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## **Illinois Must Improve Standards for the Care of Youth in Detention and Strengthen Juvenile Justice Oversight March 2021**

In the summer of 2020, Governor Pritzker announced plans to transform juvenile justice in Illinois. [JHA applauded the Governor's plan](#) and continues to support the closure of our remaining state-run Illinois youth prisons in favor of a system that keeps youth in their homes or communities and provides the support and assistance needed to foster rehabilitation and a successful path forward for them. A plan to close youth prison facilities and move to a system that seeks to keep youth at, or at least closer to, home inherently acknowledges the importance of families and loved ones being involved in the lives of their children and the harms that can come to them when they are removed from support networks and public view. It is important that we not only reduce the number of youth in any kind of custody, but also improve the standards of care for those who still end up in county detention facilities, or youth jails, and expand the reach of the [Office of the Independent Juvenile Ombudsman](#) so that any youth in county or state custody has access to the protections afforded by this effective oversight.

1. Youth in detention facilities need greater protection through enactment of specific, uniform standards, informed by current best practices, that clearly define youths' rights and these facilities' obligations.

To protect the health, welfare and rights of youth in county detention facilities and to foster transparency and public accountability, JHA urges Illinois' law and policy makers to act to update the [Juvenile Detention Center Standards](#), which by and large have remained unchanged for more than 30 years. Specifically, updates should be made (1) to reflect contemporary best practices and evidence-based policies and trauma-informed standards of care, and (2) to provide greater clarity, specificity, and guidance to county detention facilities with respect to youths' rights in detention as well as detention facilities' duties and obligations to youth and families. JHA has participated in current efforts to revise these standards and make them more substantive as well as complete and applauds the many stakeholders who have joined together to examine and update them. JHA reiterates that it is critical that both the breadth and depth of the standards be revisited, ensuring that the standards as written touch both the conditions youth are held in as well as the treatment they receive; these are first steps towards improving compliance, increasing transparency, and building accountability.

In the intervening years since the Juvenile Detention Standards were enacted, the legal response to juvenile crime has undergone revolutionary changes, informed by transformative new scientific understanding and information of childhood trauma, adolescent behavior, physiology and psychosocial development, and the deleterious impact of detention and confinement on healthy adolescent maturation and rehabilitation.<sup>1</sup> It follows that Illinois' Juvenile Detention Standards, in accord with "evolving standards of decency" recognized by the US

Supreme Court, should be amended to reflect these changes and codify contemporary best practices and minimum standards of care. It is important to note that improved standards within the Illinois Department of Juvenile Justice (IDJJ) for youth prisons have been implemented through reactive practices put in place following comprehensive settlements in litigation, not from preemptive purposeful review and enforcement of contemporary legislated standards.

In addition, and significantly, the existing Juvenile Detention Center Standards also provide no reasonable mechanism of enforcement or penalty for county detention facilities that fail to meet standards and remedy violations within a specific and clearly articulated period of time. For detention standards to have any force or consequence, specific enforcement mechanisms and penalties for county juvenile detention facilities that fail to comply with standards must be included as part of the standards. This alone necessitates revising the current standards. Along with adopting standards that are robust, holistic, and reflective of respect for youth safety and well-being, there must be a mechanism to ensure implementation as well as public reporting of facility compliance.

## 2. Public oversight of conditions and treatment of youth in Illinois' county juvenile pre-trial detention facilities is inadequate and must be expanded.

For youth prisons, in 2014, Illinois took the critical step of creating the Office of the Independent Juvenile Ombudsman (OIJO) to ensure accountability and transparency through public reporting and that the rights of youth committed to Illinois' five juvenile prisons under the control of IDJJ are fully observed.<sup>ii</sup> Since its creation, the OIJO has done an exceptional job in fulfilling its mandate. Despite minimal resources and staffing, the OIJO has been vital to identifying and rectifying issues and protecting youth welfare while furthering Illinois' agenda of juvenile justice reform and public accountability. It has accomplished these goals by continually and repeatedly visiting facilities throughout the year; responding in a timely manner to youth grievances and presenting these to administration for resolution; maintaining direct, confidential, ongoing contact with youth and families; building trusting relationships with youth, families and IDJJ; and providing candid, fair, uncompromised public reports on treatment and conditions in IDJJ facilities, requiring a public response by IDJJ.<sup>iii</sup> The OIJO has also taken steps to sound the alarm among stakeholders and to report to the public when resolution of a serious problem has not occurred and youth in state custody have been imperiled, allowing other stakeholders to seek change through alternate avenues. In addition, public oversight, accountability, and transparency regarding conditions and treatment of youth in IDJJ facilities has historically been augmented by John Howard Association's independent monitoring and reporting, as well as monitoring and reporting by court-appointed monitors pursuant to a federal court consent decree in litigation to remedy unconstitutional conditions in IDJJ facilities.<sup>iv</sup>

By way of contrast, virtually no readily accessible public information is available regarding the conditions, treatment, and experiences of youth in custody in Illinois' 16 county-run juvenile pre-trial detention facilities scattered across the state.<sup>v</sup> Lack of transparency and public accessibility to information on detention facilities' conditions, monitoring, and treatment of youth is a predictable result of ineffective, poorly coordinated juvenile detention oversight in our state.

### 3. Oversight of state juvenile prisons and county juvenile pre-trial detention facilities should be consolidated under the centralized authority of a single entity, the Office of the Independent Juvenile Ombudsman, because existing decentralized, opaque oversight spread across multiple state agencies is ineffective to protect children in pre-trial detention.

As it stands, data collection and reporting and monitoring of youth grievances and conditions and treatment of youth in juvenile detention facilities in Illinois fall under the purview of multiple jurisdictions among a confused, decentralized mixture of government agencies and entities that variously includes: the Illinois Juvenile Justice Commission (IJJC), the Jail and Detention Standards Unit (JDSU, which is housed in the Illinois Department of Corrections), the Administrative Office of the Illinois Supreme Court (AOIS) Probation Services Division, and the Illinois Department of Human Services (DHS).<sup>vi</sup> A comprehensive [2018 report](#) by Loyola University Chicago Center for Criminal Justice Research, Policy and Practice correctly observed that some juvenile detention data are publicly available through AOIC and IJJC reports – primarily data, related to detention releases and admissions.<sup>vii</sup> While the JDSU is tasked with monitoring juvenile detention facilities and issuing annual reports based on this monitoring, these reports are limited in scope and availability, in the past JHA as only been able to receive copies of these monitoring reports through use of a Freedom of Information Act request. Review of these reports reveal a noticeable lack of information about how youth are treated, including very little inclusion of any qualitative assessment of conditions and treatment, and disturbingly little input from youth. A designated authority must be tasked with thorough and ongoing public monitoring and reporting on conditions and treatment of youth in Illinois juvenile detention facilities.

Public reports for youth prisons issued by the Independent Juvenile Ombudsman identify issues, instances of mistreatment and neglect, and areas of needed reform in IDJJ facilities through monitoring that is focused on thorough investigation of youth issues, grievances, and direct, confidential communications with youth and families. Absent any comparable investigation, public reporting, and oversight of youth grievances and conditions and treatment of youth in juvenile detention facilities, there can be no confidence that youth in detention are treated humanely or their basic dignity and constitutional rights upheld. Well-settled best practice standards specify that collection and publication of detention data are not a substitute for substantive, independent public oversight and reporting based on direct observation, investigation, and most importantly, unmediated, confidential communication with youth held in places of confinement.<sup>viii</sup>

Apart from the void of public information available on conditions and treatment of youth in county detention facilities, a problem that confounds the existing system of county detention oversight mechanisms is the total lack of clarity regarding the specific functions and duties actually performed by various overseeing or data collection entities. A review of both statutory and administrative definitions and government agency descriptions of their own functions does not indicate what, if any, entity — the IJJC, JDSU, AOISC Probation Services Division, DHS — actually serves: (1) to investigate and address youth grievances and issues in detention; (2) to routinely monitor detention centers' conditions and youth programs and treatment and confidentially interview youth; (3) to regularly publicly report on conditions and issues of neglect,

mistreatment or abuse in detention; and (4) to make regular public recommendations for remedies, reforms and improvement.<sup>ix</sup>

It may be that some investigation of youth complaints and confidential interviews with youth and in-person monitoring of conditions in juvenile detention are being performed by one or more of these entities. But in the absence of any public reporting or a clear statutory or regulatory mandate to this effect, this cannot be assumed to be reliably the case. Further, even assuming *arguendo* that such monitoring does occur, non-transparent internal oversight mechanisms, standing alone, historically are proven inadequate to curtail neglect, mistreatment and abuses of power in places of confinement.<sup>x</sup> Annual Inspection Reports of county juvenile detention centers performed by the Jail and Detention Standards (copies of whose most recent reports, years 2018 and 2019, JHA obtained through a Freedom of Information Act Request) do not fulfill this function, as they consist of checklists and pro forma narratives that are predicated on observed physical plant conditions and the like, but not on confidential communications and interviews with youth regarding grievances, issues, treatment, and conditions. This is not enough. Independent, transparent public oversight and reporting that is grounded in regular, repeated in-person monitoring visits, investigation of youth grievances, and ongoing confidential communications with youth and families is imperative to protect children; to promptly alert detention center administrators, law and policy makers and the broader public of issues as they arise; and to ensure that timely remedial action is taken to mitigate harm.<sup>xi</sup>

JHA recommends, in addition to implementing needed updates to Illinois Juvenile Detention Center Standards, that the statute creating the OIJO should be amended to expand the scope of the Ombudsman's jurisdiction to include monitoring and public reporting on conditions in all county juvenile detention facilities in Illinois. In conjunction, funding and staffing for the Office must be significantly increased to allow it to achieve this goal and fulfill the expanded role of monitoring both DJJ's five youth facilities and Illinois' 16 county juvenile detention centers. The office might be divided into regions and have a deputy ombudsperson assigned to monitor specific facilities within a geographic area, which would allow for consistent oversight and support the closer to home model included in the Governor's IDJJ transformation plan. In turn, making oversight regional would help to better align facility care with local Probation and Aftercare services, creating more holistic care for youth in the justice system. Illinois lawmakers may balk at the prospect of increased spending in a time of economic crisis. However, leaving aside the incalculable cost to children's safety and welfare, continuing down the current road of failing to provide adequate independent public oversight of juvenile detention inevitably will result in even more costly litigation. As a cautionary example, lawmakers need only look to the case of Cook County's Juvenile Temporary Detention Center which, in the absence of adequate independent oversight, was subject to decades-long litigation in a class-action lawsuit necessary to remedy unconstitutional conditions of confinement.<sup>xii</sup>

Oversight is a mechanism that can identify issues and address them; it can be proactive than typical correctional system responses, which tend to be reactive. Expanding and building upon the standards used to monitor Illinois' 16 county juvenile detention centers is a necessary step in improving public information about what is happening inside these facilities. Establishing meaningful oversight of these facilities is critical to gauging compliance with these standards and in looking out for the health, safety and well being of all youth in detention in Illinois.

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<sup>i</sup> See *Roper v. Simmons*, 543 U.S. 551 (2005); *Miller v. Alabama*, 567 U.S. 460 (2012); *Montgomery v. Louisiana*, 577 U.S. \_\_\_\_, 136 S. Ct. 718 (2016). See also Annie E. Casey Foundation, "[Study: Pretrial Juvenile Detention Increases Odds of Felony Recidivism by 33%.](#)" (June 30, 2020); Barry Holman and

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Jason Ziedenberg, Justice Policy Institute, "[The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities.](#)"

ii [730 ILCS 5/3-2.7-1](#) et seq.

iii See DJJ, [Independent Ombudsman website](#), publishing annual reports and DJJ responses.

iv See [JHA website](#) (search "juvenile" or facility name to view reports); See *RJ v. Bishop*, Case No. 1:12-cv-7289 (N.D. Ill. 2012) [Consent Decree](#) and [ACLU website](#) for other case documents including court-appointed expert monitoring reports.

v [Chicago Youth Justice Map of Illinois Youth Centers and Youth Detention Centers.](#)

vi See, e.g., DHS website, [County Juvenile Detention Centers](#), [Illinois Juvenile Justice Commission website](#); [IDOC Jail and Detention Standards Unit website](#); AOIC, [Probation Services Division Website](#).

vii Loyola University Chicago Center for Criminal Justice Research, Policy and Practice, "[Juvenile Justice Data Guide: State-level collection, reporting and availability of juvenile justice data in Illinois.](#)"

viii United Nations, "[Justice in Matters Involving Children in Conflict with the Law](#)," ("**[Independent Inspectors] should be required to place special emphasis on meeting, speaking and listening to children in detention facilities, in a confidential setting.**") (emphasis added); United Nations Human Rights Office of the High Commissioner, "[Preventing Torture: The role of National Preventative Mechanisms: A Practical Guide](#)," [American Bar Association Standards for Prison Accountability: Oversight Standards](#); Association for the Prevention of Torture, "[Monitoring Places of Detention: A Practical Guide](#)," American University Center for Human rights and Humanitarian Law, "[Protecting Children Against Torture in Detention: Global Solutions for a Global Problem.](#)"

ix See e.g., DHS, [Illinois Juvenile Justice Commission website](#); AOIC, [Probation Services Division website](#) and The Probation and Probation Officer's Act, at [730 ILCS 110/15\(1\), et. seq](#) (establishing Probation Services Division); [Jail and Detention Standards Unit website](#); Illinois Administrative Code, County Juvenile Detentions Standards, [TITLE 20, CHAPTER IX, PART 2602](#).

x See Human Rights Watch, "[Prison Conditions in the United States of America](#)," US Attorney General Nicholas deBelleville Katzenbach and John J. Gibbons, Washington University Journal of Law and Policy, "[Confronting Confinement: A Report of The Commission on Safety and Abuse in America's Prisons](#)" (2006). See also Joseph Carlton Elliott, ABA Administrative Law Review, "[Sleeping with One Eye Open: The Result of Non-Transparent Oversight by the Office of Refugee Resettlement on Facilities Sheltering Unaccompanied Alien Children](#)" (2016).

xi National Council of Juvenile and Family Court Judges, "[Resolution Regarding the Need for Independent Oversight of Youth Confinement Facilities](#)" (2017).

xii See *Doe v. Cook County*, 99 C 3945 (N.D. Ill. 1999), [Memorandum of Agreement](#); Lori Turner, "[Using Impact Litigation as a Tool For Social Change: Jimmy Doe: A Case Study](#)," (documenting litigation over long-term, systemic practices of neglect, abuse and use of violence against youth housed in the Cook County Juvenile Detention Center); Civil Rights Clearinghouse, *Jimmy Doe v. Cook County*, 99 C 3945 (N.D. Ill. 1999), [Case Summary](#).