

National Juvenile Defender Center Recommendations for the Biden/Harris Administration

“Neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.” *In re Gault*, 387 U.S. 1, 13 (1967).

It has been more than 50 years since the Supreme Court of the United States unequivocally affirmed young people’s right to counsel when they are arrested and prosecuted. Yet, across the country, young people continue to go unrepresented and far too many defense systems are under-resourced, under-funded, and ill-equipped to serve those youth.

The incoming Administration has an opportunity to elevate juvenile defense as a national priority alongside its policy platforms on racial equity and COVID-19.¹ The National Juvenile Defender Center (NJDC) recommends that the incoming Administration take the following steps to make juvenile defense a part of those priorities:

1. **Create an Office of the Defender General within the Department of Justice (DOJ) that includes a senior-level Juvenile Defender General position**, creating a permanent defense-focused senior official within DOJ whose sole aim would be to safeguard and promote the legal rights of children.
2. **Appoint an Administrator of the DOJ Office of Juvenile Justice and Delinquency Prevention (OJJDP) within the first 100 days.** During President Obama’s first term, it took nearly three years to appoint an Administrator to OJJDP. While the post sat vacant, there were significant delays in funding approval, legislative reauthorization, and policy priorities. It is vital that a new Administrator immediately work to restore critical requirements for data collection that were reduced or eliminated in recent years, reprioritize the eradication of racial disparities in the juvenile legal system as a key goal of the agency, reaffirm support and acceptance of the science of adolescent development and its impact on youth in contact with the legal system, and reinstitute other critical guidance. Now that the position no longer needs Senate approval, making an appointment early should be a priority for the new Administration.
3. **Make an official joint statement from the DOJ and the Oval Office that Black lives matter.** Racial justice advocacy is integral to juvenile defense and youth justice reform. An explicit statement from the top levels of government that Black lives

¹ *Priorities*, BIDEN-HARRIS TRANSITION, <https://buildbackbetter.gov/priorities/> (last visited Dec. 21, 2020).

matter would show strong federal leadership and set the tone for the rest of the Administration's justice platform.

4. **Increase federal funding allocations for juvenile defense.** The Obama Administration was the first to create an independent permanent budget item within OJJDP specific to juvenile defense. While that allocation has survived, it is only a fraction of overall defense allocations, which in turn are only a fraction of the federal dollars allocated to prosecution, policing, and courts. The federal government must invest in juvenile defense systems in parity with the entities that arrest, prosecute, and incarcerate our nation's young people.
5. **Restore the DOJ Office for Access to Justice.** Under the Obama Administration, the Office for Access to Justice played an invaluable role in elevating the rights of youth in contact with the legal system, public defense, and other critical legal issues across all sectors of the DOJ. The new Administration should immediately restore this critical office.
6. **Reissue and update the guidance letters revoked under the current administration,** particularly those focused on youth justice. These include the ban on federal solitary confinement of youth, guidance related to school discipline and access to education, and the advisory against levying fines and fees on youth.
7. **Provide support, and technical assistance to create a uniform set of juvenile defense data indicators** and make reporting of such data an obligation under any DOJ-sponsored funding opportunities to states. There is no national set of indicators for juvenile defense, resulting in a dearth of juvenile defense data across the country. Data on whether and when youth obtain access to counsel, how long appointments last, and waiver of counsel are critical for understanding whether state courts are fulfilling their constitutional obligations. Uniform and mandatory data collection on race and LGBTQ-GNC identity are also critical for understanding how disparities play out within the juvenile legal system and identifying decision-points that should be addressed.

Beyond the recommendations outlined above, NJDC also supports youth justice reform priorities set forth by the National Juvenile Justice and Delinquency Prevention Coalition² and the indigent defense recommendations set forth by the National Association for Public Defense.³

² NAT'L JUV. JUST. & DELINQ. PREVENTION COAL., THE FUTURE OF YOUTH JUSTICE 2021: A POLICY PLATFORM FOR THE BIDEN/HARRIS ADMINISTRATION (2020), <https://www.act4jj.org/sites/default/files/resource-files/TransitionDoc%20%282%29.pdf>.

³ NAT'L ASS'N FOR PUB. DEF., RECOMMENDATIONS FOR THE BIDEN ADMINISTRATION (2020), https://www.publicdefenders.us/files/NAPD%20-%20Presidential%20Transition%20Recommendations_WITH%20LOGO.pdf.