

- **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?**

Although *In re Gault*, secured for juveniles the same due process rights accorded to adults (with some exceptions such as jury trials), it did not modify the harsh practices employed by adults in their attempt to change behavior. These practices included the detention of youth within the sight and sound of adult inmates resulting in sexual and physical abuse of juveniles in custody, detention of status youth (minors charged with an act that would not be a crime if committed by an adult e.g. runaway, unruly, smoking tobacco, truancy), commitment of kids under the age of majority in adult facilities, and the over arresting of youth of color (what the JJDPa refers to as “disproportionate minority contact” or DMC).

Since the introduction of the JJDPa, we have witnessed considerable changes in how States respond to youth, including States enacting legislation to promote the four core protections of the JJDPa.

Specifically, the JJDPa has incentivized States to change the way they interact with kids in ways that have benefitted kids. For example, many States, such my State of Georgia, have enacted legislation prohibiting a juvenile to be housed in the same facility as an adult inmate and for good reason. Historically, youth confined alongside adults have been subjected to horrible victimization including physical and sexual assaults and sometimes resulting in death. The emotional and physical damage to these kids were devastating to their future and cost this nation substantial cost in economic value and health associated costs. Incidents of this nature in Georgia now occur only .00005 times a year thanks to the JJDPa.

The JJDPa core protection on the institutionalization of status offenders has been instrumental in helping States change their paradigm on how status youth should be handled. The primary function of this core protection is the prohibition of incarceration, which exacerbates the child’s already existing issues by increasing their risk of becoming delinquent.

States and local communities have sought out evidence based programs and practices to comply with the core protections. For example, many states have opted into the Annie E. Casey Juvenile Detention Alternatives Initiative (JDAI) which utilizes eight (8) core strategies to assist local communities to separate the sheep from the wolves that ensures the sheep are not shepherded into a harsh detention setting that aggravates their situation and makes them worse. These strategies have proven to reduce disproportionate minority contact (DMC) and promote the de-institutionalization of status offenders.

The incentives of the JJDPa having inspired States and local communities to develop best practices as resulted in improving public safety. How goes kids, so goes adults. The

more we focus on the front end to avoid making kids worse, the fewer adults we see in the criminal justice system later in life.

- **What would the impact be of a formal reauthorization of the program, rather than annual appropriations?**

It would provide a solid framework for system reform that can only occur if the framework is fiscally sustainable. A formal re-authorization expressly provides sustainability that is required if long-term reform is to occur. Since the expiration of the last re-authorization, States have difficulty developing a framework for reforms that promote the four core protections because States cannot plan beyond a year. Seeking the best outcomes around the four core protections requires as an essential element that of long-term planning, which cannot occur if States are forced to make immediate decisions on how to spend money they know they have now, but not sure if they will have it a year from now.

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

Congress must remove the Valid Court Order (VCO) exception. This exception did not exist in the original JJDP, but was subsequently removed after judges complained through the National Council of Juvenile and Family Court Judges (NCJFCJ). Ironically, NCJFCJ have changed their tune and passed a resolution supporting the removal of this exception. What we know today that we didn't know then is that incarcerating status offenders converts them to delinquents and increases the odds they will end up in the adult criminal justice system.

In anticipation of NCJFCJ vote on this resolution, I co-authored an article in the *Juvenile & Family Law Journal* directed at judges to reconsider their thoughts on the VCO. This article was distributed to the Board of Trustees of NCJFCJ prior to their vote. I am no longer on that Board of Trustees and have been told by my veteran colleagues on the Board that the article was helpful in their decision to pass the resolution. I have attached the article hereto for your reading. I believe it will provide more detail about this proposed change in the JJDP.

I am in agreement with the proposed amendments that include oversight and accountability of JJDP. I do want to caution Congress not to let the recent whistleblower claims of a few States manipulating data to ensure receipt of federal funding overshadow the excellent outcomes of most States who have worked diligently to comply with the core protections.

I also want to take this opportunity to point out that the whistleblower statements that JJDP for years has failed to penalize those States who were found out of compliance by removing 20% of their funding and forcing them to re-direct the remaining 80% to remedy the problem is not anything new to the world of juvenile justice. In other words,

there was no secrecy about this by OJJDP. I have been a juvenile court judge since 1999 and after 9/11 and funding was reduced, OJJDP changed its approach on how to handle States with compliance issues. Instead of taking the 20% immediately, OJJDP would place States on probation with conditions to fix the problem. This was viewed as a common sense approach in a world of dwindling funds that had OJJDP followed the letter of the law, it would have created more problems not beneficial to the best interest of juveniles around the core protections. In other words, the reduction in funding was so significant that removing 20% was no longer punitive—it was overkill.

Although he whistleblowers testified that the States ignored the core protections because they (States) knew that OJJDP would not take 20% of their funding, the reality was that States began to voice their concerns that diminished funding coupled with the expanded compliance universe caused the States to question whether it was worth the effort for so little funding. I know because I was president of the Georgia Council of Juvenile Court Judges in 2008-09 when the judges of my State questioned why we should comply with JJDP if the funds continue to dwindle.

Notwithstanding this historical framework, the amendments for oversight and accountability are necessary to ensure the JJDP is followed.

Also, I must stress the importance of including OJJDP to give States notice and an opportunity to comment before they expand the compliance universe. In the past, the compliance coordinator has issued rules expanding what will be inspected without any notice for comment from the States. This has created tremendous friction between the States and OJJDP—particularly their compliance coordinator.