



RESOLUTION REGARDING THE NEED FOR INDEPENDENT OVERSIGHT OF YOUTH CONFINEMENT FACILITIES

WHEREAS, roughly 54,000 youth are housed in residential confinement facilities each year across the United States;¹ and

WHEREAS, research shows that since 2000, youth in at least 29 states and the District of Columbia have experienced “systemic and recurring maltreatment”² while they were confined in juvenile detention facilities, and over 40 percent of surveyed youth in secure juvenile facilities report feeling somewhat or very afraid of being physically attacked while they are detained, 45 percent report that staff unnecessarily use force against youth, and 30 percent report that staff place youth in solitary confinement as a form of discipline;³ and

WHEREAS, the Bureau of Justice Statistics, in accordance with the requirements of the Prison Rape Elimination Act (PREA), has collected extensive data on youth who are sexually abused in confinement settings, revealing that nearly 9500 allegations of sexual victimization of youth were reported in state or local and private facilities during the period from 2007 to 2012, of which 55% involved youth-on-youth assaults and 45% involved staff-on-youth assaults.⁴

WHEREAS, the NCJFCJ has previously voiced opposition to forms of maltreatment in the youth justice system that can interfere with a juvenile’s healthy development, including the inappropriate use of solitary confinement⁵ and physical restraints such as shackles,⁶ and

WHEREAS, many state and local juvenile justice agencies across the United States operate without any form of independent on-site monitoring of the conditions of confinement for youth, which creates a lack of transparency and accountability in the operation of confinement facilities;

WHEREAS, insufficient transparency and accountability for juvenile confinement facilities can lead to or mask evidence of: violence, injuries, sexual assaults, and deaths among confined

¹ S. Hockenberry, “Juveniles in Residential Placement, 2013,” *Office of Juvenile Justice and Delinquency Prevention* (May 2016): 1, <https://www.ojjdp.gov/pubs/249507.pdf>.

² The Annie E. Casey Foundation used the following standard to define “systemic or recurring maltreatment of confined youth” in its 2011 and 2013 studies of juvenile corrections facilities: “when clear evidence has emerged from federal investigations, class-action lawsuits, or authoritative reports written by reputable media outlets or respected public or private agencies showing that – at least at one particular time – one or more state-funded youth corrections facility repeatedly failed to protect youth from violence by staff or other youth, sexual assaults, and/or excessive use of isolation or restraints.” See Annie E. Casey Foundation, *Maltreatment of Youth in U.S. Juvenile Corrections Facilities: An Update* (2013): 6 & 20, <http://www.aecf.org/m/resourcedoc/aecf-maltreatmentyouthuscorrections-2015.pdf>.

³ *Id.*, 7.

⁴ Bureau of Justice Statistics, “PREA Data Collection Activities, 2016,” NCJ 249872 (June 2016): 1, <https://www.bjs.gov/content/pub/pdf/pdca16.pdf>.

⁵ National Council of Juvenile and Family Court Judges, *Resolution Regarding Reducing Use of Solitary Confinement for Youth* (August 8, 2016).

⁶ National Council of Juvenile and Family Court Judges, *Resolution Regarding Shackling of Children in Juvenile Court* (July 2015), http://www.ncjfcj.org/sites/default/files/ShacklingOfChildrenInJuvenileCt_Resolution_July2015.pdf.

youth; violence by and against staff; inadequate medical care, the deterioration of physical and mental health, and the transmission of disease; the overuse of solitary confinement, force, and other punitive measures; inadequate family contact and youth socialization opportunities; deficient rehabilitative programming, treatment, education, and recreation; increased recidivism and victimization; and expensive litigation and court-ordered monitoring agreements; and

WHEREAS, independent entities that routinely monitor and report on conditions of confinement can help proactively identify problems affecting the treatment of youth before they result in significant harm, serve as a form of informal social control over the actions of staff, help reduce operational complacency by bringing an outside set of eyes and experience in to review standard practices, and serve as a means for youth to voice concerns about their treatment, health, and safety; and

WHEREAS, the public identification of problems within juvenile detention facilities can lead to the remediation of those problems, resulting in facilities that are safer and more effective for both confined youth and facility staff; that are operated in conformance with the Constitution, other laws, and best practices; that reduce the risk of litigation; that promote positive youth development; and that are better equipped to prepare youth for productive lives in the community; and

WHEREAS, independent monitoring bodies can share information about nationally-accepted best practices in custodial programs and operations, and also identify and publish positive findings, such as effective programming outcomes and operational policies, to ensure that such practices are rewarded and replicated across similar facilities that confine youth; and

WHEREAS, independent monitoring and reporting on conditions can increase public awareness, improve public confidence in the operations of juvenile confinement facilities, improve judicial confidence that a youth placed in a residential setting will be safe; and provide judges, policymakers, and agency officials with the information that they need to make better informed decisions about juvenile justice policies and practices; and

WHEREAS, several states have developed independent monitoring bodies to ensure the protection of confined youth that can serve as models for other jurisdictions, including, for example, Texas's Office of the Independent Ombudsman of the Juvenile Justice Department, Maryland's Juvenile Justice Monitoring Unit, and Connecticut's Office of the Child Advocate; and

WHEREAS, other institutions that serve youth, such as public schools, are made transparent and accountable to the community through regular monitoring and public reporting in order to objectively evaluate each institution's impact on children's lives; and

WHEREAS, many juvenile facilities operate under the direct jurisdiction of juvenile court judges; and

WHEREAS, The American Bar Association has called on all federal, state, local, tribal, and territorial jurisdictions to create independent oversight bodies to proactively monitor and report on conditions of confinement in all places of detention, including juvenile correctional and detention facilities.⁷

⁷ American Bar Association, Criminal Justice Section, Rep. 104B, Report to the House Delegates, *Resolution on Independent Correctional Oversight and Key Requirements for the Effective Monitoring of Correctional Facilities* (August 2008), available at http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_policy_a m08104b.authcheckdam.pdf

NOW, THEREFORE, BE IT RESOLVED:

The NCJFCJ recognizes that juvenile court judges have a responsibility to care for and protect confined youth within their jurisdiction and therefore supports efforts to increase independent oversight of all places where youth are confined.

The NCJFCJ further recognizes that, although internal quality assurance measures are critical for juvenile justice agencies, these organizations should not be relied on to police their own operations, and that confined youth are vulnerable and need an independent entity to whom they can turn when they have concerns about their treatment or the conditions in their facilities.

The NCJFCJ urges state governments to establish independent monitoring entities to ensure that the rights of confined youth are protected and that confinement facilities provide safe and humane conditions and effective programming for the youth, in those states that do not currently have such oversight bodies.

The NCJFCJ encourages state governments to use the cost savings associated with reduced populations of confined youth to help fund the independent monitoring bodies established to protect the youth still in custody.

The NCJFCJ further encourages state governments to recognize that improved safety and services in youth confinement facilities will also result in cost savings to the state in the form of reduced litigation costs, reduced worker compensation costs, and reduced recidivism.

The NCJFCJ encourages the development of independent monitoring bodies that meet the key requirements for effectiveness as described in the American Bar Association's Resolution on Independent Correctional Oversight and Key Requirements for the Effective Monitoring of Correctional Facilities,⁸ including requirements that entities be provided with sufficient resources and full rights of access to the confinement facilities, the youth, and the staff.

The NCJFCJ supports a requirement that independent monitoring bodies issue regular reports of their findings about conditions of confinement to ensure that judges, policymakers, and the general public are kept informed about the operations of all juvenile confinement facilities within their jurisdiction and to increase transparency and accountability in the operations of these facilities.

The NCJFCJ encourages independent monitoring bodies to pay particular attention to issues involving the solitary confinement of youth, the use of shackles or restraints, the use of force, levels of sexual assault and other violence, access to meaningful and effective programming, and access to families.

The NCJFCJ encourages judges to make regular visits to places where youth are confined, to review all reports by independent monitors about conditions in these facilities, and to work with juvenile justice agencies to make changes in response to any findings of concern.

The NCJFCJ calls for judges to provide strong leadership on this issue and to convene other juvenile justice system stakeholders who can voice support and aid in the development of independent monitoring entities for all juvenile justice agencies across the United States.

Adopted by the NCJFCJ Board of Directors, July 15, 2017, Washington, DC.

⁸ Id.