



WRITTEN STATEMENT OF
THE AMERICAN CIVIL LIBERTIES UNION

For a Hearing on

“Reviewing the Juvenile Justice System and How It Serves At-Risk Youth”

**Submitted to the Committee on Education and the Workforce
of the U.S. House of Representatives**

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I. Introduction

On behalf of the American Civil Liberties Union (“ACLU”), we submit this statement to the U.S. House of Representatives’ Committee on Education and the Workforce for its hearing: “Reviewing the Juvenile Justice System and How It Serves At-Risk Youth.” The ACLU has been our nation’s guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. The ACLU takes up the toughest civil liberties cases and issues to defend all people from government abuse and overreach. With more than a million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C., for the principle that every individual’s rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, disability, or national origin.

We applaud the Committee for holding this timely and important hearing. Members of Congress on both sides of the aisle have acknowledged that our nation must address criminal justice reform broadly. The national conversation around reducing mass incarceration must incorporate not only de-incarceration of youth, but also federal juvenile justice reform and decriminalization. In recent decades, our nation has taken a troubling step backward in our response to youth crime and misbehavior, adopting punitive “tough-on-crime” measures that have caused great harm and come at great costs. The creators of the juvenile justice system originally viewed it as a system for providing prevention, protection, and redirection to youth, recognizing that young people are still developing and should be given opportunities for rehabilitation. Yet it is now more common for juveniles to experience tough sanctions and adult-type punishments instead. Every year, authorities arrest almost 2 million juveniles,¹ and on any given day, nearly 60,000 youth under age 18 are incarcerated in juvenile jails and prisons in the United States.²

The increasingly punitive environment for youth is also apparent in our schools, where “zero-tolerance” policies have led to about 3.5 million student suspensions³ and 260,000 student referrals to law enforcement.⁴ These overly harsh disciplinary policies push students out of school and into the juvenile justice system. Suspended and expelled children are often left unsupervised and without constructive activities. They also can easily fall behind in their coursework, leading to a greater likelihood of disengagement and drop-outs. All of these factors increase the likelihood of court involvement.⁵

Without implementing juvenile justice reform, we cannot significantly reduce mass

¹ CHARLES PUZZANCHERA, U.S. DEP’T OF JUST., OFFICE OF JUV. JUST. AND DELINQ. PREVENTION, *JUVENILE ARRESTS*, 2008, (2009), available at <http://www.ncjrs.gov/pdffiles1/ojdp/228479.pdf>.

² Carrie Johnson, *Juvenile Incarceration Rates Are Down; Racial Disparities Rise*, NPR (Jan. 2, 2015), <http://www.npr.org/2015/01/02/374511130/juvenile-incarceration-rates-are-down-racial-disparities-rise-dramatically>.

³ DEP’T OF EDUC., *SCHOOL CLIMATE AND DISCIPLINE: KNOW THE DATA* (2015), available at <http://www2.ed.gov/policy/gen/guid/school-discipline/data.html>.

⁴ DEP’T OF EDUC., OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION, *DATA SNAPSHOT: SCHOOL DISCIPLINE 1* (Mar. 2014), available at <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf>.

⁵ American Academy of Pediatrics, Committee on School Health, “Out-of-School Suspension and Expulsion,” *PEDIATRICS* (Vol. 112 No. 5, Nov. 2003), p. 1207. See also: Johanna Wald & Dan Losen, “Defining and Re-directing a School-to-Prison Pipeline,” *NEW DIRECTIONS FOR YOUTH DEVELOPMENT* (No. 99, Fall 2003), p. 11.

incarceration. An Arkansas Division of Youth Services study found that incarceration is the single most significant factor in predicting whether a youth will offend again, more so even than poor family relationships or gang affiliation.⁶ Another study of Chicago youth processed by the Juvenile Court of Cook County found that “incarceration as a juvenile increases the probability of recidivism as an adult by 22-26 percentage points.”⁷ Importantly, research also shows that de-incarceration of youth works. One report looking at five states, including Arizona, Minnesota, and Tennessee, between 2001 and 2010 found no rise in juvenile crimes when these states reduced juvenile confinement by more than 50%.⁸

While policymakers are slowly returning to the original principles of juvenile justice,⁹ there remains an urgent need to reframe our responses to juvenile delinquency. Congress should change laws and policies so that states and local jurisdictions use youth jails and prisons sparingly and instead provide effective community-based services and supports to system-involved young people and their families. Congress should also promote positive approaches to school discipline and dismantle the “school-to-prison pipeline.” **We urge the Committee to consider the proposals outlined in this statement that move us away from a system of incarceration and toward one that not only holds youth accountable for their actions, but also provides a road map to put them back on track to becoming productive members of society.**

II. The School-to-Prison Pipeline and the Juvenile Justice System

The “school-to-prison pipeline” is a disturbing national trend wherein children are pushed out of schools and into the juvenile and criminal justice systems. Students of color and students with disabilities tend to be most affected because of an overreliance on discriminatory punitive school discipline policies and a lack of resources and training within schools.

The increased use of “zero-tolerance” policies and other exclusionary practices, like suspensions, expulsions and referrals to law enforcement, decrease academic achievement and increase the likelihood that students will end up in jail cells rather than in college classrooms.¹⁰ In many schools that employ zero tolerance policies, minor misbehavior is criminalized and police are called in to handle problems that should properly be handled by teachers or administrators. This misguided model of school security has serious negative implications for youth, impacting not only their immediate lives but also their futures by increasing the likelihood that they will drop out and/or experience future criminal justice involvement.¹¹ As a result, far

⁶ JUSTICE POLICY INST., THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES 4 (2013), available at http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf.

⁷ JUSTICE POLICY INST., STICKER SHOCK: CALCULATING THE FULL PRICE TAG FOR YOUTH INCARCERATION 22 (2014), available at http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker_shock_final_v2.pdf.

⁸ See Press Release, Justice Policy Institute, Five States Dramatically Reduce the Number of Youth in Juvenile Detention Centers (Feb. 27, 2013), <http://www.justicepolicy.org/news/4952>.

⁹ Christina Wilkie, *A Bill To Keep Kids Out Of Prison Has A New Lease On Life, Thanks To Conservatives*, HUFFINGTON POST (May 7, 2015), http://www.huffingtonpost.com/2015/05/07/youth-promise-act_n_7232340.html.

¹⁰ See *Disparate Impact in School Discipline Policies: Briefing before the U.S. Comm’n on Civil Rights* (March 11, 2011) (statement of the Leadership Conference), available at http://www.aclu.org/files/assets/Civil_Rights_Sign-On_Statement_for_USCCR_Record_on_School_Discipline_Briefing.pdf.

¹¹ See, e.g. TONY FABELO ET AL, BREAKING SCHOOLS’ RULES: A STATEWIDE STUDY ON HOW SCHOOL DISCIPLINE RELATES TO STUDENTS’ SUCCESS AND JUVENILE JUSTICE INVOLVEMENT, Council of State Governments Justice Center and The Public Policy Research Institute, Texas A&M University (July 2011); LINDA M. RAFFAELE MENDEZ, *Predictors of Suspension and Negative*

too many of the most at-risk students end up incarcerated instead of educated.

The burden of this trend falls disproportionately on students of color and students with disabilities, who are punished more harshly and more frequently for the same infractions that other kids commit.¹² In fact, there is no evidence that racial disparities in school discipline can be explained through higher rates of misbehavior by African American students.¹³

According to national data released by the Department of Education, African American students are 3.5 times more likely than their white peers to be suspended—and while they represented just 18% of the students in the sample, they accounted for 39% of expulsions.¹⁴ Of the total students arrested or referred to law enforcement nationally, 70% were Latino or African American.¹⁵ Students with disabilities are also subjected to overly punitive discipline practices at far higher rates than their peers.¹⁶ In fact, students with disabilities are more than twice as likely to receive one or more out-of-school suspensions.¹⁷ They are also far more likely to be victims of corporal punishment.¹⁸ And although they made up only 12% of the students sampled by the Department of Education in their most recent data collection, they made up 70% of those subject to physical restraints.¹⁹ As a result, they are at greater risk for the physical injury, emotional harm, and long-term adverse educational outcomes that can result. Many of the students within this group are also students of color, as they are disproportionately represented in certain special education classifications.²⁰

Furthermore, for girls and young women the school-to-prison pipeline can become the “sexual abuse-to-prison pipeline.” Research has shown not only that one in four American girls will experience some form of sexual violence by the age of 18, but also that sexual abuse is among the primary predictors of girls’ involvement with juvenile justice systems.²¹ As a result, girls, particularly girls of color, who are victims can become criminalized. However, systems are often ill-equipped to identify or treat the problem. Former Kentucky Department of Justice Commissioner Hasan Davis describes how children enter the system as victims of abuse and

School Outcomes: A Longitudinal Investigation, NEW DIRECTIONS FOR YOUTH DEVELOPMENT (No. 99 Fall 2003); Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, *Justice Quarterly* 23:4 (2006).

¹² Tamar Lewin, *Black Students Face More Harsh Discipline, Data Shows*, N.Y. TIMES (Mar. 6, 2012), http://www.nytimes.com/2012/03/06/education/black-students-face-more-harsh-discipline-data-shows.html?_r=1&hp; see also AMERICAN CIVIL LIBERTIES UNION & HUMAN RIGHTS WATCH, *IMPAIRING EDUCATION* 27 (2009), available at <http://www.aclu.org/human-rights/impairing-education-corporal-punishment-students-disabilities-us-public-schools> [hereinafter “Impairing Education”]

¹³ See DANIEL LOSEN & RUSSELL SKIBA, *SUSPENDED EDUCATION: URBAN MIDDLE SCHOOLS IN CRISIS*, 10 (September 2010), available at http://www.indiana.edu/~equity/docs/Losen_Skiba_Suspended_Education.pdf.

¹⁴ See Lewin, *supra* note 12.

¹⁵ DEP’T OF EDUC., OFFICE FOR CIVIL RIGHTS, *THE TRANSFORMED CIVIL RIGHTS DATA COLLECTION 2* (2012), available at <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf> (offering a snapshot of 2009-2010 national data) [hereinafter “CRDC 2012”].

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 3.

¹⁸ See DEP’T OF EDUC., OFFICE FOR CIVIL RIGHTS, *CIVIL RIGHTS DATA COLLECTION 2011-2012*, available at http://ocrdata.ed.gov/StateNationalEstimations/Projections_2011_12.

¹⁹ *Id.* at 5.

²⁰ U.S. COMM’N ON CIVIL RIGHTS, *MINORITIES IN SPECIAL EDUCATION: A BRIEFING BEFORE THE UNITED STATES COMMISSION ON CIVIL RIGHTS HELD IN WASHINGTON, DC, DECEMBER 3, 2007* 86 (April 2009) (statement of Hilary O. Shelton, Director of the NAACP Washington Bureau), available at <http://www.usccr.gov/pubs/MinoritiesinSpecialEducation.pdf>.

²¹ Timothy Williams, *History of Abuse Seen in Many Girls in Juvenile System*, N.Y. TIMES (Jul. 9, 2015), http://www.nytimes.com/2015/07/09/us/girls-in-juvenile-facilities-often-abused-report-says.html?_r=0.

neglect, only to later be locked up for running away from abusive homes as teenagers.²² In fact, between 75-93% of youth entering the juvenile justice system annually in the U.S. are estimated to have experienced some degree of trauma.²³ Yet, many state and local governments and juvenile detention centers lack education and training around trauma-informed responses and continue to use methods and punitive measures that may re-traumatize youth.

III. Impact of Punitive School Discipline Policies

Excessive disciplinary measures disproportionately impact African American, Latino, and students with disabilities and are particularly harmful for African American and Latino students.²⁴ For example, according to Department of Education data, African American students comprise 15% of students in the collected data, but are 35% of the students who receive one suspension and nearly half of the students (44%) who are suspended more than once.²⁵ Over 50% of students in school-related arrests or who are referred to law enforcement are black or Latino. Students with disabilities make up 14% of students in the collection, but are 76% of students who are physically restrained by adults in their schools. Harsh punishments are an ineffective means to reduce disciplinary problems, and they often lead to an unwelcoming—and, in some cases, unsafe—learning environment.

Examples of over-reliance on punitive school discipline and zero tolerance policies gone awry are too numerous to count. For example, by removing teachers' and administrators' discretion to make judgements about how to respond properly to student misbehavior, zero tolerance policies often result in punishments that range from the harsh, like the high school honors student suspended for singing in the cafeteria, to the absurd, like the six year old Cub Scout who faced a 45-day sentence at a reform school for bringing a camping utensil to lunch. When such punitive policies as suspension and expulsion are used, students are removed from the classroom, causing them to lose valuable learning time. This approach puts already troubled kids even further behind, and discourages students who had been performing well.

These tactics have only exacerbated the national dropout crisis. The latest national data released by the Department of Education indicates that just 71% of African American and 75% of Latino students graduated from high school in 2013, compared to 87% of their white classmates.²⁶

²² See Video of Hasan Davis, Former Commissioner, Kentucky Department of Justice, (Nov. 5, 2014),

<https://www.youtube.com/watch?v=IsOBMPUnOAO&feature=youtu.be&list=PLZpsALsFMJ4nBa7Pd7Cykzkl7oLPTA8r8>.

²³ JUSTICE POLICY INST., HEALING INVISIBLE WOUNDS: WHY INVESTING IN TRAUMA-INFORMED CARE FOR CHILDREN MAKES SENSE 1 (2010), available at http://www.justicepolicy.org/uploads/justicepolicy/documents/10-07_rep_healinginvisiblewounds_jj-ps.pdf.

²⁴ See KIMBERLE WILLIAMS CRENSHAW, PRISCILLA OCEN AND JYOTI NANDA, BLACK GIRLS MATTER: PUSHED OUT, OVERPOLICED AND UNDERPROTECTED (African American Policy Forum and the Center for Intersectionality and Social Policy Studies at Columbia Law University, 2015), available at

http://www.law.columbia.edu/null/download?&exclusive=filemgr.download&file_id=613546.

²⁵ DEAR COLLEAGUE LETTER, CATHERINE E. LHAMON, ASST. SEC'Y, OFFICE FOR CIVIL RIGHTS, DEPT. OF EDUC., AND JOCELYN SAMUELS, ACTING ASST. ATT'Y GEN., CIVI RIGHTS DIVISION, U.S. DEP'T OF JUST., NONDISCRIMINATORY ADMINISTRATION OF SCHOOL DISCIPLINE 3 (2014), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>.

²⁶ Press Release, Department of Education, Achievement Gap Narrows as High School Graduation Rates for Minority Students Improve Faster than Rest of Nation (Mar. 16, 2015), available at <http://www.ed.gov/news/press-releases/achievement-gap-narrows-high-school-graduation-rates-minority-students-improve-faster-rest-nation>.

IV. Recommendations for Federal Congressional Reform

A. Ending the School-to-Prison Pipeline and Enacting Juvenile Justice Reform

As children nationwide continue to be funneled into the juvenile and criminal justice systems at alarming rates, Members of Congress on both sides of the aisle agree that a federal response to reverse this trend is necessary. Keeping students in school and out of the criminal justice system will dramatically benefit not only students and their families, but the country as a whole. We urge the House to support the legislative proposals discussed below which would provide crucial protections for youth who are already involved with the juvenile and criminal justice systems and would also prevent youth from entering the system in the first place.

(1) Reauthorize the Juvenile Justice and Delinquency Prevention Act (JJDP A)

The Juvenile Justice and Delinquency Prevention Act (JJDP A) is the primary vehicle through which the federal government sets and enforces standards for state and local juvenile justice systems.²⁷ Supported by nearly 200 national, state, and local organizations,²⁸ the JJDP A recognizes the unique needs of youth in the criminal justice system and establishes federal standards—or “core requirements”—for protecting incarcerated youth from victimization and abuse. The JJDP A also provides direct funding to states that are compliant with these requirements, as well as for critical research, training and technical assistance, and evaluation. The JJDP A requires states to address disproportionate minority contact (DMC), or the over-representation of youth of color in the justice system. It also prohibits youth who are under the jurisdiction of the juvenile justice system from being held in adult jails and lock-ups, except in very limited circumstances, such as while waiting for transport to juvenile facilities. In these limited circumstances where youth are placed in adult jails and lock-ups, the Act provides “sight and sound” separation between adult and juvenile inmates. In addition, youth are still often detained for technical violations of court orders, and the JJDP A prohibits the detention of youth for these so-called ‘status offenses’ (like truancy and running away from home).²⁹

JJDP A reauthorization is necessary to strengthen its provisions and to ensure that programs funded through JJDP A continue to receive funding. Since its enactment in 1974 and last reauthorization in 2002, few substantive reforms have been made to strengthen the bill, which expired in 2007. For example, the JJDP A’s valid court order, or “VCO,” exception allows for the secure detention of youth with non-criminal offenses for a violation of a VCO and has significantly undermined the requirement to deinstitutionalize status offenses. The Senate has already introduced and passed out of the Judiciary Committee a bipartisan bill (S. 1169) that would address these issues and improve the original JJDP A. The reauthorization bill would phase out the VCO exception over three years and provide additional safeguards for status offenders in the interim, provide clear direction to states and localities on how to reduce racial

²⁷ Press Release, American Civil Liberties Union, ACLU Urges Senate Judiciary Committee to Close School-to-Prison Pipeline (July 31, 2008), available at <http://www.aclu.org/racial-justice/drug-law-reform/immigrants-rights/womens-rights/aclu-urges-senate-judiciary-committee>.

²⁸ *Endorsements for S. 1169*, Act 4 Juvenile Justice (Last updated Sep. 16, 2015), available at <http://act4jj.org/endorsements-s-1169>.

²⁹ Press Release, American Civil Liberties Union, House Hears Testimony On Juvenile Justice Legislation (Apr. 21, 2010), available at <http://www.aclu.org/racial-justice/house-hears-testimony-juvenile-justice-legislation>.

and ethnic disparities among incarcerated youth, include improved standards for detaining youth to ensure they are not held with or near adults, include new procedural safeguards to improve juvenile re-entry services, and include compliance and fiscal accountability measures. Furthermore, the JJDPa reauthorization bill directs states and localities to implement and promote “trauma-informed” programs and practices, which are more effective at rehabilitating youth and at reducing recidivism, particularly for girls.³⁰

Without reauthorization, the JJDPa could lose federal funding that allows programs at the state and local level to operate. In May 2015, the House Commerce, Justice, Science, and Related Agencies (CJS) appropriations bill that was voted out of Committee and passed in the House defunded juvenile justice programs.³¹ While the Senate Appropriations Committee then considered the proposal and approved \$75 million for mentoring, \$65.5 million for Title II of JJDPa, the primary federal funding mechanism for juvenile justice in recent years, \$40 million for Title V of JJDPa, and \$2 million for girls’ programming, JJDPa will continue to face similar threats without a reauthorized bill. We urge the Committee to quickly introduce and pass a companion bill modeled after the Senate bill reauthorizing JJDPa.

(2) Pass the Youth PROMISE Act (H.R. 2197)

The Youth Prison Reduction through Opportunities, Mentoring, Intervention, Support, and Education (“PROMISE”) Act (H.R. 2197),³² introduced by Ranking Member Bobby Scott (D-VA), seeks to curb youth violence and gang involvement by providing federal funding and support for community-based and evidence-based violence and delinquency prevention programs. Under the Youth PROMISE Act, local stakeholders from communities facing the most serious gang, delinquency, and crime challenges would work through PROMISE Coordinating Councils—comprised of parents, teachers, law enforcement officers, health and social service providers, and other community members—to identify and implement comprehensive plans designed to address the drivers of crime in that community and to keep youth from ever entering the criminal justice system. These plans can include after-school, mentoring, job training, and mental health treatment—all of which are more effective at cutting recidivism, lowering crime rates, decreasing delinquency, and yielding greater financial rates than traditional punitive methods. This legislation is community-driven, granting deference to best practices developed at the state and local level.

The Youth PROMISE Act has strong bipartisan support.³³ Currently, the bill has 41 co-sponsors, including four Members of this Committee. Last year, the Youth PROMISE Act had 141 co-sponsors, including twelve Members of this Committee.

Additionally, the Youth PROMISE Act is cost-effective and saves taxpayer funds. The current model of juvenile incarceration, costing states from \$50,000 to \$200,000 per bed each year, is economically unsustainable and has yielded poor results. In Minnesota, for example, the cost of confining one youth costs \$287 per day.³⁴ In 2010, Minnesota held 9,569 youth in a secure

³⁰ *Supra* note 23 at 10.

³¹ Commerce, Justice, Science, and Related Agencies Appropriations Act, 2016, H.R. 2578, 114th Cong. (1st Sess., 2015).

³² Youth Prison Reduction through Opportunities, Mentoring, Intervention, Support, and Education Act, H.R. 2197, 114th Cong. (1st Sess., 2015).

³³ *Supra* note 9.

³⁴ *Supra* note 7 at 11.

detention setting,³⁵ meaning that the state could have spent almost \$2,750,000 per day detaining youth. By contrast, community-based alternatives like those promoted in the Youth PROMISE Act could cost less than \$75 per day. Moreover, the Youth PROMISE Act would generate long-term savings by keeping youth out of the costly detention systems and redirecting them to cheaper and more effective alternative programs. The Pennsylvania Commission on Crime and Delinquency found that a program very similar to the Youth PROMISE Act saved, on average, \$5 for every \$1 invested in prevention. The evidence-based Youth PROMISE Act would also provide for analyses of the cost-savings to society yielded by investing in prevention and intervention rather than in far more costly prosecution and incarceration.

For these reasons, the Youth PROMISE Act has strong support from the law enforcement community, including the International Association of Chiefs of Police,³⁶ the Major County Sheriffs' Association, the National Sheriffs' Association,³⁷ as well as the faith and justice communities.³⁸ For example, Hennepin County (MN) Sheriff Richard Stanek, who served as the President of the Major County Sheriffs' Association in 2013, stated that the Youth PROMISE Act was “an important step toward greater collaboration in communities to strengthen prevention and intervention efforts targeting gang violence and at-risk youth. The bill’s focus on implementation of evidence-based programs aligns with smarter approaches in today’s criminal justice system.”³⁹

Congress should reject, once and for all, outdated and costly “tough on crime” practices that funnel more funds and young people – overwhelmingly African American and Latino – into the juvenile and adult criminal justice systems and should turn instead to intelligent yet compassionate legislation designed to divert at-risk youth from a life of institutionalization and to protect the youngest and most vulnerable members of society. We urge the Committee to hold a mark-up on H.R. 2197 and to pass it out of Committee.

(3) Pass Legislation Ending Juvenile Life Without Parole and Juvenile Solitary Confinement and Allowing for Juvenile Expungement

Congress should pass legislation that ends the over-incarceration of youth, through practices such as juvenile life without parole (JLWOP) and juvenile solitary confinement, and provides them with the tools they need to grow into healthy and productive adults. In this regard, we urge the House to look to the juvenile justice reform provisions included in the Senate’s Sentencing Reform and Corrections Act.

³⁵ MINN. DEP’T OF PUB. SAFETY, OFFICE OF JUSTICE PROGRAMS, ON THE LEVEL: DISPROPORTIONATE MINORITY CONTACT IN MINNESOTA’S JUVENILE JUSTICE SYSTEM 17 (2012), available at https://dps.mn.gov/divisions/ojp/forms-documents/Documents/On%20The%20Level_FINAL.pdf.

³⁶ Letter, Chief Yousry Zakhary, President, International Association of Chiefs of Police, to Senator Mary Landrieu and Senator James Inhofe (Nov. 20, 2013), available at <http://www.theiacp.org/Portals/0/documents/pdfs/IACP%20Support%20Letter%20Youth%20PROMISE%20Act.pdf>.

³⁷ Letter, Sheriff (ret.) Aaron D. Kennard, Executive Director, National Sheriffs’ Association to Senator Mary Landrieu and Senator James Inhofe (July 17, 2013), available at <https://www.sheriffs.org/sites/default/files/uploads/documents/GovAffairs/NSA%20Youth%20PROMISE%20Act%20Support-%20Senate.pdf>.

³⁸ *Organizations, Officials, and Experts Supporting the Youth PROMISE Act*, Youth Promise Action, http://youthpromiseaction.org/documents/Organizations_Officials_&_Experts_Supporting_YPA.pdf.

³⁹ Letter, Richard W. Stanek, President, Major County Sheriffs’ Association, to Senator Mary Landrieu and Senator James Inhofe (Aug. 2, 2013).

The Sentencing Reform and Corrections Act would eliminate juvenile life without parole. Children as young as 13 in the United States are sentenced regularly to spend the rest of their lives in prison without any opportunity for release. Approximately 2,500 children have been sentenced to juvenile life without parole (JLWOP) in the United States.⁴⁰ Despite a global consensus that children cannot be held to the same standards of responsibility as adults and despite recognition that children are entitled to special protection and treatment,⁴¹ the United States allows children to be treated and punished as adults. The United Nations special rapporteur on torture criticized the U.S. model of youth detention, stating that "sentences of an extreme length have a disproportionate impact on children and cause physical and psychological harm that amounts to cruel, inhuman or degrading punishment."⁴²

In recent years, the U.S. Supreme Court has begun to recognize the cruel and unusual nature of sentencing kids to remain behind bars until they die, holding that life without parole sentences for non-homicide offenses committed by persons below the age of eighteen are unconstitutional,⁴³ and then banning mandatory life without parole sentences for children who commit homicide offenses.⁴⁴ Following the Supreme Court's lead, some states have passed laws eliminating life without parole sentences for children, and some state supreme courts have retroactively and proactively banned the punishment for kids.⁴⁵ In Virginia, a federal court ruled this year that the state may not sentence juveniles convicted of offenses other than homicide to life without parole.⁴⁶ However, because the U.S. Supreme Court did not categorically ban the practice, life without parole sentences for kids are still allowed in "rare" cases, meaning that Americans may still be sentenced to die in prison for crimes they commit as children. Forty-four states still allow the punishment.⁴⁷ Federal legislation is necessary to end the practice completely. The Sentencing Reform and Corrections Act would also give judges discretion to reduce the sentence of a defendant convicted of an offense committed when the defendant was a juvenile once the defendant has served 20 years in prison for the offense.

The Sentencing Reform and Corrections Act would ban juvenile solitary confinement, with narrowly defined exceptions. Locking children alone in a cell for 22-24 hours a day is child abuse. The U.S. Department of Justice (DOJ) has stated that the "isolation of children is dangerous and inconsistent with best practices and that excessive isolation can constitute cruel and unusual punishment."⁴⁸ For youth, isolation is psychologically shattering,⁴⁹ places them at a

⁴⁰ THE SENTENCING PROJECT, JUVENILE LIFE WITHOUT PAROLE: AN OVERVIEW 1 (2015), available at http://sentencingproject.org/doc/publications/jj_Juvenile_Life_Without_Parole.pdf.

⁴¹ Brief of *Amici Curiae* Amnesty International, Et Al. In Support of Petitioners at 2, *Miller v. Alabama*, 567 U. S. ____ (2012) (No. 10-9646 and 10-9647), available at https://www.hrw.org/sites/default/files/related_material/10-9646%2010-9647%20amicus%20brief%201.2012.pdf.

⁴² Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, U.N. DOC. A/HRC/28/68 (Mar. 5, 2015) (by Juan E. Mendez), available at http://antitorture.org/wp-content/uploads/2015/03/Children_Report.pdf.

⁴³ *Graham v. Florida*, 560 U.S. ____ (2010).

⁴⁴ *Miller v. Alabama*, 567 U. S. ____ (2012).

⁴⁵ See e.g., Sarah Schweitzer & Michael Levenson, *Mass. SJC bars no-parole life terms for youth*, BOSTON GLOBE (Dec. 24, 2013), <https://www.bostonglobe.com/metro/2013/12/24/mass-high-court-strikes-down-life-without-parole-sentences-for-juveniles/eyJKrVSE2EXD0KF7wOXX5M/story.html>.

⁴⁶ Press Release, American Civil Liberties Union, ACLU of Virginia Applauds Ruling Abolishing Life Without Parole for Most Juvenile Offenders in Virginia (Jul. 7, 2015), available at <https://www.aclu.org/news/aclu-virginia-applauds-ruling-abolishing-life-without-parole-most-juvenile-offenders-virginia>.

⁴⁷ Map, The Campaign for the Fair Sentencing of Youth, Stand Up for Fair Sentencing (2015), available at <http://fairsentencingofyouth.org/get-involved/standing-up-for-fair-sentencing/>.

⁴⁸ Letter from Robert L. Listenbee, Administrator, US Department of Justice, to Jesselyn McCurdy, Senior Legislative Counsel,

higher risk for committing suicide,⁵⁰ and stunts their social and physical development.⁵¹ Moreover, solitary confinement can worsen existing health issues and trauma. Given the lasting damage that solitary confinement can inflict on youth, it's time to end the solitary confinement of youth and strictly limit and uniformly regulate isolation practices in juvenile detention and correctional facilities. Healthy human contact, positive reinforcement, small-group living, and immediate and proportional interventions, as well as interactive treatment programs, are more successful at preventing problem behaviors and addressing mental health problems in youth than isolation.

The Sentencing Reform and Corrections Act would permit certain juveniles to obtain sealing or expungement of their federal convictions in certain circumstances. Children who have committed crimes have great potential to grow. Thus, when youth make mistakes, the best approach is to focus on rehabilitating them so they can become productive members of society. A criminal record, however, can make it more difficult for a young person to start over. Allowing youth to seal or expunge their records helps ensure that they will not be haunted by their youthful mistakes as adults.

B. Reforming School Discipline Practices That Feed the School-to-Prison Pipeline

Providing all students with equal access to quality education in a safe, supportive environment is one of the most important civil rights challenges currently facing us as a nation. The following legislative proposals would not only put an end to many overly punitive discipline practices, they would help to reduce the discriminatory application of these practices and advance reforms that promote a safe and healthy school environment for *all* students. We urge the House to take up the following bills focused on reducing school discipline disparities:

- ***The Positive Behavior for Safe and Effective Schools Act.*** This bill would give schools the tools they need to improve learning environments by allowing schools to dedicate Title I federal funds to the development of school-wide positive behavior supports. Positive behavior supports are evidence-based practices demonstrated to reduce disciplinary referrals, suspensions and expulsions, increase academic achievement, and

American Civil Liberties Union 1 (Jul. 5, 2013),

https://www.aclu.org/sites/default/files/assets/doj_ojdp_response_on_jj_solitary.pdf.

⁴⁹ AM. CIV. LIB. UNION, ALONE & AFRAID: CHILDREN HELD IN SOLITARY CONFINEMENT AND ISOLATION IN JUVENILE DETENTION AND CORRECTIONAL FACILITIES 4 (2014), available at

<https://www.aclu.org/files/assets/Alone%20and%20Afraid%20COMPLETE%20FINAL.pdf>.

⁵⁰ Lindsay M. Hayes, DEP'T OF JUST., OFFICE OF JUV. JUST. AND DELINQ. PREVENTION, JUVENILE SUICIDE IN CONFINEMENT: A NATIONAL SURVEY (2009), available at <https://www.ncjrs.gov/pdffiles1/ojdp/213691.pdf>; Seena Fazel, Julia Cartwright, et al., Suicide in Prisoners: A systematic review of Risk Factors, J. CLIN. PSYCHIATRY 69 (2008); Christopher Muola, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SUICIDE AND HOMICIDE IN STATE PRISONS AND LOCAL JAILS (2005), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/shsplj.pdf>. Adults in solitary confinement also account for a disproportionate number of suicides among people in prisons. In California, for example, although less than 10 percent of the state's prison population was held in isolation units in 2004, those units accounted for 73 percent of all suicides. Expert Report of Professor Craig Haney at 45-46, n.119, *Coleman v. Schwarzenegger*, *Plata v. Schwarzenegger*, No. 90-0520 LKK-JFM P, No. C01-1351 TEH (E.D.Cal, N.D. Cal. filed Aug. 15, 2008); for information on adult suicide rates in jails and prisons, see generally MARGARET NOONAN & E. ANN CARSON, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISON AND JAIL DEATHS IN CUSTODY, 2000-2009 – STATISTICAL TABLES (2011), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/pjdc0009st.pdf> (providing detailed statistics on suicide rates nationally in adult jails and prisons).

⁵¹ *Supra* note 4 at 5.

improve school safety.⁵² Over 16,000 schools across the country are already implementing school-wide positive behavior supports (SWPBS).⁵³ This bill would make school climates more conducive to learning by helping to reduce reliance on suspensions, expulsions, and referrals to law enforcement, all of which contribute to the dropout crisis,⁵⁴ and enabling the Department of Education to provide more training and technical assistance on effective school discipline practices and to support the development of alternatives to over-policing.

- ***The Ending Corporal Punishment in Schools Act (H.R. 2268)***: The Ending Corporal Punishment in Schools Act (H.R. 2268) would prohibit the use of physical punishment at school⁵⁵—a practice still legal in 19 states.⁵⁶ The most recent national data available indicates that almost a quarter million students are the victims of this every year. Aside from the infliction of pain and the physical injuries which often result from the use of punishments, these violent disciplinary methods also impact students' academic achievement and long-term well-being. The use of corporal punishment is not only ineffective when it comes to improving behavior, but it can also cause children to withdraw academically and socially, leading to fear, depression, and anger. Furthermore, data shows that corporal punishment is applied at shockingly disproportionate rates against African American students and students with disabilities. For example, while African Americans made up 21.7% of public school students in states that allowed corporal punishment during the 2006-2007 school year, they accounted for 35.6% of those who were hit. Rates are similarly disproportionate for students with disabilities and evidence suggests that these students are often beaten for behavior that arises from their disabilities themselves. A federal prohibition on this destructive practice is long overdue. We urge the House to pass the Ending Corporal Punishment in Schools Act.⁵⁷
- ***The Keeping All Students Safe Act***: The Keeping All Students Safe Act (S. 2020) restricts the use of harmful restraint and seclusion practices in schools.⁵⁸ Currently, no federal laws restrict the use of restraint and seclusion in schools, and less than one-third of states limit the use of restraint and seclusion to emergencies involving an imminent risk of physical harm.⁵⁹ This is not an isolated problem. Data indicates that in the 2009-

⁵² Deborah J. Vagins, *Teach (and Treat) Our Children Well*, HUFFINGTON POST (Dec. 3, 2009), http://www.huffingtonpost.com/deborah-j-vagins/teach-and-treat-our-child_b_378794.html.

⁵³ Amy Norton, *Study gives school behavior program a good grade*, REUTERS, Oct. 16, 2012, available at <http://www.reuters.com/article/2012/10/16/us-behavior-program-idUSBRE89F17W20121016>.

⁵⁴ Letter from the Dignity in Schools Campaign to Members of Congress (Dec. 18, 2009), available at http://www.aclu.org/files/assets/PBSESA_-_Dignity_in_Schools_Campaign_HR_2597_Support_Letter_FINAL.pdf.

⁵⁵ The Ending Corporal Punishment in Schools Act, H.R. 2268, 114th Cong. (1st Sess. 2015).

⁵⁶ Yunji DeNies, *Should Your Child Be Spanked at School? In 19 States, It's Legal*, ABC NEWS, March 16, 2012, available at <http://abcnews.go.com/US/spanking-school-19-states-corporal-punishment-legal/story?id=15932135#.UL6PkFFAUTA> (These states are: Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Wyoming).

⁵⁷ Coalition Letter to Rep. Carolyn McCarthy (June 28, 2010), available at <http://www.aclu.org/human-rights-racial-justice/sign-letter-supporting-ending-corporal-punishment-schools-act>;

Press Release, Office of Rep. Carolyn McCarthy, Bill Banning Corporal Punishment in Schools To Be Introduced in Congress (Sept. 21, 2011), available at <http://carolynmccarthy.house.gov/recent-news/rep-mccarthy-introducing-bill-banning-corporal-punishment-in-schools/>.

⁵⁸ The Keeping All Students Safe Act, S. 2020, 112th Cong. (1st Sess. 2011), available at <http://www.gpo.gov/fdsys/pkg/BILLS-112s2020is/pdf/BILLS-112s2020is.pdf>

⁵⁹ JESSICA BUTLER, AUTISM NAT'L COMM., HOW SAFE IS THE SCHOOLHOUSE? AN ANALYSIS OF STATE SECLUSION AND RESTRAINT LAWS AND POLICIES 4 (2012), available at <http://www.autcom.org/pdf/HowSafeSchoolhouse.pdf>.

2010 school year alone, there were over 40,000 incidents nationally of students subjected to the use of physical or mechanical restraint.⁶⁰ Of these, students with disabilities were grossly over-represented, and students of color with disabilities even more so. Although African American students made up just 21% of students with disabilities under the IDEA, they made up 44% of students with disabilities who were subject to mechanical restraint.⁶¹ There is no evidence that the use of these techniques solves behavior problems. However, there is evidence that they have resulted in severe injuries and death for the students against whom they are used.⁶²

The Keeping All Students Safe Act would provide much-needed protections for all students, and particularly for students who are disproportionately impacted by these practices. It would prohibit the use of seclusion, mechanical and chemical restraint techniques, and physical restraints (with very limited exceptions). It would also require state-approved crisis intervention training and certification for school personnel, direct timing for debriefing sessions with parents, the involved students, and schools, and would provide grant funding for states to establish clear policies and procedures to meet these new standards, assist with data collection, and improve school culture by implementing school-wide positive behavior interventions and supports.⁶³

C. Supporting Administrative Reforms That Will Complement Congressional Proposals for Ending the School-to-Prison Pipeline

We also ask this Committee to urge the Administration to adopt the following reforms to end the school-to-prison pipeline and ensure that schools are held accountable for the success of all students.

- ***Civil Rights Data Collection***: The Department of Education’s Civil Rights Data Collection (CRDC) program compiles statistical information about the placement, treatment, and achievements of students in order to discover issues which have a discriminatory impact on particular groups. Recently, the Office for Civil Rights (OCR) has made significant improvements to its data collection efforts, including expanding requiring reporting data on school discipline practices, like corporal punishment and restraint and seclusion, as well as on the number of allegations of harassment and bullying based on sexual orientation. When OCR released portions of Part Two of its 2009 CRDC in 2012, the numbers provided much-needed insight into the serious disparities in punishments for students of color and students with disabilities, resulting

⁶⁰ Letter from American Civil Liberties Union to Rep. Tom Harkin and Rep. Mike Enzi, Chairman and Ranking Member of the Senate Health, Education, Labor and Pensions Committee (July 11, 2012), available at http://www.aclu.org/files/assets/aclu_letter_for_senate_help_comm_hrg_s_2020_keeping_all_students_safe_act.pdf [hereinafter “Restraint and Seclusion Letter”]

⁶¹ CRDC 2012, *supra* note 15, at 5.

⁶² See GREGORY D. KUTZ, GOVERNMENT ACCOUNTABILITY OFFICE, SECLUSIONS AND RESTRAINTS: SELECTED CASES OF DEATH AND ABUSE AT PUBLIC AND PRIVATE SCHOOLS AND TREATMENT CENTERS 5 (2009), available at <http://www.gao.gov/new.items/d09719t.pdf>; see also Restraint and Seclusion Letter, *supra* note 60.

⁶³ Restraint and Seclusion Letter, *supra* note 60.

from those students being pushed out of school and into the criminal and juvenile justice systems.⁶⁴

While the new data categories on punitive discipline, including referrals to law enforcement and school related arrests, were extremely helpful in piecing together a national picture of school discipline, the CRDC's success was hampered by the failure of a number of school districts to report certain data items adequately, with particularly poor reporting on law enforcement referrals and school-related arrests.⁶⁵ In the future, the Department of Education must ensure that all local education authorities (LEAs) understand and comply with mandatory reporting requirements, and are held accountable for failure to do so.⁶⁶ Going forward, it will also be important to preserve the advancements that OCR has made to this valuable process. In particular, OCR must have the resources and support to make the CRDC an annual and universal collection from districts. We also support federal legislation to codify the CRDC and ensure that it is made permanent.

- ***Strengthen the Department of Justice's Office of Juvenile Justice and Delinquency Prevention:*** Over the past decade, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) has suffered depletion of funding and support. Since 2002, funding levels for OJJDP have declined more than 90%.⁶⁷ This has halted progress in advancing reform and sends the message that federal leadership in juvenile justice is not a priority. We urge Congress to fully fund juvenile justice programs and provide OJJDP with the resources needed to help states create and sustain juvenile justice systems that are less costly, enhance public safety, and offer appropriate interventions for court involved youth.
- ***Reduce Over-Policing in Schools through the Federal Grant Process and Training:*** We support using the reduction of excessively harsh school discipline practices as a criterion for federal funding. States and localities that currently receive federal grants should be required to develop non-punitive alternatives to exclusionary school discipline policies such as over-policing, and ensure appropriate training for school police and personnel in developmentally appropriate tactics. Both schools and police departments should understand that the overuse and/or the racially disproportionate use of law enforcement to respond to student misbehavior could lead to reductions in federal funds. Schools that receive school climate grants should be required to report on the use of law enforcement and their plans for reducing reliance on police as well as any racial

⁶⁴ See Lewin, *supra* note 12; Deborah J. Vagins, *Counting On Us: Release of New Civil Rights Data Is the First Step in Helping Our Kids*, HUFFINGTON POST (Mar. 9, 2012), <http://www.aclu.org/blog/human-rights-racial-justice-lgbt-rights-religion-belief-reproductive-freedom/counting-us>.

⁶⁵ Comments from the American Civil Liberties Union to the Director of the Information Collection Clearance Division, *ACLU Comments for 2013-2014 and 2015-1016 Mandatory Civil Rights Data Collections*, 78 FR 72873, Docket ID number ED-2013-ICCD-0079 (Jan. 3, 2014), available at https://www.aclu.org/sites/default/files/assets/aclu_comments_to_dept_of_ed_ocr_on_2013_and_2015_civil_rights_data_colle...pdf.

⁶⁶ *Id.*

⁶⁷ See The Department of Justice, Office of Justice Programs Oversight: Hearing Before the Subcomm. on Crime, Terrorism and Homeland Security of the H. Comm. on the Judiciary, 110th Cong. 7 (2008) (statement of Shay Bilchik, former OJJDP Administrator), available at <http://judiciary.house.gov/hearings/pdf/Bilchik080918.pdf>.

disparities in arrests, citations, or tickets. Where the federal government identifies persistent overreliance on racial disparities, it should deny renewal grants until these problems are adequately addressed.

For example, in 2004, in Clayton County, Georgia, the juvenile court, concerned about increases in school referrals from law enforcement, convened leaders from the school district, the community, mental health professionals, and law enforcement. By making clear law enforcement is more appropriately used for safety as opposed to involvement in school discipline, Clayton County reduced court referrals of students by 70% and graduations rates increased 20%.⁶⁸

V. Conclusion

We thank Chairman Kline and the Committee on Education and the Workforce for holding this important hearing on the juvenile justice system. The most effective criminal justice reform is to keep the next generation out of prison in the first place, by reducing juvenile incarceration, implementing prevention and intervention methods for at-risk youth, and ending overly punitive and exclusionary discipline policies which interfere with children's access to quality education. By supporting legislative and administrative efforts to reduce overly punitive and discriminatory school discipline practices, Congress can help to end this cycle and give all of America's children the chance to succeed.

⁶⁸Donna St. George, *Judge Steve Teske Seeks to Keep Kids with Minor Problems Out of Court*, WASHINGTON POST, Oct. 17, 2011, available at http://articles.washingtonpost.com/2011-10-17/lifestyle/35280676_1_school-discipline-student-discipline-russell-skiba; see also Matt Cregor and Damon Hewitt, *Dismantling the School-to-Prison Pipeline: A Survey from the Field* 20 Poverty and Race 5, 6 (2011), available at http://www.naacpldf.org/files/case_issue/PRRAC%20journal%20Jan_Feb%202011-%20Dismantling_the_School-to-Prison_Pipeline.pdf.