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October 21, 2008

On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with hundreds of thousands of activists and members and 54 affiliates nationwide, we are recommending actions that the new president and the next Congress must take to reform the nation's broken juvenile justice system.

Youth coming into contact with our juvenile justice system can follow one of two paths - one leading to successful integration into our society and the other leading to the adult justice system. Removed from their communities and kept out of sight, people in the criminal justice system can easily become victims of government abuses of power. Within this group, juvenile suspects, defendants, offenders and prisoners are among the most vulnerable. Limited life experience and ignorance of their basic rights can make it difficult for youthful offenders to protect their own interests, and too often, juveniles forgo their rights without realizing that they have done so.

The ACLU has prioritized juvenile justice issues for many years. We have worked with our coalition partners to increase support for the Positive Behavior for Effective Schools Act, legislation sponsored by Senator Obama and Representative Hare that would enable schools to use Title I funds to implement proven evidence-based programs, such as Positive Behavioral Interventions and Supports, conflict resolution, mediation, and restorative practices to replace counterproductive "zero-tolerance" discipline policies in schools. We have been actively involved in challenging the "school to prison pipeline" and ensuring the adequacy of counsel for juveniles. Most recently, the ACLU and the ACLU of Massachusetts released a report written by Racial Justice Program senior staff attorney Robin Dahlberg on the overuse of pre-adjudication detention of children in Massachusetts entitled, "Locking Up Our Children."

The new president must support, and Congress must undertake, a legislative program to address the needs of youth coming into contact with our juvenile justice system. Sound public policy demands that any approach must be comprehensive in nature. Indeed, rather than relying on punitive measures, we must employ a broad-based approach that includes a commitment to prevention efforts, early intervention initiatives and community-based programs. As their guiding premise, these efforts must assume that our nation's children are worth saving and it is in the best interest of both children and society not to expose young offenders to the harsh realities of the adult criminal justice system.

The ACLU's recommendations for reforming our juvenile justice system can be viewed in three segments:

- Keeping children out of the criminal justice system;
- Protecting the rights of incarcerated children; and
- Reintegrating children into communities.

The new president and the next Congress have enormous power to establish and implement sound policies that will both rehabilitate our troubled youth while making our communities safer. It is time to abandon the “tough on crime” rhetoric in exchange for a crime policy that is “smart on crime.” We must move youth onto paths toward successful adulthood and avoid the simplistic counter-productive push to put more and more young people into prisons and jails across the country.

The recommendations highlighted in this document, while important, are not meant to be a comprehensive picture of our juvenile justice work. Rather, we have attempted to highlight issues critical to our goals in this area.

Please do not hesitate to contact Jennifer Bellamy if you have questions regarding this matter at (202) 715-0828 or jbellamy@dcacclu.org.

As always, thank you for your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Fredrickson', with a long horizontal flourish extending to the right.

Caroline Fredrickson
Director, Washington Legislative Office

A handwritten signature in black ink, appearing to read 'J. Bellamy', with a long horizontal flourish extending to the right.

Jennifer Bellamy
Legislative Counsel

Keeping Children Out of the Criminal Justice System

Youth coming into contact with our juvenile justice system can follow one of two paths - one leading to successful integration into our society and the other leading to the adult system. The Juvenile Justice Delinquency Prevention Act (JJDP A) has been a force for the former. In the coming year, the JJDP A will require strengthening and reauthorization to help keep youth from entering the system, to ensure young people receive age-appropriate treatment, and to guard against racial and ethnic disparities within the system.

End the disparity in punitive sentences given to youth of color (including transfers into the adult system)

A significant body of social science research has shown both that youth of color are overrepresented in our juvenile and criminal justice systems *and* that the two systems treat youth of color more harshly than similarly situated white youth. African American youth constitute 17 % of the national youth population, but represent an estimated 30% of all youth arrested, 43% of all youth detained in juvenile detention centers, 35% of all youth adjudicated delinquent, 40% of all youth committed to juvenile correctional facilities; and 62% of all youth prosecuted as adults.

Juvenile arrest statistics show that most African-American youth are arrested for non-violent crimes, such as disorderly conduct, drug abuse violations, violations of curfew and loitering laws and non-aggravated assaults. While white youth charged with similar offenses are frequently diverted from the justice system and referred to community-based service programs, African-American youth are almost twice as likely to be referred to juvenile court for prosecution as a delinquent.

For the last 20 years, the federal Juvenile Justice and Delinquency Prevention Act (JJDP A) has required states to address the disproportionate treatment of youth of color. The Act, however, is underfunded and ineffectively enforced. As a result, many states have failed to implement its mandates.

Recommendations:

- Amend the Juvenile Justice Delinquency Prevention Act to give states specific guidance on action steps to reduce racial disparities.
- Fully fund the JJDP A so that states can effectively implement these steps.
- Empower the federal Office of Juvenile Justice and Delinquency Prevention to monitor, in a meaningful manner, state compliance with the JJDP A.
- Support legislation like the Youth PROMISE Act to keep the focus on preventing gang membership and reject other gang-oriented legislation taking a more punitive approach.

Support evidence-based programs

Most American high schools do not offer effective drug education tailored to the needs of experienced teenagers, nor do they provide interventions to assist students struggling with abuse of alcohol and other drugs. Instead, they rely primarily on deterrent punishment for students who are caught violating the rules. Proponents of the “big four” consequences — exclusion from

extracurricular activities, transfer to another school, suspension, and expulsion — believe that harsh consequences for those who are caught will deter other students from committing similar offenses. These “big four” school punishments too often constitute the entirety of “drug prevention.”

However, research has shown that these punishments coupled with ineffective drug education are not likely to change students’ behavior and increase students’ likelihood of involvement with the criminal justice system. Rather than serving as an effective deterrent, the weak drug education and punitive school system often fosters resentment and oppositional behavior.

Current “science-based” programs are more sophisticated than earlier “just say no” programs, but are still based on questionable assumptions about the reasons so many teens experiment with drugs. Effective drug policies in our nation’s schools are needed to halt what has come to be known as the “school-to-prison pipeline.” (The “school-to-prison pipeline” refers to the policies and practices that push our nation’s schoolchildren, especially our most at-risk children, out of classrooms and into the juvenile and criminal justice systems. This pipeline reflects the prioritization of incarceration over education.)

Recommendations:

- Support passage of legislation along the lines of the proposed Positive Behavior for Effective Schools Act (S. 2111/HR. 3407, sponsored by Senator Obama and Representative Hare) and enable schools to use Title I funds to implement proven evidence-based programs, such as Positive Behavioral Interventions and Supports, conflict resolution, mediation, and restorative practices to replace counterproductive “zero-tolerance” discipline policies in schools. Zero-tolerance and other ineffective disciplinary practices negatively and disproportionately impact students of color and students with disabilities. We also urge support for quality cultural competency training for teachers.
- Eliminate ineffective programs sponsored by the White House Office of National Drug Control Policy (ONDCP), especially ONDCP’s Youth Media Campaign and student drug testing grants.

Protecting the Rights of Incarcerated Children

Ensure equal access to economically valuable prison education for girls

Girls – a disproportionate number of whom are African American or Latina, and most of whom are poor – represent a small but growing proportion of children entering the juvenile justice system. Children suffer interruptions in schooling during court processing and incarceration. Once incarcerated, children are deprived of adequate educational resources and are frequently steered away from achieving a high school diploma and toward the General Education Diploma (GED), which is easier and cheaper for juvenile justice agencies to provide.

Girls bear additional burdens because the numbers of incarcerated girls are smaller, girls in a particular institution may be of different ages, grade levels and aptitudes. Girls of varying levels and ages are often crowded into a single classroom, where grade level-appropriate instruction is abandoned in favor of “self-directed” study or a lowest-common-denominator approach (*See AMERICAN CIVIL LIBERTIES UNION & HUMAN RIGHTS WATCH, CUSTODY AND CONTROL: CONDITIONS OF CONFINEMENT IN NEW YORK’S JUVENILE PRISONS FOR GIRLS 81-82, 2006*). In addition, course offerings for girls embody archaic gender stereotypes and do not prepare girls to earn a living once

released. Commonly offered courses include cooking, hairdressing and clerical work, or even crocheting and other economically valueless crafts. Boys, in contrast, may be offered classes in automobile repair, building trades such as carpentry and plumbing, and other fields that are both stereotypically male and far more lucrative than traditionally female vocations.

Recommendations:

- Require independent audits of educational offerings in youth prisons by educational experts with authority to issue reports and recommendations for adequate schooling.
- Require youth prisons to provide an education comparable to the standard required for public school.
- Require youth prisons receiving federal funds to undertake Title IX compliance reviews to ensure equal schooling is offered for girls and boys in their custody.
- Require that vocational programs for girls offer the same courses as those offered to boys.

Ensure access to counsel and the courts

Youth are especially vulnerable to abuse in institutions, and so the need for court oversight if abuse occurs is particularly important. The recent revelation of widespread sexual abuse within the Texas juvenile system, in which boys and girls were sexually and physically abused by staff, is just one example of the potential for child abuse in unmonitored correctional institutions. Unfortunately the Texas scandal in which staff shackled their youth targets and threw them in isolation cells if they complained about abuse is not an unusual occurrence. Staff sexual and physical abuse and harassment of youth in custody has been an issue from New York to Hawaii. Because incarcerated youth are uniquely at risk for abuse and have never been a source of frivolous litigation, none of the restrictions in the Prison Litigation Reform Act should apply to these youth.

Recommendations:

- Support passage of legislation exempting youth from the litigation restrictions in the Prison Litigation Reform Act.
- Require youth prisons to provide competent attorney and paralegal advisors for children in custody. Such advisors must be independent of the institution and truly representative of the children's interests and sufficient in number so as to be reasonably available to any child wishing consultation.
- Require monitoring of all juvenile justice systems by independent, preferably non-governmental, legal watchdog agencies empowered to enter youth prisons and speak privately with incarcerated children.
- Require juvenile justice systems to implement regular know-your-rights sessions for incarcerated children, conducted by competent and independent legal advisors.

Finalize the Prison Rape Elimination Act (PREA) Standards for Juvenile Facilities

Finalizing the Prison Rape Elimination Act (PREA) standards would bring added protections to all youth in the juvenile justice system. The standards would also play a critical role in ensuring the safety and protection of children who are or are perceived to be lesbian, gay, bisexual or transgender (LGBT) in particular. These children are especially vulnerable to sexual harassment and abuse, both from staff and other children in the facility. As the PREA standards are finalized, the unique needs of this vulnerable population should be given very close scrutiny by, among other recommendations, ensuring cultural competence training for staff with respect to residents who are LGBT.

Recommendations:

- The administration should work with the National Prison Rape Elimination Commission to ensure that the juvenile facility standards are finalized, as well as inclusive of the unique needs of LGBT children in particular.
- PREA should be specifically funded in the next budget request in order to fully support implementation of the PREA standards in the states.
- The Attorney General should issue the national PREA standards as soon as practicable and the administration should ensure that states' implementation of the standards is closely monitored and penalties for non-compliance are enforced.

Reintegrating Children into Communities

Youth reentering society after incarceration may find that they are barred from working in certain professions or unable to obtain licensing in certain professions because of their juvenile justice records. In some cases, children receive training in a particular field while incarcerated only to learn upon release that they are barred from being licensed in that field. Moreover, juvenile adjudications can follow children for decades, hampering their ability to obtain employment and raising the likelihood that they will reenter the juvenile or adult criminal justice systems. The federal government can positively impact state juvenile justice systems by providing states with financial incentives to invest in good prevention and intervention programs, and by avoiding mandates that have an adverse impact on juveniles interacting with the system.

Recommendations:

- The federal government should provide financial incentives to states to enact measures to enable children to ensure that their adjudications are expunged from their records once they have been rehabilitated.
- The federal government should provide financial incentives to states to enact measures which forbid employers from asking about or considering juvenile offenses in making employment

decisions, and states should change licensing regulations and statutes to ensure that juvenile adjudications do not bar an individual from working in a particular profession.

- State and federal law should hold companies accountable that sell background checks or records reflecting expunged or sealed juvenile adjudications.