

STATEMENT
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YOUTH FIRST! INITIATIVE
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Thank you for providing me the opportunity to testify today on behalf of the Youth First! Initiative. My name is Liz Ryan and I am the President and CEO of the Youth First! Initiative, a national campaign to end the incarceration of youth in youth prisons and reallocate resources to community-based alternatives to incarceration.

I'd like to start by highlighting a case of a youth in the justice system. Kalief Browder, a sixteen-year-old boy from the Bronx, was arrested in the spring of 2010 and accused of stealing a backpack.¹ He was automatically charged as an adult. He could not afford to pay the \$3,000 bail so he was held at the jail at Rikers Island. He was assigned a public defender and because of the backlogged and overwhelmed courts, he was at Rikers for three years awaiting trial. He was beaten and starved by guards. For a year during his stay at Rikers, he was placed in solitary confinement. In 2013 the charges were dismissed. After he was released, he struggled to go to school. His story became public last fall in a story in The New Yorker. He took his life on June 6, 2015.²

Kalief Browder's tragic death underscores the most pressing issues that we are facing in juvenile justice: Overuse of incarceration of youth in the justice system; The prosecution of youth in adult courts; and Unfairness, inequities, and racial and ethnic disparities in the juvenile justice system.

OVERUSE OF INCARCERATION OF YOUTH

In the U.S. on any given day, there are nearly 54,000 youth in a detention or correctional facility or other out-of-home confinement³; 4,200 youth are in adult jails⁴; and 1,200 youth are in adult prisons.⁵

Like Kalief Browder who was detained for taking a backpack, most youth who are detained or incarcerated in the justice system do not pose a serious threat to public safety.

For example, according to the latest data⁶ from the U.S. Department of Justice, three quarters of the youth incarcerated in the juvenile justice system are locked up for offenses that pose little to no threat to public safety such as probation violations, status offenses (e.g. running away, skipping school), property and public order offenses, and drug offenses. Only one in four youth placed in youth prisons and other out-of-home confinement in the juvenile justice system had committed any of the most serious violent crimes according to the violent crime index (e.g. aggravated assault, robbery, rape or homicide).

The abuse of youth in these facilities is well documented in news reports, lawsuits, studies and from incarcerated youth themselves.

Not a week goes by without a headline in a newspaper in the U.S. citing abuse of a young person in one of these facilities in the juvenile justice system. For example, this past month the tragic death of another youth, 14-year-old Andre Sheffield of Jacksonville, Florida, in the justice system made news. News coverage in Florida reported that six detention facility staff where Andre was held in Brevard County, Florida were disciplined in his death.⁷

The abuse of incarcerated youth is increasing according to a new report that documents an increase in the number of states where youth have been abused since 2000, from 22 states to 29 states.⁸ Youth face physical abuse, excessive use of force by facility staff, sexual abuse, over-reliance on isolation and restraints, staff on youth violence, and youth on youth violence.

Surveys⁹ of youth also validate these data reports. Incarcerated youth when surveyed by the U.S. Department of Justice showed that 42% of youth were somewhat or very afraid of being physically attacked, 45% said staff used force when they didn't need to, and 30% said staff place youth in solitary confinement or lock them up as discipline.

Youth are especially at risk of abuse in adult jails and prisons. Kalief Browder's case highlights this as Kalief was repeatedly attacked by guards. The National Prison Rape Elimination Commission (NPREC), established by the Prison Rape Elimination Act (PREA) reported¹⁰ in 2009 after a five year exhaustive study that "more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse."

Incarcerating youth breaks crucial family ties and penalizes families. Youth are often placed in facilities far from their families, with limited access and visits.¹¹ Families are often not included in the treatment plans for youth even though the research confirms that the most effective programs in juvenile justice draw on family strengths. Parents are often charged fees for incarceration of their children as every state allows, with most requiring, parents to be charged for

the cost of their children's incarceration.¹² Parents can be assessed fees even if a facility has been the subject of litigation.

Incarceration also puts kids further behind in school. Education for youth inside of correctional facilities often is not aligned with state curricula or quality standards as shown by a ground breaking study released by the Southern Education Foundation in 2014 that says, "The data shows that both state and local juvenile justice systems are failing profoundly in providing adequate, effective education in the south and the nation."¹³ Approximately two-thirds of young people do not return to school after release from secure custody.¹⁴

Removing youth from their homes and communities and placing them in correctional settings disrupts the healthy psychological development of youth by disconnecting youth from their parents or parent figures, from peers who model and value academic success and positive social behavior, and from participation in activities that require critical thinking and independent decision-making.¹⁵

By placing youth in correctional settings, research shows that it increases the likelihood that youth will reoffend. For example, recidivism rates for youth in youth prisons are very high: Within three years of release, around 75% of youth are rearrested and 45 to 72 percent are convicted of a new offense.¹⁶

Research demonstrates that incarcerating youth is iatrogenic. In other words, youth are worse off after being incarcerated. Research shows that once youth are detained, they are more likely to commit more unlawful acts, potentially leading to deeper involvement in the justice system. Incarceration in youth prisons is a significant predictor of involvement in the adult criminal justice

system as juvenile incarceration results in large increases in the likelihood of adult incarceration.¹⁷

The costs of detention and incarceration of youth are in the billions. Localities spend an estimated \$1 billion per year to detain youth in juvenile detention facilities, spending between \$150-\$300 per day to detain a youth and \$70,000 per year.¹⁸ States spend the vast majority of their juvenile justice funding on incarceration in youth prisons and other confinement settings, topping spending at over \$5 billion a year.¹⁹ On average, states spend \$88,000 per year or \$241 per day to place a youth, adjudicated delinquent into a youth prison or other out-of-home confinement. For the deepest end placements, states spend \$150,000 on average. Thirty-four states spend more than \$100,000 or more on the most expensive confinement option for a young person.²⁰

By contrast, community-based alternatives to incarceration could more effectively serve youth and at substantially less cost. Community-based programs cost \$75 per day in contrast to \$241 per day for incarcerating a young person.²¹ In one study²² more than 8 out of 10 youth remained arrest free and 9 out-of-10 were at home after completing their community-based program, at a cost that is a fraction of what it would have cost to incarcerate these youth. The findings highlight how high-need youth have been safely and successfully supported in their homes with the help of intensive community-based programs like Youth Advocate Programs, Inc. (YAP).

PROSECUTION OF YOUTH IN ADULT CRIMINAL COURT

A second pressing issue is the prosecution of youth in adult criminal court. Kalief Browder was one of the estimated 200,000 to 250,000 youth who are prosecuted in adult criminal court every year.²³

Contrary to popular perceptions, the overwhelming majority of youth who enter adult criminal court, and even those who are ultimately convicted, are not there for the serious, violent crimes. The national data show that as many as half of the youth transferred to adult court will be sent back to the juvenile justice system or not convicted at all.²⁴

For example, in a report²⁵ about youth in adult court in Baltimore, Maryland, the study that showed that 68% of youth charged as adults are either transferred back to the juvenile system or have their cases dismissed outright. These youth will have been held in adult jails for many months before being sent back to the juvenile justice system or not convicted.

The consequences of an adult conviction for a youth are serious, negative and life-long. Youth tried as adults face the same punishments as adults. Unfortunately in the majority of states across the country can be placed in adult jails pre- and post-trial, sentenced to serve time in adult prisons, or be placed on adult probation with few to no rehabilitative services. Youth also are subject to the same sentencing guidelines as adults and may receive mandatory minimum sentences or life without parole in non-homicide cases. The only consequence that youth cannot receive is the death penalty. When youth leave jail or prison, are on probation, or have completed their adult sentences, they carry the identical stigma as adults of an adult criminal conviction. They often have

difficulty finishing school or gaining access to a college education as they may be denied scholarship funding or admissions to universities.

An overwhelming body of research shows that prosecuting youth as adults does not work. The research demonstrates unequivocally that trying and sentencing children in adult court does not reduce crime; in fact, it does just the opposite. Trying youth as adults has both a detrimental impact on the youth tried as adults and decreases public safety.

For example, the federal Centers for Disease Control and Prevention (CDC) Task Force on Community Preventive Services examined every study on transfer policies that was in a published journal or had been conducted by a government agency, and the task force checked to make sure each study compared the same kind of youth charged with comparable offenses, recognizing that youth who are prosecuted in adult court may be charged with more serious offenses, or may have more serious backgrounds that make them different from youth in the juvenile system. The CDC review made sure that those factors were taken into consideration when it was doing its analysis.

After assessing all the research, the CDC task force recommended against laws or policies facilitating the prosecution of juveniles in the adult judicial system. Among the key findings of the report²⁶ were the following conclusions:

Prosecution of juveniles in the criminal justice system jeopardizes public safety because youth are more likely to commit additional crimes if prosecuted in the adult system. The task force found that juveniles prosecuted in the criminal system are approximately 34 percent more

likely than youth retained in the juvenile court system to be rearrested for violent or other crime.

Widening use of policies prosecuting youth as adults puts youth directly in danger because juveniles are often victimized in adult facilities, and are at a much higher risk for suicide. The review found that youth are 36 times more likely to commit suicide in an adult jail than in a juvenile detention facility.

The CDC review found insufficient evidence to support the “deterrence theory” used as a common rationale for expanded adult prosecution policies. The “deterrence theory” suggests that expanded adult prosecutions act as a general deterrent to prevent youth from committing crimes in the first place. The review found this not to be true, as well as finding no evidence to support a specific deterrence effect on youth who are tried in the adult system.

The task force thus concluded that to the extent that adult prosecution policies are implemented to reduce violent or other criminal behavior, available evidence indicates that they do more harm than good, and are counterproductive to reducing juvenile violence and enhancing public safety.

Further, the U.S. Department of Justice’s Office of Juvenile Justice and Delinquency Prevention (OJJDP) released a research bulletin²⁷ and the findings mirrored those in the CDC report also finding that laws that make it easier to transfer youth to the adult criminal court system have little or no general deterrent effect, meaning they do not prevent youth from engaging in criminal behavior.

Youth prosecuted in the adult system are more likely to be rearrested and to reoffend than youth who committed similar crimes, but were retained in the juvenile justice system. In addition, the report explored why youth have higher recidivism rates. Higher recidivism rates are due to a number of factors including:

Stigma and negative labeling effects of being labeled as a convicted felon.

A sense of resentment and injustice about being tried as an adult.

Learning more criminal behaviors from incarceration with adults.

Decreased access to rehabilitation and family support in the adult system.

Decreased employment and community integration opportunities due to a felony conviction.

After reviewing the research, OJJDP also concluded, “To best achieve reductions in recidivism, the overall number of juveniles prosecuted as adults in the criminal justice system should be minimized. Moreover, those who are prosecuted as adults in the criminal justice system should be chronic repeat offenders – rather than first-time offenders – particularly in cases where the first-time offense is a violent offense.”

The overwhelming consensus of professional organizations ranging from the American Correctional Association to the National Association of Counties is that youth should never be automatically prosecuted in the adult criminal court, youth charged with non-violent offenses and first-time offenders should not be prosecuted in adult criminal court, youth should be removed from adult jails and prisons, youth should be treated in a developmentally appropriate manner

throughout the justice system, and harsh sentences for youth such as mandatory minimums should be eliminated.²⁸

After an exhaustive year-long examination on best practices and approaches to reducing childrens' exposure to violence, the U.S. Attorney General's Task Force on Children Exposed to Violence recommended in 2012 that, "We should stop treating juvenile offenders as if they were adults, prosecuting them in adult courts, incarcerating them as adults, and sentencing them to harsh punishments that ignore their capacity to grow."²⁹

UNFAIRNESS, INEQUITIES, RACIAL & ETHNIC DISPARITIES

A third key issue underscored in Kalief Browder's case is the pervasive unfairness, inequities, and racial and ethnic disparities in the juvenile justice system.

According to the latest data from the U.S. Department of Justice, African-American youth make up only 17% of the nation's total youth population, but African-American youth constitute 30% of the youth arrested nationwide and 62% of all youth in the adult criminal justice system. African-American youth are 4.6 times more likely to be incarcerated than white youth.³⁰ Latino children, the fastest-growing segment of the American population, represent 23% of all children under the 18. At the same time, Latino youth are 40% more likely than white youth to be admitted to adult prison. Latino youth are 1.8 times more likely to be incarcerated than white youth.³¹ Native American youth are 3.2 times more likely to be incarcerated than white youth.³²

No where are these profound disparities seen more clearly than in the U.S. Department of Justice (DOJ) Civil Rights Division's three-year investigation into the operations of the Juvenile Court of Memphis and Shelby County Tennessee. DOJ found extensive racial disparities in the treatment of African-American children: African-American youth are twice as likely as white youth to be recommended for transfer to adult court. Of the 390 transfers to adult court in 2010 in Tennessee, approximately one half were from Shelby County, and all but two of the total children transferred were African-American.³³

These facts are often undermined by a false impression that youth of color commit more crime than white youth. That is simply not true. Results from self-report surveys indicate that white youth are in fact significantly more likely than youth of color to engage in delinquent behavior such as using drugs and alcohol.

Unfortunately racial and ethnic disparities in the incarceration of youth are increasing. Recent research shows that, "While the total number of incarcerated youth has declined in many states, the proportion of youth of color among all youth reentering court dispositions grew substantially between 2002 and 2012."³⁴

Unfairness and inequities in the justice system also extends to other youth populations such as girls, LGBT youth, and youth with disabilities.

Girls presence in the juvenile justice system has been steadily increasing - growing from 20 percent of arrests in 1992 to 29 percent in 2012 and from 15 percent of detentions in 1992 to 21 percent in 2011.³⁵ In 2011, 36 percent of girls' detentions in the US were for status offenses or technical violations of probation.

By comparison, 22% of boys were detained for status offenses and technical violations.³⁶

Additionally, research shows that LGBT youth are significantly over-represented in the juvenile justice system. LGBT youth represent 5 percent to 7 percent of the nation's overall youth population, but they compose 13 percent to 15 percent of those currently in the juvenile justice system.³⁷ LGBT youth are two times as likely to be detained for status offenses such as running away or skipping school, and LGBT youth face higher risks of detention or residential placement for numerous reasons such as courts' perceiving a lack of family support for youth.³⁸

Additionally, youth with educational disabilities (as defined in the Individuals with Disabilities Education Act) are overrepresented in the juvenile justice system at an alarming rate, with as many as 65-70% of youth in the system meeting the criteria for a disability, a rate that is more than three times higher than that of the general population.³⁹

OPPORTUNITY FOR REFORM

We have a unique opportunity for reform in juvenile justice because of the new research, the public's support, and the trends and political climate in the states.

There is now a rich body of research on adolescent development and evidence-informed programs that effectively reduce juvenile delinquency. The National Academy of Sciences (NAS) conducted an exhausted four year study on juvenile delinquency and their report on the research states that youth are

less able to regulate their own behavior in emotionally charged contexts, are more sensitive to external influences (e.g. peer pressure) and they show less ability to make judgment and decisions about the future.⁴⁰ This research underscores that youth have the capacity to change and are capable of rehabilitation as they are still growing and developing.

In addition to the research, the public strongly supports juvenile justice reforms. Recent public opinion polling shows that juvenile justice reform is strong across all political parties, regions, ages, gender and racial and ethnic groups.⁴¹ Polling also shows that the public strongly favors rehabilitation and treatment approaches, such as counseling, education, treatment, restitution and community service, over incarceration. The public also strongly favors involving youths' families in treatment, keeping youth close to home, and ensuring youth are connected with their families.⁴²

In the last decade, a number of states have enacted juvenile justice reforms to address these issues. These reforms have been led by a bipartisan group of state policymakers and been enacted in all regions of the country in the last decade. The National Conference of State Legislatures (NCSL) has documented a number of these reforms.⁴³

For example, nearly half the states have enacted reforms in the last decade to reduce the automatic prosecution of youth in adult criminal court, increase the age of criminal responsibility, and/or remove youth from adult jails and prisons. These states include Arizona, Colorado, Connecticut, Delaware,

Hawaii, Idaho, Illinois, Indiana, Maryland, Massachusetts, Mississippi, Nevada, Ohio, Oregon, Utah, Virginia and Washington.

In addition, a handful of states have enacted reforms to close youth prisons, remove youth from confinement in youth prisons, and reallocate resources to community-based alternatives to incarceration. These states include Texas, Ohio, California, New York, Alabama, and the District of Columbia.

These reforms have produced impressive results. In one study⁴⁴ on the impact of Texas juvenile justice reforms found that as a result, Texas slashed the number of youth locked in the state-run secure facilities by 61 percent between 2007-2012, and results for youth under community supervision are much better than those incarcerated. The Texas study found that youth incarcerated in state facilities are 21% more likely to be arrested and three times more likely to commit a felony than youth kept under community supervision.

This study underscores the opportunity to build on these trends and expand these bipartisan reforms in more states.

RECOMMENDATIONS

Congress could undertake a number of steps to prevent tragedies such as Kalief Browder's death and to ensure that the juvenile justice system is more effective, fair, and promotes the well-being of children.

The National Juvenile Justice & Delinquency Prevention Coalition (NJJDPC) has put forward a comprehensive set of recommendations⁴⁵ for Congress to consider, including:

(1) Accelerate state reforms by supporting states to shift their resources from incarceration to evidence-informed, community-based, non-residential alternatives to incarceration through technical assistance, training, research and resources;

(2) Reauthorize the Juvenile Justice & Delinquency Prevention Act (JJDP A) by strengthening the core protections for youth to eliminate the detention and incarceration of status offenders, ban the placement to youth in adult jails and prisons, and reduce racial and ethnic disparities;

(3) Support states in increasing the age of criminal court responsibility to age 18;

(4) Provide adequate resources for states to fully implement the JJDP A, to enact the Prison Rape Elimination Act (PREA), especially the Youthful Inmate Standard, and to catalyze other efforts to reduce the incarceration of youth, the prosecution of youth in adult court, and racial and ethnic disparities in the justice system; and

(5) Engage directly impacted youth and their families impacted by the justice system by establishing an independent National Technical Assistance Center on Family & Youth Engagement to provide support to state/local justice and child-serving agencies interested in expanding family engagement programs in juvenile justice, creating incentives for state and regional Parental Information Resource Centers to integrate support services for families involved in the justice system, and explicitly requiring the inclusion of family members on the Federal

Coordinating Committee on Juvenile Justice & the JJDPa required State Advisory Groups (SAGs); and

(6) Increase access to education for young people in the justice system, especially youth who are in correctional facilities and upon their reentry back into the community through the reauthorization of the Elementary and Secondary Education Act (ESEA) and reduce the negative impact of collateral consequences on the educational and employment opportunities for youth in the justice system by enhancing access to community college, post-secondary career and technical education, and four year college course work; reinstating Pell grants and the “ability to benefit” program to provide financial support and increased access to post-secondary education and technical/career training programs; and providing guidance, technical assistance, and training to instruct administrators for colleges and other post-secondary education and technical/career training programs about how to appropriately inquire and use information about juvenile and criminal-justice involvement for youth who are applying for entrance into these programs.

Altogether, these reforms would reduce the over-use of youth incarceration, prosecution of youth in adult court, and the unfairness, inequities and racial and ethnic disparities in the juvenile justice system and ultimately contribute to reduced state spending on ineffective solutions and to reduced federal prison spending.

I applaud this committee for considering these issues and am pleased to be a resource to this committee as you consider these issues and potential policy reforms on juvenile justice. Thank you for your time and consideration.

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