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### **Justice for All, Just Not Us: African American Youth and the Criminal Justice System**

As we press forward with Second Chance opportunities for adults we fail to offer many of our children a first chance at life, citizenship, and fulfillment of their dreams. The United States incarcerates more young people than any other industrialized country. Dehumanized by our indifference, brutalized by our inaction, we incarcerate 23 children per 100,000 population, compared with six in France, two in Spain, 0.2 in Finland. We do this in disproportionate numbers to the most dispossessed and vulnerable of our youth. In 2006 for every 10,000 White youth, 4 were in detention but for every 10,000 African American youth, 23 were in detention. As a nation we are derelict in our duty to care for our children in need of support and guidance. This should be cause for concern, focused reflection, and corrective action. The Association of Black Psychologists stands in opposition to this criminalization and dehumanization of our youth and the blatantly disproportionate impact on African American youth at every point of contact with the juvenile justice system.

Replete with human rights violations African American youth receive the harshest treatment in what has become a cruel and inhumane system. Widespread and well-documented, racial and ethnic discrimination in the juvenile justice system goes unabated. Well-known racial disparities have been documented in the number of youth targeted, adjudicated, sentenced and incarcerated within the system. And it does not act alone. At the front end is the infamous school to prison pipeline in which the public education system colludes with the criminalization of our youth for minor and typical adolescent behaviors, particularly in poor urban school districts. On the back end is the adult prison system where the juvenile justice system serves as a feeder into the adult criminal justice system, whose track record of disproportionality is equally heinous.

The life chances of scores of children are snuffed out once contact with the juvenile justice system is established. Negative and pervasive lifetime consequences include exclusion from education, jobs, college scholarships, public housing, and enrollment in the military; loss of voting rights; and increased risk of violence.

The government of the United States has done little to address the most serious discriminatory practices that lead to disparities in youth detention or sentencing. Despite reauthorization of the 2002 Juvenile Justice Delinquency Prevention Act (JJDP) the U.S. has yet to comprehensively collect, monitor and analyze racial disparity data. This is cause for national shame. Internationally it represents a clear failure to meet our country's

obligations under Article 5 Section (a) of the Convention to guarantee people of all races “the right to equal treatment before the tribunals and all other organs administering justice.” How do we dare speak with moral authority about the practices of other nations when we are so derelict in our commitment to the rights of our very own children?

Reforms are needed now. Oversight on the national level and targeted strategies at the local level, motivated by a sense of urgency and political will is necessary to address the ethnic disparities in juvenile justice processing that leave so many African American youth vulnerable to victimization in locked facilities. Local jurisdictions must be willing to examine each step of processing throughout the juvenile justice system to uncover where biases and prejudices create disparate treatment and stakeholders must be willing to address the role played by their own decision-making.

In this country, sentencing of youth has been overly punitive and vastly inconsistent. Our response to youth misconduct and behavioral problems has become overly reliant on the use of a punitive prison response rather than prevention, treatment, and application of the least restrictive corrective measures possible. We fail to look at the root causes of juvenile conduct associated with criminal activity and ostensibly add to the problems of our young people in our myopic blame the victim mentality. And we do this despite data indicating:

- prison sentences are the least effective and most expensive of all sentencing options available;
- high re-offending and recidivism rates suggest imprisoning young people does not address the factors driving young people’s offending behavior;
- mental health issues, learning disabilities, substance misuse, family problems, and challenged communities may be central issues but these are over looked as the most vulnerable among our children are sentenced in some instances to a lifetime of imprisonment.

In this “punish first, think about it, maybe never” mentality our children are placed in environments that pose threats to their safety and security. Such conditions would easily warrant removal of children from their home environments by child welfare agencies but in the custody of governmental agencies children suffer numerous Human Rights violations in silent captivity. Reducing over reliance on incarceration, increasing attention to the social determinants of delinquency, and giving due attention to the psychological, physical and sexual abuse that so often festers inside detention and corrections settings must occur if we are to create a more humane and just juvenile justice system for all youth .

Where incarceration may be necessary for public safety, the Missouri Model has become the gold standard for juvenile corrections, emphasizing smaller regional congregate facilities with more normative living environments. Their emphasis on creating a therapeutic milieu in juvenile facilities is in direct opposition to the excessively punitive environments of most juvenile correctional facilities. Missouri has been successful in restoring humane rehabilitative treatment, in the least restrictive environment, without sacrificing public safety.

The Association of Black Psychologists calls upon the Attorney General's office to act as a stimulus for immediate corrective action. We advocate developing a national plan to reduce the imprisonment of juveniles; setting targets for fewer children in prison; addressing root causes of imprisonment including the role of failing educational systems, limited community resources and inadequate mental health services; and using diversion, restorative justice and community-based treatment models as alternatives to secure confinement.

These are complex issues nested within layers of interlocking systems. There is no singular, magic bullet response and to offer such remedies is a betrayal of our responsibility to the care and protection of our children. Therefore, the following issues demand immediate attention and redress.

**Prevention.** Prevention is better than cure. Far greater attention must be given to creating healthy communities and schools capable of nurturing and sustaining positive youth development.

**Disproportionate Minority Contact and Confinement.** African American youth suffer "disproportionate minority confinement" (DMC) in secure detention and correctional facilities and "disproportionate minority contact" within the juvenile justice system. The lack of action by the U.S. government to counter the discriminatory effect of policies and practices or to mitigate the harm done to youth of color represent a violation of both Article 2 and Article 5 (a) of the Convention [the United Nations Convention on the Elimination of Racial Discrimination].

**Overuse of Detention.** Detention is over-utilized, especially as applied to nonviolent and first-time offending youth who are better served in community-based alternatives to detention that are less costly, offer rehabilitation and opportunity for change, and better outcomes for public safety. JDAI, the Burns Institute, and Models for Change, have demonstrated that jurisdictions can safely reduce reliance on secure detention for children without increasing re-arrests or failure-to-appear rates. Despite this, under existing U.S. juvenile justice policies, detention continues to be the first resort, rather than the last, with dramatic and disproportionate impacts on African Americans.

**Correctional Facilities Represent Abusive Environments for Youth.** Correctional facilities are violent and unsafe, where pre-existing problems such as child abuse, mental illness, learning disabilities, and school failure are only compounded. Given the over-representation of minority youth in juvenile correctional facilities, primarily African American youth, these inhumane conditions – which have been allowed to persist for years – unchecked by outside authorities, must be corrected. In many facilities accountability and grievance procedures for youth exposed to assaults, unnecessary force, inadequate supervision, excessive force, or sexual abuse are effectively non-existent.

**Inadequate Counsel.** In *Re: Gault* (1967) the Supreme Court extended the right to legal counsel to juveniles. In practice this right may go unfulfilled for numerous reasons.

Inadequate counsel is also often a result of the limited resources afforded indigent defense attorneys; thus limiting their ability to be effective advocates at the most critical stages of justice processing (e.g. detention, adjudication and dispositional hearings.) Without the resources for culturally responsive psychologists, social workers, investigators, and expert witnesses youths' rights to fundamental fairness are challenged.

**School to Prison Pipeline.** Our schools have become major entry points into the juvenile justice system through disciplinary policies that mandate school suspension, expulsion, and arrest for an increasing array of minor student behaviors and rule infractions. Ill-conceived policies like the Gun-Free Schools Act in 1994 which predicated receipt of federal funding on school districts' adoption of "zero tolerance" policies resulted in mandatory expulsions for offenses such possession of a weapon but have since been used to expel, suspend, and arrest students for a variety of non-violent behaviors. Once again, racial disparities abound as African American students who make up 17 % of the U.S. student population represent 34% of students subjected to out-of-school suspensions and 30 % of students subjected to expulsions.

**Transfer to Adult Court.** Youth are psychologically not equivalent to adults. They use their brains in fundamentally different ways from adults, and thus more psychosocially immature. Youth differ in their thinking, reasoning, decision-making, and problem solving capacities. In its 2005 *Roper v. Simmons* ruling on the juvenile death penalty, the Supreme Court cited the American Society for Adolescent Psychiatry's position that the brains of adolescents are not the same as those of adults but are still developing. The transfer mechanisms of "automatic waiver" and "prosecutorial discretion" call into question constitutional issues of fundamental fairness when developmentally immature youth are subject to adult criminal proceedings and sentences. African American children are disproportionately transferred to adult criminal court. In states like California as many as 70 percent of the children transferred to the adult criminal system are African American or Latino. These disparities are most pronounced when children are transferred based on drug or gun charges.

**Juvenile Life Without Parole (JLWOP).** One of the worst sentences that can be levied against a child transferred to adult court is juvenile life without the possibility of parole (JLWOP). Globally, 2,503 youth have been sentenced to JLWOP. Of this number, 2,502 are in the U.S. with stunning racial disparities found in its application here. African American youth (under the age of 17) constitute 17% of the population but make up 65% of youth serving JLWOP sentences. In 2006, the U.N. Human Rights Committee found the U.S. in violation of its treaty obligations because of its practice of trying children as adults and imposing JLWOP sentences. Nonetheless, this cruel, inhuman practice continues unabated and African American children suffer the greatest consequence.

**Incarceration and Detainment in Adult Jails and Prisons.** Youth are a particularly vulnerable population within adult jails and prisons where their physical safety and mental health are at great risk. These youth have higher rates of suicide than youth in juvenile facilities and in the general population, and are significantly more at risk for sexual assault than adult inmates.

In addition to the victimization youth experience, adult facilities lack the infrastructure and knowledge to implement developmentally appropriate programming and mental health treatment for youth. Also, youth in adult prisons are much less likely to be enrolled in educational programs than youth on probation or in juvenile facilities.

**In conclusion**, the juvenile-justice system is encumbered with abuses and mismanagement. Ironically, it is subject to far less scrutiny than the adult system it increasingly mirrors. Within this context, the needs and rights of African Americans overrepresented in this system are violated at every turn. These are complex problems demanding a range of solutions coherently coordinated to create a new and better framework. The treatment of our young people must be guided by compassion, common sense, and logic rather than polarizing rhetoric, politics, racism, and uninformed fears. These are solvable problems but it requires political will, leadership, and determination. We have models of good thinking and practice that can offer some initial insights (e.g., the W. Hayward Burns Institute, the Missouri Model which stands as a new gold standard, the Justice Policy Institute, the ACLU National Prison Project, the Youth Law Center, the Campaign for Youth Justice, the Youth Justice Coalition etc). The core values articulated by the W. Hayward Burns Institute offer the kind of child-centered principles that must guide reform.

Respectfully,  
*The Association of Black Psychologists*  
*African Centered Re-Entry Task Force (ACRE)*