

**Testimony of Robert G. Schwartz**  
**Executive Director, Juvenile Law Center**  
**House Crime Prevention and Youth Development Caucus**  
**September 17, 2014**

Juvenile justice goes through cycles of reform. The good news is that we are now at an upbeat moment. Today there is powerful public recognition of the science showing that teens are different: adolescent development is a unique time of experimentation and risk taking. It is also, as Dr. Laurence Steinberg tells us in his new book, *Age of Opportunity*, our last great opportunity to mold the futures of adolescents.

We also know more than ever about prevention and evidence-based programming. Ever since Del Elliott established the Center for the Study and Prevention of Violence, we have seen that there are programs and policies that can keep kids out of the juvenile justice system, reduce unnecessary placement of them when they are in the system, and reduce reoffending.

There is thus large agreement among many in our field-- researchers, practitioners, policy makers and advocates-- that youth need room to make and learn from their mistakes; that the justice system should not be used for minor misbehavior that is typical for teens; and that public safety can be maintained while giving youth opportunities to discover the people they will become.

Despite this emerging, bipartisan consensus, state juvenile justice systems are riddled with vestiges of a punitive past. Too many youth are still labeled “delinquent” for typical adolescent misbehavior. Too many youth are unnecessarily confined. Too many suffer life-long consequences from their involvement with the juvenile justice system.

There are several basic, interconnected challenges before you.

The first is how Congress can encourage states to divert youth from the system, through systematic decriminalization of minor misbehavior; and through enhancing the capacities of other public systems (such as schools) to teach youth how to behave. Another is increasing the chances that state systems are fair, proportional and developmentally appropriate.

Forty years ago, led by Senator Birch Bayh, Congress passed the Juvenile Justice and Delinquency Prevention Act (JJDPA). In addition to removing children from adult jails, the new law provided federal funds to states that eliminated status offenses from the jurisdiction of the juvenile court. JJDPA has been largely successful, but it has been remarkably underfunded. As a member for 21 years of Pennsylvania's State Advisory Group, which distributes JJDPA funds, I have seen the power of federal funding to serve as a catalyst for promoting positive outcomes.

The primary focus of the justice system has been on youth who commit "crimes"—that is, youth who engage in misbehavior that would constitute a violation of the state's criminal code. The cycles of juvenile justice reform have reflected different views of how to respond to crimes committed by teens.

In response to the punitive cycle of the early 1990s, the MacArthur Foundation in 1996 launched a Research Network on Adolescent Development and Juvenile Justice. The Network's insights led the U.S. Supreme Court nine years later to end the juvenile death penalty and ushered in a paradigm shift in thinking about kids and crime.

The Network's research has been bolstered by new findings in neuroscience that described ways adolescent behavior, specifically emotional regulation, is a function of the developing teenage brain. Collectively, the new knowledge has led to legislative reform like that in Connecticut and Illinois—which recently raised the age of juvenile court jurisdiction from 16 and 17 to the 18<sup>th</sup> birthday—and to case law that has reshaped juvenile justice in America. It is

fair to say that in 2014, social science, behavioral science, and neuroscience require that the law treat juveniles differently than adults.

Unfortunately, these cases and state law changes have not undone prior cycles of juvenile justice policy. Too many youth are still arrested for minor misbehavior. Schools still refer too many youth to juvenile court, hoping that the court will serve as the school's disciplinarian. Many juvenile justice facilities remain unsafe places. Juvenile records still impede youths' abilities to find employment, go to college, obtain housing, and enter the military.

For the vast majority of youth who misbehave, the tug-of-war over juvenile justice policy is largely about challenges that should frame Congressional action. What kind of youthful misbehavior should we criminalize? What should be the consequences of court involvement?

Advocates today celebrate states that are returning to an early 20<sup>th</sup> Century notion of juvenile justice, appropriately constrained by constitutional safeguards and fortified by new insights into adolescent development.

Congressional action is essential to accelerate the pace of reform that promotes prevention and recognizes adolescent differences while promoting public safety. These are very compatible goals.

### **Opportunities**

Juvenile justice advocates imagine a future that uses the juvenile justice system less. This means diverting youth from the system entirely. It means less frequent use of institutional care—through diversion from placement and enhanced reentry policies that reduce length of stay and recidivism. It involves having fewer life consequences for youth who are involved with the justice system.

The best way to divert youth from the system is to avoid criminalizing minor, typically adolescent misbehavior. Every day decision-makers refer some youth to the juvenile justice system, while directing others into different youth and family serving systems. Indeed, many youth in the four major youth-serving systems-- education, juvenile justice, child welfare, and behavioral health (which includes mental health and drug and alcohol services)-- are remarkably similar to one another, even though they may be assigned different labels. Youth can be referred to different systems based on their traits or conduct, or based on the traits or conduct of their parents, rather than by their needs or even the needs of society. Unfortunately, this sorting process often reflects disparities in class or race.

Many referrals to juvenile court come from schools, which refer special education students. Most of these referrals can be avoided through attention to developing and implementing the student's Individualized Education Program, especially the IEP's Behavior Management Plan.

The effort to stem school referrals is part of a larger effort to promote diversion from juvenile court. The MacArthur Foundation's Models for Change initiative has supported a cultural shift in which diversion is again in fashion. Diversion, which is a concept as old as the juvenile court itself, recognizes that many youth in the juvenile justice system do not need to be in it. Public safety can be achieved through other means that are just as effective at preventing crime while reducing stigma to youth and giving them opportunities to become adults who contribute to society. Diversion engages families. It saves dollars.

Done well, diverting youth entirely from the juvenile justice system can protect the public and effectively meet youths' needs. Many youth who enter the justice system have co-occurring behavioral disorders. Congress can support development of more refined screening and

assessment tools that will do more than assess risks; they will also address youths' strengths and needs and lead to services that divert youth who would otherwise be heading to juvenile court.

Youth who misbehave can often be helped with little more than a reprimand and referral to community-based services. Some communities do this informally. Others, like Miami/Dade County's Civil Citation Program, refer children who have committed a minor first-time misdemeanor offense to the Juvenile Services Department, where they receive an assessment and application of appropriate, targeted interventions without the stigma of an arrest. Youth are not arrested. Program participation is short-term. Upon successful completion of the Civil Citation Program no entry is made into criminal databases.

### **Diversion from Placement**

Diversion is about more than keeping youth out of the justice system. It also means reducing unnecessary use of institutional care. Since 1992, the Annie E. Casey Foundation has advanced this value through its Juvenile Detention Alternatives Initiative (JDAI). JDAI has shown how to advance public safety and save dollars while reducing the use of pretrial detention for youth charged with crimes.

Congress should support a reduction in what James Bell of the Burns Institute describes as America's "addiction to incarceration." A deinstitutionalization trend has begun in states like California, New York, and Texas, which have reduced the use of training schools for delinquent youth. Other states, like Illinois, Ohio, and Pennsylvania, have shown how fiscal incentives can reduce unnecessary out-of-home placement. Congress can promote the use of community-based services; and of smaller, friendlier facilities for youth who must be separated from their communities. Missouri has demonstrated that large congregate care programs for delinquents are not only counterproductive, they are unnecessary. Smaller programs, close to home and

family, that treat youth with respect, will increase the chances that youth leaving the system will become productive adults.

### **Smoother Reentry**

High quality reentry planning and programming are essential parts of the pathway to productive adulthood. The federal government invested in reentry through the Second Chances Act of 2007. Implementation of the federal law has largely been devoted to adult offenders; Congress can increase state attention to reentry of juveniles. Reentry is the combination of services, planning, support, and supervision that begins at disposition, continues while a youth is in placement, anticipates the youth's release from placement, continues until the youth is discharged from juvenile court supervision, and extends thereafter through connections to other opportunities, supports, and services. Done well, reentry reduces lengths of stay. It connects youth to caring adults, appropriate educational opportunities, and career and technical training. It ensures that youth have a safe place to live and continuity of health care. It is a "deep-end" prevention program.

### **Addressing New Barriers to Youths' Success**

The juvenile justice system exists to give youth better life chances than the criminal justice system. While there has been choppy progress in many state juvenile justice systems, too many recent laws establish unnecessary barriers to success at the same time as they purport to provide room for reform. The general public believes that juvenile courts are closed to the public; that juvenile records are sealed or expunged; and that being in juvenile court gives a youth a free pass to adulthood. All of these beliefs are wrong.

Juvenile records are rarely expunged. When expungement is available under state law, it is rarely automatic. Juvenile court involvement is hardly a free pass. There are “collateral consequences” to juvenile court adjudications that last well beyond a youth’s court involvement. Too many youth have records that haunt them for years. In some cases, these records will last for a lifetime. These records can impede youths’ ability to secure housing, get jobs, join the military, pursue higher education, or receive public benefits.

This is particularly important to the effort to end racial and ethnic disparities in the juvenile justice system. Because youth of color are more likely than their white counterparts to be arrested and convicted for youthful crimes, they are also more likely to carry the stigma with them well into adulthood. Thus, it is even more important to these youth that their pathway to mainstream success not be inappropriately impeded by juvenile records.

Nowhere is the hardship greater than for youth adjudicated delinquent for so-called sex offenses. A minuscule number of youth commit crimes of the sort that raise public alarm. Youth are not serial pedophiles and they are dissimilar from adult sex offenders; recidivism rates among juvenile sexual offenders are exceedingly low. And yet state and federal governments have enacted registration laws that shackle youth for life.

Congress should amend the Adam Walsh Act along the lines recommended in *Raised on the Registry*, published last year by Human Rights Watch.

The juvenile court has always tried to manage youth who are sexually active. That is one reason that the latest “status offense” is sexting. States have begun creating new crimes directed at minors who sext. Legislators have faith that the criminal law will deter teenagers from using technology to transmit sexually suggestive photographs. Their optimistic belief in the power of

the crimes code does little to promote wise adolescent behavior; it does, however, create a new class of young offenders.

### **Economic Benefits of Progressive Policies**

It has long been clear that effective delinquency prevention is sound crime control policy. Prevention programs teach youth to behave responsibly. They address problems that undermine pro-social behavior. A bonus is that research-based prevention programs are also cost-effective. You'll hear about those from other witnesses.

The good news is that the cost of converting systems from institutions to community-based services is relatively small. Juvenile Law Center and colleagues did a study 20 years ago that examined how debt financing might pay for deconstruction costs, much as it pays for the building of prisons and juvenile facilities. The surprising finding was that the cost of converting systems from institution- to community-based was relatively small. The kind of idea we promoted 20 years ago is fashionable today through Social Impact Bonds. The reality, however, is that converting systems from institution-based to community-based needn't involve a lot of money. With a relatively small appropriation, Congress can provide states with "deconstruction" funding that would bridge the cost of conversion.

In short, the juvenile justice system should be a last resort. When it must be used, it should avoid interventions that unnecessarily disrupt normal adolescent development; it should maintain or build connections with caring adults. The system should give youth opportunities to reform and provide them with the skills necessary to be contributing members of society. This means reducing collateral consequences of arrest and adjudication for delinquent acts. It means more opportunities to expunge juvenile records. It means avoiding the impulse to create new



crimes, like sexting or other technology based conduct .. And it means decriminalizing minor misbehavior that sends too many youth to the justice system.

DRAFT