NATIONAL JUVENILE JUSTICE NETWORK

February 24, 2021

**National Juvenile Justice Network Testimony in Support of:**
**I. HF922 (Long) Corrections; guidelines for use of restraint on juveniles established, general public excluded from delinquency hearings, juvenile arrest alternatives provided, and juvenile risk assessment provided.**
**II. HF947 (Pinto) Delinquent children and youth in detention facility visual inspection prohibited, delinquent children and youth in detention facility disciplinary room time prohibited, and delinquency and detention age raised to 13 years old.**
**III. HF416 (Edelson) Extended jurisdiction juvenile conviction statistic report required.**

To Whom It May Concern:

On behalf of the National Juvenile Justice Network (NJJN), I am writing to ask the committee to support the following youth justice bills: HF 922, HF947, and HF 416. Together these bills make critical steps in ensuring Minnesota's approach to youth in trouble with the law aligns with best practices we know work for young people and public safety. Specifically, NJJN supports provisions to limit the use of restraints, expand alternatives to arrest, raise the age that a young person can be prosecuted to 13 years old, limit use of solitary confinement, and track data associated with Minnesota's extended jurisdiction designation.

NJJN leads a movement of 60 state-based youth justice reform organizations and alumni of its Youth Justice Leadership Institute in 44 states in DC. Together we work to advocate for policies and practices that treat youth in trouble with the law with dignity and humanity. As states look to improve outcomes for youth, we have seen a growing movement to address harmful restraint and seclusion practices and right-size their juvenile justice systems to reflect brain science and public safety data. We firmly believe the bills being discussed today, set Minnesota in the right direction.

**HF 922/ SF 898: Ending indiscriminate court shackling**

Trussing a child up in chains is degrading and humiliating to children and their families, interferes with their right to effective assistance of counsel and due process protections, and is unnecessary for the protection of the court without an individualized showing that such restraints are needed for a particular youth.

Shackling can cause more than just temporary embarrassment for youth; the shame induced by shackling can be quite profound because youth are more vulnerable than adults to lasting harm from feeling humiliation and shame.[1] Additionally, many youth in the justice system have experienced physical and sexual abuse, making them even more susceptible to the negative trauma of shackling.[2]

[1] Models for Change Innovation Brief, "Eliminating the Practice of Indiscriminate Shackling of Youth," 1.
[2] Shoshana Elon, Jasmine Gibbs, Jamie Schickler, and Sammy Warman, "Children in Chains: The Shackling of Georgia's Youth" (Barton Child Law and Policy Center, Emory University School of Law, Fall 2011), 7, at http://bit.ly/1qrRGay

Given the legacy of discrimination in America, the trauma from shackling is especially damaging to youth of color. The image of African-American youth being shackled in court has been likened to the "images of slaves on the auction block, not of children presumed to be innocent in a court of law."[3] Since youth of color are overrepresented at all stages of the juvenile justice system, these youth bear the brunt of indiscriminate shackling policies.[4]

Indiscriminate shackling is likely to create a feeling of injustice in children because they have done nothing to warrant this treatment. Children who feel that they have been treated unfairly by the court are less amenable to treatment and rehabilitation. Rather, shackling creates "an adversarial and hostile environment," reinforces the youth's feeling of "badness," and "fosters a lack of respect for the law and the legal system."[5]

Moreover, indiscriminate shackling harms a youth's constitutional rights to due process by weakening their presumption of innocence and their ability to communicate effectively with counsel. Furthermore, routinely shackling all youth appearing in court is unnecessary for public safety. Since ending the indiscriminate shackling of youth in Florida in 2009, over 20,000 children have appeared in court, unshackled, with only two minor incidents; there have been no reports of unshackled youth escaping from court or causing serious harm to themselves or others.[6] Other safeguards are generally in place in juvenile courts to protect the public, such as sheriffs and deputies stationed in the courtroom, obviating the need to shackle all children.[7]

According to the Campaign Against Indiscriminate Juvenile Shackling, as of September 1, 2019, 32 states including the District of Columbia have rules, statutes, or administrative orders prohibiting or limiting the indiscriminate shackling of youth.[8] This is proof that states can effectively keep the public safe without the use of shacking thus restoring a sense of humanity to youth facing court processes. We encourage Minnesota to follow in the footsteps of others, and pass this reform.

**HF 922/ SF 898: Authorizing police diversion**

Youth input suggests, and outside research affirms, that arresting youth and sending them through the justice system pipeline does not work for our young people or for public safety. Arrest can cause profound and long-lasting damage to young people, including physical harm, mental health trauma, and stigmatization.[9] Arrest can also lead to detention, and the longer one stays in detention the greater the risk of mental, physical, emotional, or sexual harm.[10] Even if the charges are later dropped, the arrest information is often shared with schools, and sometimes employers, leading to school push-out (suspension and expulsion) and drop-out, as well as employment challenges due to frequent discrimination against people with arrest records.[11] All of these negative impacts can stigmatize young people and increase their chances of further justice system involvement.[12]

---

[3] Kim Taylor-Thompson, "Gideon at Fifty – Golden Anniversary or Mid Life Crisis," Seattle Journal for Social Justice, Vol. 11: Iss. 3, Article 3 (2013) 880-81, http://bit.ly/1lKrjN6.

[4] Juvenile Justice Resource Hub, "Racial-Ethnic Fairness," accessed August 20, 2014, http://bit.ly/1dEBvwD.

[5] Elon, et. al., "Children in Chains," 3.

[6] In the two reported incidents, one child started for the exit of the courtroom and a public defender employee stopped him; in the other, a child struck his father, a registered sex offender. Carlos J. Martinez, "Policy Report – Unchain the Children: Five Years Later in Florida" (Law Offices of the Public Defender, 11th Judicial Circuit of Florida, December 2011), 6, http://bit.ly/1uGwsVN.

[7] Elon, et. al., "Children in Chains," 11.

[8] Campaign Against Indiscriminate Juvenile Shackling, "Where are there statewide bans on automatic juvenile shackling?" https://njdc.info/wp-content/uploads/Shackling-Statewide-Bans-2019.pdf

[9] Kim Gilhuly, Megan Gaydos, and Holly Avey, "Reducing Youth Arrests Keeps Kids Healthy and Successful: A Health Analysis of Youth Arrest in Michigan" (Oakland, CA: Human Impact Partners, June 2017): i-ii, http://bit.ly/36h1IU9.

[10] 4 Ibid, i.

[11] "People arrested as teens are 25% more likely to drop out of high school." Ibid, i

[12] Ibid, i-ii,

When youth come in contact with the justice system, diverting them away at the earliest possible point – initial contact with law enforcement – can help to prevent deeper involvement in the justice system, to better address any underlying needs that they have, and to improve public safety and reduce justice system costs.[13] Investments should be targeted in communities with high incarceration rates and low investments in resources that youth need to grow and thrive and be developed collaboratively with youth and adult community members.[14]

By authorizing police diversion, Minnesota opens additional pathways for youth to be held accountable and get back on a path to success.

### HF 922/ SF 898: Eliminating public hearings for 16 and 17 year olds charged with a felony

Protecting the confidentiality of a youth's law enforcement and associated court records is key to furthering their lives as productive members of their communities, by reducing barriers to employment, higher education, housing, and military service. Without special protections, a juvenile record can "act like a symbolic millstone around a youngster's neck."[15]

NJJN recognizes that opening the juvenile court to certain members of the public can promote system accountability, and that public understanding of the system is beneficial. However, as with juvenile records, confidentiality of court proceedings is necessary in order to safeguard a youth's privacy and protect them from the stigma and collateral consequences of juvenile justice involvement. If the court proceedings are open, community knowledge of and attendance at the event can foreclose future education and work options for youth. Additionally, open court proceedings invite media attention, which not only may make the case common knowledge, but will likely lead to direct identification of individual youth. Even if the media is requested to respect the confidentiality of the youth participants, they may not feel bound to adhere to this request if the proceedings are presumptively open to the public.

Confidential court proceedings are needed to safeguard a youth's privacy whether tried in juvenile or adult court. NJJN recommends that juvenile court proceedings be presumptively closed to the public. Judges may open proceedings to researchers, media, individuals that the youth wishes to attend, and others with a bona fide interest in the workings of the juvenile court system, under the following circumstances: the youth who is before the court agrees and the judge, after hearing from counsel for the youth, determines that there would be no harm to the youth or the fairness of the process. Even when the proceedings are opened, the names, addresses, telephone numbers, photographs or other identifying information of the children and families in question should not be made public in any way.[16] A decision to keep the proceedings closed should never be made in order to benefit the judge. For minors proceeding in the adult court system, the court should take steps to protect the youth's confidentiality to the greatest extent possible and the names of youth being tried as adults should not be publicly released.

---

[13] Countywide Criminal Justice Coordination Committee Youth Diversion Subcommittee & the Los Angeles County Chief Executive Office, "A Roadmap for Advancing Youth Diversion in Los Angeles County" (October 2017): 7, 9, http://bit.ly/38jflnI.

[14] Center on Budget and Policy Priorities, "Youth Justice Reform and Reinvestment: Key Strategies and Fiscal Tools for Success" (March 21, 2018): 6, http://bit.ly/2RKtynL.

[15] Riya Saha Shah and Lauren Fine, "Juvenile Records: A National Review of State Laws on Confidentiality, Sealing and Expungement," 9, n. 17, http://bit.ly/28uGNtv.

[16] National Association of Counsel for Children, "Policy Statement: Confidentiality of Juvenile Court Proceedings and Records" (April 25, 1998), http://bit.ly/28uG37O.

**HF 947/ SF 941: Raise the age of Delinquency and Detention to 13 Years Old**

Adults know, kids are still developing. Imagine a 4th or 5th grader in your life. Maybe you imagine the two of you reading "Diary of a Wimpy Kid" together. You might also imagine a scenario in which the youth acts out or misbehaves. But it's unlikely that you're imagining that 4th grader being handcuffed and brought into a courtroom for his or her misbehavior. We know that children are still learning and growing; it is our responsibility as adults to guide them in the right direction.

The United States is an outlier throughout the world in the practice of trying young children in court. In 2019, the United Nations Committee on the Rights of the Child issued General Comment No. 24 in which they stated that 14 is the most common minimum age of criminal responsibility internationally, urged nations to set their minimum age of criminal responsibility to at least 14-years- old, and urged nations not to allow exceptions to be carved out to this minimum age.[17] The United Nations Global Study on Children Deprived of Liberty also called on countries to set the minimum age of prosecution in juvenile court at 14-years-old.[18]

As the United Nations Global Study stated, "depriving children of liberty is depriving them of their childhood."[19] A growing number of states have recognized this fact and momentum has been growing across the country to establish and raise the age of juvenile court jurisdiction. In the past few years, California, Massachusetts, and Utah have all raised their minimum age for prosecuting children to 12-years-old and there are currently at least 12 other states working on bills to raise the age.

Research has also demonstrated that there are negative impacts from both formal juvenile justice system processing and juvenile justice confinement. Rather than providing a public safety benefit, formal system processing often has "a negative effect".[20] Other systems can better serve youth without the harmful effects of involvement in the justice system. For example, the children's behavioral health system can provide psychiatric treatment, counseling, intensive home and/or community-based services in order to address the treatment needs of children with mental health issues. For those youth that remain in the juvenile justice system, community-based alternatives rooted in adolescent development can provide youth with a foundation for success and are much more cost-effective than youth jails; community-based programs yield net benefits from $3,600 to over $67,000 per child.[21]

Prosecuting the youngest children runs contrary to scientific research and recent United States Supreme Court decisions that have recognized children are inherently less culpable than adults. Legal experts and social scientists have also voiced significant concerns regarding young children's competency

---

[17] United Nations Convention on the Rights of the Child (CRC), Committee on the Rights of the Child, *General Comment No. 24 (2019) on Children's Rights in the Child Justice System* (2019): 6, CRC/C/GC/24, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?DocTypeID=11&Lang=en&TreatyID=5

[18] United Nations, General Assembly, "Global Study on Children Deprived of Liberty: report of the Independent Expert," A/74/136 (11 July 2019): 20, available at https://undocs.org/en/A/74/136.

[19] Ibid., 4.

[20] Juvenile Justice Resource Hub, "Community-Based Alternatives: Key Issues," accessed April , 2016, http://jjie.org/hub/community-based-alternatives/key-issues/#_edn6; citing Anthony Petrosino, Carolyn Turpin- Petrosino, and Sarah Guckenburg, "Formal System Processing of Juveniles: Effects on Delinquency," Campbell Systematic Reviews (January 29, 2010), 38. Available at http://bit.ly/1njRFEX. One finding in this report required further study: three studies with participants who had committed first-time offenses reported positive results for system processing. Also see National Juvenile Justice Network, "Emerging Findings and Policy Implications from the Pathways to Desistance Study," (Washington, DC: 2012). http://bit.ly/14jXkQl.

[21] Benjamin Chambers and Annie Balck, "Because Kids are Different: Five Opportunities for Reforming the Juvenile Justice System" (Chicago, IL: Catherine T. and John D. MacArthur Foundation, Models for Change, Dec. 2014): 7, http:/bit.ly/kids-are-different.

to understand and exercise their legal rights in any meaningful way.[22] A 2003 study found that "juveniles aged 15 and younger are significantly more likely than older adolescents and young adults to be impaired in ways that compromise their ability to serve as competent defendants in a criminal proceeding."[23]

Accordingly, young children are very likely to be found incompetent to stand trial. Setting a reasonable minimum age for juvenile court means Minnesota can avoid expensive and unnecessary competency proceedings and restoration services that don't provide children with services that address their underlying needs. It would also establish uniformity across the state in handling young children.

Nationally, justice system processing is a treatment that is disproportionately used for children of color, enhancing the racial and ethnic disparities in the youth justice system.[24] By prohibiting the arrest of young children through establishing a reasonable minimum age of prosecution, it would help to disrupt disparities and prevent large numbers of children from being arrested in school and sent through the school-to-prison pipeline.

In addition to concerns about young people's vulnerabilities in navigating the justice system, research shows that contact with the juvenile justice system can have lasting and negative psychological and health impacts on anyone – but can be especially traumatic for a child. Rather than exacerbate these trauma

s through incarceration and commitment, recognizing that these needs are better addressed through alternatives to the justice system – such as through child welfare, education, health care or human services – in the context of family and community better serves youth.

### HF 947/ SF 941: Ending Strip Searches and Use of Punitive Solitary Confinement

Advocates and correctional organizations agree youth should never be isolated unless their behavior is an immediate threat to the youth or others. These positions arise out of the research that shows solitary confinement does not reduce levels of violence nor does it act as a deterrent.[25] Rather the use of room confinement contributes to a more volatile environment. Furthermore, solitary confinement is proven to have long lasting harms on youth including trauma, psychosis, and increased risk of suicide.[26] In addition, solitary confinement further isolates young people from education and mental health services critical for youth success. States across the country, have reformed their practices as they relate to punitive solitary confinement. It is for these reasons that NJJN supports the provision to end the use of punitive solitary confinement.

### HF 416 / SF 900: Requiring data collection on extended jurisdiction juvenile sentencing

Data collection is essential to system planning and success. Regular data collection and analysis is necessary to understand the characteristics of justice- involved youth and to identify areas of disparity. It is

---

[22] Commission on Youth Public Safety and Justice, *Final Report of the Governor's Commission on Youth, Public Safety and Justice*, 37.

[23] Thomas Grisso, Laurence Steinberg, Jennifer Woolard Elizabeth Cauffman, Elizabeth Scott, Sandra Graham, Fran Lexcen, N. Dickon Repucci, and Robert Schwartz, "Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants," *Law and Human Behavior* 27(4) (2003): 333–63, 356, https://bit.ly/3aTun7A.

[24] M. Sickmund, A. Sladky, and W. Kang, "Easy Access to Juvenile Court Statistics: 1985-2018," (National Center for Juvenile Justice, 2020), https://www.ojjdp.gov/ojstatbb/ezajcs/asp/demo.asp.

[25] Stop Solitary for Kids Campaign. September 2016. https://www.stopsolitaryforkids.org/wp-content/uploads/2016/09/SSK-Talking-Points-v6-Sept-2016.pdf

[26] Stop Solitary for Kids Campaign. September 2016. https://www.stopsolitaryforkids.org/wp-content/uploads/2016/09/SSK-Talking-Points-v6-Sept-2016.pdf

important to collect data from each of the key decision points[27] in the juvenile justice process in order to learn at which point disparities are occurring and where they are most significant. This information can then be used to most effectively design strategies to address the inequities.[28] While state reporting systems vary, both Florida and Oregon are looked to as models with regard to their data collection methods and may serve as helpful models for Minnesota when implementing this goal.

## Conclusion

In sum, we applaud Minnesota for their comprehensive efforts to advance youth justice issues. We encourage the committee to move forward with the recommendations above by advancing HF 922, HF947, and HF 416. Thank you for your consideration and please don't hesitate to follow-up with any questions or concerns.

[27] OJJDP recommends that states collect disparity data at the following key juvenile justice decision making points: arrest, referral to court, diversion, case petitioned, secure detention, delinquency finding, probation, confinement in a secure correctional facility, and case transferred, certified, and waived to adult criminal court. U.S. Department of Justice, "OJJDP in Focus: Disproportionate Minority Contact" (Washington, DC: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, November 2012), 2, at http://www.ojjdp.gov/pubs/239457.pdf.

[28] Eleanor Hinton Hoytt, et al., "Reducing Racial Disparities in Juvenile Detention," in *Pathways to Juvenile Detention Reform*, Vol. 8 (Baltimore, MD: Annie E. Casey Foundation, 2001), 14, http://bit.ly/1aC6qbi; Heidi Hsia, "Introduction," in *DMC Technical Assistance Manual*, 4th ed., (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, July 2009), Intro-2, at http://1.usa.gov/1eOURCF.