

DRAFT

Keeping Guns Out of the Hands of Schoolchildren

The Clinton Administration is committed to keeping our schools gun free. It has supported measures, like the Gun Free Schools Act, which requires that in order to receive federal funding, schools must expel students who bring guns to school.

Zero tolerance for children who bring guns to school. As a result of the Gun Free Schools Act, all states now require expulsion of gun-toting students. These students are reported to local juvenile justice authorities from whom they can receive appropriate treatment.

Juveniles who possess firearms illegally are prosecuted. The vast majority of criminal cases arising from the students' possession of weapons are handled – as they should be – by state and local authorities. According to the most recent available data, between 1987 and 1996, the number of weapons cases prosecuted in juvenile court has increased by 188%. This is the largest increase among all delinquency offenses. In 90% of the adjudicated weapons cases, the juvenile court ordered formal sanctions. (Source: *Juvenile Court Statistics, 1996*).

- ▶ State and local juvenile justice authorities take weapons offenses seriously, and our federal statutes should not be used to compete with or supplant the traditional local response.
- ▶ The state and local systems are better equipped to handle juveniles. Those systems have juvenile judges and courts, detention facilities, probation offices, counseling services, and other social service programs for juveniles that simply do not exist in the federal system.

Federal prosecution of all juveniles who bring guns to school is not the answer.

- ▶ First, the role of federal authorities generally is to serve as a backstop when the state authorities are for some reason unable to follow through on a juvenile prosecution.
- ▶ Second, federal law contains strict requirements that must be met before such cases can even be brought.
- ▶ Third, handling all of these cases federally would impose a huge burden on federal prosecutors' offices. The federal judiciary is not set up to handle a high volume of cases, let alone juvenile cases. Limited resources means that pursuing more juvenile cases will reduce the number of criminal prosecutions in other areas.

We need to keep guns out of the hands of children. The number of students who do bring guns to school speaks to the ease with which kids gain access to firearms. We need to redouble our efforts to reduce the availability of guns to kids – by closing the gun show loophole, raising the minimum age for handgun possession to 21, and taking other reasonable steps to assure that our children do not get their hands on these lethal weapons.

November 2, 1999

NOTE TO THE SECRETARY

SUBJECT: MISSTATEMENTS REGARDING THE GUN-FREE SCHOOLS ACT

It is our understanding that during the May 9, 1999 show of *Meet The Press*, Wayne LaPierre repeated a statement made by Senator Orrin Hatch, which may inadvertently be confusing the Gun-Free Schools Act and the Gun-Free School Zones Act. Gary Bauer and Jack Valenti also were panelists during that segment of the show.

On May 5, 1999, Senator Orrin Hatch made the following prepared statement before the Senate Committee on the Judiciary during an oversight hearing of the Justice Department: "[D]espite more than 6,000 students illegally bringing guns to school last year, the Justice Department prosecuted only eight cases under this law in 1998" Although the statement treats the two facts as linked to the same law, the statement combines a reference to expulsions under the Gun-Free Schools Act of approximately 6,000 students for bringing a firearm to school in the 1996-97 school year, and prosecutions under the Gun-Free School Zones Act.

The Two Laws

The similarity in names of these two statutes sometimes results in confusion about the requirements of the Gun-Free Schools Act (GFSA) (20 U.S.C. 8921), an education statute administered by the U.S. Department of Education, and the Gun-Free School Zones Act (GFSZA) (18 U.S.C. 922(q)), a criminal law generally enforced by the Bureau of Alcohol, Tobacco, and Firearms (ATF) and prosecuted by the U.S. Department of Justice. We understand that the ATF and DOJ are more likely to prosecute adults under the GFSZA and not juveniles, who if charged with a criminal act violation are likely to be prosecuted under local or state laws.

The GFSA was enacted on October 20, 1994 as part of the Improving America's Schools Act; it requires that each State receiving Federal funds under the Elementary and Secondary Education Act have in effect a State law requiring local educational agencies to expel for a period of not less than one year any student who is determined to have brought a weapon to school. Each State's law also must provide authority to the local educational agency to modify the expulsion requirement on a case-by-case basis. Local educational agencies are required to refer to the criminal justice or juvenile delinquency

system any student who brings a weapon to school. We have been unable to ascertain how many of the referrals under GFSA result in state or local criminal prosecutions of the expelled students.

The current GFSZA was enacted on September 30, 1996. It makes it a criminal offense for an individual knowingly to possess a firearm in a school zone. The 1996 revisions responded to the 1995 decision of the United States Supreme Court in United States v. Lopez, 115 S. Ct. 1624 (1995), which held the earlier version of the GFSZA unconstitutional because it exceeded Congress' authority under the Commerce Clause.

Enforcement

In May 1998, the U.S. Department of Education issued a "Report on State Implementation of the Gun-Free Schools Act – School Year 1996-97" (prepared by a contractor). The report summarizes data submitted by the States on the number of students expelled for bringing a firearm to school (6, 093), the types of weapons involved, and other information. The Safe and Drug-Free Schools program is currently working with the contractor on this year's report. The reporting form asks States to identify local educational agencies not in compliance with the requirements of the GFSZA, including the requirement to refer to the criminal justice or juvenile delinquency system any student who brings a firearm to school. Program officials follow-up with technical advice and assistance to bring identified agencies into compliance. Juvenile justice officials will decide whether to prosecute a student who has been referred to the State's juvenile justice system.

Statutory Proposals

You may recall that in late April the President proposed banning handgun ownership for people under 21. In addition, the President has proposed new legislation -- the 21st Century Law Enforcement and Public Safety Act -- that among other provisions would give prosecutors the discretion to try older, more serious violent juvenile offenders as adults. Some Republicans, including Senator Craig of Idaho, have proposed revamping juvenile justice laws to allow children as young as 14 years old to be tried in adult courts and receive all adult sentences except the death penalty. Senator Daschle has criticized the "Republican federalization of law," suggesting instead that Congress needs to help states deal with juvenile crime problems rather than create new federal juvenile crimes.

I have attached and highlighted Senator Hatch's statement and the transcript from *Meet The Press*. Please let me know if there is additional information I can provide you on this matter.

Judith A. Winston

Attachments

11/2/99

To: DeAnne Barnes

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COMMENTS:

This should be helpful to you, but I
don't think it's the latest version.