Healthy Families and Communities Subcommittee

U.S. House of Representatives Education and Labor Committee

The Honorable Carolyn McCarthy, Chair

Meeting the Challenges Faced by Girls in the Juvenile Justice System

March 11, 2010, 10:00 am

Testimony by the Honorable J. Brian Huff

Presiding Judge
Jefferson County Family Court
120 2nd Court North
Birmingham, AL 35204
205-325-5538
huffb@jccal.org

Good morning. Chairwoman McCarthy and Members of the Committee, it is my distinct honor to speak with you today regarding needs and challenges faced by girls who come before the juvenile court. I am Brian Huff, the Presiding Judge of the Jefferson County Family Court in Birmingham, Alabama, where I hear, among other things, juvenile delinquency, "children in need of services," as well as child neglect and abuse cases. I was appointed to the bench in 2005 and elected in 2006.

I have helped to create and oversee Reclaiming Our Youth – a multi-faceted, collaborative, juvenile justice reform effort. The goal of the initiative is to improve the local juvenile justice system from intake to disposition by working with school officials, law enforcement, service providers and families to promote positive youth development, restorative justice and family involvement within their communities. The effort has reduced the juvenile incarceration rate in Jefferson County by more than 70% while returning millions of dollars back to the community through state grants. I have also led the Birmingham City Schools' Collaborative, which developed Birmingham's School Offense Protocol. The protocol established alternatives to incarceration for children who commit minor delinquent offenses within the school system. As a result, arrests of minors from the Birmingham City School System have fallen by more than half in the two years.

I am active in the Alabama Juvenile Judges' Association, and sit on the boards of directors for the Alabama Department of Youth Services and the Children's First Foundation. I am also past chair of the Family Law Section of the Alabama State Bar and the Birmingham Bar Associations, an ongoing member of the National Council of Juvenile and Family Court Judges and the National Association of Drug Court Professionals, and an active participant in the Act-4-Juvenile Justice Campaign to inform a strong reauthorization of the federal Juvenile Justice and Delinquency Prevention Act (JJDPA).

Girls Charged with Status Offenses

My comments today are primarily drawn from my experience hearing dependency and delinquency cases involving children, youth and families. I will focus on girls that come before the court and, more specifically, girls who come before the court for status offenses.

Status offenses are those offenses considered by the delinquency court only because of the minor status of the child involved—in fact, these "offenses" would not be criminal matters at the age of adulthood. Such matters include truancy, violating curfew, running away from home, and behavior that may cause a parent or guardian to deem a child ungovernable.

I want to begin with a true story about a girl I will refer to as "Katie." Katie is now 15-years-old. She first came to the attention of my court when she was 11. Her mother filed a complaint against her for being "ungovernable," which is a status offense in most states. Her mother complained that Katie was smoking cigarettes, drinking alcohol and talking back. Years later, we learned that Katie's troubles began when she was raped by her stepbrother – at age 11. Despite a doctor's finding that Katie had contracted syphilis as a result of the rape, Katie's parent did not take steps to protect her, and her stepbrother remained in the house for years.

When Katie's mother first came to us, we didn't ask the right questions. Instead, we simply accepted the complaint, and Katie was placed under a court order that essentially commanded her to behave in a manner that is fairly standard in these cases. It said, "the child shall properly conduct herself at all times." Not surprisingly, Katie's behavior did not change as a result of the court order. The only difference was that her misbehavior was now treated as a legal matter.

And so at age 11, Katie began her history with the juvenile justice system. Three years later, she has spent more than a year behind bars for failing to "properly conduct herself" and she is pregnant.

Today, our court's approach to cases like Katie's is fundamentally different. Rather than pushing the case through the normal process, we would instead talk with Katie and her mother and refer her to agencies and organizations that could figure out what was really happening. We now recognize that youth like Katie can and should be steered clear of further court involvement. My credo as a judge is much like the Hippocratic Oath, to "do no harm" in such cases. This is particularly critical with respect to girls, like Katie.

Many girls brought before the court for status offenses have been traumatized by abuse – sexual abuse, and neglect,[i] and judges are indeed in a position to guard against any further trauma. In fact, the National Institutes for Justice Study of girls in the juvenile justice system in South Carolina demonstrated that the vast majority of girls in the system had experienced multiple forms of victimization related to violence and sexual assault. In fact, fully 98% of the girls in this representative study reported victimization – nearly 70% were victimized by their caregivers prior to system involvement.[ii]

Placing girls who have committed status offenders in lock-ups is stigmatizing and counters all goals of rehabilitation. Detention and incarceration interrupt educational progress, pro-social relationships with peers, family and caring adults, and often also undercut job training and employment. Feelings of social isolation and hopelessness are exacerbated, not reduced — making it more likely that a young person will feel alienated.

Girls are disproportionately affected by exceptions to the Deinstitutionalization of Status Offenders core requirement. Girls are reported to account for 14% of youth in juvenile facilities for delinquency, but 41% of those in facilities for status offenses.[iii] Common sense and research tells us that imprisonment is not a positive approach to status offending behavior. Detention in general, and particularly for status offenders and other low-risk youth, has been widely shown to be destructive rather than productive, independent of poor conditions of confinement. Obviously, the damage and trauma inflicted by incarceration in a clean and safe facility are

magnified when youth are held in overcrowded and abusive facilities, which are far too common. Yet, nearly 70% of detained youth are held in facilities operating above capacity, nationwide. Under such conditions, discipline can become unduly harsh; education and medical and mental health treatment are often meager. Among youth in crowded detention facilities, there is a high number of reports of suicidal behavior, as well as stress-related and psychiatric illness. Sadly, too, youth of color – including girls of color – are more often detained than their white counterparts.[iv]

To be clear, as a juvenile judge, I am in a position to make life-changing decisions involving the lives of children. Alabama is one of 31[v] of the 56 U.S. states, territories and District of Columbia that allows secure detention as a sanction for status offenders who violate a valid court order. I, however, understand the risks and choose not to exert my authority in this way.

Some judges may find a young person to be difficult and frustrating when she challenges authority or violates a court order, and may believe it is justified to lock her up due to contempt of court or violation of an order. Yet, it is our job as judges to exercise our authority carefully and to serve the best interests of the child, family and community safety. All are better achieved through alternatives to detention or incarceration, in such cases.

Family and Community Connected Alternatives to Detention

I would like to take moment to share a photo, taken by Richard Ross, of a young girl in a detention facility in Harrison County, Mississippi—depicting a detention cell much like many in southern states. [Photo 1 of 2]. Until the recent settlement of a 2009 class action lawsuit by the Southern Poverty Law Center on behalf of confined children in this facility, it operated at more than double its lawful capacity; 70% of the youth there were nonviolent; and most of the girls at the Harrison County detention center were locked-up for non-delinquent acts and status offenses.[vi]

Attorney advocates for the children confined in this facility cite the case of a 12 year-old girl locked up at the Harrison facility for 60 days after her foster mother reported the child to the

court for failing to take her medications. Because this young girl had come before the court previously for running away from her foster placement, her failure to obey her foster mother's rules may have been deemed a "violation of a valid court order," permitting the judge to detain her.

Other facilities, including those in my home county, may be up to code and safe, as seen in this second photo by Ross, of a facility in Racine, Wisconsin, where cells are at least clean [Photo 2 of 2]. Whether in dingy and dangerous conditions or something better, I urge you to question the choice to spend hundreds of public dollars each day to lock-away non-delinquent, needy and troubled girls in cinderblock cells, rather than using more cost-efficient, proven methods of assisting them to achieve safety and stability at home, at school and in the community. In Jefferson County, we do not lock-up girls who are status offenders. We do not do so because it is plainly ineffective and further traumatizes youth who are already in distress.

There is good reason to hesitate to jail parents or place children in foster care for truancy, staying out after curfew or running away. Removing the presence of a parent or for that matter the child from the school is typically counterproductive as a means of supporting school attendance and engagement. Where evidence exists, the threat of such sanctions—and the sanctions themselves—have not been shown to reduce or deter truancy.[vii]

I have worked hard and collaboratively to reform the system and to create home-and community based alternatives for children in need of protective custody and services – not lock-ups – in my home state of Alabama. For instance, in Alabama we are working statewide to institute the Juvenile Detention Alternatives Initiative (JDAI) of the Annie E. Casey Foundation[viii].

Recommendations

Remove the VCO Exception to the Core Requirement to Deinstitutionalize Status Offenders

Right now, this Subcommittee and the whole of the House Education and Labor Committee are charged with reauthorization of the Juvenile Justice and Delinquency Prevention Act (JJDPA). In

place since 1974, the JJDPA provides important safeguards and resources to assist troubled, vulnerable and court-involved girls.

A change to the JJDPA that I believe is most critical to protect vulnerable and exploited girls has already been approved by the Senate Judiciary Committee this past December, in the form of an amendment to the JJDPA's core requirement on Deinstitutionalization of Status Offenders. The amendment, which received bipartisan approval as part of S 678 in the committee, calls upon states to eliminate the "valid court order (or VCO) exception" – a loophole that allows judges to place status offenders in locked detention.

If passed into law, the court orders issued for Katie or the Mississippi 12-year-old that I described would no longer be allowable. Judges would no longer be able to lock-up non-delinquent girls out of frustration or a misguided sense of protectiveness. Furthermore, eliminating the VCO comports with law or practice in approximately two dozen states and territories already.

Testimony given at the time of the passage of the JJDPA cited that status offenders should be "channeled away" from lock-ups and toward human service agencies and professionals to avoid creating greater social, emotional, family and/or peer-group upheaval among this highly vulnerable population. Yet, the JJDPA law has not adequately addressed alternatives along a continuum of home and community-connected services that would more appropriately and effectively address the needs of status offenders and their families. In the 1980s, the VCO exception to the core protection to Deinstitutionalize Status Offenders (DSO) was included in the JJDPA, but it left states to sort out the sanctioned judicial use of locked detention for status offenders. Researchers, legal scholars, as well as juvenile court professionals and advocates are seeking remedies to the problem of over-use of the valid court order (VCO) exception, as well as to problems that arise when federal and state law contradict.

Overall, as a result of the DSO core requirement, since 1974, there has been an overall decline in the use of secure detention for status offenders. Yet, each year nearly 40,000 status offense cases still involve locked detention.[ix] Of these, more than 30% or approximately 12,000 nationwide

would be prohibited if the VCO exception is removed from law.[x] Troubled youth, children in need of protective services, runaways and many youth with behavioral health concerns wind up in detention, not because of worries about public safety, but because of a severe lack of community alternatives, a lack of system collaboration and a lack of knowledge among judges about what resources and effective approaches are available.[xi]

Although status offenders are not dangerous, any juvenile judge will tell you that they are among the most frustrating youth that come before us. And when a status offender comes under the jurisdiction of a juvenile court, the easiest and most common response is to place the child under a court order to try to control their behavior. When they do not change their behavior – and they often do not – the same misbehavior that has frustrated the child's parents is now an affront to the court's authority. Many courts take that affront personally. As a result, the VCO exception often becomes the exception that swallows the rule.

That has certainly been the case in Alabama. Until recently, my state incarcerated status offenders at a rate that far exceeded the national average. But in 2008, the Alabama Legislature voted unanimously to in the Alabama Juvenile Justice Act to take long-term confinement of status offenders off the table entirely. The Alabama Act also capped detention stays at 72 hours. This reform was championed by state and local leaders from both sides of the aisle and from every branch of government – including our Republican Governor and our Democrat Chief Justice.

In your state, Madame Chair, the Vera Institute's Center on Youth Justice has also made inroads in addressing status offenses by increasing objective decision-making in status offense processes. In 2002, New York State contracted with Vera to improve systems and services for status offenders and their families in 23 counties. As a result several counties took steps to refine their intake processes to incorporate more immediate crisis intervention, develop programmatic alternatives to non-secure detention and foster care placement, and provide more supportive services to status offenders and their families—especially truants—in lieu of court intervention. Momentum generated from these local reforms prompted the state to pass amendments to New

York's Family Court Act in 2005 to enhance diversion requirements for status offenders and narrow the circumstances under which status offenders may lawfully be detained.[xii]

Scholars from the Vera Institute and the American Bar Association suggest that through the JJDPA reauthorization Congress do the following to assist girls and other status youth:

- promote increased use of social service agencies as first responders to status offense referrals, to assist with and promote pre-court diversion.
- remove the Valid Court Order exception so as to clear up the contradictory nature of the JJDPA requirement to ***deinstitutionalize*** with ***institutionalization*** pursuant to a VCO.

There are many alternatives to institutionalization/detention of status offenders—shown to create positive outcomes for youth and families—including reduction in court referrals, such as Functional Family Therapy and Cognitive Behavioral Therapy. Also effective are intensive case management, non-secure shelter care and temporary crisis care, and family interventions and support—all of which may be supported by the Formula Funds (Title II) program of the JJDPA.

Generate Greater and Better Resources for Effective Implementation of Federal Juvenile Justice Policy

Regarding use of federal funds under the JJDPA, Congress should strongly consider prohibiting the use of federal funds for ineffective and damaging approaches such as highly punitive models shown to increase, rather than decrease re-arrest and re-offense, including boot camps, excessive use of physical restraint, force and punishment, and the building of large residential institutions.[xiii]

When crafting State Three-Year Plans for delinquency prevention, the State Advisory Groups on Juvenile Justice, chartered and supported under the JJDPA, are in an ideal position to recommend the use of JJDPA funds for programs and practices that emphasize practices and policies that will benefit girls, such as ensuring gender-specific and competent prevention and community based services for girls, ensuring due process, effective assistance of counsel and

case management, and providing alternatives to detention and incarceration – particularly for status youth. Congress should consider ways for the JJDPA funding streams to emphasize and elevate compliance with the core requirements of the JJDPA and initiatives that strive to limit a young person's court involvement, out-of-home placement or any sort of confinement while ensuring community safety.

I also urge the Congress to consider ways to provide resources for field-based and field-strengthening research and evaluation that will refine and expand the array of best and evidence-based practices in delinquency prevention, intervention and treatment. Issues that states are hungry to address include the following, among others:

- effective approaches for girls, as well as for diverse cultural and linguistic groups;
- innovations to guard against bias and racial/ethnic disparities;
- proactive approaches to truancy prevention;
- ways to reduce school referrals to law enforcement;
- effective approaches for positive family engagement.

In addition, Congress should look to strengthen the implementation the JJDPA which addresses research, demonstration and evaluation and authorizes the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) administrator to "conduct, encourage, and coordinate research and evaluation into any aspect of juvenile delinquency, particularly with regard to new programs and methods which seek to strengthen and preserve families or which show promise of making a contribution toward the prevention and treatment of juvenile delinquency."

Consider simple language changes in the JJDPA to state that the OJJDP administrator *shall* rather than *may* provide support for research, replication and high fidelity adaptation of evidenced-based practice models, across a wide range of racial, ethnic, geographic and societal circumstances—urban and rural, both in and outside of institutional settings for applications with many populations, girls, Native American youth, youth in the U.S. territories, Latino youth, African American youth, and others. Insist that the research and findings be made widely available to the public and backed-up with training and technical assistance to the parties

principally charged with JJDPA implementation—state advisory group members and state juvenile justice specialists.

Since 2002, juvenile justice appropriations to the states that support important priorities under the JJDPA such as continuums of care; alternatives to detention; gender-sensitive and gender-specific services and effective prevention initiatives have fallen by more than 50%. Here, again, you have the opportunity to restore the research, evaluation, and funding resources, as well as training and technical assistance resources needed to meet critical needs for girls and other children involved with the court.

You will find that these recommendations are in keeping with best practice and with the recommendations of the Coalition for Juvenile Justice – an association of the JJDPA State Advisory Groups – as well as the broad-based Act-4-Juvenile Justice Campaign that includes more than 350 organizations in juvenile justice, law enforcement, youth and family service, child welfare, mental health and substance abuse treatment and representing the faith community, among others.[xiv]

In closing, I wish to avail myself to you should you have any further questions. Many thanks for the opportunity to speak before you today.

---

[i] Physicians for Human Rights, Health and Justice for Youth Campaign, "Unique Needs of Girls in the Juvenile Justice System," 2006.
[ii] DeHart, D.D., "Poly-victimization of Among Girls in the Juvenile Justice System: Manifestations and Associations with Delinquency, University of South Carolina, October 2009.
[iii] Sickmund, Melissa, Sladky, T.J., and Kang, Wei. (2008) "Census of Juveniles in Residential Placement Databook." Online. Available: http://www.ojjdp.ncjrs.gov/ojstatbb/cjrp/
[iv] Coalition for Juvenile Justice, "Unlocking the Future: Detention Reform in the Juvenile Justice System," January 2004.
[v] Unpublished JJDPA compliance monitoring data from the Office of Juvenile Justice and Delinquency (OJJDP), pertaining to 2007.
[vi] Per correspondence with the Southern Poverty Law Center, 2010.
[vii] National Center for Mental Health Promotion and Youth Violence Prevention (NCMHPYVP), Prevention Brief, 2006.
[viii] See: www.JDAIHelpDesk.org.
[ix] National Center for Juvenile Justice: www.ncjj.org.
[x] Unpublished JJDPA compliance monitoring data from the Office of Juvenile Justice and Delinquency (OJJDP), pertaining to 2007.
[xi] Schwartz, I., Barton, W. , "Reforming Juvenile Detention: No More Hidden Closets," 1997
[xii] See: see www.verainstitute.org.
[xiii] Mendel, Richard A. and American Youth Policy Forum, "Less Hype, More Help: Reducing Juvenile Crime, What Works—and What Doesn't," 2000 and "Less Cost, More Safety: Guiding Lights for Reform in Juvenile Justice," 2001.
[xiv] See: www.juvjustice.org and www.act4jj.org.

Photo One: Biloxi, MS

© Richard Ross, 2010

Photo Two: Racine, WI

© Richard Ross, 2010