJS), a shocking one in ten 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.⁵⁰ An earlier BJS survey, which focused solely on sexual violence reports filed with prison officials, reported that young inmates were also more likely to be victimized when in adult facilities.⁵¹ Reports of abuses in institutions in Idaho,⁵² Mississippi,⁵³ Ohio,⁵⁴ New Jersey,⁵⁵ Louisiana,⁵⁶ and other states demonstrate the importance of using federal laws to ensure the safety of children in custody. Abuses have included use of pepper spray, sexual assaults by staff, hog-tying, shackling, and isolation. Youth who commit crimes must be held accountable, but no court disposition, regardless of the offense, should ever include abuse, mental health deterioration, or death in a juvenile facility, adult jail, or prison.

In addition, youth of color and youth with disabilities continue to be significantly over-represented in the juvenile justice system at every stage of the process from arrest to secure detention and confinement. In 2011, African-American youth were five times as likely to be detained as White youth; Native American youth were three times as likely and Latino youth were more than twice as likely.⁵⁷ 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.⁵⁸

OJJDP has begun to recognize the national role it should play in ensuring that incarcerated youth are held in safe conditions. We support efforts to encourage States to establish community advisory boards or other independent monitoring structures to monitor and improve conditions of confinement. The Justice Department should take a leadership role in reducing excessive use of restraint and isolation in juvenile facilities and adult facilities that house youth. OJJDP can also do more to require states to reduce racial and ethnic disparities in their juvenile justice systems and to support them in those efforts with technical assistance that helps states and localities move beyond studying the problem to meaningful change.

Recommendations for the Administration

Strengthen JJDPA Jail Removal Core Protection

The original intent of the JJDPA 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. The Administration should strongly support S. 1169, which 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 JJDPA where youth can be held in adult facilities, they should have no sight or sound contact with adult inmates. Alternatively, the Administration should issue updated regulations applying these core protections to youth in the adult system.

Commit to Reduce the Disparate Treatment of Youth of Color

Another core requirement of the JJDPA requires states to address the disproportionate representation of youth of color in the justice system. We are pleased that the Administration has been looking more closely at this issue. OJJDP's current effort to require comprehensive DMC assessments from all states that includes community level data has set in motion development of specific measurable interventions aimed at reforming systems and reducing racial/ethnic disparities. In addition, we are pleased that the Department of Justice is taking legal action, like the suits filed in Shelby County (TN) and Meridian County (MS) where it finds significant disparities in the treatment of young people. It is crucial that these efforts continue and that they are strongly supported, visible, and coordinated with other Justice Department initiatives. We also encourage expansion of efforts underway to team up with the Models for Change DMC Action Network and implement its strategies supported by the John D. and Catherine T. MacArthur Foundation. In accordance with the DMC requirement, OJJDP should push states more to show how they are reducing racial and ethnic disparities at all points in the system where disparities exist, including the point at which children are sent to adult criminal court, often the most disparate point in the juvenile justice system. The Departments of Education and Justice should expand the scope of their investigations to include youth in federal custody (Federal Bureau of Prisons (BOP), Department of Homeland Security (DHS), Immigration Detention and other federal programs).

Fully Implement the Prison Rape Elimination Act (PREA) of 2003

The purpose of PREA is to protect incarcerated individuals from unfair, unjust, and unconscionable treatment and the U.S. Department of Justice's national standards on youth in adult facilities should align with that purpose. The fact remains that adult facilities are simply not equipped to safely detain youth and preserve their mental health, and we would urge the DOJ to promote best practices that reflects this reality by calling for the removal of all youth under the age of 18 from adult prisons and jails.

While the DOJ's PREA regulations give adult jails and prisons the ability to make case-by-case determinations of how to ensure the safety of vulnerable youth under the Youthful Inmate Standard, there needs to be concrete guidance and technical assistance for jurisdictions to successfully implement this standard. Under current practices, adult facilities housing children and youth are forced to choose between housing youth in the general adult population, which the National Prison Rape Elimination Commission recommended against, and housing youth in segregated settings. We know that placing youth in segregated settings most likely means that youth will spend long stretches in solitary confinement, which can aggravate mental health problems and put youth at a higher risk of suicide.

While we recognize the current efforts to raise awareness and offer training and technical assistance through the National PREA Resource Center, there has been little emphasis or support for jurisdictions on the implementation of the Youthful Inmate Standard. With states conducting compliance audits at the present time, it is imperative that the Department of Justice provides concrete recommendations and best practices on implementing the Youthful Inmate Standard. In addition to a focus on the Youthful Inmate Standard, given the high rates of sexual abuse of LGBT youth previously cited, the Administration should also urge stronger enforcement of the PREA Juvenile Facility Standards limiting isolation and requiring individualized placement decisions for transgender and intersex youth—including ensuring that decisions to place youth in a male or female residential setting are generally made on the basis of gender identity and are never solely based on birth gender or anatomy.

The Department should help operators of juvenile justice facilities, and adult facilities, understand the liability risk they face by failing to implement the PREA standards. In addition, the Administration should plan to fund the PREA Resource Center past its current funding time frame, since it will take time to help the many facilities across the country to reach full implementation of the standards. States should continue to be held accountable for implementing the PREA standards through regular audits and impositions of the penalty provided by statute for non-compliance.

Take a Leadership Role in Reducing Unnecessary Use of Restraints and Isolation

Recent reports and hearings have shed a national spotlight on the problems of solitary confinement and the particular harms isolation imposes upon young people. In both juvenile and adult facilities, extended lockdown alone in a cell or unnecessary use of restraints such as shackles, can traumatize youth, exacerbate existing mental illness, breed anger and aggression, develop depression and trigger post-traumatic stress responses. The Justice Department can and should lead the way for states to implement effective strategies to reduce their reliance on restraints and isolation to keep youth safe and to discipline them when they break institutional rules. The restrictions on isolation in the PREA regulations are an important first step, but facilities need more models and guidance to reduce unnecessary isolation.⁵⁹ Representatives of the Administration should include reduction of restraints and isolation as a priority when speaking publicly about needed juvenile justice reforms.

Ensure Fairness and Adequate Representation of System-Involved Youth

The Administration should allocate more support to expand the Department of Justice's efforts to ensure that states are meeting constitutional requirements to provide access to quality legal counsel for children in the justice system. We also encourage the Administration to use the recent U.S. Supreme Court decisions in *Graham v. Florida* and *Miller v. Alabama* to urge states modify their laws to reflect the rulings. In particular, it is no longer permissible that individuals under 18 at the time of their crime be given a sentence of life without parole (LWOP) for non-homicide crimes, nor can youth be mandatorily sentenced to LWOP under any circumstances.

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.⁶⁰ 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.⁶¹ The Administration should work with Congress to 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 must be placed out of the home.

Encourage States to Keep Youth off Sex Offender Registries

The Attorney General should refrain from promulgating policies or promoting practices that unnecessarily stigmatize youth and provide no public safety benefit through placement of youth on public and private (law enforcement only) sex offender registries. The Department of Justice should promote a policy that allows States to achieve compliance with the Sex Offender Registration and Notification Act (SORNA) Title of the Adam Walsh Act without placing adjudicated youth on a sex offender registry or subjecting them to community notification.

IV. Remove Youth from the Adult Criminal Justice System

The Administration and OJJDP must do more to help and motivate states to roll back broad transfer policies that treat too many youth as adults. Across the United States, an estimated 250,000 youth are tried, sentenced, or incarcerated in the adult criminal justice system every year.⁶² Trying youth as adults is bad for public safety and for youth. Youth prosecuted in the adult criminal justice system are more likely to reoffend than similarly situated youth who are retained in the juvenile system, and these offenses tend to be more violent.

In December 2012, after a year-long exhaustive study, the Attorney General's Task Force on Children Exposed to Violence issued comprehensive recommendations to the Attorney General on reducing children's exposure to violence, including a recommendation to abandon policies that prosecute, incarcerate, or sentence youth under 18 in adult criminal court. According to the report, "We should stop treating juvenile offenders as if they were adults, prosecuting them in adult courts, incarcerating them as adults, and sentencing them to harsh punishments that ignore their capacity to grow."⁶³

The Task Force's recommendation reflects the policies of major professional associations representing juvenile and adult criminal justice system stakeholders such as the American Correctional Association, the American Jail Association, the Council of Juvenile Correctional Administrators, the National Partnership for Juvenile Services, and the National Association of Counties that highlight the harm youth are subjected to in the adult criminal justice system. The Task Force's recommendation is consistent with the latest state law reforms according to an August 2012 report, *Trends in Juvenile Justice State Legislation 2001 – 2011*, released by the National Conference of State Legislatures (NCSL), showing that numerous states have undertaken policy reforms in the last decade to remove youth from the adult criminal justice system and from adult jails and prisons.

Additionally, youth in the adult system are also at great risk of sexual abuse and suicide when housed in adult jails and prisons.⁶⁴ 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.⁶⁵ In addition, youth housed in adult jails are 36 times more likely to commit suicide than are youth housed in juvenile detention facilities.⁶⁶

Youth tried as adults suffer lifelong consequences from their experience with adult court.⁶⁷ Youth are often denied employment and educational opportunities,⁶⁸ which significantly restricts their life chances. Youth incarcerated after being tried in adult court are more likely to be rearrested and rearrested sooner.⁶⁹ Many of these youth will not have been provided with the education and services they need to make a successful transition to productive adulthood, and they will have an adult record, which will make access to jobs or educational opportunities incredibly difficult. The Administration should provide strong leadership for

states to reduce, and eventually eliminate, their harmful and dangerous reliance on trying youth as adults.

Finally, 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 Texas, West Virginia, Wyoming, Montana, Kansas, Kentucky, Alaska, Hawaii, Delaware, Massachusetts, and Colorado. 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. The Administration should take these developments seriously and play a leadership role to ensure that federal policies and procedures hold young people accountable in age-appropriate ways that guarantee their safety and focus on rehabilitation and reintegration into society.

Recommendations for the Administration

Assist States in Removing Youth from Adult Criminal Court

Consistent with the Attorney General's report recommendation, the Administration should provide incentives for states to remove youth from the adult criminal justice system. The Administration should leverage resources and coordinate efforts through the Bureau of Justice Assistance, the National Institute of Corrections, and OJJDP to effectively invest in programs and strategies that reduce the prosecution of youth in adult court.

Amend the Federal Sentencing Guidelines

The Federal Sentencing Guidelines are advisory but deeply influential in federal sentencing. The top range of those guidelines is 'life', and because there is no parole in the federal system, that means life without the possibility of parole. The guidelines should be amended so that defendants who commit their crime before age 18 are not subjected to life without parole.

Change DOJ Policy Related to Juvenile Offenders

As set out in the current U.S. Attorney's Manual, "The decision to proceed against a juvenile as an adult in district court was delegated to the United States Attorneys by then Assistant Attorney General Jo Ann Harris in a Memorandum dated July 20, 1995." To better evaluate the national policy regarding juveniles in the federal courts, and to ensure compliance with *Miller* and the priorities of this Administration, that delegation should be reversed. The Department of Justice should review and approve all proposed transfers to adult status of those who committed their crimes as juveniles.

In reviewing the transfer of cases, and in making charging and plea decisions, the U.S. Attorney's Manual should urge consideration of the factors emphasized by Justice Kagan in

the Miller opinion: The child's age at the time of the offense and the immaturity, impetuosity, and failure to evaluate risks that go with that age; the child's home and family environment; the circumstances of the offense, including role taken and the pressure exerted by others; the child's lack of sophistication relative to an adult; and the possibility of rehabilitation.

There should be a general presumption against transfer and any possible life sentence for juvenile offenders. The Kagan factors should be considered in evaluating any rebuttal to the presumption against a transfer to adult status, and to any charge or plea which can lead to a sentence of life in prison.

V. Support Youth Reentry

Approximately 100,000 young people under age 18 leave secure juvenile facilities and return to their communities each year.⁷⁰ 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.⁷¹ 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 66 percent do not return to school after release from secure custody.⁷² 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 Administration

Increase Federal Coordination of Youth Reentry Programs and Services

Through the federal Inter-Agency Reentry Council, the Attorney General should oversee and coordinate youth reentry issues with the continuum of reentry programming supported by the Department of Justice as well as other federal agencies. The Inter-Agency Reentry Council also should continue to coordinate its work on youth reentry with the Department of Justice's Federal Coordinating Council on Juvenile Justice and Delinquency Prevention, which the Attorney General convenes.

Increase Funding for Federal Youth Reentry Programs

The Administration should prioritize and increase funding for the Second Chance Act and other federal reentry programs across the Departments of Justice, Labor, Education, and Health and Human Services that provide reentry supports and services for youth. It is critical to maintain and continue these investments as a way to support access to youth reentry services at the local level, as well as help ensure the successful reentry of youth, who otherwise could recidivate into the juvenile justice or adult criminal justice system at great cost to themselves, their families, society and taxpayers. Targeted resources and supports can help ensure reentering youth are afforded the opportunity to have positive life outcomes and are equipped with effective life skills. Finally, all youth-serving federal agencies should work together to educate States and localities about the availability of federal programs and resources that support youth reentry.

Promote Access to Education and Career Preparation Programs for Juvenile Justice System-Involved Youth

The Administration should ensure that young people involved in the juvenile justice system have access to education at all stages of their system involvement and reentry. To help achieve this outcome, the Departments of Education and Justice should fully implement the Guidance on Correctional and Reentry Education for youth involved in the juvenile justice system that they released in December 2014. The Departments should distribute the guidance to all possible stakeholders, as well as provide training and technical assistance to facilitate its implementation. Training and technical assistance should be provided to state education and juvenile justice systems, parents, youth, youth service providers, and others in the community to ensure that the guidance is successfully implemented and actually results in increased youth access to education.

Additionally, the Administration should incentivize State departments of education to focus on vulnerable school populations to ensure that youth experience no interruptions in their education during out-of-home placement, such as detention or secure treatment, and are assisted with immediate reenrollment in school or an appropriate educational or career preparation program upon exit from placement. Specifically, the Administration should call for the inclusion of an individualized education assessment before the out-of-home placement or detention begins in order to ensure that the educational needs of youth are met during placement, and that the planning required for successful reentry begins as early as possible during out-of-home placement or detention.

The Department of Education also should require or incentivize states to establish procedures for the prompt reenrollment of youth into schools or educational or career preparation programs upon return from out-of-home placement, as well as require that states establish procedures for the prompt transfer of educational records and credits earned during placement in the juvenile justice system. Finally, the Administration should support an innovative practices program aimed at ensuring the educational success of students reentering school from the juvenile justice system. Such a program could highlight the needs of reentering youth for states and school districts nationwide; incentivize states and/or local education agencies to develop best practices in the area of access to education upon reentry that could be shared with and adopted by other jurisdictions; and demonstrate a federal commitment to serving reentering youth.

Support Year-Round Programming for Delinquent and Reentering Youth

The Administration should work closely with the Departments of Justice, Labor, Health and Human Services, and Education as well as states to support funding and other efforts that promote comprehensive services on a year-round basis for re-entering youth. This is particularly important for issues related to education, since youth enter and exit the juvenile justice system year round, and this legal process is not tied to the standard school year calendar.

Remove Barriers to Health Care for Incarcerated Youth

Youth in the justice system often have serious health and mental health needs. Prior to their detention, many youth have access to health services through Medicaid or the Children's Health Insurance Program (CHIP), but this coverage is often terminated upon entering a secure detention or correctional facility, despite no legal requirement to do so. When youth lose their health coverage it forces them to reapply for benefits upon their release, a process which may take up to 90 days to complete. 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. The Administration should continue to educate States and support efforts to suspend, rather than terminate, Medicaid or other health coverage for incarcerated youth. The Department of Justice should work with the Department of Health and Human Services (HHS) to provide technical assistance to state Medicaid and juvenile justice agencies to implement a policy of suspension rather than termination of Medicaid and other health coverage for youth entering the juvenile justice system. HHS should create a pilot program to demonstrate the effectiveness of enrolling youth in Medicaid or other health insurance before they are released from detention, regardless of their enrollment status at the time of detention.

Endnotes

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⁸ These recommendations use the acronym “LGBT” in the broadest sense possible. Because terminology is constantly evolving and because certain groups may gravitate to certain terms and abbreviations over others, it is difficult to come to a commonly agreed upon acronym that reflects all perspectives. Please understand that the use of “LGBT” is intended to be as inclusive of all other identities as possible, unless otherwise specified, such as with regard to research that focuses on particular demographics.

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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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