

# The Sentencing Project

## Criminal Justice Issues and Prisoners' Rights

<https://www.sentencingproject.org/publications/promoting-safe-communities-recommendations-for-the-administration/>

## Public Facing Advocacy Writing

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Current juvenile justice policies and practices too often ignore childrens age and amenability to rehabilitation, cause long-term collateral consequences, waste taxpayer dollars, and violate our deepest held principles about equal justice under the law and the role of the juvenile justice system. Many state systems exhibit racial and ethnic disparities, lack sound mental health and drug treatment services, and apply excessively harsh sanctions for minor and nonviolent adolescentmisbehavior. Too often, community safety is jeopardized when states and localities adopt costly and overly punitive approaches that are shown repeatedly to produce the worst outcomes for children, their families, and public safety, including high rates of re-offense and higher severity of offending due to justice system contact.<sup>6)</sup>Mendel, R. (2011). [\*No Place for Kids, The Case for Reducing Juvenile Incarceration\*](#). Baltimore, MD:The Annie E. Casey Foundation.

These practices and policies continue despite the fact that the United States Supreme Court has held three times in the last three years that children are different from adults. In its 2010 ruling in *Graham v. Florida*, the Court struck down life-without-parole sentences for youth convicted of non-homicide offenses. Two years later, the Court decided in *Miller v. Alabama*, that mandatory life-without- parole sentences imposed on youth violate the 8th amendment ban on cruel and unusual punishment. In 2011, the Court ruled in *J.D.B. v. North Carolina* that youth status matters in areas of youth justice beyond the context of harsh sentencingpolicies when it imposed the requirement that law enforcement officials must consider the age of a suspect in determining whether Miranda warnings should be issued. These rulings followed in line with the Courts reasoning in *Roper v. Simmons*, which outlawed the death penalty for children in 2005, and relied on growing bodies of adolescent development research proving the unique characteristics of childrentheir lessened culpability, their unique vulnerability to peer pressure, their lack of understanding of the consequences of their actions and impulse control, and their particular capacity for rehabilitation that led the Court to conclude that children are categorically less culpable than adults. As a result, theparameters for how we treat children in the U.S. justice system are forever changed and require this Administration to reexamine practices that ignore the fundamental differences between children and adults and provide leadership to states that is consistent with these rulings.

With strong federal leadership, the pace of juvenile justice reforms can be accelerated. Research over the past 20 years has increased our understanding of what works and how to best approach juvenile delinquency and system reform. Many jurisdictions across the country are implementing promising reforms, and there is an increasingly clear path for moving toward evidence-based approaches to reducing adolescent crime. In August 2012, led by a bipartisan group of state lawmakers and governors, the National Conference of State Legislatures released a report highlighting successful efforts from around the country.<sup>7)</sup>Brown, S. (June 2012). [\*Trends in Juvenile Justice State Legislation: 2001-2011\*](#). Washington, DC:National Conference of State Legislatures.The ObamaAdministration has the opportunity and responsibility to restore an effective system of juvenile justice for our youth and should begin by focusing on the following five priority areas:

Over the past decade, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) has suffered a drastic depletion of funding and support, and the agencys commitment to both current and core concerns in juvenile justice has steadily waned.<sup>8)</sup>For more information, see [\*testimony of Shay Bilchik\*](#), former OJJDP Administrator, before the USHouse of Representatives, Judiciary Committee, Subcommittee on Crime, Terrorism and HomelandSecurity on September 18, 2008.Funding levels for OJJDP have declined more than 90 percent since 2002. In addition, the Juvenile Justice and Delinquency Prevention Act (JJDPA),authorizing legislation for OJJDP, is more than six years overdue for reauthorization. The National Academy of Sciences recently released a report detailing theimportant federal role of OJJDP and the value of the JJDPA.<sup>9)</sup>Bonnie, R., Chemers, B., and Schuck, J. Editors (November 2012). [\*Reforming Juvenile Justice: ADevelopmental Approach\*](#). Washington, DC: Committee on Assessing Juvenile Justice Reform, Committee on Law and Justice, Division of Behavioral and Social Sciences and Education, National Research Council. Going forward, theAdministration must provide the clear direction and resources needed to facilitate true and impactful reforms in all States, territories and the District of Columbia, building on innovative and evidence-based approaches to create and sustain juvenile systems that cost less in terms of both

human suffering and financing, enhance public safety, prevent delinquency and court contact in the first place, and give court-involved youth the best possible opportunities to live safe, healthy and fulfilling lives.

### **Restore and Increase Funding for Research-Driven Reforms**

As a national agency with access to and command of national resources, OJJDP is well positioned to focus on identifying, developing and promoting what works to reduce delinquency and advance youth, family and community success. OJJDP should continue to evaluate the evidence base for promising programs, support increased research to explore and develop new evidence-based approaches, and discontinue federal funding for approaches that are ineffective at protecting public safety and harmful to youth, like boot camps and zero tolerance policies.

We commend the Administration for attempting to reverse proposals to deeply cut and completely eliminate core juvenile justice funding. Yet, there is an absence of a strong voice to support for the juvenile justice formula grants that allow the federal government to partner with all 56 states, territories and DC to do the greatest good for the greatest number.

Federal funding available to support implementation of the JJDP Act and other improvements by state and local governments has steadily declined by 83 percent from 1999 to 2010<sup>10</sup> Id. page 10-16. and the appropriations caps contained in the Budget Control Act of 2011 have only accelerated the scope of the cuts.

We applaud the Administration's FY 2013 budget, which proposed \$140 million for three critical juvenile justice programs: \$70 million for Title II of the JJDP Act; \$40 million with no earmarks for Title V of the JJDP Act, and \$30 million for the Juvenile Accountability Block Grant (JABG). Although this is slightly below the \$175 million that we recommended for these programs, it is higher than congressional appropriations for FY 12 and comes closer to meeting the needed core support for state juvenile justice systems. In these tight economic times, we understand the importance of investing wisely. These are relatively modest, targeted federal investments in state and local juvenile justice programs that can pay huge dividends in the form of public safety, reduced recidivism, and better outcomes for youth. The President's budget should continue to recommend appropriations levels that seek to restore juvenile justice funding to its FY 2002 levels, adjusted for inflation, and increase these investments over the next five years.

### **Support Reauthorization and State Implementation of the JJDP Act**

Reauthorization of the JJDP Act is currently more than six years overdue. The Administration should immediately put forward a recommendation to Congress to reauthorize and strengthen the law. Moreover, it has been more than 15 years since OJJDP has conducted a comprehensive review to update JJDP Act implementation regulations and guidance. This means that the amendments made to the JJDP Act in 2002 are not yet reflected in the regulatory guidance provided to states, nor do the regulations reflect current circumstances. One of the first tasks of the new OJJDP Administrator must be to quickly produce new regulations and federal guidance to help states effectively implement the JJDP Act core protections and other reforms.

### **Strengthen Federal/State Partnerships**

The partnerships between the states and OJJDP should be strengthened by expanding training, technical assistance, research, and evaluation. Further, there should be greater transparency and accountability by making State plans and reports on compliance with the core protections publicly available on the OJJDP website.

### **Ensure That Program Policies and Practices Involve Families**

Consistent with the guiding principle to empower communities and engage youth and families because their strengths, experiences, and aspirations provide an important perspective in developing solutions in the 2011 Program Plan, we were pleased that OJJDP has initiated a greater focus on engaging families and held dialogue sessions on ways to enhance family and youth engagement. We applaud the decision of the Federal Advisory Committee on Juvenile Justice to include youth members as formal members. In addition, it was very helpful to states for OJJDP to work with two of its training partners in developing a Youth Involvement curriculum for state advisory groups. In our view, the agency should continue to actively support greater youth and family involvement by providing ongoing resources and guidance.

Specifically, we recommend allocating technical assistance resources to support family engagement, hiring a family member to help lead the effort going forward, and issuing new federal guidelines on family engagement in juvenile justice. We also recommend that OJJDP re-instate the youth leadership advisory board convened during the Clinton administration and further advance training on youth involvement. We also recommend that the Administration support the inclusion of family members on the JJDP Act state advisory groups, in a manner that is well supported and consistent with the current JJDP Act youth requirement.

### **Set and meet national benchmarks to prevent and reduce youth violence and delinquency, and to increase healing and well-being.**

The Attorney General's National Task Force on Children Exposed to Violence report, *Defending Childhood*, released in December, 2012, provided a series of recommendations to help prevent and reduce child victimization from all forms of violence. The recommendations are designed to help children and youth heal from violence by elevating federal leadership, launching a national initiative, investing in national data collection, and funding trauma-informed services for children and youth. Specific actionable recommendations include:

### **Improve Data Collection**

#### ***Race, Ethnicity and Gender***

We applaud OJJDP for recognizing the importance of research, evaluation, and data collection in the 2011 Program Plan. However, states remain ill-equipped to gather and analyze the necessary data to document and assess disparity by race, ethnicity, and gender. With

proper resources and instruction, local communities would be able to develop culturally and linguistically appropriate services for youth and their families. Better data collection would also help states and jurisdictions comply with the JJDPAs Disproportionate Minority Contact (DMC) requirement to reduce disparity; allow jurisdictions to mark progress and note where DMC remains; and evaluate the impact of various initiatives on reducing DMC. OJJDP should prioritize improved data collection and meaningful use of those data through policy guidance, resource allocation, and training.

We would also like to recognize and support the efforts of several states in urging the FBI Criminal Justice Information Services Division to provide greater access to and analysis of data on ethnicity, in addition to race, with the goal of a national standard requiring both race and ethnicity reporting in the Uniform Crime Reporting (UCR) process. Only when such information is provided can states disaggregate data to look at many populations with accuracy, most notably Latino and Hispanic youth who are often incorrectly identified as white or black in standard reports.

### ***Transfer to the Adult System***

Even the most cursory data on youth prosecuted in the adult criminal justice system via judicial, statutory, or prosecutorial waiver mechanisms and age of jurisdiction laws are not collected or reported by most states, despite the widespread use of transfer to the adult system. The Administration has shown some positive movement in collecting this information at the federal level for the *Survey of Juveniles Charged in Criminal Courts* through the Bureau of Justice Statistics. Since only 13 states publicly report transfer data<sup>11)</sup> Griffen, P., Addie S., Adams, B., and Firestone, K. (September 2011). [\*Trying Juveniles As Adults: An Analysis of State Transfer Laws and Reporting\*](#). Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention., this is a critical study that will shed light on what is happening to youth in the adult system across the country and can help inform the data collection that states should be undertaking. We call on the Administration to make certain this study is completed and that resources are made available to help states update and improve their data collection systems in accordance with the study's findings and recommendations. The Administration should also require states to track the frequency and mechanisms with which youth are transferred to the adult system.

Decades of empirical studies of juvenile delinquency by scholars in the fields of criminology, child psychology, mental health, substance abuse, economics, and public health reveal that public dollars spent on effective prevention and early intervention programs reduce delinquency. Research also shows that broadening prosecutorial powers and stiffening criminal penalties for young people do not work to lower delinquency or prevent reoffending.<sup>12)</sup> In recent years, a range of organizations have commissioned or conducted related research and reached similar conclusions, including the American Psychological Association, the Washington State Institute for Public Policy, the Social Development Research Group of Seattle, Washington, and the Office of Juvenile Justice and Delinquency Prevention. See [here](#) for more information. Similarly, public opinion polls find that taxpayers overwhelmingly favor paying for prevention, education, and rehabilitation over prosecution and incarceration of juveniles who are adjudicated delinquent.<sup>13)</sup> Piquero, A. and Steinberg, L. (December 2007). [\*Models for Change. Systems Reform In Juvenile Justice. Rehabilitation Versus Incarceration of Juvenile Offenders: Public Preferences in Four Models for Change States\*](#). See also, Center on Children's Law and Policy (December 2007). [\*Potential for Change: Public Attitudes and Policy Preferences for Juvenile Justice Systems Reform\*](#), Models for Change, Systems Reform in Juvenile Justice.

### **Eliminate the Valid Court Order (VCO) Exception from the JJDPa**

While the JJDPa currently prohibits detaining youth for status offenses, like truancy and running away from home, there is a valid court order (VCO) exception to the Deinstitutionalization of Status Offenders (DSO) core requirement.<sup>14)</sup> PL 96-509, 1980 S 2441, 94 Stat. 2755 (December 1980). The VCO exception allows judges and other court personnel to detain youth adjudicated as status offenders if they violate a valid court order or a direct order from the court, such as stop running away from home or attend school regularly.<sup>15)</sup> *cf. Id.* Detaining and incarcerating non-delinquent, status offending youth is counter-productive: it is more costly and less effective than home and community-based responses. It interrupts education, pulls children away from family and community, and stigmatizes youth.<sup>16)</sup> Nelson, D. W. (2008). *A Road Map for Juvenile Justice Reform*. Baltimore, MD: Annie E. Casey Foundation. Holman, B. and Ziedenberg, J. (2006). *The Dangers of Detention*. Washington, DC: Justice Policy Institute. Research clearly shows that once detained, youth are also more likely to commit unlawful acts, potentially leading to deeper involvement in the system.<sup>17)</sup> Nelson, D. W. (2008). *A Road Map for Juvenile Justice Reform*. Baltimore, MD: Annie E. Casey Foundation. Holman, B. and Ziedenberg, J. (2006). *The Dangers of Detention*. Washington, DC: Justice Policy Institute. Girls are disproportionately affected by the VCO exception they are more likely to be arrested for status offenses and to receive more severe punishment than boys.<sup>18)</sup> Puzzanchera, C., et al. (2011). *Juvenile Court Statistics 2008*. Pittsburgh, PA: National Center for Juvenile Justice and Office of Juvenile Justice and Delinquency Prevention. Many girls, already traumatized before entering the justice system, are re-traumatized by violent and abusive experiences in detention.<sup>19)</sup> Watson, L. and Edelman, P. (October 2012). [\*Improving the Juvenile Justice System for Girls: Lessons from the States\*](#), Washington, DC: The Center on Poverty, Inequality, & Public Policy, Georgetown University Law Center. Although judges, court personnel, and advocates are working hard to effectively address the VCO exception on the state level, its mere existence in the JJDPa undermines the DSO core requirement and harms youth. We call on the Administration to encourage and support the elimination of the VCO exception in the reauthorization of the JJDPa.

### **Support Community-Based Alternatives to Reduce Over-Reliance on Incarceration of Youth**

The Administration has the opportunity to set a bold goal to reduce all youth incarceration and out-of-home placements by half in the next five years. States as diverse as New York, Illinois, California, Arkansas, Ohio, Texas, and the District of Columbia have undertaken initiatives to reduce their over-reliance on wasteful, unnecessary and often dangerous incarceration of children.<sup>20)</sup> See [\*Juvenile Detention Alternatives Initiative\*](#). Instead these states are investing in more effective community-based approaches.

OJJDP has a vital role to play in helping States and localities prevent and reduce the unnecessary use of out-of-home placements. OJJDP has begun to partner with the Annie E. Casey Foundation to replicate the Juvenile Detention Alternatives Initiative (JDAI), which is aimed at safely reducing the unnecessary use of detention through a variety of tools and strategies. We support the continuation of efforts to reduce the use of detention, incarceration and placement of youth in other residential facilities. The Administration should invest in a

plan to cut youth incarceration and out-of-home placements in half by the end of 2017.

### **Improve School Safety and Reduce Exclusionary Disciplinary Practices**

Academic success plays a crucial role in preventing delinquent behavior and promoting positive outcomes for youth and safer communities. Youth who drop out or are pushed out of school have fewer opportunities for gainful employment and are more likely to commit delinquent acts than youth who remain in school.

Over the past two decades, expanded zero tolerance school disciplinary policies have too often led to suspensions, expulsions and push-out of students for a broad range of student behaviors that are not violent or a threat to school safety, but rather typical of normal adolescent development. Beginning in the 1990s, schools across the nation created mandatory punishments for a long list of student behaviors, many of which are now required to be reported to the police. For example, in Pennsylvania, school-based arrests nearly tripled between 1999- 2007; yet nearly all school-based referrals were misdemeanor offenses or non-delinquent.<sup>21)</sup>Greene, J., Pranis, K., and Ziedenberg, J. (2006). *Disparity by design: How drug-free zone laws impact racial disparity and fail to protect youth*. Washington, DC: Justice Policy Institute. The result of zero tolerance has too often been the disconnection from school and criminalization of youth particularly youth of color, LGBTQ youth, and youth with disabilities for behaviors and infractions that can and should be addressed within schools, without pushing youth out of school or involving law enforcement and justice system referrals. A wave of recent school discipline reforms, which move away from zero tolerance and toward more supportive responses and services, underscore the ineffectiveness of a punitive, exclusionary approach toward students.<sup>22)</sup>See [Dignity in Schools](#).

Additionally, excessive reliance on law enforcement in schools to maintain discipline can send youth into the juvenile and criminal justice systems for matters more appropriately handled by school personnel. When law enforcement officers are present in schools, there is often an increase in arrests for typical adolescent, nonviolent behavior, rather than incidents that threaten the safety of other students or school personnel.<sup>23)</sup>Advancement Project. (March 2010). [Test, Punish, and Push Out: How Zero Tolerance and High-stakes Testing Funnel Youth into the School-to-Prison Pipeline](#). Washington, DC. Without strong leadership and rules about the role of law enforcement, police are sometimes relied on to enforce rules that should be managed by school personnel, such as fistfights without injury, graffiti, disorderly conduct, and similar behaviors. Sending youth into the justice system for these minor offenses can result in a lifetime of negative collateral consequences, including significant barriers to education and employment.

In many school districts, an arrest or referral to the justice system also means suspension and expulsion from school and blocked reentry into school. Arrests, suspensions, expulsions, and barriers to school re-entry cut students off from positive interactions with adults in supportive settings such as school and cause a variety of negative life outcomes. As the presence of law enforcement and school resource officers (SROs) in schools has increased, arrests and referrals to the juvenile justice system, generally, have also increased.<sup>24)</sup>Torres, M. and Stefkovich, J. A. (2009). *Demographics and Police Involvement: Implications for Student Civil Liberties and Just Leadership*. Education Administration Quarterly 45(3): 450-473. The presence of law enforcement in schools has effects that transform the school from an academic environment to a site of criminal law enforcement. Issues that might otherwise be seen as mental health or social problems become policing matters once an officer is stationed in a school. This comes at the expense of students rights and their education. Youth of color are especially vulnerable to over-policing in schools, which increase both the racial-academic divide and racially skewed arrest rates.<sup>25)</sup>Kupchik, A. (December 30, 2012), [The flaws in the NRAs school-security proposal](#). The Washington Post. Schools should instead be encouraged to invest more resources in school counselors, school social workers, and other mental health clinicians who can strengthen school-wide positive behavioral interventions, identify and treat problems that might contribute to youth violence, and improve coordination with community mental health and prevention services.

We support the collaboration between the Department of Justice and Department of Education on the *Supportive School Discipline Initiative* to address the school-to-prison pipeline and the disciplinary policies and practices that can push students out of school and into the justice system. The goals to build consensus for action among federal, state and local education and justice stakeholders; collaborate on research and data collection that may be needed to inform this work, such as evaluations of alternative disciplinary policies and interventions; develop guidance to ensure that school discipline policies and practices comply with the nations civil rights laws and to promote positive disciplinary options to both keep kids in school and improve the climate for learning; and promote awareness and knowledge about evidence-based and promising policies and practices among state judicial and education leadership are the right ones.<sup>26)</sup>U.S. Department of Justice, Office of Public Affairs. (July 21, 2011). [Attorney General Holder, Secretary Duncan Announce Effort to Respond to School-to-Prison Pipeline by Supporting Good Discipline Practices](#) [Press Release]. We encourage the Administration to advance the policies that reflect these goals and ensure that the necessary resources and staff are provided.

### **Improve Access to and Quality of Mental Health and Behavioral Health Services and Substance Abuse Services**

The Administration should advance proposals to help identify mental/behavioral health needs early, including mental illness and substance abuse; to expand access to evidence-based services and treatment; and to improve the quality of those services. We encourage the Administration to support approaches that expand family-connected and community-based treatment options, better coordinate child and family service systems and integrate trauma-informed care into all aspects of mental/behavioral health treatment. Additionally, federal agencies must ensure that stakeholders understand and have access to programs and protections available under current law. To that end, the Administration must redouble efforts to enforce the Mental Health Parity Act by ensuring fair and equal access to behavioral health treatment services and expand access to behavioral health treatment services by ensuring that youth and families are educated and connected to public and private health insurance coverage through the Affordable Care Act.

Youth in the justice system often have serious health and mental health needs. OJJDP should increase training and technical assistance related to mental health and substance abuse, including best practices for law enforcement and probation officers, detention/corrections and community corrections personnel, court services personnel and others.

We are encouraged that OJJDP proposed to fund an initiative in partnership with the Department of Health and Human Services to identify best practices for juvenile drug courts and adolescent treatment. As an extension of that initiative, OJJDP, in coordination with the Substance Abuse and Mental Health Services Administration, should conduct a major study regarding the availability of behavioral



health resources for youth who need them (both prior to and after involvement in the juvenile and criminal justice systems) and effective strategies for diverting youth with behavioral health needs to services rather than into the justice system. According to data released by OJJDP, 44 percent of youth in custody say they were under the influence of alcohol or drugs during the commission of their offense.<sup>27)</sup> Sedlak, Andrea J., and Bruce, C. (December 2010). *Youths Characteristics and Backgrounds*. Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

### **Address the Specific Needs of Girls**

Girls are the fastest growing segment of the juvenile justice population and their pathway into the system is often very different from that of boys. For girls, physical and sexual abuse is an overwhelming predictor for juvenile justice involvement. Once in the system, girls often fail to receive the rehabilitative services they need, and instead are re-traumatized and derailed from educational achievement.<sup>28)</sup> Watson, L. and Edelman, P. (October 2012). *Improving the Juvenile Justice System for Girls: Lessons from the States*. Washington, DC: The Center on Poverty, Inequality, & Public Policy, Georgetown University Law Center.

OJJDP is uniquely positioned to take the lead in developing national standards for gender-responsive programming, staff training, and protocols. With an increase in the number of juvenile serving programs, detention centers and probation departments seeking accreditation from groups, such as the National Commission on Correctional Health Care, the Council on Accreditation, and the American Correctional Association, standards for juvenile programming, detention, and probation should include those directly related to gender-responsive practice.

OJJDP can also redouble its efforts to ensure that State Advisory Groups (SAGs) fulfill their 3-year plan requirement to address the needs of girls, and require that at least one SAG member have expertise in gender-specific challenges for girls, including sexual abuse and trauma, commercial sexual exploitation, and domestic minor sex trafficking, as well as effective interventions.

Through the National Girls Institute, OJJDP should work to fulfill the need for evaluation and research on gender-specific programs for girls, including updating the 1998 Inventory of State Best Practices (Guiding Principles for Promising Female Programming). We recommend that the Administration allocate \$10 million for a girls and juvenile justice program to provide specific, targeted support for state efforts to implement best practice with respect to at-risk and system-involved girls.

### **Promote Cultural Competence Regarding Lesbian, Gay, Bisexual, Transgender, Questioning and Intersex (LGBTQI) Youth**

Recent research shows that up to 13 percent of youth in juvenile detention identify as LGBT.<sup>29)</sup> The Equity Project. (2009). *Hidden Injustice: Lesbian, Gay, Bisexual and Transgender Youth in Juvenile Courts*. Legal Services for Children, National Juvenile Defender Center, and National Center for Lesbian Rights. In their homes, schools, and communities LGBTQI youth face challenges related to their sexual orientation and/or gender identity that can increase their risk of coming into contact with the juvenile justice system. A recent study in *Pediatrics* found that adolescents who self-identified as LGB were about 50 percent more likely to be stopped by the police than other teenagers. In particular, girls who identified themselves as lesbian or bisexual reported about twice as many arrests and convictions as other girls who had engaged in similar behavior.<sup>30)</sup> Himmelstein, K., and Bruckner, H. (January 2011). *Criminal Justice and School Sanctions against Non-Heterosexual Youth: A National Longitudinal Study*. *Pediatrics* (published online December 6, 2010). LGBTQI youth also experience high rates of school violence, interfering with their ability to learn and impacting their involvement with the juvenile courts.

The Administration should promote LGBTQI cultural competence in Safe Schools/Healthy Students (SS/HS), a program widely recognized as a model for achieving effective collaboration across public education, local mental health, and juvenile justice. SS/HS evaluations should reflect efforts to meet the needs of LGBTQI students, including decreasing the rate of arrest and referral to the juvenile court of LGBTQI youth.

In addition, LGBTQI youth experience victimization in juvenile facilities at higher rates than heterosexual youth. For example, non-heterosexual youth are sexually victimized by other youth in juvenile facilities at 10 times the rate of heterosexual youth.<sup>31)</sup> Beck, A.J., Guerino, P., and Harrison P.M. (January 2010). *Sexual Victimization In Juvenile Facilities Reported By Youth, 2008-09*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics. The Administration should support research and promote best practices for serving LGBTQI youth in community-based and out-of-home care.

Far too often, incarcerated youth endure abusive conditions. In a recent study by the Bureau of Justice Statistics (BJS), a shocking one in eight youth in juvenile facilities reported experiencing sexual abuse at their current facility in the past year alone, with more than one in five non-heterosexual youth reporting such abuse.<sup>32)</sup> Beck, A.J., Guerino, P., and Harrison P.M. (January 2010). *Sexual Victimization In Juvenile Facilities Reported By Youth, 2008-09*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics. An earlier BJS survey, which focused solely on sexual violence reports filed with prison officials, confirmed that young inmates are also more likely to be victimized when in adult facilities.<sup>33)</sup> Beck, A.J. & Harrison, P.M. (2006). *Sexual Violence Reported By Correctional Authorities, 2005*. Washington, DC: Bureau of Justice Statistics. Reports of abuses in institutions in Indiana,<sup>34)</sup> In Indiana, staff sexually assaulted youth in one facility, and failed to protect youth from violence in several juvenile facilities. Kim, W. (August 6, 2007). *Investigative Findings Letter*. Washington, DC: U.S. Department of Justice, Civil Rights Division. See also, [Justice Department Reaches Settlement Regarding Conditions at Two Indiana Juvenile Justice Facilities](#), (February 8, 2006). U.S. Fed. News Service. Schlozman, B. (September 9, 2005). *Investigative Findings Letter*. Washington, DC: U.S. Department of Justice, Civil Rights Division. Mississippi,<sup>35)</sup> In Mississippi, staff dangerously and routinely shackled youth to metal beds for discipline, excessively used isolation as punishment and regularly violated youths due process rights. Perez, T. (March 31, 2011). *Investigative Findings Letter*. Washington, DC: U.S. Department of Justice, Civil Rights Division. See also, Perez, T. (August 10, 2012). *Investigative Findings Letter*. Washington, DC: U.S. Department of Justice, Civil Rights Division. Ohio,<sup>36)</sup> In Ohio, girls in a state facility were sexually assaulted by male staff. Ohio Settles Suit Over Juvenile Jails. (April 4, 2008). Associated Press. See also, Kim, W. (May 9, 2007). *Investigative Findings Letter*. Washington, DC: U.S. Department of Justice, Civil Rights Division. Available at [New Jersey](#),<sup>37)</sup> In New Jersey, two boys due process rights were violated. See, [T.D. and O.S. v. Mickens et al.](#) (December 2, 2010). Louisiana,<sup>38)</sup> In Louisiana, youth were physically and sexually abused by staff.

Perez, T. (January 18, 2011). [Investigative Findings Letter](#). Washington, DC: U.S. Department of Justice, Civil Rights Division. and other states demonstrate the importance of enforcing federal laws to ensure the safety of children in custody. Abuses have included use of pepper spray, sexual assaults by staff, hog-tying, shackling, and isolation. Youth who commit crimes must be held accountable, but no court disposition, regardless of the offense, should ever include abuse, mental health deterioration, or death in a juvenile facility, adult jail or prison.

In addition, youth of color are significantly over-represented in the juvenile justice system. Latino youth are incarcerated in local detention and state correctional facilities nearly twice as often as White youth. African-American youth are 16 percent of the adolescents in this country, but are 38 percent of the youth incarcerated in local detention and state correctional facilities.<sup>39</sup> National Council on Crime and Delinquency. (January 2007). [And Justice for Some: Differential Treatment of Youth of Color in the Justice System](#). Oakland, CA. Research also demonstrates that youth of color are treated more harshly than White youth, even when charged with the same category of offense, including being more frequently transferred to adult court.

OJJDP has begun to recognize the national role it should play in ensuring that incarcerated youth are held in safe conditions by establishing the National Center for Youth in Custody. We also support efforts to encourage States to establish community advisory boards or other independent monitoring structures to monitor and improve conditions of confinement. The Justice Department should take a leadership role in reducing excessive use of restraint and isolation in juvenile facilities and adult facilities that house youth. OJJDP can also do more to require states to reduce racial and ethnic disparities in their juvenile justice systems and to support them in those efforts with technical assistance that helps states and localities move beyond studying the problem to meaningful change.

### **Strengthen JJDP's Jail Removal Core Protection**

The original intent of the JJDP was to recognize the unique needs of youth in the criminal justice system and establish a separate system to specifically address these needs. One of these unique needs for youth is protection from the dangers of adult jails and lockups. The jail removal core protection currently protects youth who are under the jurisdiction of the juvenile justice system by prohibiting these youth from being held in adult jails and lockups except in very limited circumstances, such as while waiting for transport to appropriate juvenile facilities. In these limited circumstances where youth are placed in adult jails and lock-ups, the sight and sound core protection limits the contact these youth have with adult inmates. The Administration should support a reauthorization of the JJDP that would extend the jail removal and sight and sound protections of the Act to all youth under age 18, regardless of whether they are awaiting trial in juvenile or adult court. In the limited exceptions allowed under the JJDP where youth can be held in adult facilities, they should have no sight or sound contact with adult inmates. Alternatively, the Administration should issue updated regulations applying these core protections to youth in the adult system.

### **Commit to Reduce the Disparate Treatment of Youth of Color**

Another core requirement of the JJDP requires states to address the disproportionate representation of youth of color in the justice system. We are pleased that, for the first time in more than a decade, the Administration is looking more closely at this issue. OJJDP's current effort to require comprehensive DMC assessments from all states that includes community level data has set in motion development of specific measurable interventions aimed at reforming systems and reducing racial/ethnic disparities. In addition, we are pleased that the Department of Justice is taking legal action, like the recent suits filed in Shelby County (TN) and Meridian County (MS) where it finds significant disparities in the treatment of young people. It is crucial that these efforts continue and that they are strongly supported, visible, and coordinated with other Justice Department initiatives. We also encourage expansion of efforts underway to team up with the Models for Change DMC Action Network and implement its strategies supported by the John D. and Catherine T. MacArthur Foundation. In accordance with the DMC requirement, OJJDP should push states more to show how they are reducing racial and ethnic disparities at all points in the system where disparities exist, including the point at which children are sent to adult criminal court, often the most disparate point in the juvenile justice system.

### **Fully Implement the Prison Rape Elimination Act of 2003 regulations.**

We applaud the Administration's work on finalizing the regulations to implement the Prison Rape Elimination Act (PREA). We encourage the Administration to continue its efforts to ensure that the regulations are fully implemented in all the states, and that they are used as a floor, not a ceiling, especially with respect to youth in the adult system. We call on the Department of Justice to issue guidance that establishes removal of all youth from adult jails and prisons as a best practice in implementing the PREA regulations. In addition, the Department should conduct more outreach to help local jails, juvenile facilities, community corrections programs, and police lockups to understand their obligations to keep youth safe in their care, regardless of the lack of a federal financial incentive to implement the PREA regulations. The Department should help operators of juvenile justice facilities understand the liability risk they face by failing to implement the PREA standards. In addition, the Administration should plan to fund the PREA Resource Center past its current funding time frame, since it will take time to help the many facilities across the country to reach full implementation of the standards.

### **Take a Leadership Role in Reducing Unnecessary Use of Restraint and Isolation**

Recent reports and hearings have shed a national spotlight on the problems of solitary confinement and the particular harms isolation imposes upon young people. In both juvenile and adult facilities, extended lockdown alone in a cell can traumatize youth, exacerbate existing mental illness, breed anger and aggression, develop depression and trigger post-traumatic stress responses. The Justice Department can and should lead the way for states to implement effective strategies to reduce their reliance on isolation to keep youth safe and to discipline them when they break institutional rules. The restrictions on isolation in the PREA regulations are an important first step, but facilities need more models and guidance to reduce unnecessary isolation.<sup>40</sup> Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences. (June 11, 2012). Hearings before the Subcommittee on the Constitution, Civil Rights and Human Rights of the U.S. Senate Committee on the Judiciary, 112th Congress. See also, Simkins, S., Beyer, M., and Geis, L. (2012). *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post- Disposition Representation*, 38 Wash. U. J. L. & Poly 241. Representatives of the Administration should include reduction of restraint and isolation as a priority when speaking publicly about needed juvenile justice reforms.

## **Ensure Fair Treatment and Adequate Representation of System-Involved Youth**

The Administration should allocate more support to expand the Department of Justices efforts to ensure that states are meeting constitutional requirements to provide access to quality legal counsel for children in the justice system. We also encourage the Administration to use the recent U.S. Supreme Court decisions in *Graham v. Florida* and *Miller v. Alabama* to urge states modify their laws to reflect the rulings. In particular, it is no longer permissible that individuals under 18 at the time of their crime be given a sentence of life without parole (LWOP) for non-homicide crimes, nor can youth be mandatorily sentenced to LWOP under any circumstances.

## **Invest in the National Center for Youth in Custody**

We continue to support the newly established National Center on Youth in Custody, but encourage the Administration to do more to help States to provide necessary training for facility staff and to adopt best practices in programming, behavior management, and security while eliminating dangerous practices and unnecessary isolation. We hope the Center will play an important role in helping the Administration set and meet the goal of reducing youth incarceration and out-of-home placements by half by the end of 2017.

## **Encourage States to Keep Youth off Sex Offender Registries**

The Attorney General should refrain from promulgating policies or promoting practices that unnecessarily stigmatize youth and provide no public safety benefit through placement of youth on public and private (law enforcement only) sex offender registries. The Department of Justice should promote a policy that allows States to achieve compliance with the Sex Offender Registration and Notification Act (SORNA) Title of the Adam Walsh Act without placing adjudicated youth on a sex offender registry or subjecting them to community notification.

The Administration and OJJDP must do more to help and motivate states to roll back broad transfer policies that treat too many youth as adults. Across the United States, an estimated 250,000 youth are tried, sentenced, or incarcerated in the adult criminal justice system every year.<sup>41)</sup> Arya, N. (2011). *State Trends: Legislative Victories from 2005 to 2010, Removing Youth from the Adult Criminal Justice System*. Washington, DC: Campaign for Youth Justice. Trying youth as adults is bad for public safety and for youth. Youth prosecuted in the adult criminal justice system are more likely to reoffend than similarly situated youth who are retained in the juvenile system, and these offenses tend to be more violent.

In December, 2012, after a year-long exhaustive study, the Attorney Generals Task Force on Children Exposed to Violence issued comprehensive recommendations to the Attorney General on reducing childrens exposure to violence, including a recommendation to abandon policies that prosecute, incarcerate or sentence youth under 18 in adult criminal court. According to the report, We should stop treating juvenile offenders as if they were adults, prosecuting them in adult courts, incarcerating them as adults, and sentencing them to harsh punishments that ignore their capacity to grow.<sup>42)</sup> Report of the Attorney Generals National Task Force on Children Exposed to Violence. (December 2012). [Defending Childhood](#). Washington, DC: U.S. Department of Justice.

The Task Forces recommendation reflects the policies of major professional associations representing juvenile and adult criminal justice system stakeholders such as the American Correctional Association, the American Jail Association, the Council of Juvenile Correctional Administrators, the National Partnership for Juvenile Services, and the National Association of Counties that highlight the harm youth are subjected to in the adult criminal justice system. And the Task Forces recommendation is consistent with the latest state law reforms according to an August, 2012 report, Trends in Juvenile Justice State Legislation 2001-2011 released by the National Conference of State Legislatures (NCSL), showing that numerous states have undertaken policy reforms in the last decade to remove youth from the adult criminal justice system and from adult jails and prisons.

Studies across the nation have consistently concluded that juvenile transfer laws are ineffective at deterring crime and reducing recidivism. OJJDP and the federal Centers for Disease Control and Prevention have sponsored research highlighting the ineffectiveness of juvenile transfer laws at providing a deterrent for juvenile delinquency and decreasing recidivism.

Additionally, youth in the adult system are also at great risk of sexual abuse and suicide when housed in adult jails and prisons. The National Prison Rape Elimination Commission found that more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse.<sup>43)</sup> [National Prison Rape Elimination Commission Report](#) (June 2009). Youth are also often placed in isolation, locked down 23 hours a day in small cells with no natural light, and these conditions cause anxiety, paranoia, and exacerbate existing mental disorders and heighten the risk of suicide. The ACLU and Human Rights Watch recently issued a report, Growing Up Locked Down, that estimated nearly 10,000 youth are in adult jails or prisons on any given day.<sup>44)</sup> Human Rights Watch and American Civil Liberties Union. (October 2012). [Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States](#). Washington, DC: Author. In fact, youth housed in adult jails are 36 times more likely to commit suicide than are youth housed in juvenile detention facilities.<sup>45)</sup> Campaign for Youth Justice. (November 2007). [Jailing Juveniles](#). Washington, DC.

The majority of youth tried in the adult system are charged with non-violent offenses,<sup>46)</sup> Campaign for Youth Justice. (March 2007). [The Consequences Arent Minor: the Impact of Trying Youth as Adults and Strategies for Reform](#). Washington, DC. and yet still suffer the lifelong consequences from their experience with adult court. Youth are often denied employment and educational opportunities,<sup>47)</sup> Campaign for Youth Justice. (March 2007). [The Consequences Arent Minor: the Impact of Trying Youth as Adults and Strategies for Reform](#). Washington, DC. which significantly restricts their life chances. If sentenced to an adult prison, approximately 80 percent of youth convicted as adults will be released from prison before their 21st birthday, and 95 percent will be released before their 25th birthday.<sup>48)</sup> Redding, R. (August 2008). *Juvenile transfer laws: An effective deterrent to delinquency?* Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. Many of these youth will not have been provided with the education and services they need to make a successful transition to productive adulthood. The Administration should provide strong leadership for states to reduce and eventually eliminate their harmful and dangerous reliance on trying youth as adults.

In light of *Graham*, *Miller*, and *JDB*, establishing that youth status must be a consideration in matters of justice, youth justice policies that ignore the differences between youth and adults now must be reexamined. The Obama Administration should take these developments seriously and play a leadership role to ensure that federal policies hold young people accountable in age-appropriate ways that guarantee their safety and focus on rehabilitation and reintegration into society.

The federal statutes governing juveniles and the procedures of the Justice Department in prosecuting and advocating during the sentencing of juveniles conflict with both the letter and the spirit of the Supreme Courts 2012 decision in *Miller v. Alabama*. In *Miller*, the Court held that it is unconstitutional to sentence someone to life without parole if that defendant was a juvenile at the time of his or her offense, and the sentence was mandatory. Yet current application of the Federal Sentencing Guidelines to youth in the federal system allows for imposition of mandatory life sentences for juveniles. Importantly, the *Miller* decision also re-emphasized the Courts continuing commitment to the idea that juvenile offenders are fundamentally different than other defendants. Federal law and the DOJ procedures must be amended to recognize these current realities.

#### **Assist States in Removing Youth from Adult Criminal Court**

Consistent with the Attorney Generals report recommendation, the Administration should provide incentives for states to remove youth from the adult criminal justice system. The Administration should leverage resources and coordinate efforts through the Bureau of Justice Assistance, the National Institute of Corrections, and OJJDP to effectively invest in programs and strategies that reduce the prosecution of youth in adult court.

#### **Help States Remove Youth from Adult Facilities**

In light of the overwhelming evidence that youth cannot be kept safe in adult facilities and the research demonstrating that keeping youth in adult facilities is harmful to the youth and to public safety, the Administration should make clear and publicize that removing all youth from adult facilities is a best practice for states in implementing the PREA regulations. The DOJ's new policy, issued as part of the PREA regulations, states that as a matter of policy, the Department supports strong limitations on the confinement of adults with juveniles.<sup>49)</sup> [National Standards to Prevent, Detect and Respond to Prison Rape, Docket No. OAG-131](#), (May 16, 2012). Washington, DC: U.S. Department of Justice, Office of Justice Programs. This is consistent with existing laws and policies used by the Federal Bureau of Prisons that prohibit the placement of youth in adult jails and prisons when in federal custody. Roughly 1 in 4 incarcerated youth are held in adult jails or prisons instead of juvenile facilities. Several jurisdictions including Virginia, Colorado, Ohio, Oregon and Texas have recently changed their laws to allow youth tried in the adult system to be housed in juvenile facilities. The Administration should leverage resources and coordinate efforts through the PREA Resource Center, the National Center for Youth In Custody, the Bureau of Justice Assistance, the National Institute of Corrections, and OJJDP to invest effectively in programs and strategies that reduce youth incarceration in adult facilities.

#### **Amend the Federal Sentencing Guidelines**

The Federal Sentencing Guidelines are advisory but deeply influential in federal sentencing. The top range of those guidelines is life, and because there is no parole in the federal system, that means life without the possibility of parole. The guidelines should be amended so that defendants who commit their crime before age 18 are not subjected to life without parole.

#### **Change DOJ Policy Related to Juvenile Offenders**

As set out in the current U.S. Attorneys Manual, The decision to proceed against a juvenile as an adult in district court was delegated to the United States Attorneys by then Assistant Attorney General Jo Ann Harris in a Memorandum dated July 20, 1995. To better evaluate the national policy regarding juveniles in the federal courts, and to ensure compliance with *Miller* and the priorities of this Administration, that delegation should be reversed. Main Justice should review and approve all proposed transfers to adult status of those who committed their crimes as juveniles.

In reviewing the transfer of cases, and in making charging and plea decisions, the U.S. Attorneys Manual should urge consideration of the factors emphasized by Justice Kagan in the *Miller* opinion: The child's age at the time of the offense and the immaturity, impetuosity, and failure to evaluate risks that go with that age; the child's home and family environment; the circumstances of the offense, including role taken and the pressure exerted by others; the child's lack of sophistication relative to an adult; and the possibility of rehabilitation.

There should be a general presumption against transfer and any possible life sentence for juvenile offenders. The Kagan factors should be considered in evaluating any rebuttal to the presumption against a transfer to adult status, and to any charge or plea which can lead to a sentence of life in prison.

Approximately 100,000 young people under age 18 leave secure juvenile facilities and return to their communities each year.<sup>50)</sup> Snyder, H. (2004). *An Empirical Analysis of the Youth Reentry Population*. Youth Violence and Juvenile Justice 2(1): 39-55. Youth are often discharged from care back to families struggling with domestic violence, drug and alcohol abuse, and unresolved mental health disabilities. Many youth are placed back into neighborhoods with few youth supportive programs, high crime rates, poverty, and poor performing schools. Public safety is compromised when youth leaving out-of-home placement are not afforded necessary planning and supportive services upon reentering their communities, increasing the likelihood of recidivism.

Reentry services and aftercare for youth exiting juvenile justice facilities reduce recidivism and support their successful reintegration into families and communities. By fostering improved family relationships and functioning, reintegration into school, and mastery of independent life skills, reentry services help youth build resiliency and positive development to divert them from harm and delinquent behaviors. Also, reentry preparation for youth who have been incarcerated for longer periods of time for serious felonies, or youth serving life without parole sentences that no longer legally are permitted, should be prepared for reentry during these longer periods of incarceration through access to education, job training, and other health and social programs.

If our nation expects to reduce recidivism, it must establish a national policy agenda that supports reentry services to connect youth with



meaningful opportunities for self-sufficiency and community integration. Policy and practice must be grounded in evidence-based practices and involve cooperation among existing federal and State agencies, local stakeholders, juvenile justice experts, and reform advocates.

We are pleased that OJJDP has provided continued funding for demonstration projects under the Second Chance Act Youth Offender Reentry Initiative and an evaluation of Second Chance Act youth reentry programs. Below are additional recommendations to help youth return successfully and safely to their communities.

### **Increase Federal Coordination on Youth Reentry**

Through the federal Inter-Agency Reentry Council, the Attorney General should oversee and coordinate youth reentry issues with the continuum of reentry programming supported by the Department of Justice as well as other federal agencies. The Inter-Agency Reentry Council also should continue to coordinate its work on youth reentry with the Department of Justice's Federal Coordinating Council on Juvenile Justice and Delinquency Prevention, which the Attorney General convenes.

### **Increase Funding for Youth Reentry**

The Administration should prioritize and increase funding for the Second Chance Act and other federal reentry programs that provide reentry supports and services for youth. The Department of Justice also should ensure that it maintains funding for youth reentry programs. Over the past couple of years, the percentage of funding dedicated to youth reentry programming at the Department of Justice has decreased. It is critical to maintain and continue these investments as a way to support access to youth reentry services at the local level, as well as help ensure the successful reentry of youth, who otherwise could recidivate into the juvenile justice or adult criminal justice system at great cost to themselves, their families, society and taxpayers. Targeted resources and supports can help ensure reentering youth are afforded the opportunity to have positive life outcomes and are equipped with effective skills. Finally, all youth-serving federal agencies, including the U.S. Departments of Justice, Labor, Education, and Health and Human Services, should work together to educate States and localities about the availability of federal programs and resources that support youth reentry.

### **Promote a Continuum of Education for Delinquent Youth**

The Administration should incentivize State departments of education to focus on vulnerable school populations to ensure that youth experience no interruptions in their education during out-of-home placement, such as detention or secure treatment, and are assisted with reenrollment in school upon exit from placement. Specifically, the Administration should call for the inclusion of an individualized education assessment before the out-of-home placement or detention begins in order to ensure that the educational needs of youth are met during placement, and that the planning required for successful school reentry begins as early as possible during out-of-home placement or detention.

The Department of Education also should require or incentivize states to establish procedures for the prompt reenrollment of youth into schools upon return from out-of-home placement, as well as require that states establish procedures for the prompt transfer of educational records and credits earned during placement in the juvenile justice system. Finally, the Administration should pilot an innovative practices program aimed at ensuring the educational success of students reentering school from the juvenile justice system. Such a program could highlight the need for reentering youth for states and school districts nationwide; incentivize states and/or local education agencies to develop best practices in the area of access to education upon reentry that could be shared with and adopted by other jurisdictions; and demonstrate a federal commitment to serving reentering youth. Such funding could be provided in a competitive manner, similar to the Administration's Race to the Top Program.

### **Support Year-Round Programming for Delinquent and Reentering Youth**

The Administration should work closely with the Departments of Justice, Labor, Health and Human Services, and Education as well as states to support funding and other efforts that promote comprehensive services on a year-round basis for reentering youth. This is particularly important for issues related to education, since youth enter and exit the juvenile justice system year round, and this legal process is not tied to the standard school year calendar.

**Encourage Education and Employment Training Services for Youth Offenders** The Administration should push for the inclusion and development of education and training programs for youth who are denied access to traditional secondary and post-secondary institutions or reenrollment upon reentry. Such programs would help fill the gap in educational and youth- and young adult-focused workforce preparation resources and services; reduce reentry barriers; improve the transition of youth back into community; and help youth develop into working, career-ready citizens.

### **Remove Barriers to Health Care for Incarcerated Youth**

Youth in the justice system often have serious health and mental health needs. Prior to their detention, many youth have access to health services through Medicaid or the State Children's Health Insurance Program (SCHIP), but this coverage is often terminated upon entering a secure detention or correctional facility, despite no legal requirement to do so. When youth lose their health coverage it forces them to reapply for benefits upon their release, a process which may take up to 90 days to complete. This delay seriously threatens successful reintegration to the community and often results in long delays in obtaining vital treatment, medication, and services at a time when they are most needed. Gaps in services significantly increase the risk of reoffending and recommitment to an institution. The Administration should continue to educate States and support efforts to suspend, rather than terminate, Medicaid or other health coverage for incarcerated youth. The Department of Justice should work with the Department of Health and Human Services (HHS) to provide technical assistance to state Medicaid and juvenile justice agencies to implement a policy of suspension rather than termination of Medicaid and other health coverage for youth entering the juvenile justice system. HHS should create a pilot program to demonstrate the effectiveness of enrolling youth in Medicaid or other health insurance before they are released from detention, regardless of their enrollment status at the time of detention.

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## Sentencing Policy

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