

**Committee on Education & Labor  
U.S. House of Representatives  
The Honorable George Miller, Chair**

**Reforming the Juvenile Justice System to Improve  
Children's Lives and Public Safety**

**April 21, 2010, 10:00 am**

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Good morning. Chairman Miller and Members of the Committee, it is my distinct honor to speak with you today regarding needs and challenges faced by vulnerable and troubled youth who come into contact with the juvenile justice system. I am Hasan Davis, Deputy Commissioner of Operations at the Kentucky Department of Juvenile Justice, where I have direct oversight of all state-run residential facilities, including detention centers, youth development centers and group homes, as well as day treatment schools and the classification division which manages the detention alternatives coordinators.

Improving the odds for challenged youth has always been my work. Prior to assuming my current position, I directed the Youth Violence Prevention Project in Lexington, Kentucky. In addition to my experience as a trainer and technical assistance provider in juvenile justice, I continue to work nationally with successful U.S. Department of Education initiatives like GEAR UP and TRIO. For ten years, I served as chair of the Kentucky Juvenile Justice Advisory Board, the governor-appointed state advisory group on juvenile justice chartered under the Juvenile Justice and Delinquency Prevention Act, and for three years served as Vice-Chair of the Federal Advisory Committee on Juvenile Justice.

However, the truth that informs my work most is that if not for second chances, I would not have accomplished any of these things. I grew up with visual and hearing challenges and an early diagnosis of dyslexia and Attention Deficit Disorder (ADD). After an increasing amount of pre-teen delinquent behavior, I was arrested at age eleven. In her infinite wisdom, the judge for my case decided that locking me up would not serve me or the community. So she sent me home on conditions of probation. Although my challenges were far from over, that judge prevented my early entry into the juvenile justice system and ultimately provided me the opportunity to seek a better outcome for myself and my family.

For all of these reasons, I am thankful for the opportunity to share with Members of the Committee the progress that Kentucky has made and continues to make to realize the goals and purpose of the Juvenile Justice and Delinquency Prevention Act (JJDP), which has allowed us to develop and adopt proven effective approaches to meeting the needs of vulnerable youth and increase community safety.

Now I want to be clear: Kentucky has not always done what is considered to be in the best interest of youth when they come into contact with our juvenile justice system. There was a time when Kentucky was out of compliance with the Jail Removal core requirement of the JJDP due to our practice of holding juveniles in cells located within adult facilities. More recently, in 2006, Kentucky was in danger of being found out of compliance with the Deinstitutionalization of Status Offenders (DSO) core requirement of the JJDP, due in large part to the misuse and overuse of the valid court exception to the DSO core requirement, which allows judges to place non-delinquent status youth – such as runaways, truants and curfew violators – in locked facilities.

In response to these challenges, Kentucky, like other states, had to make a choice: do we forsake the JJDP and the protections it provides for our youth, or do we challenge ourselves to do better? At our core, we have always believed in the safeguards that the JJDP provides for court-involved youth. Consequently, on both occasions we made a commitment to face our challenges head on. We requested external assistance, examined our internal culture and created

the reforms necessary to ensure our return to full compliance with the JJDP, and to act in the best interest of Kentucky's youth, families and communities in the short and long run.

### **Kentucky's Improved Approach to Status Youth**

I'll begin by talking about the progress Kentucky has made over the last three years to better address the unmet needs of youth charged with status offenses without placing these youth in locked facilities.

Status offenses are those offenses considered by the court only because of the minor status of the child involved - "offenses" that would not be criminal matters at the age of adulthood. Examples include truancy, violating curfew, running away from home, and behavior that may cause a parent or guardian to deem a child ungovernable.

In 2007, as a result of a routine compliance audit conducted by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), we learned that high numbers of detention orders were being issued for status youth statewide. More specifically, the valid court order exception (VCO) to the DSO core requirement had been invoked almost 2,000 times, allowing judges to order the locked detention of non-delinquent youth whose most serious "offense" involved repeatedly running away, skipping school or being rebellious to an adult authority figure. To put that in some context, for that same year almost half the states reported using the VCO less than 250 times; only three states reported using the VCO more than 1,000 times.<sup>i</sup>

It would be impossible for me to overstate the concerns raised by Kentucky's overuse of detention orders at that time. The underlying causes of status offenses are typically linked to problems at home and school, and to unmet trauma and mental health needs of young people.<sup>ii</sup> Locked detention is not designed to treat or to resolve such causes. More importantly, the negative outcomes that can arise from detention far outweigh any benefits of short-term confinement without access to critical services necessary to eliminate the reasons for the status offense. Detention in general, and particularly for status youth and other low-risk youth, has been widely shown to be destructive rather than productive, adding to the often overcrowded conditions that many detention facilities face. Nationally, nearly 70% of detained youth are held

in facilities operating above capacity. Under such conditions, discipline can become unduly harsh; education, medical and mental health treatments are often minimal. Among youth in crowded detention facilities, there are a high number of reports of suicidal behavior, as well as stress-related and psychiatric illness. Sadly, too, youth of color and girls continue to be disproportionately affected, and are more likely to be detained for a status offense than their white or male counterparts.<sup>iii</sup> Currently, girls are reported to account for 14% of youth in juvenile facilities for delinquency, but make up 41% of those in facilities for status offenses.<sup>iv</sup>

To address Kentucky's challenges with the DSO core requirement, in 2003 Kentucky's state advisory group allocated a portion of its JJDPA Title II State Formula Grants dollars to pilot the Detention Alternatives Coordinator program. After a successful test, run the Kentucky Department of Juvenile Justice committed its own resources to ensure the program would survive and expand. Today, we provide a wide-array of alternatives to secure detention through the dedicated work of a Detention Alternatives Coordinator (DAC) housed in each of our nine regional juvenile detention centers. Over the past few years, DACs have partnered with the Administrative Office of the Courts to educate judges and identify resources which make it easier for frustrated judges to commit status youth to appropriate non-secure settings. After the court approves each eligible youth for an alternative to detention placement, the DAC completes a risk assessment screening, matches the youth with an appropriate level of supervision and restriction, and facilitates their transfer from secure to non-secure custody. Each year, we receive requests from more judges and the Judicial College to provide education on DACs and how their work can support the courts.

The positive impact of our DAC program is illustrated by Vicky's story. Vicky was a habitual runaway. She climbed out her window in the middle of the night, walked away from school, etc. Vicky was regularly using a number of drugs and coping with a diagnosis of Oppositional Defiant Disorder (ODD). Vicky wanted to disappear - from school, from home, from the eyes of the world. When she was picked up, one of our DACs requested that she be diverted and placed on electronic monitoring. During her placement, Vicky was ordered into treatment by the court and began taking needed prescription medications. As a result, her school attendance became more regular and her grades began to improve. Today, Vicky is a college student attending Eastern Kentucky University. She has taken control of her life and is living it drug free.

In Kentucky, we understand and accept that there are times when locked detention is the only reasonable option to address a youth's delinquent behavior. For instance, locked detention may be necessary if a youth poses a serious threat to public safety. Status offenses such as running away, skipping school, violating curfew and using tobacco and/or alcohol under age generally do not meet this threshold. In keeping with this view, we seek to meet the JJDP's mandate not to detain status youth except in these very limited circumstances.

### **Kentucky's Improved Compliance with the Jail Removal Core Requirement**

Next, I'll talk about the progress that Kentucky has made to achieve and maintain compliance with the Jail Removal core requirement of the JJDP.

As I stated at the top of my testimony, there was a time, back in the 1990s, when Kentucky was out of compliance with the Jail Removal core requirement of the JJDP due to our practice of holding juveniles in cells located within adult facilities. At that time Kentucky had only two secure juvenile detention centers. Local jails were reimbursed for housing youth, which created an obvious incentive for long-term detention without attention to the needs and issues particular to youth. With the creation of the Kentucky Department of Juvenile Justice in 1996, we committed to establishing a pre-service training academy for direct care staff, developing an internal investigation unit, hiring a board certified physician to guide medical staff, and building state-run regional detention centers. We currently maintain nine secure detention centers across the state, making available a secure facility within one hour's drive of any of our 120 counties. As a result of these changes, I can attest that on January 16, 2001, Kentucky was found to be in full compliance with the JJDP Jail removal core requirement.

More significantly, Kentucky has gone even further. We have removed *all* juveniles – including those charged as adults – from adult facilities pre-trial, and serve some transferred juveniles post-trial in our juvenile facilities. Currently, youthful charged as adults when they were juveniles participate and succeed in our detention treatment and group home facilities, allowing their behavior and treatment progress – not the nature of their offense – to determine their placements. The research is clear: incarcerating youth with adults is a dangerous practice that puts youth at

risk of great physical, emotional and mental harm.<sup>v</sup> Moreover, according to a number of studies, incarcerating youth with adults actually increases the likelihood that they will re-offend once released, and re-offend more quickly and more seriously.<sup>vi</sup> Given that our dual aim should always be the safety of the community *and* the safety of the youth, we stand with the Coalition for Juvenile Justice, the Act 4 Juvenile Justice Campaign, and more than 350 international, national, state and local allies in the belief that it is time to end the practice of detaining youth charged as adults in adult facilities.

## **Recommendations**

### **Remove the VCO Exception to the DSO Core Requirement**

Right now, the House Education and Labor Committee is charged with reauthorization of the JJDPA. In place since 1974, the JJDPA provides important safeguards and resources to assist troubled, vulnerable and court-involved youth. A change to the JJDPA that I believe is most critical to protect vulnerable and troubled youth has already been approved by the Senate Judiciary Committee this past December, in the form of an amendment to the DSO core requirement. This amendment, which received bipartisan approval by the Committee as part of S. 678, calls upon states to eliminate the (VCO) exception – an unfortunate loophole that allows judges to place status youth in locked detention. If passed into law, judges would no longer be able to lock-up non-delinquent youth out of frustration or a misguided sense of protectiveness. Furthermore, eliminating the VCO exception comports with current law or practice in approximately two dozen states and territories.

Testimony given at the time of the passage of the JJDPA cited that status youth should be “channeled away” from lock-ups and toward human service agencies and professionals to avoid creating greater social, emotional, family and/or peer-group upheaval among this highly vulnerable population. Yet, the JJDPA has not adequately addressed alternatives along a continuum of home and community-connected services that would more appropriately and effectively address the needs of status youth and their families. In the 1980s, the VCO exception to the DSO core requirement was included in the JJDPA, but it was left to states to sort out the

sanctioned judicial use of locked detention for status youth. Researchers, legal scholars, as well as juvenile court professionals and advocates, are seeking remedies to the problem of over-use of the VCO exception, as well as to problems that arise when federal and state law contradict.

Overall, as a result of the DSO core requirement, since 1974, there has been an overall decline in the use of secure detention for status youth. Yet, each year nearly 40,000 status offense cases still involve locked detention.<sup>vii</sup> Of these, more than 30%, or approximately 12,000 nationwide, would be prohibited if the VCO exception is removed from the JJDPA.<sup>viii</sup> Troubled youth, children in need of protective services, runaways and many youth with behavioral health concerns wind up in detention, not because of worries about public safety, but because of a perceived or real lack of community alternatives, a lack of system collaboration, and a lack of knowledge among judges about what resources and effective approaches are available.<sup>ix</sup> Our DACs in Kentucky are addressing these challenges, and we believe that our state could serve as a model. There are, in fact, many alternatives to institutionalization/detention of status youth shown to create positive outcomes for youth and families, including Functional Family Therapy, intensive case management, non-secure shelter care and temporary crisis care, and family interventions and support—all of which may be supported by the Title II State Formula Grants Program of the JJDPA.

### **Strengthen the JJDPA Jail Removal Core Requirement to Remove Juveniles Charged as Adults from Adult Jails.**

The original intent of the JJDPA was to recognize the unique needs of youth in the justice system and establish a separate system to specifically address these needs. One of these unique needs for youth is protection from the dangers of adult jails. As aforementioned, placing youth in adult jails can have dire consequences for the youth, his/her family and the community.

As currently written, the Jail Removal core requirement protects youth who are under the jurisdiction of the juvenile justice system by prohibiting these youth from being held in adult jails and lock-ups except in very limited circumstances, such as while waiting for transport to appropriate juvenile facilities. In these limited circumstances where youth are placed in adult

jails and lock-ups, the Sight and Sound core requirement limits the contact these youth have with adult inmates.

While these core requirements have worked to keep most children out of adult jails for more than 35 years, the JJDPa does not apply to youth under the jurisdiction of the adult criminal court. Rather, on any given day, 7,500 children are locked up in adult jails before they are tried.<sup>x</sup> Nearly 40 states have laws that allow children prosecuted in adult courts to be placed in adult jails, prior to their first court hearing.<sup>xi</sup>

To ensure that more youth are afforded the protections originally conceived by Congress back in 1974, Congress should amend the JJDPa to extend the Jail Removal and Sight and Sound requirements of the JJDPa to all youth, regardless of whether they are awaiting trial in juvenile or adult court. In the limited exceptions allowed under the JJDPa where youth can be held in adult facilities, they should have no sight or sound contact with adult inmates.

### **Generate Greater and Better Resources for Effective Implementation of Federal Juvenile Justice Policy**

Regarding use of federal funds under the JJDPa, Congress should strongly consider prohibiting the use of federal funds for ineffective and damaging approaches such as highly punitive models shown to increase, rather than decrease re-arrest and re-offense, including boot camps, excessive use of physical restraint, force and punishment, and the building of large residential institutions.<sup>xii</sup>

I also 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 girls, as well as for diverse cultural and linguistic groups;
- 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.

In addition, Congress should look to strengthen the implementation the JJDPA 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.”

Consider simple language changes in the JJDPA 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 JJDPA implementation—state advisory group members and state juvenile justice specialists.

Since 2002, juvenile justice appropriations to the states that support important priorities under the JJDPA such as continuums of care; alternatives to detention; gender-sensitive and gender-specific services and effective prevention initiatives have fallen by more than 50%. Here, again, you have the opportunity to restore the research, evaluation, and funding resources, as well as training and technical assistance resources needed to meet critical needs for girls and other children involved with the court.

You will find that these recommendations are in keeping with best practice and with the recommendations of the Coalition for Juvenile Justice – an association of the JJDPA State Advisory Groups – as well as the broad-based Act-4-Juvenile Justice Campaign that includes more than 350 organizations in juvenile justice, law enforcement, youth and family service, child

welfare, mental health and substance abuse treatment and representing the faith community, among others.<sup>xiii</sup>

In closing, I wish to avail myself to you should you have any further questions. Many thanks for the opportunity to speak before you today.

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<sup>i</sup> Unpublished JJDP compliance monitoring data from the Office of Juvenile Justice and Delinquency (OJJDP), pertaining to 2007.

<sup>ii</sup> National Center for School Engagement. (2009). *What is truancy?* Denver, CO. <http://www.schoolengagement.org/TruancyPreventionRegistry/Admin/Resources/Resources/40.pdf>; Hammer, H., Finkelhor, D., & Sedlak, A. J. (2002). *NISMART: National Incidence Studies of Missing, Abducted, Runaway and Thrownaway Children, Runaway/Thrownaway Children: National Estimates and Characteristics*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, <http://www.ncjrs.gov/pdffiles1/ojjdp/196469.pdf>

<sup>iii</sup> Coalition for Juvenile Justice, *Unlocking the Future: Detention Reform in the Juvenile Justice System*, January 2004.

<sup>iv</sup> Sickmund, Melissa, Sladky, T.J., and Kang, Wei. (2008). *Census of Juveniles in Residential Placement Databook*. Available: <http://www.ojjdp.ncjrs.gov/ojstatbb/cjrp/>.

<sup>v</sup> *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*, Campaign for Youth Justice, available at [http://www.campaign4youthjustice.com/Downloads/NationalReportsArticles/CFYJ-Jailing\\_Juveniles\\_Report\\_2007-11-15.pdf](http://www.campaign4youthjustice.com/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf). (November 2007).

<sup>vi</sup> Centers for Disease Control and Prevention, “Task Force Recommends Against Policies and Laws Facilitating Transfer of Youth to the Adult Justice System to Reduce Violence among Transferred Youth,” Guide to Community Preventive Services, available at [http://www.thecommunityguide.org/violence/Violence-YouthTransfer\\_rev.pdf](http://www.thecommunityguide.org/violence/Violence-YouthTransfer_rev.pdf). (April 13, 2007).

<sup>vii</sup> National Center for Juvenile Justice: [www.ncjj.org](http://www.ncjj.org).

<sup>viii</sup> Unpublished JJDP compliance monitoring data from the Office of Juvenile Justice and Delinquency (OJJDP), pertaining to 2007.

<sup>ix</sup> Schwartz, I., Barton, W. *Reforming Juvenile Detention: No More Hidden Closets*, 1997.

<sup>x</sup> *Jailing Juveniles*, p. 4.

<sup>xi</sup> *Id.* at 24.

<sup>xii</sup> Mendel, Richard A. and American Youth Policy Forum, *Less Hype, More Help: Reducing Juvenile Crime, What Works—and What Doesn't* (2000), and *Less Cost, More Safety: Guiding Lights for Reform in Juvenile Justice* (2001).

<sup>xiii</sup> See: [www.juvjustice.org](http://www.juvjustice.org) and [www.act4jj.org](http://www.act4jj.org).