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## STRENGTHENING JUSTICE SYSTEMS FOR CHILDREN

### REFORMS IN JUVENILE AND YOUNG ADULT JUSTICE IN THE U.S.

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**Introduction** - The Juvenile Justice Initiative (JJI) is a policy advocacy NGO in Illinois. JJI advocates for a racially equitable and humane system of justice for children in Illinois. JJI's mission is to transform the juvenile justice system in Illinois by reducing reliance on confinement, and ensuring fairness for all youth in Illinois. We advocate through a theory of change that begins with research and includes dialogue, coalition building, strategy development, direct advocacy, and implementation. JJI has spearheaded numerous deincarceration and jurisdiction reforms through our research and advocacy – including reducing incarceration by more than two-thirds and closing three juvenile prisons, requiring lawyers during police interrogation for young children, reducing by over 80% the number of children tried in adult court, establishing legal protections including confidentiality in restorative justice proceedings, and providing education and training on a range of topics including the fundamental protections in the convention on the rights of the child. Our research highlights racial disparities in the court process from arrest to detention to prison commitment and transfer to adult court, and through this lens of racial disparity we advocate for equal treatment of all children in conflict with the law.

While the U.S. remains the only nation that has failed to ratify the Convention on the Rights of the Child, there has been extensive civil advocacy within the U.S. to comply with the fundamental human rights outlined in the CRC. This paper will examine reforms and developing policies in juvenile and young adult justice in the United States, and will provide an overview of collaboration among North American nations to exchange innovative policies and research and to develop collaborative policy papers to promote juvenile justice policies and practices consistent with the highest aspirations of human rights.

**North American Juvenile Justice collaboration** – the JJI has been instrumental in encouraging a dialogue among juvenile justice professionals in North America. Two convenings have been held over the past five years – the first in Washington DC in 2014, and the second in Toronto, Canada in 2015. The convenings included academics, public authorities and civil society. The participants identified three areas of common interest – restorative justice, ensuring deprivation of liberty is a last resort, and ending the use of solitary confinement. The North American participants collaborated on two policy papers on these issue areas, shared developments within our nations, and learned about the U.N. Global Study on Children Deprived of Liberty. The North American participants learned about Canada's success in reducing incarceration, in shifting to restorative justice and Canada's national juvenile justice law that incorporates adolescent development and full human rights protections under the Convention on the Rights of the Child. From the U.S., the group explored research on adolescent development as well as policies and practices with the most effective outcomes as well as the work of civil society to advance human

rights reforms. The group learned of new Mexican national juvenile justice legislation, research in Mexico on juvenile justice issues, and innovative practices in restorative justice from Mexico. The collaborative dialogue and mutual projects presented a unique opportunity to advance the cause of justice and human rights for children in conflict with the law in our region.

**Juvenile Justice and Rehabilitative Approaches for Young Adults -** The U.S. has been rapidly moving toward full compliance with the CRC's ban on adult prosecution of children under the age of 18. In addition, a number of states have begun to consider expanding juvenile rehabilitative measures for young adults over the age of 18.

The world's first juvenile court was in Chicago, Illinois in the U.S. in 1899. It wasn't long before the progressives in Chicago realized the benefits of diversion and second chances through the juvenile court, and in 1914 they set up a "Boys' Court" for young adults, up to age 21, who began low level cases in juvenile court. This was an effort to address the problem of young adult male arrested on minor offenses who often spent long periods in the adult jail awaiting trial. Reports note that the chief judge recognized the need for special treatment of this group of emerging adults. These were very minor offenses (disorderly conduct and petty theft), and most were dismissed – fewer than 20% resulted in convictions. The advantage was that the cases were discharged without the harm, and cost, of lengthy jail terms. Services were provided through the precursor of juvenile probation and detailed statistics documented the success of the "juvenile" approach for young adults.<sup>1</sup> The Boys Court continued through the 1960's.

Several U.S. states are revisiting the Boys' Court experiment. States that recently raised the age of juvenile court to meet the CRC's upper age of 18 had such positive outcomes from the rehabilitative approach of the juvenile court for older adolescents that they are now considering raising the upper age beyond the arbitrary boundary of age 18. State legislatures in Massachusetts, Connecticut and Illinois are all considering proposals to raise the age of juvenile court to 21. Judges are also recognizing the need to consider young adults as a special population: *"The theses of these articles is to illustrate the need to expand juvenile sentencing provisions for young adult offenders."*<sup>2</sup>

The Justice Lab at Columbia University in New York City has organized a learning community to explore successful approaches to emerging adults in conflict with the law. Columbia's Emerging Adult Project recently led a team of U.S. legislators, sheriffs, prosecutors, defense lawyers and judges to The Netherlands, Croatia and Germany to learn more about successful approaches

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<sup>1</sup> Willrich, Michael, Boyz to Men....and Back Again? Revisiting a Forgotten Experiment in Juvenile Court, 86 *Judicature*, Issue 5, p. 258-March 2003, <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=200190>

<sup>2</sup> People v. House, IL App 12/24/15 <http://www.illinoiscourts.gov/Opinions/AppellateCourt/2015/1stDistrict/1110580.pdf>

to emerging adults in the justice system. A series of blogs describing the visits was posted on the Crime Report in the U.S.<sup>3</sup>

**Fewer Youth in Prison & Closing Juvenile Prisons...but Racial Disparities increasing & Immigrant Detention Increasing** – There is a movement in the U.S. to finally end mass incarceration of children. U.S. research has extensively documented the harm from even a short stay in juvenile detention/prison, including a study from the American Academy of Pediatrics that documents worse physical and mental health outcomes in adulthood from incarceration during adolescence.<sup>4</sup> Between 2001 and 2015, juvenile placements fell by more than half (54%), but racial disparities among youth in custody increased 22% since 2001.<sup>5</sup>

U.S. prisons tend to be located in rural communities, and frequently serve as one of the leading employers in the region. Closing a prison is thus an emotional debate between correctional staff who depend on the prison for jobs, and families and advocates for youth who are sentenced to the prisons. The youth who end up incarcerated often come from urban communities a considerable distance away from the prison facility.<sup>6</sup> The geographic difference in the location of prisons in rural communities with inmates from urban communities are one factor contributing to the profound racial disparities – the prisons are out of sight and out of the mind of urban judges and prosecutors, and the children who end up incarcerated come from outside the prison community and may have a different racial and cultural heritage, rendering it easier for staff to consider them “inmates” rather than children.

The push for jobs in rural communities is one of the main drivers behind mass incarceration in the U.S. The other incentive is the profit involved in the numerous products and services required to operate prisons – from cell doors and furniture, to ankle monitors, shackles, uniforms, and services including telephone communications, meals and health services.<sup>7</sup> However, as the U.S. juvenile prison market decreases, there is a troubling increase in detention of immigrants – and immigrant detention facilities are built by the same private and for-profit companies that manufacture prisons. While the previous administration phased out contracts with private prisons that housed immigrants, the current Bureau of Prisons has restored the contracts – and proposed to build 5 new

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<sup>3</sup> [In Germany, It's Hard to Find a Young Adult in Prison](#) (released today, 4/10/18)

[How Croatia's 'Off-Ramps' Keep Young Adults Out of Prison](#) (4/4/18)

[Raising Age to 23: It Works for the Dutch](#) (3/27/18)

<sup>4</sup> Barnett et al, How Does Incarcerating Young People Affect their Adult Health Outcomes, 2017, <http://pediatrics.aappublications.org/content/early/2017/01/19/peds.2016-2624>

<sup>5</sup> <https://www.sentencingproject.org/publications/black-disparities-youth-incarceration/>

<sup>6</sup> [http://qconline.com/news/local/hundreds-attend-hearing-on-youth-center/article\\_467a7896-3c9e-54f1-89a6-40c9007dfd10.html](http://qconline.com/news/local/hundreds-attend-hearing-on-youth-center/article_467a7896-3c9e-54f1-89a6-40c9007dfd10.html)

<sup>7</sup> Markowitz, Eric, *Making Profits on the Captive Prison Market*, The New Yorker, Sept. 4, 2016, <https://www.newyorker.com/business/currency/making-profits-on-the-captive-prison-market>

immigrant detention centers .<sup>8</sup>

**Lawyers During Interrogation – Giving Meaning to Miranda** – Over fifty years ago, the U.S. Supreme Court required in *Miranda* that juveniles and adults be given the protection of a warning that anything they said could be used against them and a reminder that they had a right to a lawyer. Despite extensive discussion in a subsequent opinion of the danger to children in an interrogation setting, the Court did not require anything more than the same admonishments given to adults. The *Miranda* Court looked outside the U.S. and took note of protections in laws in England, Scotland, and India, based on distrust of “confessions” obtained through police interrogation.

The *Miranda* protections failed to effectively safeguard the rights of persons during interrogation – especially those of children. According to the National Registry of Exonerations, there were 127 exonerations in 2017, and 25 of those rested in part on false confessions.<sup>9</sup> The high rate of false confessions among juveniles has led to an ongoing effort to require lawyers for children during interrogation. As long ago as 1999, the Chicago Tribune called for legislation to require lawyers for all children during interrogation: “....*guilt or innocence is not the issue. Justice is the issue. And that can be achieved only when no minor may be questioned by police or prosecutors without a lawyer present. Passing such a law should be a priority for the General Assembly’s committees....*”<sup>10</sup> Yet, fifteen years later, the Chicago Police Accountability Task Force noted that less than one-tenth of 1 percent of arrested juveniles had an attorney in 2015.<sup>11</sup> Children are easily influenced and easily convinced to waive their right to a lawyer under *Miranda*. Further, since African American youth are more likely to be arrested (three-fourths of arrests of juveniles in Chicago in 2015 were of black children), there are profound racial disparities in the population most at risk of involuntary confessions. This shocking denial of the fundamental protection of a lawyer for children during interrogation is particularly disheartening in Chicago, the home of the world’s first juvenile court.

To make matters worse, Illinois courts have upheld waivers of *Miranda* right to a lawyer by children even when police “misrepresent” the evidence.<sup>12</sup>

To date only a handful of states require lawyers for children during interrogation. In 2016, as a result of advocacy by JJI, the Illinois Legislature required a lawyer

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<sup>8</sup> <https://www.npr.org/2017/11/21/565318778/big-money-as-private-immigrant-jails-boom>

<sup>9</sup> [https://www.huffingtonpost.com/entry/2017-a-roller-coaster-ride-of-a-year-in-false-confessions\\_us\\_5a3bf9f2e4b06cd2bd03d8ff](https://www.huffingtonpost.com/entry/2017-a-roller-coaster-ride-of-a-year-in-false-confessions_us_5a3bf9f2e4b06cd2bd03d8ff)

<sup>10</sup> Chicago Tribune, 7/12/99.

<sup>11</sup> <http://www.chicagoreporter.com/juveniles-in-police-custody-to-get-more-legal-protections-in-illinois/>

<sup>12</sup> *People v. Patterson*, 25 N.E.3d 526 (IL 2014). The case involved a 15 year old automatically tried in adult court and sentenced to 36 years in prison based in part on a statement made to the police without a lawyer after the police misrepresented that there were video tapes of the scene. Illinois Supreme Court held that “deception is not per se unlawful.....deception or subterfuge does not alone invalidate a confession”.

for children under the age of 15 during interrogation in murder or sex cases.<sup>13</sup> In 2017, California passed a law prohibiting interrogation of children under the age of 16 until the child has first consulted with a lawyer.<sup>14</sup>

Yet, to date the U.S. has failed to provide children legal protections as expansive as those provided to both children and adults in Europe, as a result of the ECHR's 2008 decision in **Salduz v. Turkey**.<sup>15</sup> This is particularly disheartening since the consequences for children in prosecutions in the U.S are so much graver – U.S. children are still prosecuted in adult court and are given lengthy prison sentences including life and de facto life terms of imprisonment. The **Salduz** Court emphasized that children have a stronger right to legal assistance during interrogation because of their protections under the Convention on the Rights of the Child. It remains imperative for the U.S. to fully realize the promise of **Miranda**.

**Restorative Justice** – One heartening trend in the U.S. and across the world is the increasing use of restorative justice. Dissatisfaction with traditional punitive systems of justice has driven interest in restorative justice, particularly in the U.S.

In Chicago, a juvenile court judge has opened a restorative justice community court focused on young adults up to the age of 26 charged with misdemeanors and non-violent felonies. The Court relies upon community led circles to develop repair of harm agreements, and if the young people successfully complete the agreement then their case is closed and their record cleared. The court sits around a conference table in a meeting room in a community center, and relies upon a community defender office. The judge, Hon. Colleen Sheehan, traveled to Northern Ireland to learn about successful implementation of restorative justice processes, and has ensured there are confidentiality and proportionality protections in place.<sup>16</sup> Ensuring fundamental protections, especially confidentiality, is a critical component of the development of restorative justice.

The policy paper on restorative justice developed through collaboration among North American nations, stresses that restorative justice processes must have fair trial guarantees, including voluntary participation, confidentiality, proportionality and neutrality of the mediator – all guaranteed by law.

**Conclusion** - Civil society in the U.S. continues to advocate for ratification of the Convention on the Rights of the Child. The failure of the U.S. to ratify this crucial international instrument, combined with inequality and racism in our justice system, is a matter of grave concern. Civil society also advocates for full human

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<sup>13</sup> IL. Public Act 99-0882, effect. 1/1/17. <http://www.chicagoreporter.com/juveniles-in-police-custody-to-get-more-legal-protections-in-illinois/>

<sup>14</sup> <https://www.hrw.org/news/2017/10/11/california-new-laws-protect-children-youth>

<sup>15</sup> Salduz v. Turkey, App. No. 36391, 49 Eur.H.R. Rep. 421 (2008).

<sup>16</sup> <https://www.theatlantic.com/politics/archive/2017/05/chicago-restorative-justice-court/524238/>

rights for all persons in conflict with the law. But the challenges are enormous – and particularly egregious for such a wealthy and developed nation. The United Nations Special Rapporteur on extreme poverty and human rights, Philip Alston, reported in December of 2017 on his visit to the United States and warned that there is no other developed country where so many citizens are behind bars. Mr. Alston noted the use of the criminal justice system to general revenue and said the use of the legal system to raise revenue through “fines and fees” rather than promote justice was pervasive around the country. He also criticized the setting of large bail bonds – resulting in the poor remaining in jail despite a presumption of innocence and facing the loss of their jobs, disruption of childcare, “and a dive into deeper destitution”. He criticized the widespread practice of suspending drivers’ license for a range of non-driving related offenses, including failure to pay fines, and noted the confused and counter-productive drug policies – which constitute the driving force behind the prosecution and incarceration of many juveniles in the U.S.

It is imperative for the U.S. to ratify the Convention on the Rights of the Child, and ensure that national and state laws respect the fundamental human rights for children in conflict with the law as outlined in the CRC.