

To: **House Judiciary Committee**  
**Subcommittee on Crime, Terrorism and Homeland Security**  
“Juvenile Justice Pipeline and the Road Back to Integration”  
May 13, 2021

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**OPENING STATEMENT:**

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Madam Chairwoman Jackson Lee, Chairman Nadler, Ranking Member Biggs, & Distinguished Members of this Subcommittee, thank you for inviting me to testify before you today. I am honored to share my thoughts and experience with you regarding a path forward for youth involved in the justice system.

At a press conference this past Saturday to address the civil rights charges recently filed by the Justice Department against convicted Officer Derek Chauvin and the other three officers charged in George Floyd’s death – at which Chairwoman Jackson Lee was also present – Congressman Al Green from Houston proclaimed, “the winds of change are blowing.”

The winds of change are indeed blowing. I have been advocating for youth in the justice system since 1975. I co-founded Juvenile Law Center one year after Congress first passed the JJDP, and just 8 years after the United States Supreme Court first declared that children are people too, under our Constitution. The cries for transformation have never been louder or more urgent.

Since 1975, I have seen the highest levels of youth arrests and incarceration, and I have also seen the lowest. 2019 saw the lowest number of youth arrests in more than 40 years, and youth incarceration has dropped by 70% since its peak in 1996.

But even in the face of such steep drops, youth incarceration remains too high, and our youth are still suffering. Children are still experiencing physical, emotional, and sexual abuse in custody; we remain the last country in the United Nations to sentence children to die in prison; and racial disparities have actually worsened in the youth justice system.

Federal leadership can make a difference. Several bills have now been introduced that will set standards and provide guidance on how to establish a more humane justice system for our children. I will briefly highlight a few of these opportunities.

## COSTS AND FEES:

Over ten years ago, I litigated the “Kids for Cash” case in Pennsylvania – an international scandal in which two Pennsylvania judges were alleged to have taken nearly \$3 million in kickbacks from the developer and owner of private, for profit youth detention centers. The greed and corruption were unprecedented – but the case also exposed a largely hidden system of fines and fees charged directly to kids and their families that kept them embroiled in the legal system even after their cases were essentially resolved. Just in the past three years, seven states have passed legislation to abolish or substantially limit fines and fees in the youth justice system, and nine have legislation pending this term, but we are just at the beginning of this transformation. Federal level incentives to reduce fines & fees would further spur these much-needed reforms.

## CONDITIONS:

Even one day of incarceration harms children’s future outcomes, but we still lock too many children up. And while these youth are often portrayed as dangerous, the data reveal a different story:

- The majority of youth (62%) are detained for property, public order or drug offenses, not offenses against another person.
- The pandemic actually underscored our propensity to over-incarcerate. Custody levels dropped by about 24% at the beginning of the pandemic last Spring, and these numbers have remained low in many jurisdictions.
- Too many children are still placed in isolation, pepper sprayed, and assaulted by staff and others while in custody--with little recourse available unless they can jump through complicated administrative hoops required by PLRA. This is unacceptable.
- Research has shown us that rehabilitation and programming are much more effective and economical when delivered to children and their families in their communities, rather than in out of home placements.
- While the number of state-run facilities has dropped by more than half since 2000, federal investments to both continue to this trend and support a continuum of care from prevention to intervention in the community is better for youth and for the community, and costs less.

## EXTREME SENTENCES:

When Juvenile Law Center opened in 1975, children could still be executed. After the Federal Crime Bill in 1994, nearly ¼ million children were sent into the adult system EVERY YEAR. Today, children as young as 6 and 7 can be arrested in almost half the states across the country.

The emergence of developmental and neuroscientific research in the last 15 years has changed or eliminated some of these practices. I served as co-counsel on *Montgomery v Louisiana* and on leading amicus briefs in the earlier US Supreme Court decisions that struck certain extreme sentencing practices for youth based on their developmental immaturity. But the United States remains far behind in its harsh treatment of children.

That children are different from their adult counterparts is now established both in science and the law. This principle must inform every aspect of our youth justice system. We must keep the youngest children out, and provide the youth who remain the caring treatment and rehabilitation the system was designed to provide. The states have made good progress here -- nearly all states now set 18 as the age of criminal responsibility; more than half of the states have abolished JLWOP as a sentencing option; and half the states have limited-the automatic transfer of children into adult court.

Yet, our federal statute has no such boundaries.

These aren't radical ideas. Reforms in the states, like at the federal level, are bipartisan. Conservative groups as diverse as Freedom Action Network, Americans for Prosperity, R Street Strategies and Right on Crime support these efforts locally and nationally.

Let me close with 2 final points.

In 1985, Nelson Mandela famously observed, "There can be no keener revelation of a society's soul than the way in which it treats its children."

More recently, Justice Sotomayor wrote, in her dissent from the Supreme Court's denial of cert in a case in which incarcerated individuals in Texas sought greater health and safety protections in the face of COVID 19, "It has long been said that a society's worth can be judged by taking

stock of its prisons. May we hope that our country's facilities serve as models rather than cautionary tales.”

I urge the members of this Committee to keep these two truths close. Change and transformation is indeed possible in our youth justice system, but only if that system mirrors the core values of human dignity, racial equity, and true justice for all.