

Testimony of Dean Hill Rivkin
College of Law Distinguished Professor
University of Tennessee College of Law

U.S. Senate Committee on the Judiciary
Accountability and Oversight of Juvenile Justice Grants
April 21, 2015, 10:00 A.M.

My name is Dean Hill Rivkin. I am College of Law Distinguished Professor at the University of Tennessee College of Law, where I have taught since 1976. With the assistance of community cooperating attorney, Brenda McGee, I teach a clinical course with law students called “Public Interest Lawyering: Education Law Practicum” (“The Practicum”).

Since 2009, we have represented in juvenile court youth prosecuted by the State for the status offense of truancy, which is not a crime. Before we became their attorneys, most of our clients had already pled guilty, despite having had solid defenses to the charges—such as trauma, disability, and mental health issues.

A number of our clients had been locked up in the juvenile court’s secure juvenile detention facility following their pleas of guilty. These lock-ups ranged from periods of up to 24 hours to a week or longer, which is a violation of the JJDP’s Deinstitutionalization of Status Offenders – or DSO – requirement. In the juvenile jail, our clients were shackled, indiscriminately drug tested, asked to strip, given orange jail jump-suits, and placed in a facility that held serious juvenile offenders. They were not screened for mental health problems. One of our clients threatened suicide, following her release from the detention facility, and was admitted to a psychiatric hospital by her parents.

We sought to halt these practices and urged our State agency – the Tennessee Commission on Children and Youth (“TCCY”) – to exercise more vigilant oversight over DSO issues. We questioned TCCY whether its data was accurate and complete. These questions were never satisfactorily answered. We also obtained local detention statistics documenting numerous lock-ups of status offenders. These included hundreds of secure detentions not only in truancy cases but also in runaway cases, for tobacco use, and for curfew violations.

After exhausting our efforts with TCCY, we turned to OJJDP for assistance. In the spring of 2013, following the appointment of a new OJJDP Administrator, we conveyed our concerns to OJJDP about the problems in Tennessee. In July, 2013, I received a telephone call from an official at OJJDP, who stated that he was following up on my communication with the Administrator about the problems in Tennessee.

In this conversation, I was informed that OJJDP was preparing to conduct an Audit of Tennessee, the first full Audit since 2005. I offered to send to this official the local detention data that we possessed and to meet with OJJDP staff to convey our catalogue of concerns about DSO problems in our County and the State. The official stated that he was not interested in our data and left the impression (later confirmed) that OJJDP would conduct the Audit without meeting with us.

The Audit was released in January, 2014. It failed to consider the information that we possessed about Tennessee's compliance practices. For example, the local juvenile detention data that we possessed showed numerous secure detentions for truancy and other status offenses. These detentions were not reflected in the State data sent to OJJDP. The Auditors did not ask to review the data that we offered. Instead, the Auditors only looked at four months of TCCY data from 2012.

Significantly, the Audit failed to mention the large number of lock-ups under OJJDP's so-called 24-hour exception. This exception, which finds no grounding in the absolute ban on secure detention in the JJDPA, allows courts to jail status offenders for 24 hours before a court hearing and 24 hours after, excluding weekends and holidays. In Knox County alone, 237 non-DSO lock-ups were reported in 2012. In our view, Knox County is abusing the 24-hour exception, and OJJDP turned a blind eye to this abuse.

Based on our experiences, we believe that the compliance system as it is currently administered by OJJDP is one of the least transparent systems of any federal program that I've encountered. Public access is limited. Bureaucratic language abounds. Without greater transparency and clarity, accountability—the touchstone of success for the JJDPA--suffers.

In conclusion, the need for a strong federal presence, with adequate funding, to prevent vulnerable children from being incarcerated for non-crimes is even more important today than it was in 1974. Congress should proceed forthwith with a fortified reauthorization of the JJDPA in light of the evidence presented at this hearing.

Thank you.