

Tracy McClard, Parent

Testimony before the House Committee on Education and Labor
Full Committee Hearing on “Reforming the Juvenile Justice
System to Improve Children’s Lives and Public Safety”

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Good Morning, Chairman Miller, Ranking Member Kline, and members of the House Education and Labor Committee. Thank you for having me here to testify today on the Juvenile Justice and Delinquency Prevention Act (JJDP) and share my story.

My name is Tracy McClard and I live in Jackson, MO. In 2008, I lost my barely 17 year old son, Jonathan, in Missouri’s criminal justice system.

Background and Context:

Before I begin telling my family’s experience with having our son in the adult criminal justice system, I would like to give you some data to help put our story into context. Each year, an estimated 200,000 youth go into the adult criminal court and every day 10,000 kids under the age of 18 are incarcerated in adult jails and prisons.

These policies exist even though research shows that prosecuting children as adults causes harm to these youth and does not increase public safety. Reports from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the Centers for Disease Control and Prevention (CDC)’s non-federal Task Force on Community Preventive Services, show that prosecuting youth as adults actually increases crime. The CDC report found that youth involved in the adult system are 34% more likely to commit crimes than children who have done similar crimes, but remain in the juvenile justice system. The OJJDP report found that prosecuting youth as adults increases the chances of a youth re-offending and recommended decreasing the number of youth in the adult criminal justice system.

Research also shows that youth in adult jails face unbelievable conditions. First, these youth are at great risk of physical and sexual assault. The National Prison Rape Elimination Commission recently found that “more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse” and said youth be housed separately from adults. Second, youth in jails typically do not have access to things like education, mental health programs, or substance abuse treatment, especially when compared to kids in juvenile facilities. Finally, and as my family tragically knows too well, youth in adult jails are at a high risk of suicide - youth in adult jails are 36 times more likely to complete suicide in an adult jail than youth juvenile detention facilities.

Jonathan’s Story:

In July 2007, my son Jonathan, who was 16 years old at the time, made an extremely poor error in judgment. That morning Jonathan’s ex-girlfriend called to tell him that she was pregnant with

Jonathan's baby, but that her new boyfriend was abusive and was going to force her to inject cocaine and kill the baby. She also told him she was going to commit suicide before the new boyfriend could do this. Under the influence of drugs, and in what he thought was an attempt to save two lives, Jonathan shot the boyfriend, who survived, with the intent to scare him into leaving the ex-girlfriend alone. Thinking the police would understand why he did what he did and not understanding the gravity of his actions, Jonathan immediately turned himself in. While I believed that Jonathan needed to be held accountable for his actions as well as pay retribution, I never would have imagined the conditions he would face in the adult criminal justice system that ultimately took his life.

Our ordeal began with Jonathan being taken to an adolescent psychiatric hospital in St. Louis, MO within two hours of his arrest due to shock and suicidal thoughts in the aftermath of the event. The charge nurse there said that Jonathan was very confused and afraid. He remained in that facility for two weeks and was then ultimately transferred to the Cape Girardeau Juvenile Detention Center to be closer to home.

While in the psychiatric hospital, Jonathan was prescribed an extremely high amount of anti-psychotic medication. When he was transferred back to the juvenile facilities we, as his parents, had no control over Jonathan's medication or the dosage. It took several weeks for his body to adjust and during this time he had recurring nightmares about the loss of his baby and hallucinations of blood running down the walls. Eventually his body adjusted to the medication. In the juvenile detention center, Jonathan was allowed to complete homework from school and stay caught up. Jonathan remained in the Cape Girardeau County Juvenile Detention Center until September 6, 2007.

On that day, Jonathan had a certification hearing where he was transferred to the adult system. At the conclusion of the hearing he was immediately placed in the Cape Girardeau County Jail with adults in Jackson, MO. He was a 140 lb., slight built, 16 year old child among much older, bigger men. As soon as he arrived, all the medication he was forced to take earlier was abruptly stopped due to the jail's anti-narcotics policies, causing intense withdrawal symptoms, including shaking, another bout of hallucinations and severe depression. There was no medical care, medication or concern on the part of the jail's staff as Jonathan was forced to suffer these withdrawal symptoms.

At the jail, the ability for Jonathan to continue his education was also put on hold. Because he was now in the adult system, his school was no longer required to send homework and he was officially dropped from their roster. This was really difficult for Jonathan to deal with as he loved school, learning, reading and research. He had a lot of friends, made good grades and his teachers really enjoyed having him in class. He was working toward scholarships and had plans to become a doctor or psychiatrist. In the weeks waiting for his certification hearing, he mentioned several times how worried he was about his education. The night before the hearing he said, "I wonder if my teachers know I have to go to jail tomorrow and I can't be in school anymore. My life is over."

In order to continue with his education, Jonathan tried to work on a GED book, but he told me that it was too noisy in the jail and nobody was there to help or support him. He ended up staring

at the TV every day and at night he could not sleep as the lights were kept on and the adult inmates stayed up. He waited to use the restroom and take a shower in the mid-morning hours when the other inmates were sleeping to avoid being assaulted. Jonathan spent approximately two weeks in the Cape Girardeau County Jail and due to a change in venue was then transferred to the Mississippi County Jail in Charleston, MO.

I knew the transfer was coming, I just didn't know when. Due to security protocol, families are not allowed to know when loved ones are being moved. Before Jonathan was transferred, I called the Mississippi County Jail to speak to the supervisor about his safety. The supervisor led me to believe he was very concerned about having someone so young in his jail, that he would be very careful about which pod he chose to place Jonathan, and that other inmates had been singled out to watch over him. I was told that the officers would keep an eye out for him and he would be fine.

Jonathan was transferred on a Thursday. We were allowed only one 15 minute visit a week, either on Monday or Thursday between one and four o'clock. My husband and I took time away from our jobs each week to visit. We visited through glass by talking on a phone. Since Jonathan was moved on Thursday, the following Monday was our first opportunity to see him.

As Jonathan approached his side of the glass, my husband and I were shocked by what we saw. Jonathan had cuts and bruises all over his face, ears, and head. His hair was shaved off and he had a tattoo under his eye. He was told by the other inmates in the facility he needed the tattoo to survive. I immediately broke down and wept because I was utterly powerless to keep him safe. As I questioned him about what happened, I learned that he was attacked the night he arrived there. He said there was a meth lab in the jail and the person who attacked him was someone he shared a cell with and who was coming down off of meth. This person took Jonathan's shirt and pulled it over his head so he couldn't see and so his arms were trapped. Jonathan kept trying to reassure me that he would be okay and this was his fault because he'd gotten himself into this nightmare. We both knew he wouldn't be okay.

Following the extremely short visit, Jonathan was led back into the madhouse and my husband and I sought out the supervisor that I had spoken with on the phone. When we asked about the events of the fight and Jonathan's promised safety a very unconcerned supervisor told us, "Things like this happen! What do you expect? We don't tolerate fighting of any sort so if Jonathan participates in it again he'll be placed in solitary confinement. I don't care what the circumstances are."

On our next visit a week later, Jonathan was visibly shaken. He said, "Mom this place is so scary." I asked what happened. He described an incident that happened that week of a new inmate coming in. He said when this man was brought in several inmates grabbed him and dragged him to the back. He said, "Mom, I could hear him screaming and screaming and nobody did anything! When they brought him back out I couldn't recognize him because he was so bloody and beat up and he got sent to solitary, but nobody else got into trouble."

For the next several visits, Jonathan always had stories to tell about violent things that happened that week and comments he was hearing from inmates who had been to prison about how to

survive if he had to go to prison. He was constantly trying to strengthen his body to survive present and future attacks. He talked about how he was told he needed to be in a gang, which he didn't want to join, to survive. At this point, he was trying to decide between making education a priority and dealing with the bullying and beating that came with studying for the GED or if he should forget his education so he could join a gang and be safer. Jonathan remained in the Mississippi County Jail until his sentencing hearing on November 13, 2007.

Missouri has a blended sentencing option in place called the Missouri Dual Jurisdiction Program, which is run by the Missouri Department of Youth Services (DYS) and serves youth up to age 21 who have been certified as adults. Youth sentenced to this program are placed in a secure facility near St. Louis and are allowed to live in dorm style rooms, wear their own clothes, and have their own possessions from home. They also receive their high school diploma or GED, can take college classes, and have extensive individual and group counseling geared toward substance abuse, positive choices, victim empathy and restoration and other issues geared toward this specific population. Families are also encouraged to visit and remain involved. To be allowed into this program, a youth is interviewed by the DYS and a recommendation is given to the judge for acceptance or rejection. If accepted, the adult sentence is suspended while the youth receives intensive counseling and education. At the age of 21, another hearing is scheduled to decide if the youth can go home on probation or if the youth must serve the rest of the sentence in the adult prison. The decision for initial placement and adult placement is ultimately up to the judge.

Jonathan was interviewed for this program and was highly recommended. A representative from the DYS came to his sentencing hearing (which is unusual) to testify about the huge possibility for success Jonathan possessed. Namely, Jonathan had a close, supportive, extended family, was a good student in school, was well liked by peers, grew up in church and was involved in the youth group, and had goals and plans for his future. Although the DYS person who interviewed Jonathan thought Jonathan would be a good candidate for the program, the DYS worker also said that the judges in our court district typically were difficult to work with and wished Jonathan's case was in a different district. Tragically, the judge in Jonathan's case refused to listen to this recommendation.

Jonathan left the jail two days later and was placed in several other facilities. On December 13th, Jonathan took his GED test and passed with a 99th percentile in the nation. On January 4th, three days after his 17th birthday he was found hanging in his cell. A few days before, he had learned that he would be going back to Mississippi County to the prison in Charleston, which was the same town where he had lived and witnessed horrible experiences while in the jail.

While in jail, Jonathan lost everything. He lost his freedom, his friends, his safety, his privacy, his sanity, his childhood, skateboarding, swimming, his girlfriend, summer vacation, scholarships, college, dreams, Six Flags, marriages, births, deaths, family vacations, Christmas, Thanksgiving, time with his brother and sister (who now have tattoos in his honor and named their children after him), time with a close extended family and cousins who have always been a huge part of his life, his whole entire future and his life.

Our family also suffered while Jonathan suffered and we nearly lost everything as well. Jonathan's older brother, Charles, had recently moved out on his own, but began experiencing

panic attacks and seizures due to extreme stress and worry over Jonathan and was forced to move back home. Shortly after Jonathan died, Charles attempted suicide. A few weeks before Jonathan's death, my husband also attempted suicide and was hospitalized. Jonathan's older sister, Suzanne, who is in the Army National Guard, was scheduled to deploy a few days after Jonathan's death and also ended up in the hospital suffering from panic attacks.

Recommendations and Conclusion:

Jonathan's experience taught me that no child should be placed with adults no matter what, because when children are put in with adults they die - physically or mentally. I also believe that all kids deserve a second chance. As a parent, one of the most frustrating things for me was that the court, the judges, and the prosecutors didn't know my son - they hadn't raised him like I had; they didn't even know him as a person - but they weren't willing to give him the second chance they might have given to their own kids if they were in the same situation. Finally, if the goal of the juvenile and criminal justice system is to keep our communities safe, how safe can our communities be if a kid in Jonathan's position would have spent five, ten, fifteen or more years in the conditions Jonathan faced and with the role models he had?

In terms of JJDPa reauthorization, I have two main recommendations for the Committee. First, the current JJDPa law has two core requirements - jail removal and sight and sound separation - that recognize the dangers of keeping youth out of adult jails and out of contact with adults in these facilities. However, right now these two requirements only apply to youth who are under the jurisdiction of the juvenile court. Once a youth is charged as an adult, these protections no longer apply and, like Jonathan, kids can be placed in the same cell as adults. I hope the Committee can extend the jail removal and sight and sound protections to all youth under 18, no matter what court they are tried in. The alternative is just too dangerous for our youth and our communities.

Second, I hope that the JJDPa will continue to allow States to have the option to let youth who are convicted in adult court to serve their sentence in juvenile facilities rather than adult prison. It is my understanding that the Office of Juvenile Justice and Delinquency Prevention (OJJDP) recently stopped penalizing States that were allowing youth to serve their time in juvenile facilities and I would like for the Committee to make sure this decision is permanent.

Thank you again for having me here to testify and for giving me the chance to share my story, my family's story, and Jonathan's story with you today.