

MEMORANDUM

TO: Senator Amy Klobuchar  
FROM: Mark Soler, Executive Director, Center for Children's Law and Policy  
SUBJECT: Responses to questions following OJJDP oversight hearing  
DATE: May 12, 2015

This memorandum provides responses to your questions following the Judiciary Committee oversight hearing on the Office of Juvenile Justice and Delinquency Prevention (OJJDP) on April 21, 2015.

1. *The Juvenile Justice and Delinquency Prevention Act (JJDP) has been in place since 1974. In your experience, what benefits has this law provided for kids who may interact with the system, as well as for the broader criminal justice system?*

The two reports by the National Research Council on the juvenile justice system and OJJDP provide excellent discussions of the benefits as well as the shortcomings of the JJDP and OJJDP. The two reports are:

National Research Council. (2013). *Reforming Juvenile Justice: A Developmental Approach*. Committee on Assessing Juvenile Justice Reform, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schuck, Eds. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press. ("*A Developmental Approach*").

National Research Council. (2014). *Implementing Juvenile Justice Reform: The Federal Role*. Committee on a Prioritized Plan to Implement a Developmental Approach to Juvenile Justice Reform. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press. ("*The Federal Role*").

*A Developmental Approach* is the most up-to-date comprehensive report on key components of the juvenile justice system in this country, including current practices, research on adolescent development, prevention of recidivism, fairness and accountability, reduction of racial and ethnic disparities, and assessment of the strengths and challenges for the Office of Juvenile Justice and Delinquency Prevention. *The Federal Role* was commissioned by the Administrator of OJJDP, Robert Listenbee, in response to the first report, to provide a roadmap for improvement of OJJDP. Together they represent a thorough assessment of the state of juvenile justice and the role that the JJDP and OJJDP can and should play.

In my own experience, the JJDP Act has provided two types of direct benefits to youth who interact with the juvenile justice system. First, the statute sets some minimum protections for youth in the system through the four “core requirements.” Those requirements say, in essence, “Don’t put children in adult jails and prisons. Don’t lock up children if they are charged with offenses that would not be crimes if committed by adults. And don’t allow the system to disproportionately impact youth of color.” There are financial penalties to states for noncompliance. Thus, through the JJDP Act, the federal government has put the weight of its authority behind these core protections. Moreover, after the JJDP Act was enacted in 1974, most states passed legislation that mirrored the “sight and sound separation” and “deinstitutionalization of status offenders” (DSO) requirements (the only two in the original Act), and several states have prohibited holding children in adult jails, so the JJDP Act has served as a model for state legislatures.

Second, through its Title II formula grants and other provisions of the Act, the JJDP Act has provided funding to states for programs and services for youth at risk and in trouble, start-up of new programs, assessments of various components of state and local juvenile justice systems, research, and assistance in complying with the core requirements. The state plan requirements in 42 U.S.C. §5633(a) provide guidance to the states on specific services and programs they should provide in a quality juvenile justice system, such as mental health services, substance abuse treatment, and education of delinquent youth. At the same time, the JJDP Act provides sufficient flexibility in funding that states can serve their appropriate roles as laboratories for innovation. This funding directly benefits youth who interact with the system.

The JJDP Act has provided at least four types of benefits for the broader juvenile justice and criminal justice systems. First, the JJDP Act has enabled OJJDP to support invaluable data collection and analysis. Much of this work has been done by the National Center for Juvenile Justice, and includes online availability of data for all of the states and several excellent periodic reports entitled *Juvenile Offenders and Victims*. Second, the JJDP Act has allowed OJJDP to support pioneering research in the juvenile justice field. This research has included groundbreaking research on effective programs for violence prevention, known as Blueprints for Violence Prevention, as well as the only national studies on conditions of juvenile confinement (1992) and access to counsel and quality of representation in juvenile proceedings (1994). Third, the JJDP Act has authorized OJJDP to provide training and technical assistance to the field. In the early days of the JJDP Act, I and other consultants traveled to many states to assist them in removing children from adult jails and finding alternatives to incarceration for status offenders. In more recent years, OJJDP has provided technical assistance to states on a wide variety of issues. Fourth, the JJDP Act has enabled OJJDP to develop partnerships with major charitable foundations to implement lessons learned in foundation initiatives in additional sites. Thus, OJJDP has partnered with the Annie E. Casey Foundation to support juvenile detention reform as part of its Juvenile Detention Alternatives Initiative (JDAI) in Pennsylvania, Tennessee, and Kentucky. OJJDP has also partnered with the John D. and Catherine T. MacArthur Foundation and its Models for Change initiative to support reforms in mental health services, screening and assessment of system-involved youth, dual-system youth (child welfare and juvenile justice), and racial and ethnic disparities in multiple sites around the country.

2. *For kids who may interact with the system, what would be the impact of a formal reauthorization of the program, rather than annual appropriations?*

The lack of formal reauthorization of the JJDPA has significantly weakened OJJDP. As noted in *A Developmental Approach* (p. 308-318), OJJDP's authorizing legislation expired in 2007 and 2008. The very fact that the statute has not been reauthorized for years indicates a lack of support for the goals of the Act in Congress. Funding has continued as annual appropriations, but funding for OJJDP for juvenile justice system improvements declined by 83 percent between 1999 and 2010. Moreover, the Obama Administration failed to appoint a permanent Administrator of OJJDP during its entire first term.

These circumstances have hampered OJJDP's ability to accomplish its mission. The lack of an appointed Administrator hampered OJJDP's ability to negotiate and argue its position on many issues with its oversight agency, the Office of Justice Programs (OJP), and the Assistant Attorney General who runs OJP. The lack of an Administrator also left OJJDP without a strong advocate before Congressional committees, including the Appropriations committees. Research and statistical functions have been taken away from OJJDP and transferred to other Department of Justice agencies. OJJDP has also been hampered by rulings by the Office of General Counsel that have appeared to be at odds with the goals and mission of the JJDPA.

Formal reauthorization would strengthen OJJDP by re-committing the federal government to the goals of protecting both the public and youth who interact with the juvenile justice system. Annual appropriations make it very difficult for OJJDP to make long-range plans and to support innovations that require nurturing for more than twelve months at a time. Formal reauthorization would enable OJJDP to strengthen its operations and retrieve its place as an equal alongside other agencies within OJP, including the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, and the Office for Victims of Crime.

3. *What changes do you believe are necessary in any reauthorization of the program?*

I have listed several of the beneficial provisions of the JJDPA above. Some of those provisions have been extremely successful, such as the core requirement designed to keep children out of adult jails. Others have had only qualified success. The Deinstitutionalization of Status Offenders requirement, for example, has been severely compromised by the Valid Court Order exception, which allows judges to lock up children who commit status offenses after being ordered by a court not to do so. In many jurisdictions, unfortunately, the exception has swallowed the rule. The "disproportionate minority contact" (DMC) requirement has also had only limited success because it only requires states to "address" racial disparities, without providing further guidance and without requiring states to actually decrease disproportionality.

Any reauthorization of the JJDPA should address these and other known shortcomings of the Act. Accordingly, I support the recommendations endorsed by Act4JJ, representing more than 350 national, international, state, and local organizations:

- Extend the Jail Removal and Sight and Sound separation core protections to all youth under the age of 18 held pretrial, whether charged in juvenile or adult court.
- Codify current state flexibility for housing youth convicted in adult court in juvenile facilities rather than adult prisons by modifying the definition of "adult inmate."

- Strengthen the Deinstitutionalization of Status Offenders (DSO) core protection, which prohibits the locked detention of status offenders, by removing the valid court order (VCO) and Interstate Compact exceptions.
- Strengthen the Disproportionate Minority Contact (DMC) core protection by requiring States to take concrete, measurable steps to reduce racial and ethnic disparities in the juvenile justice system.
- Provide safe and humane conditions of confinement for youth in state or local custody by prohibiting use of JJDP funds for dangerous practices, encouraging states to adopt best practices and standards to eliminate dangerous practices, and clarifying that isolation of longer than a few hours is a dangerous practice.
- Provide a research-based continuum of mental health and substance abuse services to meet unmet needs of court-involved youth and their families, including diversion and re-entry services.
- Ensure that programs and practices designed to address the needs of system-involved youth are both evidence-based and trauma-informed and reflect adolescent development principles.
- Ensure that confined youth receive high quality education aligned with state and local curricula, and that they receive supports for successful re-entry to school.
- Assist states in compliance with the JJDP by establishing incentive grants to encourage states to adopt evidence-based and/or promising practices that improve outcomes for youth and their communities. For states that are deemed to be out of compliance with any of the core protections, Congress should require any JJDP funds withheld for non-compliance to be set aside and made available to those states as improvement grants to help them with those particular protections.
- Enhance the partnership between states and OJJDP by expanding training, technical assistance, research and evaluation. Of particular importance is training to enhance the capacity of state and local courts, judges, and related judicial personnel to more effectively improve the lives of system-involved children and those at risk of becoming involved in the juvenile court system.
- Enhance the partnership between OJJDP and Congress by encouraging transparency, timeliness, public notice, and communication.
- Incentivize juvenile justice systems to ensure that all policies, practices, and programs recognize the unique needs and vulnerabilities of girls.
- Incentivize states to reduce the number of child welfare involved youth who cross over into the juvenile justice system by implementing best practices for cross-system

communication and collaboration between child welfare agencies and juvenile justice systems.

- Update provisions to ensure that all policies and practices protect youth from discrimination based on actual or perceived sexual orientation, gender identity, and gender expression, and incentivize juvenile justice systems to increase cultural competency to serve LGBT youth.