



**REMARKS OF ROBERT L. LISTENBEE
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*REMARKS AS PREPARED FOR DELIVERY***

Good morning. I'd like to thank Dr. (Juan) Sanchez and the board for inviting me to speak today.

It's my pleasure to be here this morning to talk about our nation's use of incarceration for young offenders and what we can do to reduce our reliance on the practice.

I know this is a topic of keen interest to your organization and it is a priority for our office.

Today, I want to touch upon three topics:

1. OJJDP historic role in reducing incarceration of youth and our support for alternatives to launching young people into the juvenile justice system.
2. OJJDP's focus on system reform.
3. The lasting impact of incarceration on youth and the value of reducing our reliance on locking kids up.

OJJDP's historic role

For those of you who are not familiar with OJJDP, I would like to talk for a moment about who we are and the work we do.

Congress has charged our office with two primary areas of responsibility. First, we must address the needs of youth who come into contact with the juvenile justice system and those who are at risk for becoming involved with the system. At the same time, we must protect children in America who are victims of abuse, violence, and crime.

We are a small office, but we are the only component within the Department of Justice who works solely with children and youth. Historically, OJJDP has played a leading role in reducing our over-reliance on incarceration.

Congress created OJJDP in 1974 through the passage of the Juvenile Justice and Delinquency Prevention Act. Since its passage, the JJDP Act has changed the way states and communities deal with troubled youth.

The original goals of the Act and OJJDP were simple: To help state and local governments prevent and control juvenile delinquency and to improve the juvenile justice system.

A second and equally important focus of the JJDP Act is to protect youth in the juvenile justice system from inappropriate placements and from the harm—both physical and psychological—that young offenders can experience when they are exposed to adult inmates.

Yet another important element of the Act emphasizes the need for community-based treatment for juvenile offenders.

In passing the JJDP Act, Congress recognized that keeping children in the community is critical to their successful treatment. Within the JJDP Act, there are four core requirements that form the basis of OJJDP's working relationship with the states.

Participating states and territories must comply with the four core requirements to receive Formula Grant funding from OJJDP.

The four core requirements are:

Deinstitutionalization of status offenders (DSO).

- That is, you can't lock up juveniles for behavior that would not be considered criminal if committed by an adult.

- Status offenses include possession of alcohol or tobacco, truancy, running away from home, or “ungovernable” behavior.

Separation of juveniles from adults in locked facilities.

- If you must hold juvenile in a jail or detention center, you must keep them out of sight and sound contact with adult prisoners at all times.

Removal of juveniles from adult jails and lockups.

- You can’t lock up juveniles in adult jails or detention centers.

Reduction of disproportionate minority contact (DMC), where it exists.

- States must develop and implement plans to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system.
- The goal is to ensure equal and fair treatment for every youth in the juvenile justice system, regardless of race and ethnicity.

States must visit and collect information from facilities to demonstrate compliance with the JJDP Act. Every year, each state submits a compliance monitoring report to OJJDP.

The report provides compliance data and a detailed description of how the state is meeting the core requirements.

Since the JJDP Act was enacted in 1974:

- Detention of status offenders has fallen 97 percent.
- The instances of youth being held with adults have declined 98 percent.
- And the instances of youth being held in adult jails and lockups have decreased 97 percent.

As of 2011, every state participating in OJJDP's Formula Grants program was found in compliance with the requirements to reduce racial and ethnic disparities in their juvenile justice systems.

Nothing exemplifies what we have achieved through our joint efforts with the states than our work together to address DMC.

The good news is: Over the past decade, states and localities, with assistance from OJJDP, greatly expanded their efforts to identify and assess DMC.

Despite these efforts, though, DMC remains pervasive at all decision points within the juvenile justice system. Examination of recent data show:

- All minority youth were arrested at almost twice the rate of white non-Hispanic youth in 2008.
- African American youth had the highest arrest rate; they were arrested at more than twice the rate of white non-Hispanic youth.
- American Indian and Alaskan Native youth had the highest rate of transfers to adult court of all minorities, at almost twice the rate of white non-Hispanic youth.

We continue to work closely with the states to assess their juvenile justice systems to help them determine where DMC is occurring, to evaluate the problem, and to develop solutions to eradicate disparities.

Unfortunately, it is a problem that we cannot solve overnight. Our efforts to address disparities in placement also extend into our programmatic development. I would like to speak for a few minutes on a DOJ and OJJDP strategic priority: the Supportive Schools Discipline Initiative.

As many of you know, over the last three decades, there's been literally a sea-change in the way school discipline is meted out. In the 1980s, many schools adopted zero-tolerance policies that require the use of specific disciplinary measures—many of them severe and punitive—to improve school safety. These policies were originally designed to make sure that students did not bring weapons to school.

But school districts have expanded the net to include disruptive behavior, swearing, inappropriate dress, and many other non-violent, non-serious infractions.

As a result, millions of U.S. public school students from kindergarten through the 12th grade are suspended or expelled every year.

The Council of State Governments recently released study findings of evaluations of the discipline practices in 7 Texas school districts that proved beyond any doubt something we've all suspected for a long time.

The excessive and inappropriate use of suspension, expulsion, and in-school arrests is pushing kids out of school and into the juvenile justice system. This practice has come to be called the school to prison pipeline. The study found that only 3 percent of disciplinary actions in schools were for conduct for which federal law mandates suspensions and expulsions.

The other 97 percent of disciplinary actions were made at the discretion of school officials. The study found that minority students were disciplined more harshly for similar or less serious infractions than were their peers.

According to the report, 83 percent of African-American male students had at least one discretionary violation, compared to 74 percent for Hispanic male students, and 59% for white male students.

The same pattern held true for female students: 70 percent of African-American female pupils had at least one discretionary violation, compared to 58 percent of Hispanic female pupils and 37 percent of white female pupils.

The same was true for children with disabilities.

The researchers also found that when a student was suspended or expelled, the chances that he or she would become involved in the juvenile justice system increased significantly.

Twenty-three percent of all students who were involved in the school disciplinary system later had a contact with the juvenile justice system.

In comparison, only 2 percent of students who had no involvement in the school disciplinary system later had contact with the juvenile justice system.

We really don't want to see kids derailed from their school life.

Schools should be gateways to opportunity—NOT gateways to the juvenile justice system.

As the report makes clear, once a child enters the justice system, they are fingerprinted and their records are entered into a statewide central repository at the Texas Department of Public Safety.

Law enforcement and juvenile justice agencies throughout the state can then access the resulting criminal history record.

When he heard the results of the Council of State Governments study, the Attorney General decided he had to do something.

In July 2011, Eric Holder and Education Secretary Arne Duncan launched a partnership between their departments to find solutions—to keep kids in school and out of court.

Together, the two departments launched the Supportive School Discipline Initiative to reform current school discipline practices that push kids out of school and into the juvenile justice system.

The goals of the initiative are:

- To keep students in school and engaged in learning by promoting supportive discipline practices.
- To ensure that school discipline practices are implemented in compliance with civil rights laws.
- To ensure access to high quality instruction for students who are disciplined.

We have organized the Initiative's work into four components:

1. We are developing consensus among stakeholders on policy and practice on how to transform punitive discipline into positive behavior management practices that keep kids safe, in schools, and learning.

We involved law enforcement professionals; community members; educators; representatives from federal agencies; private foundation executives; court officials; and juvenile justice practitioners in our discussions.

2. We are collaborating on needed research and data collection.
3. We are developing and issuing joint ED-DOJ guidance on the issues. We're working on a toolkit for schools to use as they address discipline issues—and we're supporting an effort to engage judges to work with schools and communities to cut referrals of students to court for non-serious, non-violent actions.
4. We are providing training and technical assistance to build capacity, awareness, and knowledge about the problem and how to address it.

We're using everything at our disposal—information, education, training and technical support, and guidance—to help everyone—school nurses, teachers, principals, school resource offices, probation officers, judges, parents, and students—get access to the tools they need to make the changes.

OJJDP's focus on reform.

Next, I would like to talk about OJJDP's focus on system reform.

We are centering our work at OJJDP on:

- Positive development approaches to youth justice and delinquency prevention.
- This includes trauma-informed policies and practices.
- Partnering with youth and families to inform and develop solutions.
- Working through cross-agency efforts and public-private partnerships.

Overall, our primary goal is to keep kids from ever entering the system in the first place. We have reason for optimism that our efforts are meeting with some success.

Since 1997, the first year that OJJDP collected such data, the population of juvenile offenders in custody has declined by one-third.

The number of status offenders in custody is down 52% since 1997. Based on the latest available national and state-level data that we have from our Census of Juveniles in Residential Placement, there were nearly 71,000 delinquent youth in residential placement facilities on the census date: February 24, 2010.

This figure is a 35-year low.

At the same time, crime has also declined. Despite this encouraging trend, we still need to improve in several areas, especially regarding rates of confinement for minority youth.

Nationwide, the custody rate for black youth is more than 4.5 times the rate for white youth. The custody rate for Hispanic youth is 1.8 times the rate for white youth. Looking at these figures from a slightly different perspective, for every 100,000 white juveniles living in the United States, 128 were in a residential facility on February 24, 2010. For Hispanic youth, this rate was 228 per 100,000. For black youth, the figure was 606 per 100,000. Minority youth accounted for 75 percent of juveniles held in custody for a violent offense in 2010. In 2010, more than 47,000 minority youth were in residential placement in juvenile facilities across the country. They comprised 68 percent of the custody population nationwide. Black youth accounted for 41 percent of all offenders in custody.

As I said a few moments ago, between 1997 and 2010, the population of offenders in residential placement dropped 33 percent. Of this figure, the number of white youth declined 42%, and the number of minority youth declined 27 percent.

Again, we are making progress, but we still have a great deal of work to do to make sure that the system treats every child equally and justly. Changing circumstances—reduced funding and our growing understanding of adolescent brain development—are challenging us to take a new look at our options regarding locking kids up.

It has been said that virtually all juvenile justice work in this country takes place at the state and local levels. State and local leadership is critical when it comes to designing and overseeing long-term juvenile justice reform.

At OJJDP, state and local buy-in is critical to everything we do. In these times of financial constraints at the federal and state levels, we must always seek to leverage our resources and utilize them wisely. Each state has its own priorities, policies, political culture, funding realities, and unique situations that must be considered when implementing any reform regime.

Several states have undertaken major reforms of their juvenile justice systems within the last decade. However, not all have used a developmental approach.

One way that OJJDP could help the field embrace reform is to disseminate information on states that currently have ambitious reform efforts underway or have strengthened their systems utilizing evidence-based practices.

We could also use our training and technical assistance resources to educate the field about reform. This is an instance where OJJDP could join with other juvenile justice stakeholders in a national public awareness campaign to highlight the importance of juvenile justice reforms.

The question we are wrestling with at OJJDP is should we adopt a developmental approach to all juvenile justice reform?

I am inclined to advocate for a developmental approach to youth both within the Department, across the federal government, and when working with our state, local, and tribal partners in the field.

There are several steps that we must take before undertaking such a major policy initiative:

First, we must work deliberatively with working groups within OJJDP to develop an understanding of the meaning of a developmental approach to juvenile justice in grant making, research, training and technical assistance, and general policy making.

We plan to pursue a similar process with other components within the Department of Justice and agencies represented on the Coordinating Council, which is chaired by the Attorney General.

Also, we will seek further input from the field through structured and informal communications.

A couple of years ago, OJJDP commissioned the National Academy of Sciences to convene a committee to study juvenile justice reform. We asked this committee to:

- Review recent advances in behavioral and neuroscience research and draw out the implications of this knowledge for juvenile justice reform.
- Assess the new generation of reform activities occurring in the United States.
- Assess the performance of OJJDP in carrying out its statutory mission and its potential role in supporting scientifically based reform efforts.

Recently, the Academy released its report, which consolidates much of what we know about:

- youth development
- the adolescent brain
- current practice in juvenile justice
- what works in juvenile justice
- what doesn't work
- and how we can best move our nation forward.

The central premise of the report is stated in very optimistic terms, which bear repeating: “If the procedures for holding youth accountable for their offending and the services provided to them are designed and operated in a developmentally informed way, this approach will promote positive legal socialization, reinforce a pro-social identity, and reduce reoffending.”

However, the Academy was just as bold in its warning about the failure to pursue such an approach: According to the report, if a developmental approach is not taken, “the outcome is likely to be negative interactions between youth and justice system officials, increased disrespect for the law and legal authority, and the reinforcement of a deviant identity and social disaffection.”

We have asked the Academy to address three remaining questions:

- Are there any gaps in the research?
- Based on implementation science, what are the steps and challenges that OJJDP faces in adopting a developmental approach to juvenile justice reform?
- Would states and tribal governments realize any cost savings if they adopt a developmental approach to juvenile justice reform

Another avenue we are pursuing is reducing over-reliance on detention and incarceration for kids who have gotten off track.

This includes our efforts to:

- Reinforce a prosocial identity.
- Keep kids in touch with their families and other caring adults.
- Provide as little disruption as possible in their schooling.
- Help them develop vocational skills.
- Help ensure, where necessary, that they have access to substance abuse and mental health treatment.

The lasting impact of incarceration on youth and the value of reducing our reliance on locking kids up.

On a more practical note, why try to keep young people from entering the juvenile justice system?

Research and experience has taught us that the minute a youth sets foot in detention or lock up, he or she has a 50 percent chance of entering the criminal justice system again when they are an adult.

That involvement with the juvenile system is the single greatest predictor of later criminality. Locking up young people can seriously affect their ability to get an education and a good job when they are older.

We have learned a great deal about why kids run afoul of the law, how violence and abuse affect kids, and what we can do to keep kids safe. A growing body of research is telling us that kids are wired differently than adults, that they are still a work in progress.

Their mental and emotional circuits do not fully develop or mature, in most cases, until they are 23 or 24 years of age.

They don't have the same ability to reason, make decisions, or properly assess risk as adults do.

We have to remember that kids in custody are still growing, still maturing and forming their adult identity.

If we understand this, can we say that a confinement setting is necessarily the best environment for a young person to undergo their development toward adulthood? We all hope our kids will make good, prosocial choices once they reach full maturity.

It is our job to help them reach that destination. We must look at issues and causes and correlates for why kids enter the system to begin with.

Research has shown us that in many cases kids who are victims are at greater risk of becoming offenders. Kids who are exposed to violence, abuse, and neglect begin as victims. The sad truth is that kids who are victims often go on to victimize others as they get older. As often happens, these kids become involved in the justice system. The sad truth is that incarceration is not terribly effective in reducing juvenile offending. Kids come out of locked facilities and some experts suggest that recidivism rates for these kids can run as high as 70 percent.

This makes sense when you consider that these youth are:

- Cut off from family members and community support.
- Disengaged from school.
- Completely cut off from healthy outcomes.

Confinement can contribute to deteriorating mental health conditions in these youth.

Research suggests that between 50 percent and 70 percent of incarcerated youth have a diagnosable mental illness, and as many as 19 percent may be suicidal.

Timely treatment is often difficult to access in crowded facilities. Other youth and staff may physically or sexually victimize them. This is not a public safety track record that inspires confidence.

For the reasons I just stated, it is in the best interests of our young people and our communities that we identify and embrace effective alternatives to confinement.

There are other cheaper, more treatment-oriented approaches to holding youth accountable for their behavior.

Research has shown that community-based programs

- Reduce crowding in residential facilities,
- Cut the costs of operating juvenile detention centers,
- Shield offenders from the stigma of institutionalization,
- Help offenders avoid associating with youth who have more serious delinquent histories,
- Maintain positive ties between the juvenile and his or her family and community.

Many states are finding that incarcerating youthful offenders is an expensive habit that they can no longer afford.

By some estimates, it can cost upwards of \$80,000 per year to house a young person in a residential facility.

This has led some states and communities to consider the alternatives.

Researchers in Washington State found that for every dollar counties in the state spent on juvenile detention systems, they realized \$1.98 of “benefits” in terms of reduced crime and costs of crime to taxpayers.

In sharp contrast:

- Diversion and mentoring programs produced \$3.36 of benefits for every dollar spent.
- Aggression replacement training produced \$10 of benefits for every dollar spent.
- Multi-systemic therapy produced \$13 of benefits for every dollar spent.

In New York City, it costs \$385 to hold a youth 1 day in detention, while it costs \$25 to send a youth to a detention alternative. Some states and communities have turned to well-structured, properly implemented, community-based programs.

Massachusetts relies on a network of small, secure programs for serious offenders (generally fewer than 20 youth per facility), complemented by a full continuum of structured community-based programs for the majority of committed youth.

These programs allow for a greater connection between the youth and his or her family, school, and other community-based support systems and have shown powerful effects in reducing subsequent involvement in delinquency.

Nevertheless, we may never free ourselves totally from secure facilities. For that reason, we must take steps to ensure that the kids that we incarcerate are the ones who truly need to be there while we ensure the safety of those residing and working in facilities.

Finally, one of the ways that OJJDP has expanded its reach and scope of work is to expand our collaborations with other agencies and offices. We actively seek out partnerships with other federal agencies where our mandates regarding children and youth intersect.

Each side brings their expertise, resources, and manpower to the table. In this way, we are able to reach kids and address issues as we never have before. Also, we have forged stronger ties with state and local agencies to support programs that have been shown to work. Our work with the states to address DMC is a prime example. Our work with philanthropic groups has opened up a new world of possibilities to better meet the needs of troubled children and youth.

These relationships are especially exciting because the philanthropies see the challenges that we all face from an entirely different perspective. They have opened our eyes to new possibilities and opportunities. And they have forced us to think in new and innovative ways.

We will continue to innovate because the times dictate that we must. We hope these new relationships will offset some of our budget shortfalls and allow us to meet the needs of more youth.

To conclude, I have spoken about OJJDP's long-term efforts to reduce our over-reliance on incarceration, our focus on system reform, and the reasons reform and new perspectives on dealing with delinquency and juvenile misbehavior are important to our youth, our communities and our nation.

By working together, we must remain a strong voice for our children. By working together, we will continue to make a difference in the lives of our children.

And we will help secure a better, brighter future for our children.

Thank you.