To: Honorable Members of the Joint Juvenile Justice Commission
From: Gabriella Celeste, Juvenile Justice Project of Louisiana, Ad Hoc Advisory Board Representative
Date: January 27, 2003
Re: JJC Ad Hoc Advisory Board Recommendations – Minority Report

It has been an honor and a privilege to serve as a representative on the Ad Hoc Advisory Board to the Juvenile Justice Commission. Over the course of the year, I have been impressed with the time and energy so many people have dedicated to this process and I am extremely hopeful that the result will be meaningful reform for our state's juvenile justice system.

The process that the Commission staff has designed and the framework that they have developed for the Commission's recommendations thus far has been comprehensive in substance, inclusive of differing perspectives and authentic in its attempt to achieve the fundamental reform called for by so many people at the public hearings and in other forums. After numerous meetings, draftings and often-exhaustive negotiations, I believe that the draft recommendations currently presented for the Commission's approval is a remarkable achievement.

Prior to addressing the Ad Hoc Advisory Board's proposals, I would like to raise a critical issue in the Casey Foundation's recommendations. While I urge the Commission to adopt the Casey recommendation to close a secure care facility, I believe that any resulting programs and savings should be diverted to the Department of Social Services and/or the Department of Health and Hospitals. Both of these are agencies whose missions prioritize treatment and rehabilitation, in comparison to the Department of Corrections whose top priority is security and who has proven incapable of providing the treatment and rehabilitative services necessary for these youth, are far more capable of developing the community based alternatives research shows reduces juvenile delinquency.

I strongly endorse the Ad Hoc Advisory Board's recommendations as presented. However, there is one area which the current set of recommendations does not address: state laws that fundamentally compromise the distinction between the juvenile and criminal justice systems. This is particularly relevant given the Advisory Board's, and public's, recognition of the growing, disturbing trend toward criminalizing the juvenile process – prosecuting more youth as adults, running juvenile institutions like adult prisons, and so on.

This "Minority Report" is filed to bring your attention to this significant issue. While the Ad Hoc Advisory Board only addressed – and ultimately did not approve an amendment to – one specific law, the "Habitual Offender Law", there are specific state laws that should be reviewed and amended in light of our shared belief in rehabilitation for youth, as well as newly discovered neurological scientific research and our common sense understanding of adolescent development. While one could point to several state laws that jeopardize the distinction between the juvenile and adult systems, I focus here on

three particularly troubling laws: the Habitual Offender Law (R.S. 15.529.1); the Juvenile Transfer Law (La. Ch.C. art. 305); and the Juvenile Death Penalty Law (R.S. 14.29C and La.Ch.C. art 305).

What follows is a brief discussion of these three laws and our position on why they ought to be amended as part of an overall effort to reform the juvenile justice system. Generally speaking, if we all agree that the juvenile justice system is, and should remain, distinct from the adult criminal justice system and that the focus of the juvenile system should be on rehabilitation and effective accountability in order to ensure public safety, then these laws seriously erode these basic principles.

(1) Habitual Offender Law (R.S. 15.529.1)

This law currently requires that certain juvenile adjudications (including drug offenses and a subsequent aggravated battery, as well as other offenses) be eligible for enhancing subsequent adult offenses with mandatory sentencing. The problem with this law is not whether courts and juries should be informed of any prior juvenile record (which they do have access to), but that prior juvenile adjudications – most of which are simply pleas and often without any legal representation – can be used to severely sentence someone on even their very first offense as an adult. In juvenile court, most children and families are focused, rightly so, on taking responsibility, learning from mistakes and getting any necessary help and treatment needed; they are not even aware of how a juvenile adjudication can be used against them in the future (in fact, most people mistakenly believe that the juvenile record is destroyed once someone becomes an adult). While it is arguably appropriate to be able to consider an adult offender's past history as a juvenile, to be able to use a juvenile record where a child did not even have an opportunity to be found guilty with a trial by jury is patently unfair and, at least according to some courts across the nation, unconstitutional. Moreover, it transforms what is supposed to be a "juvenile" misdeed into an adult crime, thereby changing the whole nature of what we mean by "adjudication" and "juvenile justice" in the first place. The law should be amended to remove persons "adjudicated delinquent under Title VIII of the Louisiana Children's Code" and only permit enhanced sentencing of adults for prior adult crimes.

(2) Juvenile Transfer Law (La. Ch.C. arts. 305, 863)

These laws currently require that juveniles who are transferred to adult criminal court for certain crimes[1] not be permitted, under any circumstances, to return to the juvenile court (and thus the juvenile justice system) for adjudication and sentencing. In other words, there is no "transfer-back" provision which exists in many other states.[2] The fact that adult district court judges cannot consider the option of returning a child to juvenile court, particularly those who are transferred without a juvenile court finding of "no substantial opportunity for rehabilitation," leaves them with extremely few options for addressing the unique circumstances of a youth's case. While a transfer-back would

[1] Louisiana has three transfer statute provisions that allow children to be transferred to adult court for prosecution: automatic transfer for certain crimes, prosecutorial discretion for a number of additional offenses, and transfer upon a finding of no substantial opportunity for a child's rehabilitation at a transfer hearing.

[2] Among the states that permit transfer back to juvenile court are: Arizona, Arkansas, Colorado, Connecticut, Delaware, Georgia, Iowa, Kentucky, Maryland, Mississippi, Montana, Nebraska, Nevada, New York, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Vermont, Virginia, Wisconsin, Wyoming.

certainly be the exception, rather than the rule, limiting district court judges by not even allowing them the opportunity to consider that a youth, and society, would be better served if the youth were adjudicated through the juvenile system is a significant barrier. Many states are even reconsidering whether youth should ever be prosecuted as adults, or at least limiting that decision to courts alone, rather than prosecutors. Here, we should at least allow for the possibility that a child should remain in the juvenile system. As such, the law should be amended to allow a "transfer-back" or "reverse-waiver" provision where circumstances are appropriate.

(3) Juvenile Death Penalty Law (R.S. 14.29C and La.Ch.C. art 305)
Given that sixteen year-old youth offenders are automatically transferred to adult court on charges of first degree murder, they are also eligible for the death penalty. Currently there are six young men on Louisiana's death row who were under the age of eighteen at the time of the offense. Aside from international prohibitions against the juvenile death penalty and numerous resolutions against the juvenile death penalty passed by various professional organizations[3], the vast majority of states do not allow the execution of sixteen-year-old offenders[4] and many states are currently reconsidering the use of capital punishment on youth offenders. There is an ever-growing legal and scientific consensus that youth are different than adults in their maturity, appreciation of consequences, and susceptibility to peer influence. The fundamental difference between youth and adults requires that youth – while not exempt from secure punishment – not be stricken with the harshest of penalties. The overwhelming scientific, social and developmental evidence warrants the exemption of 16- and 17-year-old offenders from the death penalty or at least merits a recommendation by this Commission to review and reconsider the appropriateness of executing juveniles.

Thank you for your attention and consideration of these issues. I am available for further information and comment should the Commission require any additional details.

[3] For example, the American Academy of Child and Adolescent Psychiatry, the National Mental Health Association, the American Psychiatric Association, and the American Bar Association have all passed resolutions against the execution of youthful offenders.
[4] Thirty-three (33) states, including Texas, Georgia and Florida, do not permit executing offenders who were sixteen (16) at the time of the offense.