

# Recommendations for the 118th Congress



**National Juvenile Justice and Delinquency Prevention  
Coalition**

**Recommendations to the 118th Congress  
2023-2024**



**OPPORTUNITIES FOR JUVENILE JUSTICE & DELINQUENCY  
PREVENTION REFORM**

The 118th Congress presents a unique opportunity for lawmakers to continue to strengthen and support youth and their communities. 2024 marks the 50th anniversary of the passage of the Juvenile Justice and Delinquency Prevention Act (herein referred to as the Act). This landmark bipartisan legislation established a unique federal and state partnership focused on protecting children and keeping communities safe. It continues to be the primary federal legislation related to youth justice at the federal level.

The Act was reauthorized in 2018 through the Juvenile Justice Reform Act (JJRA).<sup>1</sup> The updated law called on State, Tribal, local governments, and U.S. territories to “support a continuum of evidence-based or promising programs that are trauma informed, reflect the science of adolescent development, and that are designed to meet the needs of youth...”<sup>2</sup>

The legislation also strengthened the Act’s four core protections by:

- narrowing the acceptable uses of the valid court order exception, which is used to incarcerate children in need of services;
- ensuring that young people awaiting trial in adult courts are included in the Act’s provisions that prohibit the use of adult jails and lockups for minors;
- ensuring that states for the first time monitor and address disproportionalities within their systems related to both race and ethnicity.

The JJJPA is up for reauthorization again in 2023. It provides an opportunity for federal support to help address the widespread trauma and grief that young people have experienced over the past three years as their lives were upended and education interrupted.

Such legislation is essential to help us build upon and maintain the positive gains that have been seen in the youth justice system over the past decade. The number of youth arrests accounts for only seven percent of the nation’s crime<sup>3</sup> and has declined 58% percent between 2010 and 2019.<sup>4</sup> Despite a steady drop in juvenile incarceration and out-of-home placements, there are still far too many young people being placed away from home who could be helped more effectively in their own communities. The most recent data tells us

---

<sup>1</sup> 34 U.S.C. 11102.

<sup>2</sup> *Id.*

<sup>3</sup> *OJJDP Statistical Briefing Book*. Online. Available: <https://www.ojjdp.gov/ojstatbb/crime/qa05102.asp?qaDate=2019>. Released on November 16, 2020.

<sup>4</sup> *OJJDP Statistical Briefing Book*. Online. Available: <https://www.ojjdp.gov/ojstatbb/crime/qa05101.asp?qaDate=2019>. Released on November 16, 2020.

that on any given day, just over 37,500 young people were confined in juvenile facilities,<sup>5</sup> and approximately 1 in 10, or 4,000 youth were held in adult jails and prisons.<sup>6</sup> And while the system has shrunk overall, it has not done so in an equitable manner. Disparities in the courts' responses to Black youth, Tribal youth, and Hispanic youth continue to be pervasive, with data showing that youth of color often receive more punitive and less rehabilitative responses than their white peers who engage in the same behavior. This has to end.

Current juvenile justice policies and practices, such as charging and sentencing youth as adults and incarcerating children for violating court orders related to status offense behaviors, too often ignore a young person'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 and the role of the juvenile justice system. While many state legislatures have taken steps to address these inequities, problems persist.<sup>7</sup> Across the country we see policies and practices that exacerbate racial and ethnic disparities; discriminate against lesbian, gay, bisexual, transgender, queer and gender nonconforming youth (LGBTQ/GNC) youth; lack sound culturally appropriate trauma-informed screening, assessment and care for mental health and drug treatment services; ignore intersectionality with immigrant youth and youth in the child welfare system; and apply excessively harsh sanctions for minor and nonviolent adolescent misbehavior. 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, or involvement with related systems such as child welfare or youth homelessness. They allow children to be transferred to the adult system, where they may be required to serve decades in an adult prison. As the updates to the JJDPA are implemented by states, we hope to see these problems addressed. However, this will not happen overnight, and investment from the Federal government will be one key to success.

---

<sup>5</sup> *OJJDP Statistical Briefing Book*. Online. Available: <https://www.ojjdp.gov/ojstatbb/corrections/qa08201.asp?qaDate=2018>. Released on May 15, 2020.

<sup>6</sup> *OJJDP Statistical Briefing Book*. Online. Available: <https://www.ojjdp.gov/ojstatbb/corrections/qa08700.asp?qaDate=2018>. Released on May 15, 2020.

<sup>7</sup> Sarah Alice Brown, Nat'l Conference of State Legislatures, *Trends in Juvenile Justice State Legislation: 2001-2011* (2012), available at <http://www.ncsl.org/documents/cj/trendsinjuvenilejustice.pdf>; Sarah Alice Brown, Nat'l Conference of State Legislatures, *Trends in Juvenile Justice State Legislation: 2011-2015*, available at [http://www.ncsl.org/documents/cj/Juvenile\\_Justice\\_Trends\\_1.pdf](http://www.ncsl.org/documents/cj/Juvenile_Justice_Trends_1.pdf).

<sup>8</sup> Richard Mendel, The Annie E. Casey Found., *Maltreatment of Youth in U.S. Juvenile Corrections Facilities* (2015), available at <http://www.aecf.org/resources/maltreatment-of-youth-in-us-juvenile-corrections-facilities>; Richard Mendel, The Annie E. Casey Found., *No Place for Kids, The Case for Reducing Juvenile Incarceration* (2011), available at [www.aecf.org/noplaceforkids](http://www.aecf.org/noplaceforkids).

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> This is particularly true for youth of color, who often live in communities who are over-policed in their homes, schools, recreation and transportation systems. 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 their homes and communities whenever possible.<sup>10</sup> **As the past two decades have shown us, we can safely reduce youth incarceration, and arrests can continue to fall.**

Research over the past 25 years has increased our understanding of what works and how to best approach juvenile delinquency and juvenile justice system reform. As jurisdictions across the country continue to implement promising reforms, the 118th Congress has the opportunity and responsibility to support and bolster these changes and should begin by focusing on the following six priority areas:

1. Establish a Positive Vision for Juvenile Justice Reform;
2. Ensure Developmentally Appropriate Responses to Justice-Involved Youth;
3. Reduce Reliance on Detention and Incarceration and Invest in Communities;
4. Ensure Fairness and Equity for Justice-Involved Youth;
5. Ensure Care for Justice-Involved Youth; and
6. Help Youth Successfully Reenter Their Communities.

## Recommendations for the 118th Congress:

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

If youth are to realize their full potential, society must invest in supports for families and communities that promote child and family wellness, such as quality education,

---

<sup>9</sup> Amanda Petteruti, Marc Schindler, and Jason Ziedenberg, Justice Policy Inst., *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration* (2014), available at <http://www.justicepolicy.org/research/8477>; Richard Mendel, The Annie E. Casey Found., *No Place for Kids, The Case for Reducing Juvenile Incarceration* (2011), available at [www.aecf.org/noplacforkids](http://www.aecf.org/noplacforkids).

<sup>10</sup> Shaena Fazal, Nat'l Collaboration for Youth, Nat'l Human Serv. Assembly, *Beyond Bars: Keeping Young People Safe at Home and Out of Youth Prisons* (2014), available at <http://www.collab4youth.org/news?id=737>; Tony Fabelo, PhD, Nancy Arrigona, MPA, and Michael D. Thompson, Justice Ctr., Council of State Governments, *Closer to Home: An Analysis of the State and Local Impact of the Texas Juvenile Justice Reform* (2015), available at <http://csgjusticecenter.org/youth/publications/closer-to-home>.



infrastructure, such as transportation, emergency services, and housing. Research has shown us that youth respond best to services that are asset- and developmentally-based, are trauma-responsive, and are focused on opportunities, resources, and coaching so that youth can develop the competencies they need to mature and become well-adjusted adults.<sup>11</sup> While most reform falls under the purview of states, Tribal Nations, and local governments, the Federal government can still play a key role in supporting state juvenile justice systems.<sup>12</sup>

Going forward, Congress must provide the clear direction and resources needed to facilitate reform in all States, Tribal Nations, 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, Tribal Nations, and U.S. territories 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, while also enhancing public safety, preventing delinquency and court contact, and giving court-involved youth the best possible opportunity to live safe, healthy, and fulfilling lives.

## **A. Elevate and Strengthen Federal Responses to Youth Justice**

### **I. Reauthorize the Juvenile Justice and Delinquency Prevention Act.**

In the United States, there is no national, centralized juvenile justice system. Rather, there are more than 56 different juvenile justice systems independently operated by the U.S. States, territories, the District of Columbia, and local governments. Consequently, policies and procedures vary widely from state to state and among local jurisdictions, creating a patchwork quilt of juvenile justice systems resulting in inconsistent outcomes for youth, families, and communities, including exposure of youth to physical, mental, and emotional injury. To address inconsistencies and to improve outcomes for youth and community safety, in 1974 Congress passed the Juvenile Justice and Delinquency Prevention Act

---

<sup>11</sup> Jeffrey A. Butts, et al., *Positive Youth Justice: Framing Justice Interventions Using the Concepts of Positive Youth Development* (2010), available at <http://citeseerx.ist.psu.edu/viewdoc/summary?doi=10.1.1.610.8464>; Nat'l Research Council, *Reforming Juvenile Justice: A Developmental Approach* (2013), available at <https://www.nap.edu/catalog/14685/reforming-juvenile-justice-a-developmental-approach>.

<sup>12</sup> Comm. on a Prioritized Plan to Implement a Developmental Approach to Juvenile Justice Reform, Comm. on Law and Justice, Division of Behavioral and Social Sciences and Education, *Implementing Juvenile Justice Reform: The Federal Role* (2014), available at <http://www.nap.edu/catalog/18753/implementing-juvenile-justice-reform-the-federal-role> [hereinafter *The Federal Role*].

(JJDDPA) and changed the way in which states approach juvenile justice.

Most recently reauthorized in 2018 with bipartisan support, the JJDDPA is based on a broad consensus that children, youth, and families involved with the juvenile and criminal courts should be guarded by federal standards for care and custody, while also upholding the interest of community safety and the prevention of victimization. The JJDDPA creates a federal-state partnership for the administration of juvenile justice and delinquency prevention by providing:

- a juvenile justice planning and advisory system, known as State Advisory Groups (SAGs);
- federal funding for delinquency prevention and improvements in state and local juvenile justice programs; and
- operation of the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) which is dedicated to supporting state and local efforts to carry out the JJDDPA.

We urge reauthorization of the JJDDPA to ensure that funding can continue for these critical programs. One of the biggest successes of the JJDDPA has been the high participation rates of State, Tribal Nations, and U.S. Territories in the Act. In 2019, the number of non-participating states began to increase dramatically.

Under the Non-Participating State portion of the Act, created more than 40 years ago, states that were not yet ready to participate in the Act were allowed to apply to be a Non-Participating state, and have a non-profit entity apply for federal funds to begin the work necessary to become a fully participating state.<sup>13</sup> This provision was never intended to be a “work around” to compliance, however, in recent years, states that were deemed Non-Participating often received more funding than they did when they had fully participated in the Act.<sup>14</sup> This counters the intent and purpose of the Act and the protections it ensures for our children.

We call on Congress to close this loophole as part of reauthorization.

Research has shown that youth of color are disproportionately overrepresented and subject to more punitive sanctions than similarly-charged/situated White youth at all levels of the

---

<sup>13</sup> 34 U.S.C. 11133.

<sup>14</sup> See FY'18 funding awards: <https://ojjdp.ojp.gov/funding/awards/2018-jx-fx-0028>.

juvenile justice system.<sup>15</sup> The Juvenile Justice Reform Act of 2018 (JJRA) took this research into consideration and strengthened the JJDPAs Racial and Ethnic Disparities (R/ED) core protection. Previously, the law merely required states to “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.

The reauthorization gives clear direction to states and localities to plan and implement data-driven approaches to ensure fairness and reduce racial and ethnic disparities, to set measurable objectives for disparity reduction, and to publicly report such efforts.

The lack of accurate data and culturally responsive programming has been highlighted in reports by the field.<sup>16</sup> In response, we further recommend a \$2 million pilot program to help ensure that Latinx youth are properly counted. The JJDPAs core protection of addressing racial and ethnic disparities cannot be carried out without ensuring that adequate and accurate data is collected.

The reforms provided to the R/ED core requirement should ensure that states are actually taking steps to address disparities within their system. Furthermore, we call on Congress to ensure that states are able to use their Title II dollars on programs that are proven to address disparities, but may not be explicitly listed in the statute. In the last Congress, Senator Warren and Senator Whitehouse, introduced S. 4398, legislation specifying R/ED Title II funding could be used to address racial and ethnic disparities within the youth justice system. Additionally, the legislation would support local services, planning, and data-sharing to promote more equitable treatment of youth.

It is also essential that as part of a reauthorization, the valid court order exception be eliminated. While the JJDPAs currently prohibits detaining youth for status offense behaviors, such as truancy and running away from home, there remains a valid court order (VCO) exception to the Deinstitutionalization of Status Offenders (DSO) core requirement.<sup>17</sup> The VCO exception allows judges to detain youth adjudicated for status offenses if they violate a valid court order or a direct order from the court, such as “stop running away from

---

<sup>15</sup> Joshua Rovner, Racial Disparities in Youth Commitments and Arrests, The Sentencing Project (Apr. 1, 2016), <https://www.sentencingproject.org/publications/racial-disparities-in-youth-commitments-and-arrests/>.

<sup>16</sup> “OPPORTUNITIES FOR JUVENILE JUSTICE & DELINQUENCY PREVENTION REFORM.” *Act4JJ*, National Juvenile Justice & Delinquency Prevention Coalition, 2021, <https://www.act4jj.org/sites/default/files/resource-files/NJJDPC%20Recommendations%20to%20117th%20congress%20%28wecompress.com%29.pdf>.

<sup>17</sup> P.L. 96-509, 94 Stat. 2755 (December 1980).



home” or “attend school regularly.”<sup>18</sup>

The Juvenile Justice Reform Act of 2018 made important changes to this provision to ensure the VCO exception is truly an exception rather than a rule. Under the new law, youth who are found in violation of a valid court order from an underlying status offense may be held in detention, for no longer than seven days, if the court finds that such detention is necessary and enters an order containing the statutorily required information.<sup>19</sup>

Even with these protections, evidence shows that detaining and incarcerating non-delinquent youth who have engaged in status offense behaviors is counter-productive: it is costlier and less effective than home and community-based responses. It interrupts education, pulls children away from family and community, and stigmatizes youth.<sup>20</sup> Research clearly shows that once detained, youth are also more likely to commit unlawful acts, potentially leading to “deeper” involvement in the system.<sup>21</sup> 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.<sup>22</sup> Although judges, court personnel, and advocates are working hard to effectively address the VCO exception on the state level, its mere existence in the JJDP Act undermines the DSO core requirement and harms youth. In the 115th Congress, we were pleased that several proposals were introduced to eliminate or phase out use of the VCO exception. We call on Congress to pass a bill this session that would phase out the exception. Until that time, we also urge Congress to require OJJDP to make public current state data on use of the VCO, disaggregated by race, ethnicity, and gender.

We also call on Congress to increase investments in the JJDP Act as part of the reauthorization process. 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. In Fiscal Year 2018 this decline slowed and started

---

<sup>18</sup> *cf. id.*

<sup>19</sup> Juvenile Justice Reform Act of 2018, H.R. 6964 Sec. 205, 115th Cong. (2018); Overview of the Juvenile Justice Reform Act of 2018, Act 4 Juvenile Justice (Dec. 2018), available at <http://www.act4jj.org/sites/default/files/resource-files/JJDPAct%20Reauthorization%20Summary%20December%202018.pdf>.

<sup>20</sup> Douglas W. Nelson, Annie E. Casey Found. A Road Map for Juvenile Justice Reform (2008), available at <https://www.aecf.org/resources/a-road-map-for-juvenile-justice-reform/>; Holman and Ziedenberg, *supra* note 73.

<sup>21</sup> *Id.*

<sup>22</sup> Compliance Data for FY2021, Office of Juvenile Justice and Delinquency Prevention, available at <https://ojjdp.ojp.gov/state-use-valid-court-order-exception#efckq> (last visited April 4, 2023).

to show signs of recovery.<sup>23</sup> The lack of investment in Title II, however, remains alarming. These formula grants are provided to states based on compliance with the Act. In FY23, Title II formula grants were finally returned to their FY'10 funding levels at \$75 million. However, this still falls short of the Congressional authorizing level of \$80 million and their FY'02 level of \$88.8 million and fails to cover recent inflation.<sup>24</sup> States have seen youth justice funding drop between 20 and 50 percent over the past decade, despite being asked to do more to receive these federal dollars.

Title V of the Act, which provides prevention grants, has also dropped more than a third in the past decade. These funds have been provided primarily as competitively-bid grants for specifically designated programs, leaving few dollars left for local jurisdictions to apply for prevention-based programs based on their own needs for services, as the program was intended to be used.

Congress has the unique opportunity to reverse this trend and promote and support evidence-based 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.

(All sums reported are in millions.)	JJDP A Title II	JJDP A Title V	JABG	Mentoring	Other	Total
FY02	\$88.8	\$94.3	\$249.5	\$16	\$91.5	\$545.9
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	\$55	\$14.5	\$0	\$80	\$97.5	\$247
FY18	\$60	\$27.5	\$0	\$94	\$101	\$282.5
FY19	\$60	\$24.5	\$0	\$95	\$107.5	\$287
FY20	\$63	\$42	\$0	\$97	\$118 <sup>1</sup>	\$320
FY21	\$67	\$62	\$0	\$100	\$130	\$359
FY22	\$70	\$49.5	\$0	\$102	\$138.5	\$360
FY23	\$75	\$65	\$0	\$107	\$153	\$400
% Difference Since FY 02 Reenactment	-15.5%	-31.1%	-100%	+568.8%	+67.2%	-26.9%

<sup>23</sup> Juvenile Justice Federal Funding Chart, *supra* note 21.

<sup>24</sup> [https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/jjdp-a-as-amended\\_0.pdf](https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/jjdp-a-as-amended_0.pdf) (page 77, SEC. 601. 34 U.S.C. 11321).

## **II. Explore Moving the Administration of JJDP to Health & Human Services.**

OJJDP continues to be an extremely small office under the U.S. Department of Justice, our federal prosecutorial agency. As a result, youth involved in the justice system are still largely viewed through a correctional, law-enforcement lens, rather than an adolescent development and public health lens. This has led to stymied progress and continued over-incarceration of youth, particularly youth of color. While youth incarceration has been cut in half over the past decade, and arrests continue to fall to 50-year lows, there are still a tremendous number of children incarcerated who pose no risk to public safety.

We request a GAO study on the feasibility of moving the administration of the JJDP to the Department of Health & Human Services, which is better equipped to develop prosocial, developmentally appropriate solutions to youth delinquency and prevention than law enforcement.

In order to facilitate the strategic prioritization and coordination for the well-being of children and youth, we want to urge Congress to task the Coordinating Council on Juvenile Justice and Delinquency Prevention to ensure that related agencies (Health and Human Services, Labor, Education) consider the impact of new policies and practices on justice involved youth.

### **A. Create A Youth Opportunity & Justice Caucus**

OJJDP has previously grounded its vision and priorities on the young people and families who come in contact with the justice system. Through listening sessions, appointments on the Coordinating Council on Juvenile Justice and Delinquency Prevention, and the Federal Advisory Committee on Juvenile Justice, impacted youth and family members have helped determine the agency's priorities.<sup>25</sup> While these are important first steps, we call for the creation of a Youth Opportunity & Justice Caucus that is staffed by at least one formerly incarcerated youth and that makes annual recommendations to Congress on priorities for the field. This body would be similar to the Congressional Coalition on Adoption (CCA).<sup>26</sup>

### **B. Increase Cross-System Collaboration Between Juvenile Justice & Other Child Serving Systems**

---

<sup>25</sup> <https://facjj.ojp.gov/recommendations/FACJJ-Recommendations-January-2021.pdf>.

<sup>26</sup> See <https://www.ccaoinstitute.org>.

Many youth in both the juvenile justice and child welfare systems have a history of trauma, mental health conditions, or substance abuse 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.<sup>27</sup> We support legislation like the 117th Congress' bipartisan Child Outcomes Need New Efficient Community Teams (CONNECT) Act 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.<sup>28</sup>

## II. Ensure Developmentally Appropriate Responses to Justice-Involved Youth

In 2013, the National Research Council (NRC), part of the National Academy of Science (NAS), published a report, *Reforming Juvenile Justice: A Developmental Approach*.<sup>29</sup> In a follow up to the report, the NRC published guidance for the Federal government to develop and implement a plan for the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to support a developmental approach to juvenile justice reforms.<sup>30</sup> As the guidance notes, “[t]aking a ‘developmental approach’ to juvenile justice [is] seen as embracing policies and practices at every decision point, and by every actor or participant, that are informed by, and compatible with, evolving knowledge about adolescent brain development with research evidence on the effects of juvenile justice interventions.”<sup>31</sup>

Research has shown that adolescents differ from adults in three important ways. Young people are: “1) less able to regulate their own behavior in emotionally charged contexts, 2) more sensitive to external influences to their own behavior such as the presence of peers and the immediacy of rewards, and 3) less able to make informed decisions that require long-term consideration.”<sup>32</sup> The promise of a system that takes a developmentally appropriate response and 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

---

<sup>27</sup> Hui Huanga, Joseph P. Ryanb, and Denise Herzc, *The Journey of Dually-Involved Youth: The Description and Prediction of Reporting and Recidivism*, 34 Children and Youth Serv. Rev. 1, 254-260 (2011), available at <https://www.sciencedirect.com/science/article/pii/S0190740911003860>.

<sup>28</sup> Child Outcomes Need New Efficient Community Teams (CONNECT) Act, S. 1033, 117th Cong. (2021).

<sup>29</sup> Nat'l Research Council, *supra* note 19.

<sup>30</sup> The Federal Role *supra* note 20.

<sup>31</sup> *Id.* at 1.

<sup>32</sup> *Id.* at 17.

employment and educational opportunities.<sup>33</sup> Youth incarcerated after being tried in adult court are also more likely to be rearrested and rearrested sooner with more serious charges.<sup>34</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 treat youth in a developmentally-appropriate manner with a focus on prevention efforts to ensure at-risk youth remain out of the justice system.

### **A. Reduce 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 to 19 have face-to-face encounters with police each year, and these estimates do not include those children under 16 years of age.<sup>35</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. Additionally, youth of color continue to be over-policed and racially profiled across the country.<sup>36</sup> Over-policing of youth of color is a significant problem in our schools as well as on the streets. Hispanic or African-American students account for over 70% of the students involved in school-related arrests or referred to law enforcement.<sup>37</sup> We urge Congress to pass legislation to ban racial profiling at all levels of government.

### **B. Ensure Any Police-Youth Interactions are Developmentally Appropriate**

The May 2015 report by the President’s Task Force on 21st Century Policing further expresses the necessity of a developmental approach to law enforcement’s interaction with

---

<sup>33</sup> Campaign for Youth Justice, *The Consequences Aren’t Minor: The Impact of Trying Youth as Adults and Strategies for Reform* (Mar. 2007), available at [http://www.justicepolicy.org/uploads/justicepolicy/documents/07-03\\_c4yjconsequences\\_jj.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/07-03_c4yjconsequences_jj.pdf).

<sup>34</sup> Richard E. Redding, U.S. Dep’t of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* (June 2010), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf>.

<sup>35</sup> Int’l Association of Chiefs of Police, *The Effects of Adolescent Development on Policing* (2015), available at <http://www.theiacp.org/Portals/0/documents/pdfs/IACPBriefEffectsofAdolescentDevelopmentonPolicing.pdf>.

<sup>36</sup> National Association for the Advancement of Colored People (NAACP), “Born Suspect: Stop-and-Frisk Abuses & the Continued Fight to End Racial Profiling in America” (Sept. 2014), [https://www.prisonpolicy.org/scans/naacp/Born\\_Suspect\\_Report\\_final\\_web.pdf](https://www.prisonpolicy.org/scans/naacp/Born_Suspect_Report_final_web.pdf).

<sup>37</sup> Advancement Project, “School-to-Prison Pipeline” Infographic, [https://b3cdn.net/advancement/a6feca50e851bccdd3\\_eam6y96th.pdf](https://b3cdn.net/advancement/a6feca50e851bccdd3_eam6y96th.pdf).



juveniles.<sup>38</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.”<sup>39</sup>

Congress should support local law enforcement efforts in states to develop a comprehensive policy concerning police-youth interactions by providing incentivized grants to develop and support such policies. 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. Congress should divest funding from federal law enforcement programs that target youth, and invest instead in mental health and related supports. Federal investments in school policing should be placed instead in schools and community supports.

### **C. Create Incentives for States to 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 alleged commission of an offense 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 the mid-20s, much later than was previously believed to be the case. State legislatures have taken note of these studies and acted accordingly. Only three states continue to set their age of criminal

---

<sup>38</sup> President’s Task Force on 21st Century Policing, Final Report of the President’s Task Force on 21st Century Policing (2015), available at [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).

<sup>39</sup> *Id.*

responsibility below 18: Georgia, Texas, and Wisconsin.<sup>40</sup> In 2018, Vermont became the first state to set its juvenile jurisdiction age above 18.<sup>41</sup> States have also passed legislation to raise the minimum age at which youth can be transferred to the adult criminal justice system, otherwise known as “raising the floor.”<sup>42</sup> In 2015, Connecticut raised the lower age from 14-years-old to 15-years-old.<sup>43</sup> Kansas raised the minimum age at which youth can be prosecuted as adults from 12-years-old to 14-years-old, and California raised it from 14 or 15 to 16-years-old.<sup>44</sup> In addition to creating a presumption that youth under 21 remain in juvenile facilities, New Jersey also raised the minimum age that a youth may be considered for mandatory transfer to the adult system from 14-years-old to 15-years old.<sup>45</sup>

Finally, momentum has been building across the country to raise the minimum age at which states can prosecute children in juvenile court, known as “raising the minimum age.” The lack of a humane and rational minimum age for prosecuting children puts them at risk of experiencing the trauma and collateral consequences associated with arrest and police involvement. Legal experts and social scientists have also voiced significant concerns regarding young children’s competency to understand and exercise their legal rights in any meaningful way. Additionally, there are significant disproportionalities in the arrest and prosecution of young children with Black children significantly overrepresented in the justice system. The United Nations Committee on the Rights of the Child recommends that nations set their minimum age of criminal responsibility to at least 14-years- old, the most common age of criminal responsibility internationally.<sup>46</sup> The United States should join the international community in establishing a high minimum age for prosecuting children.

Congress should provide strong leadership for states to reduce, and eventually eliminate, their harmful and dangerous reliance on trying youth as adults. Congress’ Record Expungement Designed to Enhance Employment Act of 2017 (REDEEM Act) would have

---

<sup>40</sup> *In Another Big year for “Raise the Age” Laws, One State Now Considers all Teens Juveniles*, The Chronicle of Social Change (June 25, 2018), <https://chronicleofsocialchange.org/youth-services-insider/juvenile-justice-raise-the-age-vermont-missouri-state-legislation>.

<sup>41</sup> See *id.* (noting that with a few exceptions, by 2022 all teens, including 19-year-olds, will be treated as juveniles).

<sup>42</sup> Jeree Thomas, *Raising the Bar: State Trends in Keeping Youth Out of Adult Courts (2015-2017) 31-33 (2017)*, available at [http://cfyj.org/images/A-StateTrends\\_Report-Web.pdf](http://cfyj.org/images/A-StateTrends_Report-Web.pdf).

<sup>43</sup> *Id.* at 31.

<sup>44</sup> *Id.* at 33; Cal. Welf. & Inst. Code § 707 (2018).

<sup>45</sup> Thomas, *supra* note 44 at 33.

<sup>46</sup> United Nations Committee on the Rights of the Child. (2019). Convention on the rights of the child: General comment No. 24 (2019) on children’s rights in the child justice system. <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsqIkirKQZLK2M58RF%2F5F0vEnG3QGKUxFivhToQfjGxYjV05tUAlgpOwHQJsfPdJXCiixFSrDRwo w8HeKLLh8cgOw1SN6vJ%2BF0RPR9UMtGkA4>.

incentivized states to establish age 18 as a floor for original jurisdiction in adult criminal courts.<sup>47</sup> The Childhood Offenders Rehabilitation and Safety Act of 2021, would have also set a minimum age of 12 years old for federal juvenile court jurisdiction.<sup>48</sup> We call on Congress to reintroduce and pass the provisions of this bill related to the age of adult court jurisdiction, to create incentives to encourage States to raise the extended age of juvenile court jurisdiction to at least the age of 21, and to encourage States to establish a reasonable minimum age for juvenile court jurisdiction.

#### **D. Support the Removal of Youth Charged as Adults from Jails**

The Juvenile Justice Reform Act closes a critical loophole in the jail removal provision of JJDPa by calling on states and localities to remove youth who are charged as adults from adult jails pretrial. Previously, the JJDPa only prevented minors facing delinquency charges from being held in adult jails, leaving youth charged as adults vulnerable to the dangers and shortcomings of adult jails, a system not designed for youth, nor their safety. Under the reauthorized statute, youth held in adult jails – including those charged as adults<sup>49</sup> – must be removed to juvenile detention centers within three years of enactment of the new law. The definition of “adult” in the new statute is tied to each state’s age of criminal responsibility and extended age of jurisdiction.<sup>50</sup>

A little over half of the states and Washington, D.C. already permit youth charged as adults to be housed in juvenile facilities. There has been considerable movement in advancing these reforms at the state and local level over the past decade; however, many states will need to pass legislation in order to come into compliance with the law.<sup>51</sup> We urge Congress to exercise its oversight power to ensure the Office of Juvenile Justice and Delinquency Prevention is enforcing compliance of this new provision of the JJDPa. Further, Congress should ensure it is providing full funding of Title II of the JJDPa so that states have funding assistance to implement new laws.

---

<sup>47</sup> Record Expungement Designed to Enhance Employment Act of 2015, S. 827, 115 Cong. (2017); Record Expungement Designed to Enhance Employment Act of 2015, H.R. 1906, 115 Cong. (2017)

<sup>48</sup> H.R. 2908. The Childhood Offenders Rehabilitation and Safety Act of 2021. 117th Congress.

<sup>49</sup> Neelum Arya, Jail Removal Project, Getting to Zero: A 50-State Study of Strategies to Remove Youth from Adult Jails 11 (2018), available at [https://drive.google.com/file/d/1LLSF8uBlrcqDaFW3ZKo\\_k3xpk\\_DTmItV/view](https://drive.google.com/file/d/1LLSF8uBlrcqDaFW3ZKo_k3xpk_DTmItV/view) (80 percent of youth in adult jails are youth charged as adults).

<sup>50</sup> Currently, only four states set the age of criminal responsibility below age 18 – they include Georgia, Michigan, Texas and Wisconsin. There are five more states who are in the process of implementing their “raise the age” laws.

<sup>51</sup> Arya, *supra* note 49.

We further call on Congress as part of the reauthorization of the JJDPa to make clear through statute that this provision also prohibits the detention of youth in adult prisons. This change would mirror and codify the long held belief in the field that the JJDPa's jail removal protection ensures that young people are not housed in any type of adult carceral facility, particularly the worst and most punitive among them.

### **E. Eliminating Life Without the Possibility of Parole or Release for Children Through the Use of a Judicial Review Process**

In light of the Supreme Court's decision in *Roper, Graham, Miller, Montgomery, and J.D.B.*,<sup>27</sup> states have eliminated the use of life without parole or release sentences for children, including Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oregon, South Dakota, Texas, Utah, Vermont, Virginia, Washington, Wyoming, and Washington, D.C.<sup>52</sup> 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.<sup>53</sup> 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.<sup>54</sup> U.S. law continues to remain in violation of both the *Graham* and *Miller* Supreme Court decisions.

We urge Congress 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

---

<sup>52</sup> See Josh Rovner, *Juvenile Life Without Parole: An Overview*, *The Sentencing Project* (April 13, 2021), <https://www.sentencingproject.org/publications/juvenile-life-without-parole/> ("Since 2005, Supreme Court rulings have accepted adolescent brain science and banned the use of capital punishment for juveniles, limited life without parole sentences to homicide offenders, banned the use of mandatory life without parole, and applied the decision retroactively. In 2012, the Court ruled that judges must consider the unique circumstances of each juvenile offender, banning mandatory sentences of life without parole for all juveniles; in 2016, this decision was made retroactive to those sentenced prior to 2012."); *States the Ban Life Without Parole for Children*, Campaign for the Fair Sentencing of Youth, <https://www.fairsentencingofyouth.org/media-resources/states-that-ban-life/> (last visited April 27, 2021).

<sup>53</sup> *ABA Urges High Court to Expand 2012 Juvenile Life-Without-Parole Decision*, American Bar Ass'n (July 29, 2015), [https://www.americanbar.org/news/abanews/aba-news-archives/2015/07/aba\\_urges\\_high\\_court/](https://www.americanbar.org/news/abanews/aba-news-archives/2015/07/aba_urges_high_court/).

<sup>54</sup> U.N. Committee against Torture, *Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America* ¶ 23-24, U.N. Doc. CAT/C/USA/CO/3-5 (Dec. 19, 2014); *Rights of the Child*, G.A. Res. 61/146 ¶ 31(a), U.N. Doc. A/Res/61/146 (Dec. 19, 2006).

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 the 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 individual’s counsel; and (11) any other mitigating factors or circumstances.

Since the 115th Congress, both chambers of Congress have introduced legislation to address federal sentencing in respect to children under age 18. This trend continues this year with Rep. Bruce Westerman (R-AR) also introducing in Congress, H. 2858, a bill to end extreme sentences for minors in federal court. Senators Durbin and Grassley have also included reforms to extreme sentencing of juveniles in federal court this Congress, with the First Step Implementation Act.

## **F. Update the Federal Delinquency Act**

Federal law has not kept up with research, and does not currently set a minimum age for delinquency. We propose amending chapter 403 of Title 18 to define a “juvenile” as a person who is at least 12 years of age that has not attained their 18th birthday, and “juvenile delinquency” as the violation of a law of the United States committed by a person who has reached their 12th birthday but prior to their 18th birthday which would have been a crime if committed by an adult. International law commonly recognizes 14 as the minimum age.<sup>55</sup> Twelve would only just begin to align the United States with international law. In addition, we support ending mandatory prosecution of children in federal court by amending 18 U.S. Code § 5032 to only apply to children ages 16 and 17, and only after a hearing by a judge that considers individual factors that includes the age and maturity of

---

<sup>55</sup> United Nations Committee on the Rights of the Child. (2019). Convention on the rights of the child: General comment No. 24 (2019) on children’s rights in the child justice system. <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPpRiCAqhKb7yhsqlkirKQZLK2M58RF%2F5F0vEnG3QGKUxFivhToQfjGxYjV05tUAlgpOwHQJsFPdJXCiixFSrDRwo w8HeKLLh8cgOw1SN6vJ%2Bf0RPR9UMtGkA4>.



the child, any history of trauma, and when the child is provided counsel.

We urge Congress to pass legislation this Congress to amend the Federal Delinquency Act. Similar legislation was introduced in the 117th Congress by former Congresswoman Karen Bass. H. 2908, aimed to establish 12 as the minimum age of jurisdiction, and 16 as the minimum age for transfer to adult court. The bill also would have prohibited direct file of minors facing charges in federal court to the criminal justice system. Finally, H. 2908 would have provided financial incentives for states to increase communication and cooperation between their youth legal system and their child welfare system.

### **III. 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 abuse, 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 work to 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's juvenile justice system. Out-of-home confinement for a young person in the United States can exceed \$200,000 per year.<sup>56</sup> While youth incarceration has dramatically decreased over the past two decades, almost all states still rely on these costly institutions and the harmful approach they embody. Nationally, 78 percent of out-of-home placements are operating under capacity, including facilities that are built to house no more than 10 youth at one time.<sup>57</sup> This is a positive sign and call to action. Instead of sustaining these failed institutions, they should be consolidated and closed, resulting in tens of millions of dollars that 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

<sup>56</sup> Petteruti, et al., *supra* note 17.

<sup>57</sup> *OJJDP Statistical Briefing Book: Family Characteristics*, Office of Juvenile Justice and Delinquency Prevention <https://www.ojjdp.gov/ojstatbb/corrections/qa08522.asp?qaDate=2016>.

and the Annie E. Casey Foundation, released *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model*, which explores recent research in developmental psychology and widespread reports of abuse in juvenile facilities, and recommends that the current youth prison model should be replaced with community-based programs and small, home-like facilities that provide age-appropriate rehabilitation services.<sup>58</sup> The public agrees. Public opinion polls find that taxpayers overwhelmingly favor paying for prevention, education, and rehabilitation over prosecution and incarceration of youth who are adjudicated delinquent, and that youth should be treated differently than adults.<sup>59</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. The 115th Congress took a step in this direction with the reauthorization of the Juvenile Justice Reform Act (JJRA). The JJRA significantly expands the types of delinquency prevention programs that qualify for funding under Title V, allowing for a broader, more holistic approach to addressing the needs of youth who have been in contact with the justice system and preventing delinquency.

In the rare instances when youth must be in out-of-home placement, they should be placed in short-term, culturally competent, therapeutic environments that will address youth trauma and 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.

#### **A. Invest \$50m to support State Efforts to Close Ineffective, High-Cost Youth Prisons**

---

<sup>58</sup> Patrick McCarthy, Vincent Schiraldi, & Miriam Shark, Nat'l Insti. of Justice, Harvard Kennedy School, *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model* (2016), available at [https://www.aecf.org/m/resourcedoc/NIJ-The\\_Future\\_of\\_Youth\\_Justice-10.21.16.pdf](https://www.aecf.org/m/resourcedoc/NIJ-The_Future_of_Youth_Justice-10.21.16.pdf).

<sup>59</sup> *National Poll Result*, Youth First Initiative (Feb. 26, 2017), <http://www.youthfirstinitiative.org/national-poll-results-2017/>; *Public Opinion on Juvenile Justice in America*, Pew Charitable Trusts' Public Safety Performance Project, (2014), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/12/public-opinion-on-juvenile-justice-in-america>.

It can cost hundreds of thousands of dollars a year to securely confine a young person.<sup>60</sup> Many policymakers draw a sharp distinction between youth who commit violent and non-violent offenses. However, research shows that in order to sustainably reduce youth violence, recidivism, and racial disparities, we must change laws, policies, and practices that prohibit young people involved in a violent crime from taking advantage of effective interventions in a community setting. New research shows that victims of crime support these approaches.<sup>61</sup> Often this money could be better spent on less costly, more effective alternatives. States as divergent as New York, Illinois, California, Arkansas, Ohio, and Texas, as well as the District of Columbia have undertaken initiatives to reduce their over-reliance on wasteful, unnecessary, and often dangerous out-of-home placement of children.<sup>62</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>63</sup>

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>64</sup> Fiscal scarcity – particularly since the 2008 downturn – accelerated state and local approaches to meeting a young persons’ need in the community because they could use less expensive, and more effective options 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-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 positive vision for investing in youth, rather than locking them up.

---

<sup>60</sup> Petteruti, et al., *supra* note 17.

<sup>61</sup> Justice Policy Inst. & Nat’l Ctr. for Victims of Crime, *Smart, Safe, and Fair: Strategies to Prevent Youth Violence, Heal Victims of Crime, and Reduce Racial Inequality* (2018), *available at* [http://www.justicepolicy.org/uploads/justicepolicy/documents/Smart\\_Safe\\_and\\_Fair\\_9\\_5\\_18.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/Smart_Safe_and_Fair_9_5_18.pdf).

<sup>62</sup> *Juvenile Detention Alternatives Initiative*, The Annie E. Casey Found., <https://www.aecf.org/work/juvenile-justice/jdai/> (last visited Feb. 13, 2019).

<sup>63</sup> Shaena Fazal, Youth Advocate Program, *Safely Home: Reducing Youth Incarceration and Achieving Positive Youth Outcomes for High and Complex Need Youth Through Effective Community-Based Programs* (2014), *available at* <https://www.ncjrs.gov/App/Publications/Abstract.aspx?id=269376>.

<sup>64</sup> Nat’l Research Council, *supra* note 19 at 181.

Congress should provide \$50 million in FY'24 for a new initiative in the DOJ Office of Juvenile Justice and Delinquency Prevention (OJJDP) to support state efforts to build on the long-standing success of reducing youth incarceration and crime. Between 2000 and 2018, the number of incarcerated youth decreased by 65%, and the number of juvenile justice facilities dropped by 50%. During this time youth crime also fell. From 2006 to 2019, juvenile arrests for violent crimes dropped by 50%, and from 2008 to 2019, juvenile arrests for property crimes fell by 73%. However, there are many youth prisons still operating and taking up precious state resources, especially during this time of strained state budgets. Federal funds would assist states by: 1) supporting a planning and consultation process to close youth prisons and direct state resources from those entities to support more effective community-based services for young people involved in the juvenile justice system and their families, as well as 2) provide workforce development for correctional staff who will need new employment upon facility closures.

### **B. Ensure That Youth Are Not Detained while Awaiting Housing Placement or While Awaiting Hearings in Immigration Proceedings**

Youth who are not charged with a crime that threatens public safety, or those who have completed their sentence, should not be held in a detention facility. This includes youth who are seeking asylum in the United States as unaccompanied minors and those fleeing violence in their home country with their families. While finding appropriate foster care placement for children poses significant challenges to state agencies, resource limitations and administrative difficulties do not justify the unnecessary exposure to potentially traumatizing experiences that these children face. Many youths have a history of adverse childhood experiences or underlying mental health issues and detention can exacerbate underlying trauma.<sup>65</sup> Youth placed in these facilities are at heightened risk for physical and sexual abuse.<sup>66</sup> They may also be subjected to things like physical restraints, chemical agents such as pepper spray, and solitary confinement.<sup>67</sup> Further, young people entering the foster care system, or who are experiencing foster home disruption, have often already

---

<sup>65</sup> Nat'l Conference of State Legislators, *Mental health Needs of Juvenile Offenders*, <http://www.ncsl.org/documents/cj/jjguidebook-mental.pdf> (last visited Jan. 22, 2019); Lee A. Underwood & Aryssa Washington, *Mental Health Illness and Juvenile Offenders*, 13 *Int. J. Environ. Res. Public Health* 228 (Feb. 18, 2016), available at <https://www.mdpi.com/1660-4601/13/2/228>.

<sup>66</sup> *One in Eight: The Reality of Sexual Abuse in Juvenile Detention*, Just Detention Int'l, <https://justdetention.org/webinar/one-in-eight-the-reality-of-sexual-abuse-in-juvenile-detention/> (last visited Feb. 13, 2018).

<sup>67</sup> Mendel, Annie E. Casey Found., *Maltreatment of Youth in U.S. Juvenile Corrections Facilities: An Update (2015)*, available at <https://www.aecf.org/m/resourcedoc/aecf-maltreatmentyouthuscorrections-2015.pdf>.

had their educational experiences significantly disrupted. Placing them in detention centers outside of any community, never mind their own community, will only increase the severity of these disruptions.<sup>68</sup>

Regardless of the difficulties state agencies face regarding placement, they should not use detention centers as a dumping ground for foster youth. By unnecessarily institutionalizing young people who have committed, at worst, minor offenses, these states are essentially manufacturing recidivism. Studies have shown that prior incarceration is the most accurate predictor of future incarceration.<sup>69</sup> Youth who are not charged with a crime that threatens public safety should not be incarcerated.

Similarly, youth should not be detained pending immigration proceedings. Often, youth are held on the basis of suspected gang membership with seemingly no evidentiary threshold. Despite the lack of statistical evidence, there is a default association between young Latinx and MS-13. The explanation for this association rests entirely on skin color and nation of origin. Detention, and the fear of detention, both drive a wedge between young Latinx and local law enforcement. This dynamic clearly frustrates legitimate law enforcement objectives, and the end result leaves communities less safe.<sup>70</sup> Furthermore, the detained youth are subjected to all the negative impacts of detention discussed above. We urge Congress to take action to ensure that young people are not detained while awaiting housing placement, or while awaiting a hearing in immigration proceedings.

### **C. Reauthorize the Juvenile Accountability Block Grant**

The Juvenile Accountability Block Grant (JABG) program, authorized under the Omnibus Crime Control and Safe Streets Act of 2002, is designed to help reduce juvenile offending by supporting the implementation of graduated sanctions and positive enforcements. The basic premise underlying the JABG program is that both the youth and the juvenile justice system must be held accountable. In implementing the program, OJJDP works to support state efforts that reduce juvenile offending through both offender-focused and system-focused activities that promote accountability. Funding for JABG was zeroed out in FY 2014

---

<sup>68</sup> *Id.*

<sup>69</sup> Barry Holman and Jason Ziedenberg, Justice Policy Instit., *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* (2006), available at [http://www.justicepolicy.org/images/upload/06-11\\_rep\\_dangersofdetention\\_jj.pdf](http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf).

<sup>70</sup> Rachel Marshall, *We Need to Help Immigrant Youth, Not Scapegoat Them*, Juvenile Justice Information Exchange (June 27, 2018), <https://jjie.org/2018/06/27/we-need-to-help-immigrant-youth-not-scapegoat-them>.



and has not been provided by Congress in any year that has followed.<sup>71</sup>

During the 115th and 116th Congress, the House passed the Tiffany Joslyn Juvenile Accountability Block Grant Program Reauthorization Act.<sup>72</sup> This legislation allocated \$30 million per year for five years to JABG, and included efforts to curb cyber and on-line bullying, but did not pass in the Senate. We urge the House and Senate to introduce and pass legislation to restore funding for this important grant program.

#### **D. Support Family Engagement**

Recognizing the integral role families play in holding the youth justice system accountable for how they care for and supervise young people, 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 youth in the justice system. This includes families of immigrant 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.

#### **F. Improve School Safety 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. Research has demonstrated that expanded 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. Zero tolerance disconnects students from their school and criminalizes youth, particularly youth of color, LGBTQ youth, and youth with disabilities for behaviors and infractions that can and should be prevented and addressed within schools without pushing youth out of

---

<sup>71</sup> Juvenile Justice Federal Funding Chart, Act 4 Juvenile Justice, available at <http://www.act4jj.org/sites/default/files/resource-files/Historic%20Funding%20Chart%20-%20FY18.pdf> (last visited Jan. 23, 2019).

<sup>72</sup> Tiffany Joslyn Juvenile Accountability Block Grant Program Reauthorization Act of 2017, H.R. 68, 115th Cong. (2017).

school or involving law enforcement and justice system referrals.<sup>73</sup>

Additionally, reliance on law enforcement in schools to maintain discipline can result in youth ending up in 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, the percentage of arrests and referrals to the juvenile justice system from schools, generally, have also increased.<sup>74</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. Further, students are often arrested for normal childhood behavior. In at least 22 states, it is now a crime to disrupt school, and SROs have arrested students for things like wearing too much perfume, burping repeatedly, or playing with a Nerf gun during a break in a virtual class.<sup>75</sup> 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>76</sup>

Schools should instead be encouraged to invest more resources in school counselors, school psychologists, school social workers, and other mental health clinicians who can

---

<sup>73</sup> See *Locked Out of the Classroom: How Implicit Bias Contributes to Disparities in School Discipline*, NAACP Legal Defense Fund 4 (2017), available at [http://www.naacpldf.org/files/about-us/Bias\\_Reportv2017\\_30\\_11\\_FINAL.pdf](http://www.naacpldf.org/files/about-us/Bias_Reportv2017_30_11_FINAL.pdf) [hereinafter *Locked Out of the Classroom*]; Russell J. Skiba, et al., *The Color of Discipline: Sources of Racial and Gender Disproportionately in School Punishment*, 34 *Urban Rev.* 4 (Dec. 2002), available at <http://www.indiana.edu/~equity/docs/ColorofDiscipline2002.pdf> (Research has shown time and again that youth of color are no more likely to misbehave than white youth.); *The School-to-Prison Pipeline: Infographic*, Advancement Project (Sept. 3, 2013), <https://advancementproject.org/resources/school-prison-pipeline-infographic/> (showing that over 70 percent of students involved in school related arrests or referred to law enforcement are African-American or Hispanic.); Katherine Reynolds Lewis, *Why Schools Over-Discipline Children With Disabilities*, *The Atlantic* (Jul. 24, 2015), <https://www.theatlantic.com/education/archive/2015/07/school-discipline-children-disabilities/399563/> (explaining that zero-tolerance policies have an even greater effect on students with disabilities, particularly those students with depression, autism, and behavioral disorders.); Movement Advancement Project and Ctr. for American Progress, *Unjust: How the Broken Juvenile and Criminal Justice Systems Fail LGBTQ Youth* (Aug. 2016), available at <http://www.lgbtmap.org/file/lgbt-criminal-justice-youth.pdf>.

<sup>74</sup> Amber Farn, M.S.Ed., Cntr. for Juvenile Justice Reform, *Keeping Youth and Out of the Justice system: Promising Practices and Approaches 1-2* (June 2018), available at [https://cjjr.georgetown.edu/wp-content/uploads/2018/05/CP-Series-Bulletin\\_School-Justice-May-2018.pdf](https://cjjr.georgetown.edu/wp-content/uploads/2018/05/CP-Series-Bulletin_School-Justice-May-2018.pdf).

<sup>75</sup> Monique W. Morris, Rebecca Epstein, and Aishatu Yusuf, *Be Her Resource: A Toolkit About School Resource Officers and Girls of Color* (2016), available at [https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2018/05/17\\_SRO-final-cc.pdf](https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2018/05/17_SRO-final-cc.pdf). See also, "Colorado school calls police on 12-year-old who showed toy gun in virtual class," Available at: <https://www.kiro7.com/news/trending/colorado-school-calls-police-12-year-old-who-showed-toy-gun-virtual-class/AJGU24CDPBC4DH2E5QZ2BU2HZI/>.

<sup>76</sup> Aaron Kupchik, *The flaws in the NRA's school-security proposal*, *Wash. Post* (Dec. 30, 2012), [http://www.washingtonpost.com/opinions/the-nras-faulty-school-security-proposal/2012/12/30/b5b73fc0-5054-11e2-950a-7863a013264b\\_story.html](http://www.washingtonpost.com/opinions/the-nras-faulty-school-security-proposal/2012/12/30/b5b73fc0-5054-11e2-950a-7863a013264b_story.html).

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 adopt a more trauma-informed approach and seek to mitigate the emotional and behavioral effects of adverse childhood experiences (ACEs) and chronic environmental stressors on vulnerable students. Effective school-justice partnerships should include Memorandums of Understanding (MOU) that clearly articulate a limited role for the law enforcement officers in schools, require trauma-sensitive and mental health awareness training, and establish explicit protocols for interactions with students and referral to services where necessary.<sup>77</sup> All school employees should be offered training to better identify mental health issues that can trigger different behaviors and practice de-escalation techniques to diffuse conflict.

Congress should advance legislation that effectively addresses 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 divest federal funding from law enforcement in schools.

### **G. Improve Access to and Quality of Mental Health and Substance Abuse Services**

Studies have shown that as many as 70 percent of youth in juvenile detention centers 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.<sup>78</sup> Juvenile justice agencies are often ill-equipped to manage the mental health and substance abuse needs of youth effectively, yet are often the first line of care for them in mental and behavioral health crises. The agencies themselves identify the following as barriers to their success: insufficient resources, inadequate administrative capacity, lack of appropriate staffing, and lack of training for staff.<sup>79</sup>

---

<sup>77</sup> E.g., *School-Justice Partnership Project: Keeping Kids in School and Out of Court*, Nat'l Council of Juvenile and Family Court Judges, <https://schooljusticepartnership.org/about-the-project.html> (last visited Feb. 4, 2019).

<sup>78</sup> Office of Juvenile Justice and Delinquency Prevention, *Intersection between Mental Health and Juvenile Justice*, available at <https://www.ojjdp.gov/mpg/litreviews/Intersection-Mental-Health-Juvenile-Justice.pdf> (last updated July 2017); Nat'l Conference of State Legislators, *Mental health Needs of Juvenile Offenders*, <http://www.ncsl.org/documents/cj/jjguidebook-mental.pdf> (last visited Jan. 22, 2019); Lee A. Underwood and Aryssa Washington, *Mental Health Illness and Juvenile Offenders*, 13 *Int. J. Environ. Res. Public Health* 228 (Feb. 18, 2016), available at <https://www.mdpi.com/1660-4601/13/2/228>.

<sup>79</sup> Federal Advisory Committee on Juvenile Justice, *Annual Report (2006)*, available at <http://www.ncjrs.gov/pdffiles1/ojjdp/218367.pdf>.

Congress should continue to advance proposals to help identify behavioral health (i.e. mental health and substance abuse disorders) needs early, including exposure to adverse childhood experiences (ACEs), mental illness and substance abuse. Additionally, Congress should support demonstration projects focusing on the routine use of trauma screening practices within the juvenile justice system, including at the initial point of referral for delinquency complaints, to ensure informed targeting of effective trauma interventions for these youth and their families. Congress should also expand access to innovative, culturally competent, and evidence-based services and treatment, and to improve the quality of those services.

Further, Congress should create incentives for states to reduce the inappropriate detention 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 abuse 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, prosecutors, judges, probation officers, and other decision makers.

#### **H. Continue to Support Programs and Education on Youth Exposure to Violence and Appropriate Responses to Adverse Childhood Experiences**

An individual's health, educational success and future likelihood of becoming a victim or perpetrator of crime are all directly influenced by his or her experiences with violence and trauma as a child (also known as adverse childhood experiences or "ACES"). More than half of American children have witnessed or experienced violence directly, and new brain science increasingly points to long-lasting and at times devastating outcomes from the trauma that results. Importantly, violence can be prevented, and early identification and help for children who have experienced violence and trauma can dramatically increase the likelihood that they will grow up healthy, avoiding addiction and mental illness, finishing school, and never entering the juvenile justice system.

The Department of Justice has administered a small but deeply impactful program since 2010 to help communities address children's exposure to violence and test the most effective strategies for reducing crime and increasing awareness about how to heal traumatized children. One recent outcome of the "Defending Childhood" initiative was training to help law enforcement agencies engage with children who may have experienced

a violent incident, and it has also funded science-based trainings on how trauma impacts brain development and what adults can do to help children.<sup>80</sup> While many of the interventions identified through the Defending Childhood initiative are eligible for Title V PROMISE grants of the JJDP, it is critical that the Department of Justice continue to fund this initiative, which connects interpersonal and community violence interventions. The Fiscal Year 2023 omnibus appropriations bill included \$10 million for the Children Exposed to Violence initiative and we would recommend that funding continue. Continued funding would allow this program to expand, so more schools, parents, community-based organizations, and law enforcement agencies could receive training on how to address child trauma and prevent crime and violence.

### **E. Pass the Runaway and Homeless Youth and Trafficking Prevention Act (RHYTPA)**

An estimated 4.2 million young people ages 13 to 25 experience homelessness annually, of which 700,000 are unaccompanied youth ages 13 to 17. There is a two-way relationship between youth homelessness and the justice system - youth involved with the policing and carceral systems are more likely to report homelessness. As many as 44 percent of young people experiencing homelessness have spent time in a jail, prison or detention facility, while 62 percent of them have been arrested, and 78 percent have had at least one encounter with law enforcement.<sup>81</sup> Much of this is due to arrests that stem from activities associated with daily survival such as panhandling, loitering, or sleeping outdoors.

LGBTQ youth are at more than double the risk of homelessness compared to non-LGBTQ peers, yet they may face discrimination when seeking needed services. In addition, an estimated 1 in 5 youth and young adults experiencing homelessness are victims of trafficking, which includes commercial sexual exploitation and labor trafficking.<sup>82</sup>

Runaway and Homeless Youth Act (RHYA) programs administered by the U.S. Department of Health and Human Services provide vital prevention, shelter, longer-term housing and

---

<sup>80</sup> *Enhancing Law Enforcement Response to Children Exposed to Violence and Childhood Trauma*, Int'l Association of Chiefs of Police, <https://www.theiacp.org/projects/enhancing-law-enforcement-response-to-children-exposed-to-violence-and-childhood-trauma> (last visited Feb. 12, 2019).

<sup>81</sup> "Youth Homelessness and Juvenile Justice: Opportunities for for Collaboration and Impact ." Juvjustice.org, Coalition for Juvenile Justice, June 2016, [https://www.juvjustice.org/sites/default/files/resource-files/policy%20brief\\_FINAL.compressed.pdf](https://www.juvjustice.org/sites/default/files/resource-files/policy%20brief_FINAL.compressed.pdf).

<sup>82</sup> "One-Fifth of Homeless Youth Are Victims of Human Trafficking." *Covenant House*, <https://www.covenanthouse.org/charity-blog/blog-covenant-house-news-efforts-towards-justice-end-human-trafficking/one-fifth>.



services to runaway, homeless, and disconnected youth through three key programs:

- the Basic Center Program (BCP), which provides temporary shelter, counseling, family reunification, and aftercare;
- the Transitional Living Program (TLP), which provides longer-term housing with supportive services, including Maternity Group Homes for pregnant and parenting youth; and
- the Street Outreach Program, which provides education, treatment, counseling and referrals.

These programs were initially authorized as Title III of the JJDP in 1974. After being reauthorized as a standalone bill for 30 years, RHYA was reauthorized for two years with the JJDP in 2018. However, vital programmatic improvements to the bill as well as a provision protecting LGBTQ youth from discrimination were not included. In addition, these programs continue to be funded well below the necessary level to ensure the programs are effective. Congress should increase Federal investments in these programs above the most recently appropriated levels. Further, we call on Congress to pass a comprehensive five-year reauthorization of RHYA by passing the Runaway and Homeless Youth and Trafficking Prevention Act (RHYTPA) that will:

- Continue to provide funding for rural, suburban and urban communities to prevent and respond to youth and young adult homelessness;
- Strengthen prevention efforts offered through the Street Outreach and Basic Center programs;
- Enable Basic Center programs to serve youth for 30 days, and Transitional Living Programs to serve youth through age 25;
- Codify comprehensive nondiscrimination protections for youth and young adults accessing services under RHYA;
- Ensure trafficking is prevented and victims are served through outreach, identification, referrals and reporting;
- Increases authorized appropriations levels to \$300 million annually; and
- Ensure continued studies on the incidence and prevalence of youth and young adult homelessness.

We also call on Congress to appropriate \$300 million to the vital Runaway and Homeless Youth Act program to increase the service and housing options available to minor and transition aged youth at-risk of experiencing homelessness.

The current economic crisis and related family stress threaten to create new waves of youth

and young family homelessness. Even prior to COVID-19, youth and family homelessness were at record levels: public schools identified over 1.5 million children and youth experiencing homelessness.<sup>83</sup> Over 80% of these children and youth were staying outside the formal shelter system, bouncing between temporary situations with other people or in motels, when they were first identified.<sup>84</sup> Similarly, most young adults experiencing homelessness are not in shelter or on the streets. Now more than ever, these children, families, and youth need our attention if they are to receive the help they need to survive and thrive.

We strongly believe that every young person in America should have a safe place to call home and multiple opportunities to succeed, especially our young people experiencing homelessness, whose lives are often marked by histories of abuse, trafficking, discrimination, poverty, violence, and family homelessness, incarceration, mental illness and substance use disorders. These experiences should not define the trajectory of a person's life and are absolutely no indication of a young person's aptitude or abilities.

Administered as competitive grants through the U.S. Department of Health and Human Services (HHS) Administration for Children & Families (ACF) Family and Youth Services Bureau (FYSB), the Runaway and Homeless Youth Act (RHYA) program funds three key pillars of intervention for youth who are at-risk of or are experiencing homelessness: Street Outreach Program, Basic Center Program, and Transitional Living Program (including Maternity Group Homes).

RHY providers are uniquely able to serve youth and young adults who are at risk of, or experiencing homelessness and/or human trafficking. As community-based organizations, they adapt to deliver services based on local needs, including in rural and suburban settings (where homelessness looks different).

#### **IV. 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 youth, girls, and other vulnerable populations to grow into healthy, productive adults is not only fair, it is a wise

---

<sup>83</sup> "The Emergency Family Stabilization Act, S. 220." *National Network for Youth*, 21 Apr. 2021, <https://nn4youth.org/resource/the-emergency-family-stabilization-act-s-220/>.

<sup>84</sup> *Id.*

It is well-documented that 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 to transfer into the adult system. Over the past 10 years disparities have remained virtually unchanged. In every state, Black youth are more likely to be incarcerated than their white peers, about five times as likely nationwide.<sup>85</sup> African American youth are 4.6 times as likely as their white peers to be incarcerated for offenses generally, and 7.1 times as likely to be incarcerated than their white peers for violent behaviors.<sup>86</sup> American Indian youth are three times as likely to be incarcerated as their white peers.<sup>87</sup> For Latinx youth disparities are smaller but still prevalent; Latinx youth are 42 percent more likely than their white peers to be incarcerated.<sup>88</sup> In fact, while the number of youth involved in the juvenile justice system has shrunk overall over the past decade, the racial and ethnic disparities have not improved and, for some decision points in the system, they have actually increased, demonstrating a need for intentional and deliberate attention on ending implicit and explicit biases.<sup>89</sup> LGBTQ youth are also over-incarcerated, particularly for misdemeanor crimes and/or status offenses.<sup>90</sup> These youth often have experienced high levels of trauma which need to be addressed, not punished.

### **A. Funding and Support for Tribal Youth and Tribal Juvenile Justice Systems**

Congress must take action to ensure that, like all governments, Tribal Nations have access to flexible and consistent funding sources in order to develop institutions and programs that work to meet the needs of tribal youth. American Indian and Alaskan Native children (tribal youth) are arrested at a rate of more than two to three times that of other youth and are overrepresented in the juvenile justice system.<sup>91</sup> However, when tribal youth are in state and Federal justice systems, it is almost impossible to track them. The Government Accountability Office (GAO) recently found that many states do not report when they have

---

<sup>85</sup> Rovner, Josh. "Racial Disparities in Youth Incarceration Persist." *The Sentencing Project*, Feb. 2021, <https://www.sentencingproject.org/app/uploads/2022/08/Racial-Disparities-in-Youth-Incarceration-Persist.pdf>.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Josh Rovner, The Sentencing Project, *Racial Disparities in Youth Commitment and Arrests* (2016), available at <https://www.sentencingproject.org/wp-content/uploads/2016/04/Racial-Disparities-in-Youth-Commitments-and-Arrests.pdf>; *Implicit Bias Snapshot*, Nat'l Juvenile Justice (Sept. 2017), <http://www.njjn.org/our-work/implicit-bias-snapshot>.

<sup>90</sup> Movement Advancement Project and Ctr. for American Progress, *Unjust: How the Broken Juvenile and Criminal Justice Systems Fail LGBTQ Youth* (Aug. 2016), available at <http://www.lgbtmap.org/file/lgbt-criminal-justice-youth.pdf>.

<sup>91</sup> *Native Disparities in Youth Incarceration*, The Sentencing Project (Oct. 12, 2017), <https://www.sentencingproject.org/publications/native-disparities-youth-incarceration/>.

tribal youth in their custody.<sup>92</sup> Additionally, Federal agencies fail to accurately report tribal youth in their custody.<sup>93</sup> As a result, the GAO was not able to truly assess how many tribal youth are in Federal and state juvenile justice systems today. This prevents us from accurately measuring the trends of tribal youth in juvenile justice systems leaving us unable to address their needs.

Federal support is necessary to ensure that tribal youth have access to fair, appropriate and effective justice services. We support increases in funding for tribal juvenile justice and an increase in the authorization level for the Tribal Youth Program. We also ask that legislative efforts include reauthorizing Section 4213(e) and 4212(a)(3) of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986, which provides preventative services to tribal youth such as emergency shelters, halfway houses, and emergency care, as well as summer youth programs to combat illegal narcotics in Indian Country.

In addition to increasing funding for tribal programs, Congress must amend existing laws that disproportionately impact tribal youth. Under the Federal Juvenile Delinquency Act (FJDA), 18 U.S.C. § 5032, federal prosecutors may not file charges against a juvenile in federal court unless the state certifies that either it does not have jurisdiction or that its resources are insufficient to prosecute. However, no such certification is required from tribal courts—although tribal youth make up a majority of federal juvenile cases. Amending the FJDA to require Tribal Nations to submit a similar certification would create the kind of dialogue about resources and priorities that is sorely needed. Amending FJDA would also affirm that juvenile justice should be handled by a local community first, and include larger government involvement only when necessary.

Congress must also enact legislation that: 1) requires states to provide notice to the Tribal Nation whose tribal youth comes in contact with their state juvenile justice system allowing the Tribal Nation to provide culturally appropriate services and support; 2) requires the Federal government to track all tribal youth in the justice system; 3) requires that the Federal government asks all youth “what is their tribal affiliation” to accurately track tribal youth in the Federal system; 4) requires reporting on the number of tribal youth in Federal incarceration and their tribal affiliation; and 5) requires states work with Tribal Nations on

---

<sup>92</sup> U.S. Gen. Accounting Office, GAO-18-591, *Native American Youth Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency* (2002).

<sup>93</sup> *Id.*

the design, content, and operation of juvenile justice programs to ensure they are culturally appropriate and meet the needs of tribal youth.

## **B. 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.<sup>94</sup> 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 post-traumatic stress syndrome.<sup>95</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, communication and language disorders, Traumatic Brain Injury, and combinations thereof.<sup>96</sup>

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.<sup>97</sup> 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>98</sup> Congress should fund a Protection and Advocacy Program for juvenile

---

<sup>94</sup> Richard Diaz, et al., *The Arc's Nat'l Ctr. on Criminal Justice and Disability, Justice-Involved Youth with Intellectual and Developmental Disabilities: A Call to Action for the Juvenile Justice Community* (2015), available at <https://www.thearc.org/document.doc?id=5343>.

<sup>95</sup> Kathleen R. Skowrya and Joseph J. Cocozza, PhD, Nat'l Ctr. for Mental Health and Juvenile Justice, *Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System* (May 2015), available at [http://www.ncmhjj.com/wp-content/uploads/2013/07/2007\\_Blueprint-for-Change-Full-Report.pdf](http://www.ncmhjj.com/wp-content/uploads/2013/07/2007_Blueprint-for-Change-Full-Report.pdf); Linda A. Teplin, et al. Office of Juvenile Justice and Delinquency Prevention, *The Northwestern Juvenile Project: Overview 1-13* (Feb. 2013), available at <http://www.ojjdp.gov/pubs/234522.pdf>; The Mental Health and Juvenile Justice Collaborative for Change, *Better Solutions for Youth with Mental Health Needs in the Juvenile Justice System* 1, 7 (2014), available at <http://cfc.ncmhjj.com/wp-content/uploads/2014/01/Whitepaper-Mental-Health-FINAL.pdf>.

<sup>96</sup> See ASERT, *Juvenile Justice and Autism Spectrum Disorder 3* (2013), available at <http://www.paautism.org/desktopmodules/asert-api/api/item/ItemDetailFileDownload/4661/ASERT%20Juvenile%20Justice%20and%20Autism%20Spectrum%20Disorder%20Manual.pdf> (explaining that “it is estimated that individuals with ASD [Autism Spectrum Disorder] will have up to seven times more contact with law enforcement over the course of their lifetime than their peers.”).

<sup>97</sup> U.S. Dept. of Educ. Office of Civil Rights, *Civil Rights Data Collection Data Snapshot: School Discipline* (Mar. 2014), available at <https://blogs.edweek.org/edweek/rulesforengagement/CRDC%20School%20Discipline%20Snapshot.pdf>.

<sup>98</sup> *Id.*

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.

### C. Ensure Fair Treatment of Immigrant Youth

Out of the estimated 10.7 million non-citizen immigrants living in America today, approximately one million are children under 18 years old.<sup>99</sup> Many of these youth have come to this country fleeing violence and oppression, carry complex emotional burdens from trauma, and face basic language barriers.<sup>100</sup> As national anti-immigrant rhetoric has escalated to the point of associating immigrants with animals and infestation and equating immigrant youth with gang members, these youthful immigrants have often become caught in the crosshairs of the justice system.<sup>101</sup> Rather than being supported to develop into successful adults, immigrant youth are more often being targeted for arrest, detention, and deportation.

We urge Congress to support policies that uplift all families and further best practices for positive youth development for all youth, regardless of immigration status. Congress should pass legislation to protect the confidentiality of all youth in the justice system, including immigrant youth; avoid detaining immigrant youth; and incentivize states to not use gang databases and to pass legislation to ensure youth in the justice system have access to defense counsel that understand the immigration consequences of juvenile justice system involvement and, where necessary, access to immigration attorneys.<sup>102</sup> Congress should also support and invest in outreach programs, and community and family support services to help immigrant youth deal with trauma, family reunification and social stressors to ensure they feel connected to their new communities.<sup>103</sup> Finally, Congress

<sup>99</sup> Jens Manuel Krogstad, Jeffrey S. Passel & D'Vera Cohn, *5 Facts about Illegal Immigration in the U.S.*, Pew Research Cntr. (Nov. 28, 2018), <http://www.pewresearch.org/fact-tank/2018/11/28/5-facts-about-illegal-immigration-in-the-u-s/>; Marshall, *supra* note 74.

<sup>100</sup> Shannon Wilber and Annie Junck, Annie E. Casey Found., *Noncitizen Youth in the Juvenile Justice System* 5, 12 (2014), available at <https://www.aecf.org/m/resourcedoc/aecf-NoncitizenYouthintheJJSsystem-2014.pdf>.

<sup>101</sup> Abigail Simon, *People Are Angry President Trump Used This Word to Describe Undocumented Immigrants*, Time (June 19, 2018), <http://time.com/5316087/donald-trump-immigration-infest/>.

<sup>102</sup> Nat'l Juvenile Justice Network, *Policy Platform: Supporting Immigrant Youth in the Crosshairs of the Justice System* (Aug. 2018), available at <http://www.njjn.org/uploads/digital-library/Supporting%20Immigrant%20Youth,%20NJN%20Policy%20Platform,%20August%20%202018.pdf>.

<sup>103</sup> Marshall, *supra* note 74.



should exercise its oversight power to examine U.S. Immigration and Customs Enforcement's (ICE) initiatives to arrest and deport unaccompanied minors and their families, and incidents where ICE has falsely accused Latino youth of being affiliated with gangs.<sup>104</sup>

#### **D. Promote Non-discrimination and Cultural Competence Regarding LGBTQIA Youth**

Recent research finds that one in five youth in the juvenile justice system identify as LGBTQIA and 85 percent of these youth are youth of color.<sup>105</sup> LGBTQIA youth are vulnerable to discrimination, profiling, and mistreatment in the juvenile and criminal justice systems. In fact, LGBTQIA youth are twice as likely to end up in juvenile detention; 20 percent of youth in juvenile justice facilities identify as LGBTQIA compared to 7-9 percent of youth in general.<sup>106</sup> In their homes, schools, and communities, LGBTQIA 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 LGBTQIA youth enter the juvenile justice system as a direct result of family rejection.<sup>107</sup> In addition, a recent study in *Pediatrics* found that adolescents who self-identified as LGBTQIA were about 50 percent more likely to be stopped by the police than other teenagers.<sup>108</sup> In particular, girls who

---

<sup>104</sup> Elise Foley, ICE's 'Targeted Enforcement Operation' Mostly Arrests Immigrants It Wasn't Targeting, Huffington Post (Aug. 1, 2017, 3:32 PM), [https://www.huffingtonpost.com/entry/ice-enforcement\\_us\\_5980c7fde4b08e1430063383](https://www.huffingtonpost.com/entry/ice-enforcement_us_5980c7fde4b08e1430063383); Stephen Kang, *The Trump Administration Is Detaining Immigrant Kids for Gang Membership Without Evidence. So We Sued*, ACLU (Aug. 14, 2017, 2:00 PM), <https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/trump-administration-detaining-immigrant-kids> (describing a Federal court case revealed that ICE arrested and detained a young man with Deferred Action for Childhood Arrivals (DACA) status. The young man, Daniel Ramirez Medina, was put into removal proceedings and ICE tried to strip him of his DACA status. ICE asserted that Ramirez was gang-affiliated and, among other deceptive actions, went as far as altering a statement Ramirez wrote in pencil to make it look like he confessed to being in a gang. A Federal judge ultimately found that ICE had violated Ramirez's rights and also violated Federal law by stripping him of his DACA status.); Mark Joseph Stern, *Bad Liars*, Slate (May 16, 2018, 5:18 PM), <https://slate.com/news-and-politics/2018/05/federal-judge-accused-ice-of-making-up-evidence-to-prove-that-dreamer-was-gang-affiliated.html> (detailing multiple incidents where ICE has been accused of alleging Latino youth are gang-affiliated with little to no evidence).

<sup>105</sup> Ctr. for American Progress, Movement Advancement Project, and Youth First, *Unjust: LGBTQ Youth in the Juvenile Justice System* (June 2017), available at <https://www.lgbtmap.org/file/lgbtq-incarcerated-youth.pdf>; B.D.M. Wilson, et al., *Disproportionality and Disparities among Sexual Minority Youth in Custody*, *J. of Youth Adolesc.* (2017); Angela Irvine and Aisha Canfield, *Reflections on New National Data on LGBQ/GNCT Youth In the Justice System*, 2 *LGBTQ Policy Journal at the Harvard Kennedy School* 27 (2017), available at <https://static1.squarespace.com/static/58ba8c479f7456dff8fb4e29/t/59739d333e00be4843e0263b/1500749110120/irvine.canfield.2017.pdf>.

<sup>106</sup> Movement Advancement Project and Ctr. for American Progress, *Unjust: How the Broken Juvenile and Criminal Justice Systems Fail LGBTQ Youth* (Aug. 2016), available at <http://www.lgbtmap.org/file/lgbt-criminal-justice-youth.pdf>.

<sup>107</sup> *Id.*

<sup>108</sup> Kathryn E. W. Himmelstein and Hannah Bruckner, *Criminal Justice and School Sanctions against Non-Heterosexual Youth: A National Longitudinal Study*, 127 *Pediatrics* 49 (2011), available at <http://pediatrics.aappublications.org/content/127/1/49>.

identified as lesbian or bisexual reported about twice as many arrests and convictions as other girls who had engaged in similar behavior.<sup>109</sup> In addition, LGBTQIA 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.<sup>110</sup>

Congress should create incentives for states to reduce the inappropriate detention of LGBTQIA youth and address decision makers' lack of understanding of this population by: 1) ensuring that JJDP State Advisory Groups (SAGs) include experts on LGBTQIA youth; 2) increasing research and information dissemination on this topic; 3) making training and technical assistance available for juvenile justice agencies, law enforcement officers, judges, probation officers, and other decision makers;<sup>111</sup> and 4) requiring all programs funded under the JJDP and other OJJDP incentive grants to adopt policies prohibiting discrimination based on actual or perceived sexual orientation, gender identity, and gender expression.

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

As the number of young people in contact with the juvenile justice system has fallen, girls have made up a greater proportion of this overall population. Girls also enter the juvenile justice system through different pathways than boys and have distinct needs. This stems from many factors. Girls' pathways into the juvenile justice system often originate with surviving abuse, especially sexual violence.<sup>112</sup> Girls often enter the system for non-violent and status offenses, such as running away and truancy; behaviors that are responses to trauma and violence. This remains true at the deepest end of the system. Half of all girls committed in the juvenile justice system are there on nonviolent charges: technical violations, simple assault, and status offenses.<sup>113</sup> Girls are also arrested for their own victimization; for example, in many states child sex trafficking survivors are arrested on prostitution charges. Trafficking survivors also enter the system on other offenses for

---

<sup>109</sup> *Id.*

<sup>110</sup> Allen J. Beck, PhD, *et al.*, U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Statistics, Sexual Victimization in Juvenile Facilities Reported by Youth, 2012 (2013), available at <https://www.bjs.gov/content/pub/pdf/svjfry12.pdf>.

<sup>111</sup> *Access to Juvenile Justice Irrespective of Sexual Orientation, Gender Identity, and Gender Expression (SOGIE)*, Nat'l Council of Juvenile and Family Court Judges (Aug. 27, 2017), <http://www.ncjfcj.org/SOGIE-Bench-Card>.

<sup>112</sup> Malika Saada Saar, *et al.*, Human Rights Project for Girls, Georgetown Law Ctr. On Poverty and Inequality, Ms. Foundation for Women, *The Sexual Abuse to Prison Pipeline: The Girls' Story* (2015), available at [https://rights4girls.org/wp-content/uploads/r4g/2015/02/2015\\_COP\\_sexual-abuse\\_layout\\_web-1.pdf](https://rights4girls.org/wp-content/uploads/r4g/2015/02/2015_COP_sexual-abuse_layout_web-1.pdf).

<sup>113</sup> Sickmund, *et al.*, *supra* note 8.

behaviors directly related to their being trafficked.<sup>114</sup> Pre-existing trauma is prevalent among girls in the juvenile justice system.<sup>115</sup> Finally, many girls have different physical health needs than boys that must be appropriately considered in juvenile justice facilities, including access to menstrual products and reproductive care.

Unfortunately, juvenile justice systems are too often ill-equipped to address the specific needs of girls. As a result girls often fail to receive the services and support needed to heal from trauma, and instead can be re-traumatized by routine processes of the juvenile justice system such as strip searches.<sup>116</sup> Federal policy must address the unique experiences and needs of girls in the juvenile justice system, and we recommend an approach emphasizing ending girls' incarceration, tailoring juvenile justice systems to the needs of girls, adequate data collection and reporting, and appropriations.

Congress and Federal agencies must build on momentum from reforms in the Juvenile Justice Reform Act of 2018 and OJJDP's National Girls Initiative to provide specific, targeted support for local and 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 a state's three-year plan required by Title II of the JJDPA. We also encourage Congress to amend Title V of the JJDPA 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. This could be particularly effective in meeting girls' needs, based on the low-level and status offenses bringing them into contact with the juvenile justice system. Congress should also pass the Runaway and Homeless Youth and Trafficking Prevention Act, which would provide counseling and appropriate services to victims of commercial

---

<sup>114</sup> Cynthia Godsoe, *Contempt, Status, and the Criminalization of Non-Conforming Girls*, 34 *Cardozo L. Rev.* 1091 (2014), available at <http://ssrn.com/abstract=2446224>; Francine T. Sherman, *Justice for Girls: Are We Making Progress?*, 59 *UCLA L. Rev.* 1584 (2012). See also, Ctr. For Public Policy Studies, Human Trafficking and the State Courts Collaborative, State Justice Inst., *Dealing with Human Trafficking Victims in a Juvenile Case* (Nov. 2013), available at [http://www.htcourts.org/wp-content/uploads/HT\\_Victims\\_inJuvenileCases\\_v02.pdf?InformationCard=Dealing-With-HT-Victims-Juvenile](http://www.htcourts.org/wp-content/uploads/HT_Victims_inJuvenileCases_v02.pdf?InformationCard=Dealing-With-HT-Victims-Juvenile).

<sup>115</sup> Rights 4 Girls, *Girls' Experiences Prior to Justice Involvement*, available at <http://rights4girls.org/wp-content/uploads/r4g/2016/08/R4G-Physical-and-Mental-Health-Needs-fact-sheet.pdf> (last visited Feb. 4, 2019).

<sup>116</sup> Patricia K. Kerig, PhD and Julian D. Ford, PhD, Nat'l Child Traumatic Stress Network, *Juvenile Justice Consortium, Trauma among Girls in the Juvenile Justice System* (2014), available at [https://www.nctsn.org/sites/default/files/resources//trauma\\_among\\_girls\\_in\\_the\\_jj\\_system.pdf](https://www.nctsn.org/sites/default/files/resources//trauma_among_girls_in_the_jj_system.pdf); Liz Watson and Peter Edelman, Georgetown Ctr. On Poverty, Inequality, and Public Policy, *Improving the Juvenile Justice System for Girls: Lessons from the States* (2012), available at [http://www.law.georgetown.edu/academics/centers-institutes/poverty-inequality/upload/JDS\\_V1R4\\_Web\\_Singles.pdf](http://www.law.georgetown.edu/academics/centers-institutes/poverty-inequality/upload/JDS_V1R4_Web_Singles.pdf).

sexual exploitation, diverting survivors of child sex trafficking rather than pushing them into the juvenile justice system.

It is critical that Congress and OJJDP direct states to collect and report additional data, to best inform ongoing programs, interventions, and reforms. The Juvenile Justice Reform Act of 2018 added critical additions to OJJDP reporting requirements, but key areas for additional data collection still exist, including: the number of survivors of trafficking in contact with the juvenile justice system; conditions of confinement that may exacerbate girls' trauma including use of strip searches; the number of parenting youth detained, incarcerated, or in out-of-home placements in the justice system; and the frequency of the use of restraints on pregnant youth in contact with the juvenile justice system. The Department of Justice (DOJ) should collect and include these data points in their annual report to Congress. OJJDP should also work to ensure all data regarding youth justice involvement on a state and national level can be disaggregated by gender, race, and ethnicity.

Finally, we urge Congress to provide strong direction to OJJDP around funds appropriated to address the needs of girls in the juvenile justice system. Congress has approved \$2 million in recent fiscal years for this purpose. However, DOJ's 2019 Program Plan marks a shift in priority, with funds now intended to go to states, rather than non-governmental entities. In order to end the criminalization of vulnerable girls and provide them with needed services and support, it is imperative that Congress continue to appropriate funding for non-governmental entities.<sup>117</sup>

## **F. Incentivize States to Eliminate Juvenile Justice Fines and Fees**

Across the country, youth and their families, including many in poverty, face monetary charges for a young person's involvement in the justice system. Financial obligations imposed include fines, administrative court fees, fees for assessments, evaluation and treatment, probation fees, public defender fees, diversion fees, fees for expungement, and charges for the cost of confinement. These costs lead to heightened racial disparities, economic distress, and increased recidivism rates.<sup>118</sup> Congress should pass legislation

---

<sup>117</sup> OJJDP FY 19 *Girls in the Juvenile Justice System (GJJS)*, <https://grantsnet.justice.gov/programplan/html/Item.htm?ForecasterId=15052>.

<sup>118</sup> Jessica Feerman, *et al.*, Juvenile Law Ctr., *Debtors' Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System* (2016), available at <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf>.

requiring states to collect data on the use of fines and fees in the justice system. Congress should also incentivize states to eliminate such fines and fees entirely by tying federal funding to the elimination of juvenile fines and fees or by providing grants to states that eliminate these financial obligations. This change is in keeping with the DOJ, as a recent letter from the department outlines circumstances where fines and fees violate youths' civil rights.<sup>119</sup>

### **G. 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 *In re Gault* extended the right to counsel to juveniles, a series of access issues remain in many parts of the country.<sup>120</sup> In some areas, youth waive their right to counsel, often out of fear that their parents will be charged.<sup>121</sup> In other areas, youth are not meaningfully advised of their right to counsel before being interrogated. 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.

Under reforms made to the JJDP Act by the Juvenile Justice Reform Act of 2018, states must outline a plan to ensure youth have access to publicly supported, court-appointed legal counsel. Further, OJJDP must provide best practices and technical assistance for states regarding the legal representations of children. Congress must fully fund these efforts as required by the law. Congress should monitor and ensure that these deliverables are met.

### **V. Ensure Care for Justice-Involved Youth**

In the rare instances when youth pose a serious risk to public safety and need to be in a

---

<sup>119</sup> INSERT CITE

<sup>120</sup> 387 U.S. 1 (1967); *Honoring Gault: Ensuring Access to Counsel in Delinquency Proceedings*, Nat'l Council of Juvenile and Family Court Judges (Aug. 25, 2016), <https://www.ncjfcj.org/Honoring-Gault-Info-Card>.

<sup>121</sup> Jessica Feerman, et al., Juvenile Law Ctr., *The Price of Justice: The High Cost of “Free” Counsel for Youth in the Juvenile Justice System* (2018), available at <https://jlc.org/resources/paying-justice-high-cost-free-counsel-youth-juvenile-justice-system>; <https://njdc.info/wp-content/uploads/2018/09/Arizona-Assessment-NJDC.pdf>.

secure environment, they should not have to endure abusive conditions. Studies by the Bureau of Justice Statistics (BJS) have found that as many as one in 10 youth in juvenile facilities report experiencing sexual abuse, with more than one in five non-heterosexual youth reporting such abuse.<sup>122</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>123</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>124</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. Congress should provide strong leadership for states to reduce, and eventually eliminate, their harmful and dangerous reliance on these types of dangerous practices.

### **A. 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.<sup>125</sup> 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 youth 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.

The use of physical restraints and seclusion is an outdated practice, which research continues to demonstrate is at best ineffective and at worst counterproductive and abusive.<sup>126</sup> Many states continue to allow the use of physical restraints and seclusion for juvenile offenders, even when the practices are prohibited in the state's public schools.<sup>127</sup> A

<sup>122</sup> Beck, *supra* note 125.

<sup>123</sup> Nat'l Prison Rape Elimination Comm'n, National Prison Rape Elimination Commission Report (June 2009), *available at* <https://www.ncjrs.gov/pdffiles1/226680.pdf>.

<sup>124</sup> Mendel, *supra* note 16.

<sup>125</sup> *E.g.*, Fabiola Santiago, *Florida's Juvenile Justice system Fails to Protect Youth from Brutal Abuse*, Miami Herald (Oct. 12, 2017), <https://www.miamiherald.com/news/local/news-columns-blogs/fabiola-santiago/article178575576.html>.

<sup>126</sup> Majority Committee Staff Report, U.S. Senate Health, Education, Labor, and Pensions Comm., *Dangerous Use of Seclusion and Restraints in Schools Remains Widespread and Difficult to Remedy: A Review of Ten Cases* (Feb. 12, 2014), *available at* <https://www.help.senate.gov/imo/media/doc/Seclusion%20and%20Restraints%20Final%20Report.pdf>.

<sup>127</sup> Brendan McCarthy, *Juvenile Justice System Uses Physical Restraints Banned in Schools*, WFPL (Aug. 5, 2016), <https://wfpl.org/juvenile-justice-system-uses-physical-restraints-outlawed-in-schools/>.



2002 Department of Justice study found that juveniles who had been in isolation for even a few hours had higher levels of anxiety, depression and paranoia.<sup>128</sup> Furthermore, an OJJDP study found that 62 percent of suicide victims in juvenile correctional facilities were held in solitary confinement at one point and 50 percent had been in solitary confinement at the time of their suicide.<sup>129</sup>

The Federal legislative and executive branches have noted the need to end these practices in public schools. As former Secretary Arne Duncan wrote in a 2012 departmental resource, “there continues to be no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques.” Young people in the juvenile justice system should be no different.

The First Step Act bans the use of solitary confinement for youth in Federal custody and the JJDPA requires OJJDP to provide a report on the use of restraints and isolation upon youth held in the custody of secure detention and correctional facilities.<sup>130</sup> Further, under the JJDPA, states are now required to report on their plan to prohibit the use of these harmful practices.<sup>131</sup> However, Congress should take this a step further by disallowing 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 allow states to use JJDPA 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>132</sup>

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

Youth in the adult system are at great risk of sexual abuse and suicide when housed in adult

<sup>128</sup> Robert L Listenbee, Jr., et al., Office of Juvenile Justice and Delinquency Prevention, Report on the Attorney General’s National Task Force on Children Exposed to Violence (2012), available at [www.justice.gov/defendingchildhood/cev-rpt-full.pdf](http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf).

<sup>129</sup> Lindsay Hayes, U.S. Dep’t of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Juvenile Suicide in Confinement: A National Survey (2009), available at [www.ncjrs.gov/pdffiles1/ojjdp/213691.pdf](http://www.ncjrs.gov/pdffiles1/ojjdp/213691.pdf).

<sup>130</sup> First Step Act, S. 3649, 115th Cong. (2018); Juvenile Justice Reform Act of 2018, H.R. 6964, 115th Cong. (2018).

<sup>131</sup> Juvenile Justice Reform Act of 2018, H.R. 6964, 115th Cong. (2018).

<sup>132</sup> “Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences”. (June 11, 2012). Hearings before the Subcommittee on the Constitution, Civil Rights and Human Rights of the U.S. Senate Committee on the Judiciary, 112th Congress. See also, Sandra Simkins, Marty Beyer, Lisa M. Geis, *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 Wash. U. J. L. & Pol’y 241 (2012).

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. It is estimated that between 30,000 to 60,000 youth are in adult jails or prisons annually.<sup>133</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>134</sup>

In light of the overwhelming evidence that youth cannot be kept safe in adult facilities and the research demonstrating that keeping youth in adult facilities is harmful to the youth and to public safety, Congress has made an effort to ensure youth are removed from adult facilities. Under the Prison Rape Elimination Act of 2003 (PREA) Youthful Inmate Standard, youth must be sight and sound separated from adults in adult facilities, and the standard further urges facilities not to resort to the use of isolation in order to comply with the law.<sup>135</sup> Further, the Juvenile Justice Reform Act of 2018 closes a critical loophole in the jail removal provision of JJDPA, by calling on states and localities to remove youth who are charged as adults from adult jails pretrial. Previously, the JJDPA only prevented minors facing delinquency charges from being held in adult jails, leaving youth charged as adults vulnerable to the dangers and shortcomings of adult jails, a system not designed for youth, nor their safety. Under the reauthorized statute, youth held in adult jails, including those charged as adults, must be removed to juvenile detention centers within three years of enactment of the law.

In order to ensure these reforms are effective, Congress must adequately fund PREA and the JJDPA to ensure nationwide compliance. Previous funding for PREA aided in the development of the critical PREA Resource Center and training of hundreds of auditors. The grant opportunities offered through the Bureau of Justice Assistance are paramount to ending prison abuse in this nation and to date, dozens of jurisdictions have benefited. Congress must also fully fund the JJDPA to ensure states have the assistance they need to remove all youth from adult jails and lockups. Over half the states already allow youth transferred to the adult system to be held in juvenile facilities, but some of those states will

---

<sup>133</sup> Arya, *supra* note 49.

<sup>134</sup> Campaign for Youth Justice, *Jailing Juveniles* (2007), available at [http://www.campaignforyouthjustice.org/documents/CFYJNR\\_JailingJuveniles.pdf](http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf).

<sup>135</sup> See Jasmine Awad, Rachel Marshall, Eric Rico, & Jeree Thomas, *Is It Enough? The Implementation of PREA's Youthful Inmate Standard* (2018), available at [http://www.campaignforyouthjustice.org/images/Issue\\_Brief\\_Is\\_It\\_Enough\\_The\\_Implementation\\_of\\_PREA's\\_Youthful\\_Inmate\\_Standard\\_Updated.pdf](http://www.campaignforyouthjustice.org/images/Issue_Brief_Is_It_Enough_The_Implementation_of_PREA's_Youthful_Inmate_Standard_Updated.pdf).

need assistance to actually move transferred youth to the juvenile facilities, and other states will need to change their laws.<sup>136</sup> We also encourage Congress to exercise its oversight authority to make certain that states' implementation of these two laws are consistent with the intent to keep individuals in custody safe from sexual victimization and related harms.

### **C. Pass the Justice for Juveniles Act**

Youth are at serious risk of harm in juvenile and criminal justice facilities. They face physical and sexual violence, solitary confinement, pepper spray, and harmful restraints. Youth also face unique challenges in complying with the administrative exhaustion requirement of the Prison Litigation Reform Act (PLRA). The exhaustion requirement means that youth need to file grievances in a facility before they can ask for the court's help. Youth often lack the literacy skills, the understanding of the system and the capacity to comply with these expectations. They are also uniquely at risk of retaliation by staff members if they try to report abuse. Youth are deprived of court access because of the PLRA.

In the 117th Congress, legislation was introduced to address this, and passed the House with strong bipartisan support. The Justice for Juveniles Act protects young people from abuse in institutions by exempting them from the PLRA. The PLRA currently creates obstacles to the courts for young people facing abuse in justice system institutions: It requires teenagers in juvenile or adult facilities to file grievances before bringing a lawsuit, sometimes with the very people who have abused them; it limits the kind of relief youth can get from the courts; it prevents youth from bringing a lawsuit for emotional injuries without physical injuries; and it limits attorneys' fees, making it harder for young people to find attorneys to represent them.

The Justice for Juveniles Act exempts youth from the requirements of the Prison Litigation Reform Act to ensure that they are properly protected from abuse in institutions. We call on the House and Senate to reintroduce and pass legislation to ensure that young people ages 21 and younger are no longer held to the requirements of the PLRA.

## **VI. Help Justice-Involved Youth Successfully Reenter Their Communities**

---

<sup>136</sup> Arya, *supra* note 49.

More than 48,000 young people are held in out-of-home placements each day.<sup>137</sup> When they return home, many youth are placed back into neighborhoods with few youth supportive programs, high crime rates, poverty, and poorly performing schools. Yet many are not provided with the comprehensive reentry planning that would help them 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.<sup>138</sup> 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. By fostering reintegration into school, mastery of independent life skills, and mental health and substance abuse 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 receive access to education, job training, and other health and social programs throughout their incarceration to help prepare them for reentry.

If our country 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. The Juvenile Justice Reform Act of 2018 sets out, for the first time, requirements for reentry plans for youth who are returning to the community.<sup>139</sup> This is a critically important step to ensure that young people exit the justice system to safe, stable, and secure housing. Planning needs to begin as early as possible and support services should follow the youth home; however, Congress can still do more to ensure long-term success for youth re-entering their communities and that this

---

<sup>137</sup> Youth Confinement: The Whole Pie, Prison Policy Initiative, *available at* <https://www.prisonpolicy.org/reports/youth2019.html>.

<sup>138</sup> Reentry, N.D *available at* [https://youth.gov/youth-topics/juvenile-justice/reentry#\\_ftn1](https://youth.gov/youth-topics/juvenile-justice/reentry#_ftn1).

<sup>139</sup> Juvenile Justice and Delinquency Prevention Act (JJDP) Fact Sheet Series: Reentry, Act 4 JJ Coalition (Feb. 2019), *available at* <http://www.act4jj.org/sites/default/files/resource-files/Reentry%20Fact%20Sheet%20-%20FINAL.pdf>.

requirement of the JJRA is implemented in a meaningful way.

### **A. Increase Funding for the Second Chance Act and the Juvenile Justice and Delinquency Prevention Act to Support Youth Reentry**

Congress reauthorized the Second Chance Act as part of the First Step Act and the Juvenile Justice and Delinquency Prevention Act.<sup>140</sup> Both laws contain provisions that improve support for youth reentry. Congress should robustly fund these laws to ensure ready access to appropriate reentry services for youth at the state and local level. Such services support the successful, long-term 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 ensure reentering youth are afforded the opportunity to have positive life outcomes and are equipped with important and necessary skills that enable them to achieve a lifetime of opportunity and success.

Specifically, we join in asking that existing funding for the Relaunching America's Workforce Act (RAWA) be raised to a minimum of \$15 billion, including \$100 million for Correctional Education. An additional \$500 million should also be provided for the Department of Labor's (DOL) Reentry Employment Opportunities (REO) program. Finding employment is a challenge for returning citizens even in the best of times. During the ongoing financial uncertainty that our country is facing, we ask that you ensure youth and adults impacted by the criminal legal system are a target population in job creation and subsidized employment efforts.

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

Juvenile records contain highly sensitive information such as details about the child's family, education, social history, behavioral problems, mental health and/or substance abuse 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. Public access to these records can negatively affect a young person's ability to find employment and housing, to obtain health insurance, to enroll in a post-secondary education program or to enlist in military service.<sup>141</sup> We urge

---

<sup>140</sup> First Step Act, S. 3649, 115th Cong. (2018); Juvenile Justice Reform Act of 2018, H.R. 6964, 115th Cong. (2018).

<sup>141</sup> Riya Saha Shah and Jean Strout, *Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records*, Juvenile Law Ctr. (2016), available at <http://www.jlc.org/resources/publications/future-interrupted-collateral-damage-caused-proliferation-juvenile-records>.

Congress to pass legislation that would improve juvenile record confidentiality, automatically expunge juvenile offenses of children before they turn 16, and automatically seal juvenile offenses that occur after a child has reached the age of 16.

### **C. Require States to Provide Juvenile Offenders with State-Issued Identification, and Encourage Voter Registration**

In many states, it is still possible for young people to leave state custody without state identification of any kind. Along with voter registration, identification is a key means of reintegration to the community. Ensuring access to identification also advances important Federal priorities, such as easing the ability for young people to pay taxes and access Federal benefits.

The Supreme Court's 1974 decision of *O'Brien v. Skinner* protects the right of certain inmates to vote in elections, however, it leaves implementation up to local and state jurisdictions.<sup>142</sup> Consequently, the ways in which states comply with the ruling and the effort required to register inmates to vote varies from state to state. One model that can be used is California's 2014 approved law which requires juvenile detention facilities to: (1) identify those housed in the facility who are of age to vote; (2) provide registration to each age-appropriate individual housed in the facility; and (3) assist the individual who completes their registration in sending it to the county elections official.<sup>143</sup> We urge Congress to incentivize states to provide access to voter registration and to ensure young people leave state custody with a government form of identification. Congress should reintroduce and support the Voter Information and Access Act of 2018, which would amend Federal law to require the Bureau of Prisons to include voting restoration and voter registration as part of its planning program preparing incarcerated people for re-entry into society and would clarify that the attorney general can award grants to prisons, jails, juvenile facilities, and re-entry courts for voter registration and restoration programs.<sup>144</sup>

### **D. Encourage States to Offer Industry-Recognized Credentials and Postsecondary Education at All Juvenile Facilities**

---

<sup>142</sup> *O'Brien v. Skinner*, 414 U.S. 524 (1974).

<sup>143</sup> Cal. S.B. No. 1063 (2016).

<sup>144</sup> Sam Levine, *New Bill Aims To Make Sure Incarcerated People Know And Can Use Their Voting Rights*, Huffington Post (Dec. 24, 2018), [https://www.huffingtonpost.com/entry/incarcerated-people-voting-rights-new-legislation\\_us\\_5c2134a1e4b0407e907db56c](https://www.huffingtonpost.com/entry/incarcerated-people-voting-rights-new-legislation_us_5c2134a1e4b0407e907db56c).



Productive partnerships between juvenile facilities and career and technical education facilities, community colleges, and job training programs exist in states across the country. Unfortunately, they are the exception that proves the rule. Few states have the comprehensive statewide approach that Oklahoma does.<sup>145</sup> The Juvenile Justice Reform Act of 2018 allows for easier transfer and application of education credits (full and partial) earned by system-involved youth across school systems in part by requiring states receiving funding under the Act to collaborate with state educational agencies to ensure that educational process is made for adjudicated juveniles. It also calls for individualized case plans to help youth re-enter their communities, including education and job training assistance, and an assessment on the living arrangements to which the youth will be discharged.

We urge Congress to incentivize states to increase access to credential programs, including expanding access to post-secondary education, which would increase alignment across Federal agencies and programs for a subpopulation that many Federal programs seek to serve.

### **E. 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 engage in illegal sexual behavior have extraordinarily low recidivism rates; more than 97% of youth who are adjudicated delinquent for sexual offenses will not reoffend.<sup>146</sup> Moreover, 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.<sup>147</sup> Youth are also exceedingly amenable to treatment. SORNA has great potential to disrupt families and communities across the nation because registration and notification stigmatizes youth and their families, including the parents and other children in the home.<sup>148</sup> Finally, SORNA has a chilling effect on the identification and proper treatment of youth who exhibit inappropriate sexual behavior.

---

<sup>145</sup> CareerTech Skills Ctr., Okla. CareerTech, <https://www.okcareertech.org/about/careertech-system/delivery-arms/skills-centers> (last visited Jan. 22, 2019).

<sup>146</sup> INSERT CITE

<sup>147</sup> Riya Saha Shah, *Five Facts About Juvenile Sex Offender Registration*, American Bar Association (Dec. 5, 2018), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/practice/2018/five-facts-about-juvenile-sex-offender-registration/>.

<sup>148</sup> Riya Saha Shah, *How Sex Offender Registries Impact Youth*, Teen Vogue (Oct. 17, 2017), <https://www.teenvogue.com/story/how-sex-offender-registries-impact-youth>.

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 youth who are adjudicated delinquent or convicted in criminal court from sex offender registries and community notification practices. Further, Congress should disincentivize states from including youth on registries by tying the Federal funding to keeping youth off sex offender registries.

## Acknowledgements & Citation:

This bi-annual policy guide is a collaborative effort by members of the National Juvenile Justice & Delinquency Prevention Coalition (NJJJPC). Editors of the guide would like to thank the following members for their contributions to this report:

CLASP  
Coalition for Juvenile Justice  
Juvenile Law Center  
National Center for Youth Law  
The National Juvenile Justice Network  
The National Network for Youth  
Rights 4 Girls  
Human Rights for Kids  
The Sentencing Project  
Youth First Initiative

When citing this guide, we suggest the following:

Nat'l Juvenile Justice and Delinquency Prevention Coalition, *Opportunities for Juvenile Justice & Delinquency Prevention Reform* (Lisette Burton and Naomi Smoot Evans eds., 2023).