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Re: Comments on OJJDP Proposed Plan for Fiscal Year 2010

Dear Acting Administrator Slowikowski:

This responds to your agency's Proposed Plan for Fiscal Year 2010 and the December 1st *Federal Register* announcement seeking comments. We commend OJJDP for publishing this notice and for the broad scope of issue areas already addressed that are of such great importance to youth and their families. The American Bar Association looks forward to opportunities for collaboration with OJJDP on the implementation of these listed, and other important, activities during the coming year.

The priority areas included in the *Federal Register* announcement are certainly all of serious consequence, and we applaud the identification of worthy initiatives. We are especially pleased to see a new priority for a "National Juvenile Delinquency Court Improvement Project" as well as the development of the "National Training and Technical Assistance Center for Youth in Custody." As you may know, the ABA was very involved in conceptualizing the child welfare "State Court Improvement Program" administered by the Department of Health and Human Services. A similar program to enhance delinquency courts, assuming that (like the HHS program) funding goes directly to the administrative offices of the highest courts of a state, can have tremendous promise.

We suggest here a few critical gaps in the proposed plan, as well as ways we believe the plan's identified priorities can be strengthened.

1. Increase Support for OJJDP's Core Requirement Relating to Deinstitutionalization of Status Offenders (DSO) and Promotion of Other Status Offense System Reforms Within the States

The ABA applauds OJJDP for focusing its proposed plan on several issues relating to juvenile status offenders, such as reducing truancy and underage drinking and evaluating risky behavior in girls. However, the proposed plan does not address several critical areas relating to juvenile status offense systems, and yet a focus on status offenders and their families is one of the core foci of OJJDP under the deinstitutionalization of status offenders (DSO) mandate. With its numerous resources on delinquency and status offense prevention, OJJDP is uniquely positioned to provide states with critical additional support and guidance on how to deinstitutionalize status offenders and to promote best practices for alternative program interventions.

OJJDP's 2007 national videoconference, co-sponsored with the ABA, that addressed all categories of juvenile status offenders was a logical jumping off point for the agency to refocus energies on sharing knowledge, data and practice innovations regarding status offense systems. In recent years, numerous states, such as New York, Connecticut, Massachusetts have taken a close look at reforming their status offense systems. Other states, such as Florida, have been nationally recognized for their status offense system work, which focuses on pre-court intervention and assistance to families. The ABA hopes that OJJDP will build on these efforts to provide states with ongoing critical information about status offense system reforms.

Status offenders represent a population of at-risk youth that often fall between the cracks of the child welfare and juvenile delinquency systems. Yet, research shows that status offense behavior increases the likelihood that youth will enter the juvenile delinquency system, and the most recent statistics show that the number of youth entering the status offense system is growing.

OJJDP research indicates that hundreds of thousands of youth are arrested each year because of a status offense, and the number of status offense court cases more than doubled between 1985 and 2004. In addition, even though a significant minority of states do not incarcerate status offenders, numerous states continue to use the "valid court order" exception to lock up these youth, and some even do so in violation of the Juvenile Justice and Delinquency Prevention Act (JJDP). These practices continue despite the increasing amount of research showing the detrimental effects incarceration can have on youth -- and this is especially true for youth who are incarcerated for *noncriminal* behaviors, many of whom have undiagnosed special education needs, as well as physical or mental health problems and substance abuse issues. By more fully addressing the broad spectrum of status offense populations as a whole, OJJDP will be better able to meet its goal of preventing delinquency and strengthening the juvenile justice system.

The ABA therefore recommends that OJJDP make support to states regarding the DSO mandate, and improvement of state responses to juvenile status offenders generally, a priority in 2010. OJJDP can do this in part by creating a national assistance program that could gather knowledge, data and research about state reforms that promote alternatives to detention for status offenders. Through these efforts and its existing resources, the national assistance program could disseminate best practices and information to states on DSO efforts and, most importantly, provide states with training and technical assistance relating to court system reforms, social

service or probation department efforts, coordination between child-serving systems (child welfare, delinquency and status offense) and the handling of status offense cases by prosecutors and defense attorneys.

OJJDP can also expand on several of its existing proposed plan activities to support state efforts relating to status offenders and their families by addressing the following, in the priority areas it has already identified:

- *Improving the Indigent Juvenile Defense Program:* There is limited state and national guidance available for attorneys who represent status offenders. These attorneys, even more so than juvenile delinquency defenders, are often ill-trained and lack resources. Although *In re Gault* did not contemplate status offense representation, many jurisdictions provide alleged status offenders counsel and must if they face the possibility of incarceration. To further OJJDP's goal of improving judicial system responses and development of competent representation for youth in juvenile court, the ABA recommends that OJJDP expand this priority to provide training and technical assistance to juvenile defense attorneys representing status offenders, as well as delinquent youth.
- *Girls' Delinquency:* As OJJDP notes, girls are entering the delinquency system at increased rates. The number of girls entering the status offense system is also high, almost equaling the number of boys in most categories and exceeding them in others (such as runaways). In fact, a review of OJJDP data shows that status offender girls are often detained longer than boys held for the same offenses and in some instances are held longer than girls who committed delinquent offenses. The ABA commends OJJDP for continuing and expanding upon its efforts through the Girls Study Group and recommends that in developing knowledge and evaluating promising practices for delinquent girls, it do the same for girls in the status offense system, particularly those who are runaways (see comment below about runaways from juvenile residential programs, under *Missing Children*).
- *Research, Evaluation and Data Collection:* The ABA recommends that OJJDP expand its flexible funding research and evaluation program to include delinquency prevention efforts that relate to status offense system reforms. Status offenders are often at high risk of slipping deeper into the juvenile justice system. OJJDP can help stem this tide by supporting innovative research and evaluation to assess what status offense approaches work to decrease recidivism, both in the status offense and delinquency systems. The ABA also recommends that OJJDP increase its data collection efforts to gather more up-to-date quantitative information on status offenses in the court system. The most recent data is several years old, and without this information OJJDP cannot fully assess or address important issues relating to court improvement in the status offense system.

2. Focus Support on the Development and Best Practices of Ombudsman/Child Advocate Offices Empowered to Receive and Address Complaints Related to the Care of Youth in Residential Facilities

The recent report of the Bureau of Justice Statistics on the alarming prevalence of sexual assault of youth in juvenile correctional facilities suggests to us that, among other steps OJJDP should take in response to the report, the Office should develop an additional priority area on aid to state juvenile justice (and child protection) agencies on the establishment of Child/Youth Ombudsman Offices/Programs (also called, in some states, the Office of the Child Advocate). In 1998 OJJDP

published “Beyond the Walls: Improving Conditions of Confinement for Youth in Custody.” A chapter of this publication was entitled “Use of Ombudsman Programs in Juvenile Corrections.” The chapter noted that these programs can:

- Address complaints from institutionalized juveniles;
- Furnish information about placement alternatives;
- Conduct investigations;
- Ensure careful aftercare service planning and post-release implementation;
- Provide a mechanism of coordination between placement alternatives;
- Provide recommendations and research on improvement for institutions;
- Create accountability for officials in the system;
- Educate the public, legislators, and policymakers about the rights and needs of institutionalized juveniles; and
- Litigate to protect children’s rights (a power actually vested in relatively few ombudsman offices).

For several years, under congressional authority, OJJDP had a state challenge grant program under which a few states used special OJJ funding to support development and maintenance of such ombudsman programs. However, authorization for that federal “challenge” money ended, and although “Child Advocate” ombudsman-type programs have expanded in the child protection area, there appears to be far less development of these programs in the juvenile justice area. OJJ last issued material on this topic in a February 2005 *Juvenile Justice Bulletin* entitled “State Ombudsman Programs,” which included much useful information on the work of such offices. As the authors of this Bulletin noted:

“One role of an ombudsman is to consider how issues and problems in individual cases may require system-wide changes to make an impact on organizational culture. The ombudsman’s independence gives the office the ability to aggregate individual grievances and the respect within the organization to promote systemic change at top administrative levels. Systems change emphasizes outcomes, public accountability, and monitoring. A systems change approach promotes cross-agency collaboration and partnerships to provide coordinated and comprehensive services throughout the child welfare and juvenile justice systems....In terms of out-of-home placement for youth, the purview goes beyond program components to consider all facets of out-of-home placement interventions, including staff characteristics, staff/client interactions, and intervention strategies and techniques”

American Bar Association policy has long supported the institutional mechanism of an ombudsman to address a variety of issues and problems facing clients of government systems. The ABA Center on Children and the Law has worked for many years on child/youth ombudsmen issues, publishing a book on this topic, networking with relevant programs/offices across the country, and advising legislators and others on the role and importance of these programs.

We urge OJJDP to create a special priority area on this, especially in light of new public concern about the safety of youth in correctional facilities. We also offer our assistance if OJJDP chooses to prioritize this important topic.

3. Improvement of the Juvenile Court Prosecution and Defense Function

The ABA encourages OJJDP to take an active role in influencing the Department of Justice to assist in providing adequate funds to juvenile prosecutors and public defenders across the country. There is currently a surplus of legal and non-legal professionals who would like to focus their work on juvenile justice but struggle to find such employment opportunities. The ABA believes that “stimulus type” programs, projects, and training that introduce solid new opportunities for legal and non-legal professionals to work on the advancement of youth and their rights would advance our criminal justice system as a whole.

4. Other Suggested Revisions to the Proposed Plan

In addition to the very worthwhile services OJJDP provides to the juvenile community through its projects, the ABA encourages OJJDP to consider studying and reporting on the following additional policy and research issues:

- Standards for and oversight of “for profit” juvenile detention centers;
- Legal and ethical implications of allowing “for profit” and “not for profit” private organizations to charge parents and children for the use of ankle bracelets or for the costs of mandatory, court-ordered stays in residential facilities;
- Collateral consequences people face later in life because of a prior juvenile record;
- Research and data on detained youth who have incarcerated parents;
- Research and data on infants born to juveniles in detention or incarceration, quality of in-facility pre-natal health services, and infant placement arrangements and outcomes;
- Use and overuse/misuse of medications prescribed for detained youth, the quality of administration and monitoring of medications, and provisions for post-release continuation of appropriate medications;
- Ethical standards for juvenile court judges, court personnel, legislators, and others related to financial dealings with programs and organizations that serve juveniles in both community and residential settings; and
- Assisting state juvenile justice programs and juvenile detention and correctional facilities in disaster plan development (we are grateful that an ABA representative has been invited to serve on an OJJDP work group on this issue).

School-Related Prevention Programs

The ABA commends OJJDP for emphasizing school-related prevention programs and a proposed collaboration with DOE SS/HS. The ABA would, however, urge OJJDP also to emphasize collaboration with courts and state and local Bars, as well as the broader legal community. The ability of the courts to convene, influence and lead the community on behalf of

enhanced responses to truancy cases cannot be overstated. Model court diversion programs, volunteer lawyer programs that function as liaisons between the courts and the schools, and the improved enforcement of truancy laws that apply restorative justice practices are examples of the necessary integration for the prevention and intervention of truancy. Laws and policies that provide full procedural protections and reduce criminalization of truancy, disability related behaviors and school-related conduct problems should be considered and included in comprehensive community partnerships that can be coordinated with the legal community. We believe that efforts to promote a comprehensive national strategy for courts and schools to collaboratively engage and resolve issues surrounding at-risk truant youth have yet to be addressed, and they should be prioritized in the proposed plan.

Programs to Address and Treat Children Exposed to Violence

In February 2009 the ABA House of Delegates approved a new Association policy on the importance of legal advice and counsel to child victims of crime, stating that child victims of criminal conduct should have prompt access to these services. The resolution also called for the initiation of pilot or demonstration projects in which rights and protections for child victims are protected and enforced, and further called for court procedures and standards of practice and training to help assure that the legal help provided to child crime victims is effective.

As noted in the December 2009 OJJDP Juvenile Justice Bulletin, “Juveniles Who Commit Sex Offenses Against Minors,” a significant percentage of offenders (35.6% of those known to the police) are juveniles themselves, and there are many children exposed to sexual violence who have to navigate the juvenile, as well as criminal, court systems. We would like to see OJJDP, through this violence response initiative, support and evaluate new juvenile court-based child victim lawyer/guardian ad litem programs that focus on the legal needs and protection of minor victims of crimes of violence committed by other juveniles.

Child Exploitation

While OJJDP’s proposed plan for FY2010 specifically addresses bullying in schools -- and includes responses to emergent issues such as sexting, cyberbullying, and self-production of child pornography under its Project Safe Childhood Community-Based programs -- we believe the initial step OJJDP should undertake is research into the nature, incidence, and scope of these problems as addressed by the juvenile justice system. Before communities can effectively respond to the problem, they need to understand the legal ramifications. Research should identify its scope and investigate the responses by law enforcement as well as examine charging and other options available to prosecutors.

We support OJJDP’s continuing focus on child exploitation, especially the focus on Internet Crimes Against Children through the ICAC Task Force program. As discussed above, we believe this focus should also include research into legal responses to emergent issues such as sexting and cyberbullying that specifically include computer-assisted crimes.

Similarly, we urge OJJDP to focus on trafficking of children for sexual purposes as a component of its child exploitation efforts, as well as under its High-Risk Runaway program. Runaways are

at increased risk of exploitation while living on the streets, subjecting them to the risk not just of trafficking but also of physical and mental health complications. Evidence-based, effective responses to these trafficked youth can greatly reduce their exposure to these risks. Since many of these children are engaged in prostitution, we also urge OJJDP to aid states in taking new victim-centered, non-punitive approaches to prostituted minors, similar to the recent Safe Harbor Act law in New York State.

Substance Abuse and Treatment and Programs to Address Mental Health Needs of Youth in the Juvenile Justice System

The ABA supports OJJDP's focus on the substance abuse and mental health treatment needs of youth in the juvenile justice system. This population is underserved in relation to their mental health care needs, with serious consequences for their future well-being. The facilities that serve them are ill-equipped to provide the effective treatment options these youth need. We urge OJJDP, however, to ensure that the identified services for this population are evidence-based and effective, and that prevention services focus on positive youth development.

Missing Children

The Association has long been involved in pursuing legal and judicial system improvement as it related to a major part of the missing children population: those children who are the victims of custodial interference by a family member (parental kidnapping). We commend OJJDP for its support of the National Center on Missing and Exploited Children, Amber Alert, and related technical assistance work.

We suggest that the Office give special attention in its program plan to children who "go missing" from juvenile residential programs and facilities, largely by running away. This is a most vulnerable population for risk of death and serious injury, and just as the children who run from foster care placements have received increased attention from child welfare agencies, so should runaways from the juvenile justice system be promptly reported to proper authorities as "missing children" and states required to keep accurate data on children who run from facilities, their status, and the length of time they are missing.

We would also like to see special OJJDP attention to the plight of children from poor minority families, who disproportionately may be victims of custodial interference by a parent or family member. These children come from families that may be most unlikely to access the services of a private attorney, especially one knowledgeable on parental kidnapping criminal laws and the Uniform Child Custody Jurisdiction and Enforcement Act.

Therefore, we would ask OJJDP to consider setting aside some of its missing children program money for efforts involving work that could be done in collaboration with the Legal Services Corporation, state and county Bar Association pro bono programs, law schools, and law firms with pro bono activities, to help establish legal support projects that aid low-income parents with custody problems that may result, or have resulted, in a domestic family-related kidnapping. We suggest that there is an unmet legal need here that can be partially met through targeted OJJDP

missing child funding. Again, thank you for this opportunity to comment on the OJJDP proposed program plan.

Sincerely,

A handwritten signature in black ink that reads "Thomas M. Susman" with a long horizontal flourish extending to the right.

Thomas M. Susman