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Subcommittee on Healthy Families and Communities
Committee on Judiciary
Subcommittee on Crime, Terrorism and Homeland Security**

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“The Juvenile Justice and Delinquency Prevention Act: Overview and Perspectives”

Madam Chairman, Members of the Committee, I am Robert E. Shepherd, Jr., Emeritus Professor of Law at the University of Richmond Law School in Virginia, and a former Chair of the Juvenile Justice Committee of the American Bar Association. I am also a long-term member and leader with the Coalition for Juvenile Justice, a national group consisting of representatives of the State Advisory Groups created pursuant to the Juvenile Justice and Delinquency Prevention Act. I am here to present testimony on “The Juvenile Justice and Delinquency Prevention Act: Overview and Perspectives” and I thank you for the opportunity to speak to you about this important piece of legislation and the issues it addresses.

That Act, originally enacted more than thirty years ago, has contributed greatly to the prevention of delinquency, to early intervention in the suppression of delinquency, to treating delinquent behavior and rehabilitating delinquent youth so as to prevent future delinquency, and to ensuring humane treatment of these young people in the juvenile justice system. The Act, and its programs, is still the best possible federal vehicle for protecting society from antisocial behavior by children and adolescents and for enabling these youth to become good citizens and successful adults. It also creates a unique partnership between agencies of the federal government and leaders in the juvenile justice field in the states and localities as an integral part of the structure of the Act. A partnership which calls on the Congress and the agencies under the Executive Branch to work cooperatively with the Governors and the Governor-appointed State Advisory Groups on juvenile justice in a meaningful dialogue and in response to state and local concerns.

I have been asked to give a brief overview of juvenile justice and what research shows are the best practices in dealing with at-risk and delinquent behavior among youth. Obviously, there are time constraints that make it impossible to address these issues in any depth, but I will attempt to highlight the most significant issues involving youth either in, or at risk of entering, the juvenile justice system as a beginning to the work of the Congress in reauthorizing the JJDP Act.

The incidence of juvenile crime

Recent data show a dramatic reduction in the rate and seriousness of juvenile delinquency in the past ten or twelve years, contrary to the dire predictions of many “experts” whose ominous

writings shocked legislators into abandoning the core principles of the juvenile system. Those principles, separating delinquent youth from hardened criminals, treating youth as developmentally different from adults, and viewing young people as being inherently malleable and subject to change in a rehabilitative setting, are still fundamentally sound. Indeed, as we have learned more from the developmental and brain research in recent years, we know better what does work in turning around these young lives and correcting their behavior. There has been a slight upswing—barely 2 percent—in violent crime in the past year but it is not uniform across all categories of offending, and it may be aberrational rather than the beginning of a trend. (See Butts & Snyder, 2006)

Transfer or placement of juveniles in adult courts

One issue that needs to be addressed in the reauthorized JJDP Act is the increased use of transfer to adult court of juveniles, a practice that is unwise and contrary to much evidence regarding the implications of transfer or certification. Several recent studies, by researchers in Florida, Minnesota, New York and New Jersey, and Pennsylvania, are consistent in showing that youth transferred to adult court and tried as adults had higher recidivism rates, they re-offended sooner after release from adult institutions, and their repeat offenses were more serious than similar youth retained in juvenile court for the same offenses in the same or comparable jurisdictions. (Lanza-Kaduce, Frazier, Lane & Bishop, 2002; Fagan, 1991; Mayers, 2003; Podkopacz & Feld, 1996; Coalition for Juvenile Justice, 2005) Thus, treatment as an adult created a greater risk for community safety in the long term than did juvenile treatment. A *Miami Herald* study of the Florida experience in 2001 concluded that “[s]ending a juvenile to prison increased by 35 percent the odds he’ll re-offend within a year of release.” (Greene & Dougherty, 2001)

Juveniles incarcerated in adult correctional institutions are also at greater risk of assaults, both sexual and physical. Studies show that such youth are five times as likely to report being a victim of rape, twice as likely to be beaten by staff, and 50% more likely to be assaulted with a weapon than youth in juvenile facilities and they are eight times more likely to commit suicide. (Audi, 2000; Forst, Fagan & Vivona, 1989) Judges should have broad discretion in sentencing adolescents, even when they are tried and treated as adults. Juveniles involved in delinquent activity frequently have less culpability than the adults they are associated with in such behavior, they may be a lookout rather than a triggerman, and yet much legislation enacted in the past two decades denies juvenile courts the power to discriminate among different levels of involvement and different kinds of behavior. As Bob Schwartz of the Juvenile Law Center in Philadelphia is fond of saying, Oliver Twist, the “Artful Dodger,” Bill Sikes, and Fagin were not equally culpable in their criminal activity in Dickensian London, but they are treated as such in many state laws and some federal legislation.

Two very recent reports highlight the dangers in trying and treating juveniles as adults in the courts and in corrections. The Campaign for Youth Justice gives an outstanding overview of the issues in its March report entitled *THE CONSEQUENCES AREN’T MINOR: THE IMPACT OF TRYING YOUTH AS ADULTS AND STRATEGIES FOR REFORM* (Campaign for Youth Justice, 2007), and the Task Force on Community Preventive Services of the Centers for Disease Control and Prevention reinforced the recommendations in an important report published in the *American*

Journal of Preventive Medicine in April. The CDC task force in particular criticized the belief that the fear of adult treatment had a deterrent effect on youth behavior and agreed with the research on enhanced post-release offending by young people tried as adults. (McGowan et al, 2007)

Detention reform and DMC

Two issues that have received a lot of attention in the states and from private foundations have been the disproportionate contact between the processes of the juvenile and adult justice systems and minority youth and the overuse of secure detention facilities for young people awaiting trial. The Annie E. Casey Foundation has worked with several states and many localities in reducing the use of secure placements by the judicious use of objective assessment instruments in determining who should be locked up awaiting trial, either because they are high risks for flight or for re-offending if they remain free in the community. And, since minority youth tend to be detained in disproportionate numbers, these new strategies help to address DMC issues. Likewise, a greater focus in the Act on transfer or placement in adult courts may have a beneficial impact on DMC problems because policies that increase the transfer of juveniles to adult court also have a disproportionate impact on children of color. Recent studies have shown that more than seven out of every ten youth admitted to adult facilities across the country were youth of color, and minority youth are more likely to be treated as adults than white youth charged with the same offenses. (Poe-Yamagata, 2000; Ziedenberg; Males & Macallair, 2002; Coalition for Juvenile Justice, 2005)

Language should be included in the Act to encourage states to reduce the number of children unnecessarily or inappropriately placed in secure pretrial detention. The new language should encourage states to enact legislation that requires that secure pretrial detention be based on the criteria of public safety and risk of flight from the court's jurisdiction, set and adhere to guidelines for expedited case processing, and encourage states to develop and use appropriate alternatives to secure pretrial detention for juveniles who pose no immediate risk of public safety or risk of flight. An alarmingly high number of juveniles accused of crime are detained in secure detention centers before trial although they have been charged with only nonviolent, relatively minor offenses. Many of these are youth who have untreated drug abuse or mental health problems or are minority youth. Secure pretrial detention in these cases is both costly and detrimental to the youth. Juveniles placed in alternative pre-trial programs benefit from better mental health assessments and treatment and stronger connections with family, school, religious, and community supports.

Gangs

Much attention has been given to the incidence of gang-related violence and the involvement of young people in these gangs and their activities. Transfer to adult court and the use of mandatory minimum sentences have often been advocated for impacting on youth gang activity. However, the research does not support the efficacy of either of these approaches and placing juveniles in adult facilities largely dominated by gangs would seem to exacerbate the problem. A report released in 2004 by Fight Crime: Invest in Kids, a law enforcement-based group, points to the effectiveness of many current programs in preventing gangs—at the local and

state level—and in interdicting violent gang activity. That report, *CAUGHT IN THE CROSSFIRE: ARRESTING GANG VIOLENCE BY INVESTING IN KIDS*, offers much useful advice about programs that work with the help of federal investment in anti-gang programs through the JJDP and other entities.

Sex offenders

Sex offenders seem to have become the modern equivalent of lepers and there is a tendency to lump juveniles in with adults who prey on young children when it comes to harsh punishments and mandatory registration laws. However, research does not support the inclusion of adolescents in such strategies since juveniles who commit illegal sexual behavior are amenable to treatment and rehabilitation and they are a very heterogeneous population that should not be lumped with adults, and they should be processed through the juvenile justice system. (Pierce and Bonner, 2004) The National Center on Sexual Behavior of Youth at the University of Oklahoma Health Sciences Center, an OJJDP project, has been responsible for much of this research and these conclusions, and Frank Zimring at the University of California Law School, Berkeley, has published research that reinforces their findings and recommendations. (Zimring, 2004) Both the Center and Professor Zimring have pointed to the extremely low incidence of re-offending by young people who engage in illegal sexual behavior. (See also Association for the Treatment of Sexual Abusers, 2006)

Effective prevention strategies and treatment of juvenile offenders

We have more research-based information today about what works and what doesn't work in preventing delinquent behavior and in treating juvenile offenders who have violated the law. In October of 2004, the National Institutes of Health (NIH) convened an independent "state-of-the-science" panel for a conference to address the important issues of preventing violence and related health-risking social behaviors in adolescents, and the panel issued a significant report of importance to all those who make policy governing juvenile programs, and it is rather remarkable that this report has not received more attention than it has. The panel concluded that "get tough" programs that rely on "scare tactics" for the purpose of preventing children and adolescents from engaging in violent behavior are not only ineffective, but may actually make the problem worse. The panel, which consisted of thirteen distinguished experts from a variety of disciplines, and which was charged with assessing the available evidence on preventing violence and other risky behaviors on the part of adolescents, released its report that same month summarizing its assessment of the current research.

The panel found that many residential "get tough" programs, including group detention centers, boot camps and other similar residential programs, often exacerbate existing problems among adolescent youth by grouping those with delinquent tendencies together, where "the more sophisticated instruct the more naïve." Similarly, it also concluded that practice of transferring increasing numbers of juveniles to the adult criminal justice system noted above also can be counterproductive, resulting in greater violence among incarcerated youth and increased recidivism when they are ultimately released.

The panel concluded that “a number of intervention programs have been demonstrated to be effective through randomized controlled trials.” and it spotlighted two particular programs that it found are clearly effective in reducing arrests and out-of-home placements: Functional Family Therapy, and Multisystemic Therapy. Among the significant characteristics that these two programs had in common are a focus on developing social competency skills, a long-term approach rather than a “simple” short-term “fix,” and the involvement of the family as well as the youth in the program. The two programs maintained positive results for nearly four years after the treatment ended. Several other programs were identified that were classified as “effective with reservation,” meaning that they had only internal rather than external randomized controlled trials: Big Brothers Big Sisters (reductions in hitting), Multidimensional Treatment Foster Care, Nurse Family Partnership (reduction in incarceration), Project Towards No Drug Abuse (reduction in weapon carrying), Promoting Alternative Thinking Strategies (reduction in peer aggression), and Brief Strategic Family Therapy (reduction in conduct disorder, socialized aggression). The Evidence Report/Technology Assessment accompanying the panel conclusions contains probably the most extensive bibliography as of October, 2004, of the existing literature on violence prevention and treatment with a useful analysis of the studies and programs. (AHRQ Publication No. 04-E032-2 (October 2004))

The importance of research and its dissemination under the JJDP Act

As the unique partnership between the federal government and the states relates to research on best or promising practices, I urge the Congress to consider ways to provide resources for field-based and field-strengthening research and evaluation that will refine and expand the array of best and evidence-based practices in delinquency prevention, intervention and treatment. Issues that states are hungry to address include the following among others:

- effective approaches for diverse cultural and linguistic groups, as well as rural populations;
- innovations to guard against bias and racial/ethnic disparities;
- proactive approaches to truancy prevention;
- ways to reduce school referrals to law enforcement;
- effective approaches for positive family engagement;
- analyses of what youth are being sent to adult criminal court and what happens to them in that system; and
- proven approaches to community and school reintegration for youth who have been recruited into criminal street gangs.

Please also look to strengthen the implementation of Part 5653 Sec. 243 of the JJDP Act which addresses research, demonstration and evaluation and authorizes the OJJDP administrator to “conduct, encourage, and coordinate research and evaluation into any aspect of juvenile

delinquency, particularly with regard to new programs and methods which seek to strengthen and preserve families or which show promise of making a contribution toward the prevention and treatment of juvenile delinquency.” Very explicit language is now included, yet most of the functions in this section are not being addressed. Perhaps because the OJJDP Administrator is given too much discretion to direct the limited resources now appropriated and designated for research under the JJDP Act to topics and questions that have little to do with the goals of the Act.

Therefore, please consider simple language changes in the JJDP Act to state that the OJJDP Administrator *shall* rather than *may* provide support for research, replication and high fidelity adaptation of evidenced-based practice models, across a wide range of racial, ethnic, geographic and societal circumstances—urban and rural, both in and outside of institutional settings for applications with many populations, girls, Native American youth, Youth in the U.S. territories, Latino youth, African American youth, and others. Insist that the research and findings be made widely available to the public and backed-up with training and technical assistance to the parties principally charged with JJDP implementation—state advisory group members and state juvenile justice specialists.

The Office of Juvenile Justice and Delinquency Prevention

Again, speaking as a long-time member of a State Advisory Group and as one active in both the Coalition for Juvenile Justice and the Federal Advisory Committee on Juvenile Justice, I urge you to ensure a vibrant, rehabilitatively-focused “home” for juvenile justice within the U.S. Department of Justice at OJJDP—with an administration guided by experts and whose actions are both timely and transparent to the public.

As cited in the recent Congressional Research Service Report (April 2007) on the JJDP Act, the Act itself has “trended away from having the rehabilitation of juveniles as its main goal” turning instead, along with the majority of states, toward a counter-productive emphasis on increased punishment. Simultaneously, OJJDP rules and regulations for states to receive federal justice grants have increasingly prohibited staff and state juvenile justice advisors from developing appropriate policy and practice models in communication with elected officials.

Since 2002, juvenile justice appropriations to the states—that support important priorities under the JJDP Act such as:

- continuums of care;
- alternatives to detention;
- effective prevention initiatives;
- and restorative justice

have fallen by nearly 50% and the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP), which has recently failed to advocate for its own purposes, has seen its budget slashed to one-fifth of its former status.

In addition, with effective leadership and oversight by Congress, OJJDP's Federal Coordinating Committee on Juvenile Justice can be more effective to develop cross-system and cross-agency integration of programs, policies and services in education, employment, child welfare, children's mental health and substance abuse prevention.

Effective and state-responsive leadership at OJJDP would also undoubtedly raise concerns about why OJJDP has disengaged from and disavowed the Coalition for Juvenile Justice—which serves as the national leadership association for the State Advisory Groups—as called for in Section 5633 (f)(Part A-E) of the Act itself. It has been damaging to prevention and intervention efforts and the promotion of best and promising practices in delinquency prevention to allow the OJJDP Administrator to ignore the letter and the spirit of the statute.

Thank you for your attention and for your resolve to address these continuing issues presented by juvenile justice. This year is not only the year for reauthorization of the JJDP Act, it is also the fortieth anniversary of the United States Supreme Court's historic decision in *In re Gault*, 387 U.S. 1 (1967), in which the basic guarantees of due process were extended to youth in juvenile and family courts. A timely and thoughtful process for making needed amendments and reauthorizing the Act would be a fitting way to celebrate that anniversary. And the reauthorization process has always been the occasion for meaningful bipartisan cooperation and collaboration, and that would be pleasant as well.

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