

**Testimony of the Center for Children's Law and Policy
for the House Judiciary Subcommittee
on Crime, Terrorism and Homeland Security**

April 22, 2008

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The Center for Children's Law and Policy (CCLP), a nonprofit public interest law and policy organization focused on reform of juvenile justice and other systems that affect troubled and at-risk children, and protection of the rights of children in such systems, submits this testimony to supplement previous testimony submitted to the Subcommittee on November 8, 2007. CCLP supports the provisions of H.R. 4109, the "Prison Abuse Remedies Act of 2007," and urges the Subcommittee to approve the bill or similar legislation that protects children from the provisions of the Prison Litigation Reform Act (PLRA) by removing juveniles from the Act.

We have extensive experience in the area of juvenile justice, particularly with respect to investigation of and litigation over conditions of confinement for juveniles. Mark Soler litigated such cases throughout the country over the past 30 years and has authored more than 20 articles and book chapters on civil rights, the rights of children, and juvenile justice issues. Before joining CCLP, Dana Shoenberg served from 1998 to 2005 as a Trial Attorney and then Senior Trial Attorney in the U.S. Department of

Justice, Civil Rights Division, Special Litigation Section, where she investigated and sought remedies for patterns and practices of constitutional and other federal law violations in state and local juvenile detention facilities, jails, and prisons. We have interviewed many hundreds of incarcerated youth over the years, as well as large numbers of facility staff and administrators. We were two of the principle authors of the comprehensive standards for inspection of juvenile detention facilities promulgated by the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative.

No "Release Orders" Involving Dangerous Juvenile Offenders. In the course of our work on conditions of confinement, we monitor civil rights litigation in this area, review reports on litigation, and have contact with attorneys in the country who bring civil rights class actions over conditions in juvenile facilities. We are not aware of any litigation that has resulted in the release of dangerous juvenile offenders as a consequence of population caps. In fact, there have been few cases involving juvenile facilities that have led to court-imposed population caps. In the instances in which courts have imposed population caps in juvenile facilities, the policy and practice have been to release youth who pose the least risk to public safety. This principle is often explicitly included in the terms of the court order or consent decree. In the course of our technical assistance to juvenile justice systems around the country, we have helped jurisdictions create structured tools to help decision-makers apply uniform criteria to decide which youth are appropriate to detain and which can safely be released.

Extensive Abuse of Children in Juvenile and Adult Facilities. Mark Soler's testimony for the Subcommittee on November 8, 2007, discussed the extensive abuse in juvenile facilities reported in recent years. In addition to examples cited there from

Texas, South Dakota, Ohio, Montana, Florida, Maryland, Tennessee, New York, Illinois, Louisiana, and Mississippi, the Subcommittee should be aware of the following from California:

- In 2005, a group of incarcerated youth sued the State of California for inadequate supervision, overcrowding, and unsanitary conditions for 10,800 youth confined in state juvenile facilities. In addition, there were also 218 reports of abuse and 60 allegations of sexual abuse reported to the Department of Corrections and Rehabilitation in the years 2005-2007.¹ In the three years that California has had to remedy the situation, plaintiffs' lawyers say that California's Division of Juvenile Justice has made "a mockery of compliance" in the areas of education, safety, medical care, mental health, disabilities, and sex offender treatment. Staff reportedly keep youth on suicide watch without supervision, and discipline youth by confining them in dark and filthy cells for 20 hours a day. The state has yet to establish an adequate mental health treatment program, and access to medical treatment has been slowed due to tensions between correctional and medical personnel.²
- In 2003, the U.S. Department of Justice found that the Los Angeles County Juvenile Halls (detention facilities) provided inadequate mental health services to detained youth, leading to increased safety and suicide risks. The Department of Justice also found that staff at the Los Angeles facilities used pepper spray excessively to control youth, often using the painful spray without proper warning. Staff also used pepper spray on youth who were already under control or who had committed minor infractions. Staff sprayed one youth after placing her in handcuffs because she was threatening to harm herself. Staff sprayed other youth for talking back to staff members. The Department of Justice found that there were no effective administrative remedies available: all facilities lacked effective grievance systems. Many youth feared retaliation by staff members and were aware that their grievances would not remain confidential. Moreover, there was no system in place to ensure that any remedy would take place after a youth filed a grievance.³

Children face even worse dangers in adult jails and prisons. More than 25 years ago, Mark Soler testified before the Senate Judiciary Committee's Subcommittee on Juvenile Justice on the incarceration of children in adult jails and lock-ups.⁴ The testimony described a 15-year-old girl who was held in jail in Ohio for running away from home, then sexually assaulted by a guard; a 17-year-old boy who was jailed in Idaho for traffic violations and then beaten to death by other inmates; and a 16-year-old

boy in Kentucky who was put in jail after having an argument with his mother, then committed suicide by tying one sleeve of his shirt around his neck and the other to the bars of his cell, and jumping from the top of the shower stall.

The Department of Justice has found dangers to youth held in adult jails as well. In a 2002 findings letter, for example, the Department found that in the Baltimore City Detention Center, where girls were not sight and sound separated from adult women, adult female inmates frequently shouted sexually harassing and frightening comments at them. The Department also found that the facility placed youth at risk of harm by failing to separate youth and adults in preparation for and during transportation.⁵

Today, the dangers to youth in adult jails and prisons -- assaults, depression, lack of mental health services, lack of education, and suicide -- are well-documented.⁶

According to the U.S. Department of Justice, Bureau of Justice Statistics, a very high percentage of the victims of inmate-on-inmate sexual violence in adult jails – 21% in 2005 and 13% in 2006 -- were youth under the age of 18⁷, at a time when only 1% of the inmates in jails are under 18.⁸ Moreover, juveniles in jails are 36 times as likely to commit suicide as juveniles in juvenile detention facilities, and 19 times as likely to commit suicide as juveniles in the general population.⁹

No Frivolous Lawsuits Filed by Youth. We are not aware of any lawsuits over conditions of juvenile confinement that have been dismissed by the court as “frivolous.” That is hardly surprising. In a locked juvenile facility, jail, or prison, staff mete out discipline for misbehavior, and young people are dependent upon staff for food, clothing, exercise, education, and access to medical and mental health services. Consequently, most youth are reluctant to complain for any reason, no matter how badly they are

mistreated, let alone file a lawsuit. Lack of knowledge about their rights, as well as pervasive fear of retaliation by staff, keep young people quiet. Moreover, the often complex grievance systems in correctional facilities deter youth from all but the most pressing and legitimate concerns. Most incarcerated teenagers lack the writing ability and understanding of the court system needed to file a court action, and their access to attorneys willing and able to bring such actions is extremely limited as well.

For these reasons, as well as those noted in earlier testimony, we urge the Subcommittee to act favorably on H.R. 4109.

¹ Mohr, Holbrook. "Youth Prisons Get Scrutiny." AP. 3 Mar. 2008. 7 Mar 2008. http://www.mercurynews.com/crime/ci_8435681

² Rothfeld, Michael. "Juvenile Prison System Needs Reform Lawyers Say." Los Angeles Times. 18 Feb. 2008. 7 Mar. 2008. <http://www.latimes.com/news/local/la-me-youth18feb18.0.5845357.story>.

³ Boyd, Ralph. Investigative Findings Letter. U.S. Department of Justice: Civil Rights Division. (April 9, 2003). http://www.usdoj.gov/crt/split/documents/la_county_juvenile_findlet.pdf.

⁴ Reauthorization of the Juvenile Justice and Delinquency Prevention Act, S-Hrg. 98-330, 98th Cong. (Feb. 24, 1983) 6-25 (Statement of Mark Soler, Executive Director, Youth Law Center).

⁵ Boyd, Ralph. Investigative Findings Letter. U.S. Department of Justice: Civil Rights Division. (August 13, 2002). http://www.usdoj.gov/crt/split/documents/baltimore_findings_let.htm.

⁶ Campaign for Youth Justice, The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform (March, 2007).

⁷ Beck, A.J., Harrison, P.M., Adams, D.B. (2007, August). Sexual Violence Reported by Correctional Authorities, 2006. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics; Beck, A.J., Harrison, P.M., Adams, D.B. (2006, July). Sexual Violence Reported by Correctional Authorities, 2005. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

⁸ Snyder, H.N., Sickmund, M. (2006). Juvenile Offenders and Victims: 2006 National Report. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

⁹ Campaign for Youth Justice, Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America (November, 2007).