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Committee on Education and Labor
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Miller and Chairwoman McCarthy:

Thank you for the opportunity to provide additional comments to add to my testimony before the U.S. House of Representatives Education and Labor Committee, Subcommittee on Healthy Families and Communities.

Youth in Adult Facilities

Unfortunately, too many youth in America are exposed to the dangers of adult jails and prisons. On June 30, 2006, there were 2,364 juveniles in state prisons, a 7.1% increase since the year before. There were also 6,104 juveniles in adult jails – 4,836 were held as juveniles in the juvenile court system, and 1,268 were held as youth in the adult criminal system.¹ Adult facilities are often unsafe for other adults but because of their size and age, youth are especially vulnerable. A report by the Commission on Safety and Abuse in America's Prisons found that "violence remains a serious problem in America's prisons."² Sexual violence varies across systems and states, but almost every system experiences problems with sexual violence. According to a Bureau of Justice Statistics report, about 36% of the reported allegations of sexual violence in 2006 involved staff sexual misconduct; 34% inmate-on-inmate nonconsensual sexual acts; 17% staff sexual harassment; and 13% inmate-on-inmate abusive sexual contacts. This report also found that 13% of the victims of substantiated incidents of inmate-on-inmate sexual violence in jails were juveniles under the age of 18 – a surprisingly high percentage of victims. In contrast, youth under 18 were 0% of the perpetrators of sexual violence in jails.³

Youth are also particularly susceptible to suicide when placed in jails. According to another Bureau of Justice Statistics report, *Suicide and Homicide in State Prisons and Local Jails*, jail inmates under 18 had the highest suicide rate (101 per 100,000) of all inmates. While the most common cause of death for jail inmates over 18 is illness, that is not true for youth. A few other facts are particularly important to note from that study. First, jail inmate suicides were heavily concentrated in the first week spent in custody (48%). Almost a quarter of all jail suicides took place either on the day of admission to jail (14%) or the following day (9%). Second, of all offender groups, public-order

offenders spent the shortest time in custody prior to committing suicide; half of their suicides took place in the first three days of custody. Finally, rates of inmate suicide were closely related to jail size, with the smallest facilities recording the highest suicide rates.⁴ These findings are particularly relevant to the reauthorization of the Juvenile Justice and Delinquency Prevention Act (JJDP A) because many people do not realize that youth held in jails for even very limited periods of time are at a great risk of suicide. These findings support my recommendation to extend the core protections to cover youth in the adult system as well.

Conditions of Confinement

The first national survey of juvenile facilities conducted in 1990-92 by Abt Associates for the Office of Juvenile Justice and Delinquency Prevention, found that children were repeatedly held in short-term isolation (one to 24 hours) with many youth being isolated for more than 24 hours; youth frequently were suicidal and were not given appropriate treatment. Unfortunately those abusive practices have not yet ended.

Six years ago state officials closed the South Dakota State Training School after federal litigation by the Youth Law Center revealed that staff regularly sprayed confined youth with pepper spray, chained them by their wrists and ankles to the four corners of their beds, and locked them in their rooms for days and weeks at a time. More recently, the Special Litigation Section of the Civil Rights Division of the U.S. Department of Justice has found horrendous restraint, isolation, and use of force practices in state facilities in Louisiana (staff “hog-tied” youth, physically beat youth, used mace on youth); Mississippi (staff “hog-tied” youth, shackled girls to a pole, kept girls in “dark room”); and other states.⁵ Earlier this year, an investigation of Texas Youth Commission facilities revealed more than 2,000 complaints of abuse in over 50 facilities. Unfortunately, the Texas Youth Commission has declined to follow the recommendations of a commission created to investigate the abuses and has proposed increasing the use of pepper spray at its facilities. The JJDP A should send a clear signal to juvenile justice facilities nationwide that such practices are unacceptable.

In reauthorizing the JJDP A, Congress has the opportunity to include prohibitions on the use of some especially dangerous practices. These include use of chemical agents; use of pain compliance techniques; hitting, kicking, striking, or using chokeholds or blows to the head; use of four- or five-point restraints, straightjackets, or restraint chairs; tying or placing in restraints in uncomfortable positions; periods of excessive isolation; restraining to fixed objects; restraining in a prone position or putting pressure on the back; using physical force or mechanical restraints (including shackling) for punishment, discipline, or treatment; and use of belly belts or chains on pregnant girls. These recommendations are based on the recommendations of experienced attorneys, physicians, and psychologists who have seen such practices firsthand in states throughout the country. The recommendations are in keeping with national standards for conditions in juvenile detention facilities created by the Annie E. Casey Foundation for its Juvenile Detention Alternatives Initiative. The standards include the combined insight of 15

national experts, myself included, as to effective best practices for safe and humane juvenile facilities.

In addition, states should be encouraged to create independent monitoring offices with authority to investigate and seek remedies of harmful conditions in their juvenile facilities through the use of incentive grants. Establishing independent state monitoring authorities with sufficient power to make necessary changes where harmful practices are found could significantly improve the quality of conditions in facilities nationwide. Currently there is only one main agency available to investigate and remedy such abuses. The Civil Rights Division of the Justice Department is been able to pursue some investigations under the Civil Rights of Institutionalized Persons Act. Private, nonprofit legal advocacy organizations such as the Center for Children's Law and Policy, Youth Law Center, and National Center for Youth Law, who have historically improved conditions of confinement through litigation, have been hampered by procedural and other obstacles in the Prison Litigation Reform Act. The Office of Juvenile Justice and Delinquency Prevention of the Justice Department has no authority, experience, or expertise to conduct such investigations. The Prison Rape Elimination Commission focuses on one portion of the problem – sexual abuse of inmates in adult and juvenile facilities - but has no authority to conduct individual investigations or pursue remedial litigation.

Mental Health Services

The U.S. Surgeon General has found that debilitating mental disorders affect one in five U.S. youth, but access to effective treatment is often limited. In July 2004, Rep. Henry A. Waxman and Sen. Susan Collins released the results of a national survey of juvenile detention facilities that assessed the inappropriate detention of youth with mental illness. The survey found that without access to treatment in the community, many mentally ill youth were warehoused in detention facilities, even if they did not have any criminal charges pending against them. Criminal justice and juvenile justice agencies across the nation need to use more diversion programs to ensure that people with mental illness are not unnecessarily criminalized. Diversion programs provide an alternative to incarceration by linking individuals to community-based mental health and substance abuse services, housing, medical care, income supports, employment and other necessary services. With appropriate diversion programs in place, youth with mental illness can get the appropriate services they need without ending up in the juvenile or criminal justice systems.

In well-run juvenile justice agencies, youth are screened upon arrival at secure facilities to identify the need for further evaluation for mental illness, and to ensure that any mental health needs that require immediate attention, such as suicidal youth and youth on psychotropic medications, are identified and their needs promptly met. However, some facilities have not adopted systems to identify youths' needs, and many more are unable to provide adequate services due to insufficient staffing.⁶ For many youth with serious mental illness, a juvenile detention center or correctional institution will never be able to meet their treatment needs. Those youth should be served in more

appropriate settings such as community and residential treatment centers. In fact, youth who have not previously experienced mental illness often develop mental disorders while in secure confinement. A recent report by the Justice Policy Institute, *The Dangers of Detention: the Impact of Incarcerating Youth in Detention and Other Secure Facilities*, found that placing youth in secure confinement itself caused mental distress. For one-third of the incarcerated youth with depression, the onset occurred after they were incarcerated.⁷

The JJDPA could help address these problems by providing incentives or requiring states to ensure that youth who cannot be served appropriately in secure juvenile facilities are diverted to more appropriate sites for their care. In addition, adequate mental health staffing to promptly and effectively treat youth in crisis and those with long-term treatment needs could be required of all states. The combination of diverting youth who cannot be treated in secure juvenile justice settings combined with ensuring timely and appropriate treatment for those who remain would have important effects on the safety of youth both with and without disabilities.

Education

Approximately 36% of youth involved in the juvenile justice system are estimated to have learning disabilities,⁸ yet staff of facilities often fail to identify these needs. Youth come to juvenile justice with a high incidence of school failure and truancy, in many cases because schools have failed to identify and meet their educational needs.⁹ School failure, disability, and ethnic minority status combine to put children and youth at risk for involvement with the juvenile justice system.¹⁰

Once incarcerated, youth are, literally, “captive audiences.” Facilities have the opportunity to nurture school success in a time when attendance is both required and enforceable, and can be excellent places to meet youths’ educational needs. Unfortunately, facilities often fail to identify youth with disabilities, and they frequently lack resources to meet their needs. Facilities also are faced with a wide range of abilities, from first grade level readers to college-level youth. Common problems at facilities include failure to provide meaningful access to the curriculum for limited English speakers, failure to hold school for sufficient hours per day, and failure to provide sufficiently challenging work for more highly achieving youth.

Additional challenges face youth returning to their home communities. Frequently, systems do not sufficiently plan for youths’ return to their home schools, so they experience educational disruption when they are released. They often lose credit for the work they did while incarcerated when facility schools fail to transfer records to youths’ home school systems. Increased communication and planning for youths’ re-entry to their communities can greatly increase their likelihood of success.

A first step in the process of correctional education reform would be requiring minimum standards for educational programs in juvenile detention and confinement facilities that approximate those in public school programs. Federal agencies could propose incentives for states and local jurisdictions that achieve and maintain minimum

standards for the operation of correctional educational programs. Agencies could develop a pilot program that involves technical assistance and support as states apply for and meet accreditation standards.¹¹ Congress could choose to address some of these failures through the JJDPA by requiring the development of minimum standards for educational programs in juvenile detention and confinement facilities that approximate those in public school programs. The JJDPA could also include incentives for states that achieve and maintain minimum standards in their correctional educational programs. OJJDP, in partnership with other federal agencies, could provide technical assistance and support as states increase their capacity for effective correctional education programs.¹²

Sincerely,

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Chief of Health Services

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[Your Name]

[Title]

¹ Bureau of Justice Statistics, *Prison and Jail Inmates at Midyear 2006*, June 2007.

² Gibbons, J.J., & Katzenbach, N.B. (2006, June). *Confronting Confinement*. The Commission on Safety and Abuse in America's Prisons.

³ Bureau of Justice Statistics, *Sexual Violence Reported by Correctional Authorities, 2006*, August 2007.

⁴ Bureau of Justice Statistics, *Suicide and Homicide in State Prisons and Local Jails*, August 2005.

⁵ See U.S.D.O.J. Findings Letters, <http://www.usdoj.gov/crt/split/findsettle.htm#CRIPAletters>.

⁶ *Detecting Mental Disorder in Juvenile Detainees: Who Receives Services*, Linda A. Teplin, et al. 95(10) *Am. J. Public Health* 1773 (Oct., 2005), available at: <http://www.ajph.org/cgi/content/abstract/95/10/1773>.

⁷ Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*.

⁸ Pamela Casey and Ingo Keilitz, *Estimating the Prevalence of Learning Disabled and Mentally Retarded Juvenile Offenders: A Meta-Analysis*, in UNDERSTANDING TROUBLED AND TROUBLING YOUTH 82-101 (P.E. Leone ed. 1990), pp. 89-94.

⁹ Foley's extensive review (2001) of the research on the academic characteristics of incarcerated youth found that in general: (a) their intellectual functioning has been assessed at the low-average to average range; (b) their academic achievement levels range from fifth to ninth grade; (c) they have significant deficits in reading, math, written language, and oral language compared with non-incarcerated students; (d) those who recidivate have significantly lower levels of intellectual and academic functioning than those who do not; and (e) school failure is a common experience. Foley, R. M. (2001). Academic characteristics of incarcerated youth and correctional educational programs: A literature review. *Journal of Emotional and Behavioral Disorders*, 9, 248-259.

¹⁰ Peter E. Leone, et al., *School Failure, Race, and Disability: Promoting Positive Outcomes, Decreasing Vulnerability for Involvement with the Juvenile Delinquency System*, The National Center on Education, Disability, and Juvenile Justice, pp. 2-5, available at http://www.edjj.org/Publications/list/leone_et_al-2003.pdf.

¹¹ Peter E. Leone & Sheri Meisel, *Improving Education Services for Students in Detention and Confinement Facilities*, a publication of EDJJ: The National Center on Education, Disability, and Juvenile Justice, available at http://www.edjj.org/Publications/list/leone_meisel-1997.html.

¹² Peter E. Leone & Sheri Meisel, *Improving Education Services for Students in Detention and Confinement Facilities*, a publication of EDJJ: The National Center on Education, Disability, and Juvenile Justice, available at http://www.edjj.org/Publications/list/leone_meisel-1997.html.