# hud NEWS draft

Department of Housing and Urban Development – Andrew Cuomo, Secretary
Office of Public Affairs, Washington, DC 20410

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FOR RELEASE
Sunday
July 30, 2000

## PRESIDENT CLINTON CALLS ON HUD TO CONTINUE BUYBACK AMERICA DESPITE CONGRESSIONAL EFFORTS TO HALT PROGRAM

WASHINGTON – President Clinton has called on Housing and Urban Development Secretary Andrew Cuomo and HUD to continue the Department's gun buyback program, despite Congressional attempts to halt the initiative.

"Despite HUD's clear authority to carry out this program, the gun lobby and other opponents of common sense gun safety measures continue to challenge this initiative. We remain committed to carrying out Buyback America, and I call on HUD to continue to offer this vital assistance to communities seeking our support in addressing their local gun violence problems," said President Clinton.

President Clinton initially announced HUD's buyback initiative, Buyback America, in September 1999. The buyback program is an unprecedented initiative designed to reduce the toll of gun violence that claims an average of 30,000 lives and wounds another 100,000 people each year in the United States.

This Spring, during Congressional debate over a supplemental appropriations bill, Congressional opponents of gun buybacks proposed language to expressly bar HUD from continuing its buyback initiative. That language was withdrawn, but opponents of buybacks subsequently asserted that HUD lacked the legal authority to support local communities in their gun buyback efforts and should therefore stop the initiative. HUD's Office of General Counsel and the Administration's Office of Management and Budget have both since reviewed this question, and have concluded that HUD has authority to continue to respond to requests from local communities for funding of gun buybacks. Given HUD's authority, if Congress believes the program should be stopped, this could be done through a legislative change.

"BuyBack America saves lives by taking unwanted guns out of circulation," Cuomo said. "Today, thanks to this historic partnership between police departments and housing authorities, there are literally thousands and thousands of unwanted guns that no longer pose a risk to our nation's communities. The success of BuyBack America means that fewer gun tragedies will occur, and lives will be saved."

The buyback program is working: During the first few months of HUD's buyback program, 71 cities have used HUD funding to purchase over 17,000 guns. To date, 92 communities are participating in the program, which admits applicants on a rolling basis, and HUD continues to receive applications.

"I commend President Clinton and Secretary Cuomo for their courage in insisting upon the continuation of this important program. It is unconscionable for this Congress to refuse to act upon sensible gun safety legislation and to try to prohibit the Department of Housing and Urban Development from doing what it can to protect citizens living in its housing," said Sarah Brady, Chair of Handgun Control.

Police departments and public housing authorities participating in Buyback America use funds from HUD's crime-fighting Drug Elimination Grant Program to take guns off the street. HUD suggests a buyback price of $50 for each gun. In addition, businesses are encouraged to donate gift certificates for food, toys, and other goods to individuals turning in guns. HUD provides an additional 43 cents in matching funds for every $1 in HUD Drug Elimination Grant funds housing authorities set aside for a gun buyback.

Buyback America is designed to give individuals the chance, for a limited period of time, to exchange their guns anonymously for something of value. All guns bought with HUD funds are destroyed, in order to reduce the number of guns in circulation, unless authorities determine a gun was stolen or used in the commission of a crime. Weapons which turn out to have been stolen are returned to their lawful owners.

Other parts of the Clinton Administration's gun safety agenda include:

- HUD and the Department of the Treasury signed an historic agreement with Smith & Wesson in March to implement a "code of conduct" that will increase gun safety and keep guns out of the hands of criminals and children.

- A $30 million Community Gun Safety and Violence Reduction Initiative that President Clinton proposed in his Fiscal Year 2001 Budget. The initiative, which would be administered by HUD, would fund computerized mapping of gun violence to help law enforcement agencies better protect the public, education and outreach programs to promote responsible safety measures by gun owners, and innovative community activities to reduce both gun crimes and accidents. If Congress approves funding for this initiative, local governments, law enforcement agencies, public housing authorities, community organizations, and other groups would be eligible to compete for HUD grants to support gun violence reduction initiatives in the communities the Department serves,

- A $280 million national firearms enforcement initiative that is also part of the President's proposed budget. The initiative would hire 500 new ATF agents and inspectors to target gun criminals, hire more than 1,000 prosecutors at all levels of government, fund new gun tracing and ballistics testing systems to catch more gun criminals, fund local media campaigns to discourage gun violence, and expand the development of "smart gun" technologies.

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**U.S. Department of Housing and Urban Development**

# Fax

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| **To:** Leanne | **From:** Nestor Davidson |
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| **Phone:** | **Date:** July 17, 2000 |
| **Re:** | **CC:** |

- **Comments:**. Thanks for your help on this.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

GENERAL COUNSEL

June 15, 2000

Ms. Gail W. Laster
General Counsel
Room 10214
Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410

Dear Ms. Laster:

I am writing in response to your request for our views on your legal authority to use funds appropriated for the Public Housing Drug Elimination Grants Program (PHDEG) to fund the HUD Gun Buyback Violence Reduction Initiative. In a recent opinion, GAO concluded that HUD needs additional authority to support its gun buyback activities. We have reviewed that opinion and the materials submitted by HUD to GAO in support of its statutory authority to fund this program.

The basic premise of the gun buybacks is HUD's conclusion that reducing the availability of guns will reduce the violence and intimidation that facilitates the drug trade in and around public housing, thereby reducing drug use and violent crime. HUD relies on the authority in the Public Housing Drug Elimination Act of 1990, as amended, which authorizes it to make grants "for use in eliminating drug-related and violent crime." 42 U.S.C. 11902. It asserts that this provision gives its Secretary discretion to make grants – including those for gun buybacks – that further the statutory purpose of "eliminating drug-related and violent crime."

HUD, as the agency charged with implementing the Act, is entitled to considerable deference regarding interpretation of its own statute. As the Supreme Court stated in Chevron v. Natural Resources Defense Council, 467 U.S. 837 (1984), "We have long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer." (id. at 844). Given the broad scope of the statutory authority here, the conclusion reached by HUD is well within the agency's legitimate range of discretion.

Please let us know if we may be of further assistance.

Sincerely,

Robert G. Damus

Robert G. Damus
General Counsel

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OUR OGC opinion.

U.S. Department of Housing and Urban Development
Washington, D.C. 20410-5000

OFFICE OF GENERAL COUNSEL

July 11, 2000

MEMO TO: Saul N. Ramirez, Jr., Deputy Secretary, SD

Gail W. Laster

FROM: Gail W. Laster, General Counsel, C

SUBJECT: GAO's letter opinion on HUD's statutory authority to fund gun buybacks

## Introduction

On May 19, 2000, GAO General Counsel Robert Murphy responded to an inquiry from Rep. Walsh concerning HUD's statutory authority to use funds appropriated for the Public Housing Drug Elimination Grants Program (PHDEG) for gun buyback programs. In that letter, GAO concluded that HUD needed additional authority to support such activities. Insofar as this conclusion contradicts several previous opinions from this office supporting HUD's authority to fund gun buybacks, you requested that I review GAO's opinion.[1] I subsequently received a letter from OMB General Counsel Robert G. Damus, concluding that the gun buyback program was well within HUD's legitimate statutory discretion.[2] Close review of GAO's opinion in addition to other relevant analyses does not alter the conclusion of this office that HUD has sufficient statutory authority under PHDEG to fund gun buybacks.

## Analysis

GAO's opinion relies on the mischaracterization that HUD argued only that buybacks reduce drug-related crime rather than reducing drug use. HUD, however, has

[1] The Department of Justice has long taken the view that GAO opinions are not binding on the executive branch. "Although the opinions and legal interpretations of the General Accounting Office and the Comptroller General often provide helpful guidance on appropriations matters and related issues, they are not binding upon departments, agencies, or officers of the executive branch. See Bowsher v. Synar, 478 U.S. 714, 727-32 (1986)." 1998 WL 1180050 (Office of Legal Counsel, July 22, 1998) (attached at Tab 1).

[2] Letter from Robert Damus, OMB General Counsel, to Gail Laster, HUD General Counsel (June 15, 2000) (attached at Tab 2).

consistently maintained that gun buybacks are likely to reduce drug use by diminishing the supply of guns used by drug dealers to facilitate the distribution of drugs and thereby decreasing the availability of drugs and their use. For example, HUD's May 5 letter to GAO sets forth HUD's central thesis in support of its authority to fund gun buybacks:

> The basic premise of the gun buybacks being funded by HUD is that reducing the availability of guns will reduce the violence and intimidation that facilitates the drug trade in and around public housing, thereby reducing drug use.

GAO's May 19 letter, however, describes HUD's position as follows:

> HUD does not believe that the language of subsection (a)(6) requires a showing of a nexus between gun buybacks and reduction of drug use.
>
> * * * *
>
> HUD asserts instead that it is enough if in its design the program or activity is reasonably expected to reduce drug-related crime and violent crime in and around public housing.

To the contrary, as HUD's May 5 submission makes clear, gun buybacks are designed to reduce drug use, as the statute contemplates. HUD did not claim that a connection between gun buybacks and reduced drug related or violent crime alone was sufficient, as GAO asserts. The Department relied on PHDEP's emphasis on combating drug-related and violent crime as evidence that Congress itself recognized the close connection between drug use and drug-related and violent crime to inform the evaluation of the reasonableness of the means chosen by HUD to achieve the statutory goal of reduced drug use. In other words, the statute's increasing emphasis on violent crime over the years informed the Department's decision to address the conditions of violence that facilitate the organized distribution of drugs and result in widespread drug use.

> This legal conclusion was grounded in the common sense proposition that guns are "tools of the trade" for drug dealers that enable them to intimidate public housing and federally assisted low-income housing residents into cooperation or acquiescence with their activities. The threat of violent retribution allows drug dealers to silence residents who would report their activities to the police. This, in turn, allows "open air" drug markets to flourish in public and low-income housing complexes, allowing drug dealers to turn hallways and even apartments of vulnerable and elderly residents into havens for drug sales *and use*. . . . OGC attorneys, in reviewing the NOFA, concluded that given the close connection between the threat of gun violence and the prevalence of drug sale and use in and around public and low-income housing, there was ample reason for program officials to believe that reducing the availability of guns through a

> buyback program *would reduce drug use in and around public and low-income assisted housing.*

GAO's May 19 letter pays scant attention to this analysis. Although GAO admits that HUD is only required to make "a reasonable showing that the program has the means of accomplishing the statutory purposes, namely, to reduce drug use," GAO then faults HUD for not presenting studies that prove a "direct correlation between the impact of reducing violence or weapons used for violent crime to a reduction in drug use." This is an unjustifiably stringent standard and conflicts with GAO's own admission that only a "reasonable showing" is necessary. Appropriations law does not require that agencies produce scientific studies proving that their programs work before they have even been fully implemented. Instead, as GAO recognizes at another point in their May 19 letter, their review of whether an expenditure is "reasonably necessary" to carry out an authorized function "reflects a respect for an agency's exercise of discretion to determine how best to accomplish the objects of its appropriation." Moreover, even the "reasonably necessary" standard is more demanding than the authorizing statute requires. Section 11903(a)(6) authorizes funds to be expended on "programs **designed to**" reduce drug use – a standard which HUD has easily satisfied. Specifically, HUD has considered the scientific literature as well as other sources of information, including input from city governments, housing officials and police departments across the country, and has reasonably concluded that buybacks have promise as a means to reduce drug use. HUD's May 5 letter to GAO summarized the existing scientific evidence as follows:

> First, the vast majority of guns used in crimes are obtained by theft or other illegal means. Elliott, D.S. 1994, Youth Violence Overview, Boulder, Colo.: Center for the Study and Prevention of Violence, University of Colorado. NCJ 152908. Another study of youth gang members found that "gun theft" was a "regular gang activity." Sheley and Wright, 1992. Buybacks are designed to reduce the number of guns in the community, thereby reducing the number of guns available to be stolen and used in violent crime.
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> Furthermore, there are reasonable grounds to believe that reducing the number of guns in a community can have a dampening effect on both violent crime *and drug use* in light of studies that have shown "a very strong relationship between owning illegal guns and delinquency *and drug use*." Huizinga, Loeber, and Thornberry, 1994, Urban Delinquency and Substance Abuse. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. Possession and use of illegal guns is also closely associated with drug dealing, *as well as with drug use*. "A strong association is found between . . . illicit drug sales and *illegal drug use*." Id. (citing Decker, 1996; Decker, Pennell, and Caldwell, 1997; Sanders, 1994; Sheley and Wright, 1993, 1995).

In the past, GAO has respected agency determinations about whether specific expenditures of appropriated funds advance the general purposes of the appropriation. For example, GAO has previously accepted an agency's determination that a reception with refreshments would "materially enhance the effectiveness" of an agency awards ceremony. *65 Comp. Gen. 738.* These kinds of agency determinations are routinely upheld by GAO without the kind of extensive supporting research and scientific evidence which HUD has pointed to in support of its common-sense proposition that gun buybacks advance the purposes of the PHDEP.

HUD also relied on its authority under Section 11903 (a)(2), which permits HUD to award grants for the purpose of providing "reimbursement to local law enforcement for additional security and protective services." Since housing authorities are required to conduct their gun buybacks through local police departments, the buyback funds, under appropriate circumstances, may constitute an authorized "reimbursement" of the law enforcement agency's costs. GAO summarily rejects this argument by concluding that "gun buyback funds do not reimburse law enforcement agencies for security and protective services. . . ." GAO's argument that gun buybacks cannot be characterized as security or protective services is simply inconsistent with its concession that HUD has adduced "evidence of a relationship between guns and violence and guns and drug dealing."

GAO also questions HUD's authorization to use the PHDEG set-aside funds to match PHDEG grant funds reprogrammed for gun buybacks, claiming that the set-aside funds are intended to be used solely for technical assistance. The plain language of the appropriations statute makes it clear that technical assistance is only *one* of the purposes for which the set-aside may be used. The underlying Act expressly provided a $10 million set-aside, which

> shall be **for grants**, technical assistance, contracts **and other assistance**, training, and program assessment and execution for or on behalf of public housing agencies, resident organizations, and Indian tribes and their tribally designated housing agencies (including the cost of necessary travel for participants in such training).

Pub. L. 105-276 (Oct. 21, 1998), 112 Stat. 2461, 2472-2473. GAO also suggests that the language of the authorizing statute makes it clear that the funds appropriated under this section are intended solely for technical assistance. In fact, the authorizing statute plainly describes the authorized uses of funds made available under this subsection as including "assistance *and other activities.*" Accordingly, OGC remains convinced that the use of part of the $10 million set-aside for discretionary grants for the same range of eligible activities as the public housing formula grants is entirely within the plain language of the authorization and appropriation acts.

## Conclusion

Close review of GAO's opinion in addition to other relevant analysis does not alter the conclusion of this office, which is supported by the Office of Management and Budget, that HUD has sufficient statutory authority under PHDEG to fund gun buybacks.

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**Conclusion**

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OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

GENERAL COUNSEL

June 15, 2000

Ms. Gail W. Laster
General Counsel
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Washington, D.C. 20410

Dear Ms. Laster:

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Please let us know if we may be of further assistance.

Sincerely,

Robert G. Damus

Robert G. Damus
General Counsel

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4 Total Pages (excluding this cover):

dditional Message: Leanne, here is the letter from NGA on Aimee's Law.

NATIONAL GOVERNORS' ASSOCIATION

Governor of Delaware
Chairman

Michael O. Leavitt
Governor of Utah
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August 5, 1999

The Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
United States House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable John Conyers Jr.
Ranking Minority Member
Committee on the Judiciary
United States House of Representatives
2142 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman and Representative Conyers:

The nation's Governors appreciate the attention Congress is giving to the issues of juvenile crime, delinquency and violence and the role of Governors in addressing these issues. Success requires the development and implementation of innovative programs and policies that prevent delinquency, eliminate violence wherever children congregate, and ensure strong punishment for violent juveniles and persons responsible for exposing young people to harm. The bills you are working to reconcile accept these principles and support many effective juvenile justice strategies that Governors support. These strategies include incarceration for anyone who knowingly provides a firearm to a minor for illegal use, and additional penalties for those who illegally sell or transfer firearms or engage in drug trafficking at or near a school site, park, or other area where children and youth congregate.

While many of your goals are laudable and Governors support them, we do not approve of the various mandates, restrictions, and fund set-asides in H.R. 1501 and S. 254. States are in the best position to determine penalties for juvenile crime. States need more, not less flexibility to deal with delinquent behavior. Flexibility is essential to allow states to continue to find out what works, developing "best practices" on proven programs, and learning from each other. Federal mandates and one-size-fits-all prescriptions short-circuit experimentation and innovation.

The following are specific provisions to which governors object, and we urge you to consider our concerns as you negotiate during the conference.

**Aimee's Law (Title XVI, Section 1610 of S. 254, and Title I, Section 103 of H.R. 1501)**: This provision would allow the U.S. Attorney General, in prescribed circumstances, to deduct Byrne funds from State A and pay those funds to State B, to reimburse State B for the criminal justice system costs of a defendant convicted of murder, rape, or a dangerous sexual offense who has a prior conviction for a similar offense in State A. State A's Byrne funds would be reduced in such cases if State A cannot meet one of three criteria: it has adopted truth-in-sentencing (TIS); the particular defendant served at least 85 percent of the imposed sentence; or the state's average term of imprisonment for the offense is at least 10 percent above the average for all the states.

This mandate is onerous, impractical and unworkable for several reasons. First, even though many states have adopted TIS, interpretations of the meaning and the percentage of time served vary among the states. Second, some states require offenders to serve 85 percent of their time, while other states may require offenders to serve 100 percent of their time. These variances will impact the calculation of the third criteria, which is that the "state's average term of imprisonment for the offense is not less than 10 percent above the average for all states." Third, sources at the U.S. Department of Justice say it would be difficult to obtain and measure the data or to maintain a consistent average for reasonable periods of time. Fourth, the "average" would be a constantly moving target, requiring recalculation every time a single state legislature enacts a change in the sentence for covered crimes. A change by one legislature would affect other states without warning. Moreover, a crime that would trigger a Byrne fund transfer could occur before the legislature of a state falling below 10 percent, through no fault of its own, has the opportunity to meet to consider changing its law to keep its sentence/s at or above the 10 percent mandate. Each state would have to constantly monitor the legislative actions of every other state in an effort to be sure that it stayed at or above the 10 percent criteria. Therefore, we strongly urge the conferees to delete this section from the final bill. Governors remain eager to work with Congress to develop reasonable, practical, workable ways to make sure that serious violent offenders serve appropriate sentences.

**Core Requirements**: Governors have always supported the underlying principles of the juvenile justice bill and believe states should be given maximum flexibility to implement the spirit and purposes of the act. We appreciate the fact that both bills give more flexibility on the core requirements. Furthermore, we appreciate that under both bills, states would receive 50 percent of their funds, then 12.5 percent for complying with each principle.

However, S. 254 adds a fifth core requirement, which is both unnecessary and upsets the funds distribution formula just mentioned. S. 254 mandates that juveniles who possess illegal firearms in schools be taken to court and detained for at least 24 hours if the court determines that they are a danger to themselves or others. If states do not enact such a law, they will lose 10 percent of their juvenile justice funds. The goal of this provision is good, but it should not be a mandate. We urge you to delete this mandate from the final bill.

**Suspension of Driver's License in H.R. 1501, Section 1803(f)(1)**: This provision requires states to enact a statute that suspends driver's licenses of juveniles until 21 years of age if they illegally possess a firearm or use one in the commission of a crime. States that do not enact this statute risk losing 10 percent of their Juvenile Accountability Block Grant funds. This is another laudable goal with which many states may agree, but it should not be a mandate. Therefore, we also urge you to delete this mandate from the final bill.

**Juvenile Accountability Block Grants (JABG), Part R (Distribution and Allocation of funds)**: S. 254 continues present law, which authorizes the U.S. Attorney General to waive the pass-through requirements for states whose juvenile justice services are organized wholly or primarily on a statewide basis. Twenty-two states have now received full or partial waivers, and the Juvenile Accountability Incentive Block Grant (JAIBG) program is working successfully in these states. Permitting those states that need the waiver to choose to do so does not affect the states that do not need the waiver in any way; in particular, the waiver does not affect the funding of any other state.

H.R. 1501, Section 1803 provides grant funds for the JABG through a formula for distributing grant funds to state and local governments based on "Part I" crimes as reported to the FBI, and law enforcement expenditures. However, in many states, these two data points do not indicate the juvenile justice expenditure of the state or take into account how the state manages its juvenile justice system. In many states, the juvenile justice system is funded, managed and operated wholly or primarily by the state. While local governments may have law enforcement officers who interact with juveniles, they neither pay for nor have responsibility for the juvenile justice system, nor do they have legal authority to carry out the objectives of the juvenile accountability block grants program.

**Requirements to Obtain Juvenile Accountability Block Grants:** The requirements for receiving JABG funds are less onerous in H.R. 1501 than S. 254, where states not only must establish a system of graduated sanctions for youth who commit crime, but also must administer drug tests to juvenile offenders upon arrest. We are confident that with maximum flexibility and the stability that will come from fully authorizing and funding this program, states will achieve the JABG goals without the detailed, complicated, narrowly crafted requirements in S. 254. We urge you to adopt the language in H.R. 1501 in the final bill.

**State Advisory Boards:** We appreciate language that gives some discretion to Governors over appointments to state advisory boards overseeing implementation of state programs under the Juvenile Justice Act. Governors should have sole discretion over creation, make-up, and appointments to state advisory boards. Some states have existing boards that can fulfill this requirement.

**Overall Concerns:** Finally, the nation's Governors are deeply concerned about attempts to expand federal criminal law into traditional state criminal justice system functions. This will contribute little to reducing crime. Moreover, it undermines state and local anti-crime efforts. Governors also believe that federal concurrent jurisdiction in criminal justice efforts will be used by the federal government to impose additional burdensome mandates on state and local crime control and law enforcement officials, especially with regard to federal authority over juvenile offenders. One example is the mandate that states establish and maintain federally-prescribed "Juvenile Criminal History Record" data banks. The pending bills are not clear on what information must be provided to and will remain in the national data bases, who will have access to the data, how long the data will be maintained and made available, and how the data will be used. We also affirm states' rights under our federal system to control access to their own data.

We appreciate your consideration of our concerns as you proceed in reforming the juvenile justice system.

Sincerely,

Tom Carper

Governor Thomas R. Carper
Chairman

Michael O. Leavitt

Governor Michael O. Leavitt
Vice Chairman

Governor James B. Hunt Jr.
Chairman
Human Resources Committee

Mike Huckabee

Governor Mike Huckabee
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Cc: Members of the Conference Committee

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September 21, 1999

The Honorable Rick Santorum
United States Senate
SR-120 Russell Senate Office Building
Washington, DC 20510-3804

The Honorable Matt Salmon
United States House of Representatives
115 Cannon House Office Building
Washington, DC 20515-0301

Dear Senator Santorum and Representative Salmon:

Thank you very much for your letter of August 19, 1999, expressing concern about the position of the National Governors' Association (NGA) on the "Aimee's Law" provision in the juvenile crime bills, H.R. 1501 and S. 254, now in conference. We both agree and share the same value for the purpose of Aimee's Law, but we disagree over the process as outlined in the proposed statute.

Governors believe in and have supported longer sentences for those who commit murder, rape, and serious sexual offenses. Indeed, many of us have led successful efforts in our states to toughen laws and require longer sentences for these crimes. As our letter to the Conference Committee says: "Governors remain eager to work with Congress to develop reasonable, practical, workable ways to make sure that serious violent offenders serve appropriate sentences."

While we oppose the Aimee's Law provision currently in the bills, we would like to work with you in developing an appropriate way to deal with the purposes of the provision.

Sincerely,

Michael O. Leavitt

Governor Michael O. Leavitt
Chairman

Parris N. Glendening

Governor Parris N. Glendening
Vice Chairman

Mike Huckabee

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