

**The Honorable Steven C. Teske
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**Testimony before the Senate Committee on the Judiciary Hearing on “Improving
Accountability and Oversight of Juvenile Justice Grants”**

April 21, 2015

Good Morning, Chairman Grassley, Ranking Member Whitehouse, and members of the Senate Judiciary Committee. Thank you for having me here to testify today about Improving Accountability and Oversight of Juvenile Justice Grants.

My name is Steven Teske and I currently serve as the chief judge at the Clayton County Juvenile Court in Georgia, a suburb of Atlanta. In addition to the sixteen years I have spent on the court, I have been involved in the juvenile justice system in many other capacities. At the Governor’s request, I represented the 13th Congressional District on the Board of Georgia Children and Youth Coordinating Council (and served as the Chair of the Board), vice-chair of the Governor’s Office for Children and Families, Georgia commission on Family Violence, and serve on the Judicial Advisory Council to the Board of the Department of Juvenile Justice. I also served as a representative for Georgia on the Federal Advisory Committee on Juvenile Justice for the United States Department of Justice’s Office of Juvenile Justice and Delinquency Prevention from 2007-11.

I am a member of the Georgia Council of Juvenile Court Judges and served as its president from 2008-09. I am also a member of the National Council of Juvenile and Family Court Judges (NCJFCJ) and serve on its Board of Directors. I am also chair of the School Pathways Committee of NCJFCJ that provides oversight and implementation of the technical assistance made available jurisdictions seeking to develop school-justice partnerships.

In 2012, Governor Nathan Deal appointed me to serve on the Georgia Council for Criminal Justice Reform, which studied the juvenile justice system resulting in sweeping recommendations to the Governor that were unanimously approved by our legislature. The Governor appointed me in 2013 to the Commission on Criminal Justice Reform to continue the study of adult and juvenile justice reforms and to provide oversight and implementation of the changes enacted. I am co-chair of the Oversight and Implementation Committee.

Since 2010, I have been serving as a designated judge of the superior court hearing both adult civil and criminal matters.

In my testimony today, I would like to provide some historical background of accountability and oversight practices of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) that I believe will provide the context from which a framework can be created to improve accountability and oversight of juvenile justice grants. I will be sharing this background from my own experiences having served many years as the chair designee for our State Advisory Group (SAG) in which I often interacted with OJJDP compliance monitors as well as my service on the

Federal Advisory Committee for Juvenile Justice in which I had the opportunity to hear the perspectives of the many juvenile justice specialists across this nation that I believe their concerns as state representatives relative to accountability and oversight measures and processes have yet to heard. Finally, I offer these perspectives only to identify the problem from which I believe this distinguished body in its oversight role can identify the solution(s). In an attempt to be helpful to this end, I will conclude my testimony by providing what I hope will be solutions to what I perceive are the impediments to effective accountability and oversight of juvenile justice grants.

Background: JJDP, OJJDP, and the Four Core Protections

We do not have a national, centralized juvenile justice system. Instead, 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, laws, policies, and procedures can vary widely from state to state and among local jurisdictions, creating a patchwork of juvenile justice systems resulting in inconsistent outcomes for youth, families, and communities, including youth exposure to physical, mental, and emotional injury. To address these inconsistencies and to improve outcomes for youth and community safety, Congress passed the Juvenile Justice and Delinquency Prevention Act (JJDP) in 1974. The last re-authorization was in 2002.

The JJDP is designed to bring consistency in juvenile justice best practices among all the States by identifying four protections based in research that are core to delinquency prevention and rehabilitation. States who comply with the core protections receive federal funding for programming that promote the core protections. A State deemed out of compliance must lose 20% of its funding and the remaining funds must be dedicated to solving the issues that caused the noncompliance. The issue of accountability when a State is deemed noncompliant by a compliance officer is at the heart of today's hearing. However, I proffer, based on information I will share later in my testimony, that this is only half of the problem. The other half is the methodology by which compliance officers measure and the confusion surrounding what is to be measured, and this goes to oversight.

The four core protections include:

- Deinstitutionalization of Status Offenders (DSO): Status offenses are offenses that only apply to minors whose actions would not be considered offenses if they were adults. The most common are skipping school, running away, breaking curfew, and possession or use of alcohol. Under the JJDP, status offenders may not be held in secure detention or confinement. There are, however, several exceptions to this rule, including allowing some status offenders to be detained for up to 24 hours. The DSO provision seeks to ensure that status offenders who have not committed a criminal offense are not held in secure juvenile facilities for extended periods of time or in secure adult facilities for any length of time. These children, instead, should receive community-based services, such as day treatment or residential home treatment, counseling, mentoring, family support, and alternative education.

- Adult Jail and Lock-Up Removal (Jail Removal): Youth may not be detained in adult jails and lock-ups except for limited times before or after a court hearing (6 hours), in rural areas (24 hours plus weekends and holidays), or in unsafe travel conditions. This provision does not apply to children who are tried or convicted in adult criminal court of a felony level offense. This provision is designed to protect children from psychological abuse, physical assault, and isolation. Children housed in adult jails and lock-ups have been found to be eight times more likely to commit suicide, two times more likely to be assaulted by staff, and 50 percent more likely to be attacked with a weapon than children in juvenile facilities, according to U.S. Department of Justice Studies.
- "Sight and Sound" Separation: When children are placed in an adult jail or lock-up, as in exceptions listed above, "sight and sound" contact with adults is prohibited. This provision seeks to prevent children from psychological abuse and physical assault. Under "sight and sound," children cannot be housed next to adult cells, share dining halls, recreations areas, or any other common spaces with adults, or be placed in any circumstances that could expose them to threats or abuse from adult offenders.
- Disproportionate Minority Contact (DMC): States are required to assess and address the disproportionate contact of youth of color at all points in the justice system - from arrest to detention to confinement. Studies indicate that youth of color receive tougher sentences and are more likely to be incarcerated than white youth for the same offenses. With youth of color making up one-third of the youth population, but two-thirds of youth in the juvenile justice system, this provision requires states to gather information and assess the reason for disproportionate minority contact.

The JJDPA is intended to create a federal-state partnership for the administration of juvenile justice and delinquency prevention by providing:

- juvenile justice planning and advisory system, establishing State Advisory Groups (SAGs), spanning all states, territories and the District of Columbia;
- Federal funding for delinquency prevention and improvements in state and local juvenile justice programs; and
- Operation of a federal agency (Office of Juvenile Justice and Delinquency Prevention (OJJDP)) dedicated to training, technical assistance, model programs, and research and evaluation, to support state and local efforts.

The JJDPA also established the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in order for the federal government to function as a responsive and responsible partner with all states under the JJDPA. However, for years the lack of effective compliance guidelines coupled with inefficient compliance techniques as reported by juvenile justice specialists and SAG members in numerous States has weakened this partnership.

The Need for Re-Authorization of the JJDP: A Georgia Example

I am concerned that the questions around accountability and oversight of juvenile justice grants by OJJDP may cause Congress to question the need for re-authorization of the JJDP. Despite the concerns of accountability and oversight, the outcomes of many programs and practices that were created using federal funds far outweighs any negative outcomes as a result of less than desirable compliance measures. This is not to minimize in the least the importance of addressing ways to improve accountability and oversight of juvenile justice grants. It goes without saying that because JJDP has assisted States to make significant improvements in their local juvenile justice systems, imagine how much more effective those systems will be with improved accountability and oversight measures and tools in place. I am asking this distinguished body to separate those trees from the forest and address the accountability and oversight concerns knowing that by doing so you will be improving upon an already proven act of Congress.

To illustrate my point that the JJDP is a proven act of Congress, I will share some examples of what JJDP has done in Georgia by beginning in my own county of Clayton.

When I took the bench in 1999, my county was inundated with high commitment rates to state custody and overwhelming probation caseloads of which most were kids of color and non-violent offenses. In search of ways to improve our system, I found the Annie E. Casey Foundation Juvenile Detention Alternative Initiative (JDAI). The Casey model inspired me to create a number of programs using federal funding that have resulted in significant reductions in racial and ethnic disparities, detentions, commitments to state custody, and the removal of the valid court order exception. These programs seeded by federal funds provided by the JJDP include the following:

- FAST Panel (Finding Alternatives for Safety and Treatment): a multidisciplinary panel of experts that meets before every detention hearing to assess each youth and family and make recommendations to the judge for alternatives to detention. This panel, called the FAST Panel has resulted in 85% of all youth released with a re-offense rate waiting to return to court of less than one percent (1%).
- Second Chance Program: A program for deep-end youth eligible for commitment to state custody, but allowed to remain in the community with intensive supervision and treatment. Since 2010, forty-eight youth have graduated with a 6% re-offense rate compared to the 65% re-offense rate of the youth committed. This program has saved the State approximately 3.9 million dollars while increasing public safety.
- System of Care: An independent backbone agency with a board of directors that braid public and private stakeholders and an executive director and staff that receive referrals from the school system of at-risk youth for assessment and treatment. This agency coordinates all child service agencies to deliver evidence based programs for the prevention of delinquency. The programs associated with this agency have reduced school arrests by 83%, status filings in the court by 86%, while improving school attendance, behavior, and test scores. Despite our county being the poorest in all metro Atlanta, our graduation rates have been steadily increasing and posted the highest increase in graduation rates for the last academic year.

These programs, seeded by federal funds from JJDPA, have accomplished the following:

- 83% decrease in average daily detention population (ADP)
- 75% reduction in ADP of minority youth
- 47% reduction in average length of stay
- 77% fewer commitments to state custody
- 70% fewer commitments of minority youth, BUT a
- 62% reduction in juvenile arrests.

In our efforts to reform juvenile justice statewide, which was led by our Governor Nathan Deal, these Clayton County programs became a model for reform.¹ Our Governor created a criminal justice reform commission to study the juvenile justice system, which reforms resulted in a 62% reduction in commitments to state custody using federal formula grant monies from the JJDPA. These funds were used to rehabilitate youth in the community along with their families using evidence based programs listed on the OJJDP website. Our reforms also included the removal of the valid court order exception for status offenders.

How to Improve Accountability and Oversight of Juvenile Justice Grants

Notwithstanding any findings that may be made that grants were fraudulently obtained to which serious controls must be contemplated to preclude future fraud, I am here to speak to another dimension of accountability and oversight deficiencies that are just as serious but may be overlooked.

Improving accountability and oversight first requires an understanding of how OJJDP conducts its compliance audits. The concerns of juvenile justice specialists came to light during a meeting of the Federal Advisory Committee for Juvenile Justice in 2007. I attended that meeting as a Georgia representative and heard statements from several state representatives describing the disparate treatment of compliance standards among the States. Then administrator, Robert Flores, was in attendance and after hearing these alarming comments, I suggested to the administrator that if true, such disparate treatment should be met with immediate corrective action. In response, OJJDP staff met with the state representatives to begin the dialogue after the conclusion of the meeting.

What I already knew as a SAG member and from my juvenile justice specialist and confirmed by an overwhelming number of specialists from around the country, is the following:

- The DMC compliance manual itself is 389 pages in length and extremely difficult to follow;
- The other compliance manual is approximately 100 pages in length;
- Many of the guidelines contained in the compliance manual lack specificity and invites differing interpretations depending on the compliance monitor;

¹ Rhonda Cook, *Clayton County Program Becomes Model for State Reform*, Atlanta Journal Constitution, Section A, front page.

- The rules continuously change without notice and an opportunity to provide feedback, including an expansion of the monitoring universe such as shopping malls, adult psychiatric facilities, and group homes;
- Lack of a standardized process to achieve compliance upon loss of funding; and
- Poor communication from compliance monitors that creates confusion among the state representatives. For example, our last audit occurred in 2010. We did not receive the findings until 2012, but we were expected to respond to their letter within 60 days and we did. The compliance monitor did not reply until 2014—two years later. This is a widespread issue.
- Delayed findings from OJJDP as far out as two years is grounded in old data of which some, if not all, deficiencies have been corrected (See the Georgia 2012 letter responding to the OJJDP 2010 audit not provided until 2012 as an example)

Absent the voice of juvenile justice specialists and SAG members like myself, I am very concerned that the ultimate solution to improving accountability will be deficient because the diagnostics were not complete. Juvenile justice specialists and SAG members offer tremendous insight into what occurs in the weeds when compliance officers travel to localities and conduct audits. I believe that how those audits are performed and the tools by which they conduct those audits are themselves require improvement that would address the other half of this problem—oversight.

I suspicion, based upon what I personally know coupled with an appreciation for managing change at the local and state levels, that compliance officers may be making noncompliance findings using flawed measurements. If this is occurring, and the risk is high under these circumstances, it creates a paradox in which turmoil and tension occurs between the states and OJJDP as well inside OJJDP between compliance monitors and those administrators who may acknowledge these flaws and may intervene to correct an errant outcome. What is understandably viewed by compliance monitors as a violation of the law by their administrators for not enforcing the de minimus rule is viewed as corrective action of the audit by administrators and there lies the paradox, which will continue until action is taken to correct the underlying problems.

To that end, I recommend the following:

- Standardize practices for Compliance Monitoring with defined processes including definite time limits;
- Provide states with technical assistance to develop effective and comprehensive data collection systems, which is essential to accountability and oversight;
- Revise the compliance manuals and remove superfluous material and provide specificity to avoid the subjective interpretation that creates disparate compliance treatment resulting in both external and internal tension;
- Monitoring should focus on areas that are genuine issues to avoid unnecessary use of precious resources and expense. It does not make sense to dedicate massive amounts of manpower and energy to jail removal when this occurs .00005 times a year;
- Although not a regulatory agency, in the least require OJJDP to give notice to the states of any substantive compliance change in the manuals and an opportunity to provide

feedback to avoid an expansion of the monitoring universe that was not intended by Congress (Please note that 42 U.S.C 5672 (d) requires the administrator to consult with the state representatives before making any rules or regulations as it relates to compliance)² ; and

- Mandate annual training for all state representatives specific to the compliance manuals and require training within a time certain after a compliance rule has been issued after notice and comment from the state representatives.

Conclusion

I want to conclude by pointing out that the current administrator visited me and my former juvenile justice specialist, Joe Vignati,³ during January 2014 in Atlanta to ask how Georgia was able to make sweeping reforms with unanimous approval. Notwithstanding the fact that it would not have occurred but for our Governor's leadership, he was impressed with our use of formula funds to bring programs to local communities in one fell swoop that effectively reduced commitments and thus racial disparities. He would later create the SMART grant to replicate similar statewide reforms to effectuate the core protections with substantial outcomes as never seen before.

The time is ripe to re-authorize the JJDPA and in so doing make the changes necessary to improve the accountability and oversight of juvenile justice grants. I do not view this hearing as an obstacle to re-authorization, but an opportunity to improve upon an historical and strategic Act of Congress that has assisted states like mine to do the right thing for our youth. I suspect the irony in what brings us here today is in the opportunity to make better the great things already accomplished.

To that end Chairman Grassley, I want to express my gratitude to you for bringing transparency to this re-authorization process by first seeking to clean up what needs cleaning so we may be stronger in the end for the sake of our youth.

² 42 USC 5672 (d) Rules, regulations, and procedures states: The Administrator is authorized, after appropriate consultation with representatives of States and units of local government, to establish such rules, regulations, and procedures as are necessary for the exercise of the functions of the Office and only to the extent necessary to ensure that there is compliance with the specific requirements of this title or to respond to requests for clarification and guidance relating to such compliance.

³ Joe Vignati was named Assistant Deputy Commissioner for the Georgia Department of Juvenile Justice and appointed by Governor Nathan Deal to serve as co-chair of the Juvenile Justice Funding Committee, which oversees the development and implementation of the Georgia Juvenile Re-Investment program.