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PRESERVATION



Jose Cerda III

11/25/97 02:41:10 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP

cc:

Subject: Text on Juvie 4 Cities Initiative

EK:

Here's a few paragraphs on the juvie stuff. I hope it works. Also, this info is from a '96 study that relies on '93/'94 data -- a little older than I would like. I'm trying to see if we have any of the new numbers similarly broken down by city to make sure they still hold up.

The Man with No Title



JUVIE4.CT

Taking the Next Step on Juvenile Crime

Although Congress failed to pass juvenile crime legislation last year, it nonetheless provided funds for much of the Administration's Anti-Gang and Youth Violence Strategy. Specifically, Congress provided \$110 million in targeted block grant funding for thousands of new prosecutors and probation officers (CJS), \$40 million for new after school programs (Labor/HHS), \$195 million for a youth-focused anti-drug media campaign (Treasury/Postal) and other important resources (full funding for COPS, \$1 million for Youth Crime Gun Interdiction Initiative). Equally important, the Administration successfully negotiated an agreement with the nation's largest gun manufacturers to have child safety locks included with the sale of handguns. With these combined resources, communities will be in a better position to keep their youth from turning to gangs, guns and drugs next year.

But there are two important things we still need to do if we are going to take juvenile crime head on:

1. Crack Down on Kids and Guns. We need to extend the Brady Bill and ban violent juveniles from owning guns as adults. There is no denying that guns have fueled the surge in juvenile murders and are at the heart of our nation's youth violence epidemic. While non-gun homicides have remained essentially unchanged since 1984, the number of juveniles killing with a gun has quadrupled during that time period. Congress must pass legislation that stops crime-committing kids from buying a gun on their 21st birthday.

2. Target Juvenile Murders. While the Administration's juvenile crime legislation provided direct and flexible resources to the communities with the worst juvenile crime problems, Congress has rejected this approach. Unfortunately, that means it will be more difficult to target resources and replicate Boston's successful youth violence strategy, which has helped to dramatically cut Boston's crime rate and put a stop to juvenile gun murders. Not a single juvenile has been murdered by a firearm in Boston in more than 2 years (since July 1995).

Too much is at stake to wait for Congress to act. That is why we are launching a new initiative to do everything we can, to use every resource we have (i.e., more police, gun tracing and enforcement, increased prosecutions, safer schools and more), to translate Boston's success to New York, Chicago, Detroit and Los Angeles -- the cities with the most serious juvenile murder problem.

Targeting these cities can help substantially reduce the murder rate for juveniles. More than 80% of the counties in the country did not report a single juvenile homicide arrest, and more than 90% reported arresting only 1 or fewer juvenile murderers. On the other hand, 6 states (Florida, Michigan, Illinois, New York, Texas and California) account for more than half (56%) of all arrests for juvenile homicides, and these 4 cities (New York, Chicago, Detroit and Los Angeles) account for nearly a third of all juvenile murder arrests.



Jose Cerda III

10/08/98 10:58:01 AM

Record Type: Record

To: Maria Echaveste/WHO/EOP

cc: Marjorie Tarmey/WHO/EOP, Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP

Subject: Juvenile Crime Legislation

Maria:

As requested, here's the latest update on the juvenile crime bill:

In response to the House's attempts to attach juvenile crime legislation to S. 2073 (an otherwise non-controversial authorization for the Center for Missing and Exploited Children), Senator Hatch's staff has been floating compromise versions of S.10 in an attempt to get some Democratic support for a last minute bill.

Until last night, I think we -- DOJ, Senate Dems, and DPC -- were all in agreement that the compromises were unworkable. Not only were objectionable provisions of S.10 still in the bill, but provisions undermining Brady implementation and allowing the interstate carrying of concealed weapons had been added. However, in the most recent draft, these provisions had been dropped; S.10's provisions on the core mandates in the juvenile justice system had been moderated; and prevention funds had been added. Some folks at DOJ and on the Hill believe that this may be the best deal we can get.

The truth, however, is that too many Senate Democrats and Republicans -- with very strong views on this bill -- have not been part of these negotiations and are not likely to sign off on hurrying such a bill through (i.e., Senator Feinstein, whose gang provisions have been dropped; Senator Sessions; Senators Durbin and Lautenberg, who aren't ready to give up on their gun amendments). The same is true for House members like Rep. McCollum. As a result, there is probably little to no chance that any meaningful juvie compromise will be considered before Congress leaves this weekend -- perhaps with the exception of a non-controversial authorization for the \$250 million juvie block grant already included in the appropriations bill. I spoke with Peter Jacoby and he agrees with this assessment. However, I'll keep an ear to the ground and let you know if there are any new developments.

Jose'

LEVEL 1 - 3 OF 7 STORIES

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September 19, 1998, Saturday, Final Edition

SECTION: EDITORIAL; Pg. A14

LENGTH: 348 words

HEADLINE: The Juvenile Justice Bill

BODY:

THE SENATE juvenile crime bill has been stalled for a year. This is a good thing. The bill would relax federal protections for underage arrestees and give states new money to combat juvenile crime as long as they enact Draconian new laws regarding juvenile offenders. It brings a punitive zeal to the subject of kids and crime that has made it a tough sell. As a consequence, Democrats have sought to prevent it from reaching the floor. Their problems could be addressed by significantly softening the bill, but congressional Republicans are now taking a different tack.

The House, which has passed a pair of juvenile crime initiatives, recently attached them to an uncontroversial bill the Senate had passed earlier to reauthorize the National Center for Missing and Exploited Children. This package has now been sent back to the Senate. In conference committee, Senate Republicans are apparently planning to push for the Senate's juvenile justice language -- which, of course, has yet to pass the Senate itself.

It is faintly absurd for the Senate to contemplate passing a major overhaul of the federal approach to juvenile crime without a significant floor debate in the Senate. Yet this appears to be happening. The Senate has never debated either the House measures or its own version. A conference report would not be subject to amendment -- just an up or down vote -- so we face the prospect of enacting sweeping changes to the relationship between the federal government and the states on the subject of juvenile crime without the Senate's ever considering amendments to the proposal.

This procedural error is compounded by the fact that the Senate's bill -- and one of the two House bills -- is terrible public policy that would benefit greatly by substantive changes. In key respects, the Senate bill is more Draconian than the House's approach. If the Senate cannot move its version and the House chooses to adopt a different approach, by what logic should Senate conferees seek to inject their juvenile-justice language -- passed by neither house?

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PRESIDENT CLINTON AND VICE PRESIDENT GORE: WORKING TO REDUCE JUVENILE CRIME

June 25, 1998

IMPORTANT ECONOMIC UPDATE

NEW ECONOMIC NUMBERS CONFIRM STRENGTH OF THE ECONOMY. As the Vice President left for Texas, new economic numbers were released showing that the economy remains strong, and inflation low. Among the findings of today's report:

- In the first quarter of 1998, the economy grew at an annual rate of 5.4 percent;
- Investment in business equipment rose at an annual rate of 26.4;
- Private sector growth was 7.2 percent in the first quarter; and
- The gross domestic product price index rose a mere 1.2 percent at an annual rate. Over the past year, inflation rose just 1.4 percent, the smallest increase in 34 years.

Today's numbers reinforce the success of the Administration's economic policy of deficit reduction, investing in our people, and opening new markets to American good and services. This plan has helped create 16 million new jobs, generate the first budget surplus in 30 years, and reduce unemployment to its lowest level since 1970.

"Catching criminals and punishing them is important, but it will not replace our shattered feeling of security, and it will not bring back the loved ones who have been lost. We need to stop crimes before they start. That means making sure that our kids grow up with values that will steer them off the wrong path, and onto the right one."

Vice President Al Gore
June 25, 1998

Today, Vice President Al Gore travels to Texas where he discusses strategies to prevent youth crime and delinquency. The Vice President announces the availability to states of \$232 million in national juvenile justice and accountability grants and awards funding to Houston, Texas for its anti-gang initiative.

A BALANCED APPROACH TO JUVENILE CRIME. The Clinton Administration is addressing juvenile crime through an approach which emphasizes tough enforcement measures that hold children accountable for their actions, but also works with children through targeted prevention and intervention strategies to help them stay on the track to success.

GIVING STATES AND COMMUNITIES THE RESOURCES THEY NEED. Under the Administration's Anti-Gang and Youth Violence Strategy, Juvenile Accountability Incentive Block Grants are being offered so states can promote greater accountability in the juvenile justice system. The Administration fought to ensure that 45 percent of the funding goes directly toward hiring new juvenile justice prosecutors, strengthening the juvenile court system, and creating new anti-gang strategies that help prevent young people from entering a life of crime.

CUTTING CRIME RATES TO THE LOWEST LEVELS IN A GENERATION. The Administration's leadership in crime fighting has produced impressive results. Earlier this month, the Justice Department released preliminary data showing that in 1997 crime rates dropped for the sixth year in a row, the longest period of decline in a generation. Since 1993, violent crimes have dropped more than 15 percent, and murder rates have fallen by over 25 percent.



Jose Cerda III

06/22/98 04:36:36 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Michelle Crisci/WHO/EOP, Peter G. Jacoby/WHO/EOP

cc:

Subject: Juvie/FOP

Rahm, Bruce, Elena:

I've heard that Senators Hatch, Feinstein, Torreceli, the FOP and perhaps some other R's, will be doing a press event tomorrow at 2pm to announce their support for a slightly modified version of S. 10 -- Hatch's juvie bill. None of us have seen the language, but DOJ seems to think it's still along way from where we need to be on some of the more controversial issues (records, separation, etc.), though it should include more money for our courts and prosecutors proposals and some prevention funds. We'll have to wait and see what the bill looks like.

Biden's folks think this is generally bad for our negotiating position on juvie in the Senate -- losing FOP, two key dems. However, they also think that, unless the new draft addresses the concerns of the hard-right, pro-gun R's, its prospects are no better than the current version of S. 10.

Jose'

Crime - juvenile proposals
1998
and
Educ - school violence
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Leanne A. Shimabukuro

06/10/98 04:24:03 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Christa Robinson/OPD/EOP, Laura Emmett/WHO/EOP, Michael Cohen/OPD/EOP

Subject: CRIME EVENTS UPDATE

An update on our events following today's crime meeting:

1. **6/13 Radio address:** I think Christa let you know that this weekend's radio address will be school violence. Originally, Rahm wanted to release a Safe and Drug-Free Schools report that is overdue to Congress. I have just been told that it won't be ready until August. The good news is that we floated another option by Rahm, which would be for the President to instruct Secretary Riley to develop guidelines on crisis management/early warning systems on student threats. Rahm seemed to like this idea, and I will talk to Mike Cohen about this. Riley briefly remarked about such guidance in a statement on school crime earlier this week, but for the President's address we could flesh out the proposal a little more and perhaps accelerate the timeframe for when they should get this done. Thoughts?

2. **6/16 Police Bills Signing Event:** In addition to the bill signings, Rahm very much wants to make an announcement on kids and guns. He really wants the President to be able to issue a challenge on "childproof guns" (smart guns). The challenge would be to industry to have a childproof gun marketed by the year 2000. If this doesn't work, he would like to announce support for legislation on parental liability for child access to firearms. I am working with the Justice Department on both pieces. The parental liability piece should be easier to clear with them than the smart gun challenge. We could also continue to push for the Degan expansion which has been held up in the House.

Please let me know if your thoughts or reactions to any of this-- in particular, the childproof gun challenge. Two things to keep in the back of your mind are that both Leahy (who pushed for the vest bill signing) and the police groups probably won't be too thrilled with gun announcements at the signing event.

I spoke to Jose' about both items this afternoon and got his feedback. I'm sure he will be pondering all of it at game 3.

Thanks,
Leanne



Jose Cerda III

10/08/98 08:53:26 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: JJ Update

Esteemed Colleagues:

Just got off the telephone with Peter and DOJ about the juvie crime bill. DOJ is much more upbeat about the prospects of getting a workable bill than most others we've talked to; however, they had not spoken w/the Senate Dems.

Peter and I remarked that while the bill was not too offensive, it did not include enough of a victory for the President (juvie Brady, more on prosecutors/Boston, or other crime/drug proposal we've introduced) -- and was still likely to be offensive to key Dems. We gave them a list of things to float by the R's, and said they needed to check with the Senate Dems, too.

Afterwards, I received the attached e-mail from Leahy's office. Doesn't look the Senate Dems think we're as close as DOJ does. Still, we should remain vigilant; Hatch could throw an agreement into the mix at the last minute.

Jose'

----- Forwarded by Jose Cerda III/OPD/EOP on 10/08/98 08:41 PM -----



Karen Marangi @ judiciary.senate.gov (Karen Marangi)

10/08/98 06:59:14 PM

Record Type: Record

To: Jose Cerda III/OPD/EOP

cc:

Subject: JJ Update

Jose --- sorry I've been so hard to reach. I thought I'd try to email b/c its late and I'm also losing my voice !

negots w/ the senate repubs broke down today b/c Hatch and Sessions can't live w/a disprop. minority confinement mandate -- even one as soft as that in hr 1818. they are double checking w/their bosses but negotiations are likely off for good.

democrats in house and senate think it is essential to keep this

protection. otherwise, we were getting real close to what is acceptable to us... but unlikely we'll get a bill. K

by the way, I'm sending this at 7 pm on thurs --hope it gets to you this eve.

Message Sent To:

Maria Echaveste/WHO/EOP
Bruce N. Reed/OPD/EOP
Elena Kagan/OPD/EOP
Michelle Crisci/WHO/EOP
Peter G. Jacoby/WHO/EOP
Leanne A. Shimabukuro/OPD/EOP
Neera Tanden/WHO/EOP



Office of the Attorney General
Washington, D. C. 20530

January 28, 1998

MEMORANDUM FOR: Rahm Emanuel
Elana Kagan

FROM: Kent Markus, Office of the Attorney General, DOJ *Kent*
Kinney Zalesne, Office of the Attorney General, DOJ *KZ*

SUBJECT: The Current Climate Surrounding the Juvenile Justice Bill;
Your Meeting with the Children's Defense Fund Today

This memorandum is intended to provide an update on developments in the climate regarding the youth violence legislation. It is particularly relevant to your meeting this morning with religious leaders requested by Marian Wright Edelman of the Children's Defense Fund.

We have known for some time that various groups -- including child advocates such as CDF, the NAACP, the ACLU, and others -- share our opposition to many of the current provisions of the majority juvenile justice bill in the Senate, S. 10. Overall, they believe the various legislative proposals under consideration in this area abandon the rehabilitative approach to juvenile justice in favor of pure punishment. More specifically, they are concerned about both House and Senate legislation designed to increase prosecutions of juveniles as adults, expand access to juvenile records, and erode the "core requirements" (aka "fundamental protections") -- especially the one requiring separation of delinquents from adults in state custody. As you know, some of these groups also expressed concerns about the Administration bill, which was far more centrist than the majority legislation.

It has recently become clear that many of these interest groups now want to take affirmative steps to block passage of any juvenile justice legislation this year, particularly the Senate bill, S. 10. They think that the objectionable provisions in the bill far outweigh the good that it might produce, even in the best of circumstances. Some of this sentiment has a sympathetic ear among some Senate Democrats, who may themselves be content to seek prevention funding through the appropriations process -- and abandon S. 10 with its onerous "reform" requirements for states, its demolition of the fundamental protections, its increased discretion for federal prosecutors, and its various enhanced sentencing provisions.

Our approach, by contrast, has been to try to modify or eliminate the most objectionable parts of S. 10, while retaining the important crime-fighting provisions it already contains. We think its reforms to the federal juvenile system, including increased prosecutorial discretion and greater protections for victims and witnesses, are very important. Many of its amendments to federal criminal law that will make it easier for prosecutors to combat gangs, guns, and drugs

came straight out of the Administration bill. While we were pleased with the funding streams for prosecutors and courts achieved in the appropriations process -- and think it may be possible that such a result could be accomplished for prevention -- we believe it is far preferable to establish a statutorily authorized basis for each of these three funding streams, as they exist now for police and for prisons. Finally, we enthusiastically support certain other miscellaneous provisions in the bill, such as the set-aside for Indian tribes, felony treatment for failure to pay child support, and authorization to spend prison drug treatment funds (RSAT funds) on non-residential aftercare. Consequently, we have been working to effect critical changes to S. 10, primarily dedicated prevention funds, preservation of the core mandates, judicial safeguards for juveniles in the federal system, and far greater flexibility for states in the administration of their own juvenile justice systems.

From what we can discern -- and the White House Legislative Affairs office seems to agree -- it appears likely that juvenile justice legislation *will* move through Congress this year, whether or not some might prefer that it not. We continue to understand that Senate action will probably commence in mid- to late February or early March.

We are concerned that the commitment of the groups to block juvenile justice legislation generally, and S. 10 in particular, may result in their determination *not* to improve S. 10. This creates the dangerous dynamic that if the bill is not stopped, it may be passed in a far more objectionable form than if the groups had deployed their energy toward improving it. This would make the President's decision about signing the bill much more difficult. We need to assure the groups that we, too, oppose nearly everything they oppose in S. 10 -- but that we intend to try to improve it, because we think there are important provisions already in the bill and because it is unlikely that in this election year, Congress will not move forward with this year's "crime bill."

What follows is more detailed background of the issues that may be raised in the meeting, and suggested talking points on each. The topics we think they are likely to raise are:

1. Prosecuting Juveniles as Adults
2. Increased Mandatory Minimums
3. Expanded Access to Juvenile Records
4. Erosion of the Mandates (especially Housing Juveniles with Adults)
5. Inadequate Funding for Prevention
6. The "Federalization" of Juvenile Crime

Each is addressed below.

1. Prosecuting Juveniles as Adults

Issue: The groups are distressed that the new bills expand the list of offenses for which a juvenile may be tried as an adult in the federal system, and give U.S. Attorneys the discretion to charge juveniles as adults. They think these changes give prosecutors too much power and unnecessarily "federalize" juvenile crime. Moreover, they say studies "prove" that juveniles tried as adults have higher rates of recidivism than those tried as juveniles.

Background: Like the Republican bills, the Administration's bill also proposed expanding the list of offenses for which a juvenile could be tried as an adult in the federal system, and gave U.S. Attorneys the discretion to charge juveniles as adults -- although we provided for judicial review of this decision in all but the most serious cases. We believe the increased prosecutorial discretion is critical because the current process for determining whether a juvenile may be tried as an adult is often highly unpredictable and fraught with delay.

Talking Points:

- As you know, we support the expansion of the list of offenses for which juveniles may be charged as adults and the increased discretion for prosecutors. Our goal is not, however, to expand the number of federal juvenile prosecutions. Our goal is to try juveniles federally in an expeditious way, whenever there is an appropriate reason for them to be in federal court in the first place.
- Moreover, while we believe these changes are necessary in order to protect the rights of victims and the resources of the courts, we fully agree that prosecutors should not have unfettered discretion. Some U.S. Attorneys have told us even *they* want judicial review. We will vigorously support a Floor amendment to provide the opportunity for a "reverse waiver" hearing in all but the most serious cases.
- On the question of "federalization," I just don't believe these adjustments will federalize juvenile crime. In general, federal prosecutors don't want juvenile cases, and federal judges surely frown upon them. These changes will result in fairer, more expeditious proceedings for defendants who are already in federal court, but I do not expect a mass importation of state cases to the federal system. [Note: more on federalization below.]
- With regard to the research you cite, it is my understanding that those studies show *correlation* between adult prosecution and recidivism, but not *causation*. In other words, they might just as likely prove that offenders who are more likely to recidivate are being properly diverted into the adult system. In any event, we are encouraging further study on this matter.

Issue: The groups are even more upset that the new bills would require, as a condition of receipt of new federal JJ money, that States prosecute more juveniles as adults.

Background: S. 10 makes it a condition that juveniles 14 and older *may* be prosecuted under State law as adults for an act that would be a serious violent felony if committed by an adult. H.R. 3's condition is even stricter: States must provide that juveniles 15 or older charged with serious violent crimes can be tried as adults *either as a matter of law or prosecutorial discretion*.

Talking Points:

- We completely agree that the requirement imposed by the new Republican bills is wrongheaded -- not to mention hypocritical, coming from Republicans who have long criticized Democrats for thinking Washington knows best. Most states have already made substantial changes in their juvenile transfer laws and don't need instruction from Washington. We have never proposed to tell States what to do in this area.
- Fortunately, we succeeded in watering down the Senate condition to such a point that most States now comply, since the Senate condition (unlike the one in the House) deems judicial waiver states in compliance. At a minimum, we will push for this in the final bill.

2. **Mandatory Minimum Sentences**

Issue: The groups oppose mandatory minimums in general, and are particularly upset that: 1) more juveniles will be subject to existing ones if tried as adults, and 2) S. 10 increases certain existing mandatory minimums as well as creates several entirely new ones.

Background: Our bill proposed only one new mandatory minimum: 3 years for the transfer of a handgun to a juvenile *knowing* it will be used to commit a crime of violence. We also raised existing mandatory minimums (from 1 to 3 years) for the most egregious forms of drug trafficking: selling drugs to children, using children to sell drugs, and selling drugs near schools.

S. 10 includes versions of both of those provisions, plus several new mandates: 1 year for soliciting criminal gang activity, 4 years for soliciting a minor for criminal gang activity, 5 years for a "pattern" of criminal gang activity, and 25 years for a second offense under the new "pattern of criminal gang activity" statute.

Talking Points:

- We have had concerns from the outset about the new "Federal Gang Violence Act" in S. 10 that aims to crack down on gangs. We think it may be unnecessary,

given existing federal tools of prosecution.

- The one new mandatory and the few increases that we did include in our bill are necessary to punish the most egregious behavior we can think of: transferring guns to children knowing they will commit crimes of violence; selling drugs to children, using children to sell drugs, and selling drugs near schools.
- Moreover, we were adamant about several important safety valves to protect juveniles. Intact is the provision under current law that permits judges to ignore mandatory minimum penalties for defendants who meet certain criteria (i.e., low criminal history, offense did not involve use of violence or a firearm, defendant was not a leader or organizer of others in the offense).
- Also, under S. 10, no mandatory minimum will apply to a juvenile under 16 who does not commit a Three Strikes offense. And S. 10 provides for the creation of new sentencing guidelines both for juveniles tried as juveniles and juveniles tried as adults -- giving judges greater flexibility in their sentencing determinations.
- And I should stress again -- I think this question will be largely academic. Only about 200 juveniles come before the federal courts annually now (more than half of those are Native American) -- and I doubt the number will dramatically increase even under these new rules. To my mind, the primary focus of our energy here should be in assisting states and local governments in their prosecutions and their efforts at juvenile crime prevention.

3. Expanding Access to Juvenile Records

Issue: The groups are angry that the new bills drastically increase access to juvenile records, especially state records. They argue, correctly, that most juvenile offenders never return to the justice system, and youthful indiscretions should not follow them forever. Specifically, they see this as one more unnecessary obstacle many young black men will face in trying to seek employment.

Background: There is no question that state juvenile records are years, if not decades, behind state criminal records -- and state criminal records are not in such good shape. We proposed incentive grants to help states modernize their juvenile recordkeeping systems. But S. 10 and H.R. 3 go much further, imposing a heavy-handed requirement on States to fingerprint and photograph juveniles, keep most juvenile records in a manner equivalent to adult records, send juvenile records to the FBI, and (Senate only) dramatically expand access to those records by schools, courts, and law enforcement of any jurisdiction.

Talking Points:

- We think the new recordkeeping requirement, particularly in S. 10, is

extraordinarily intrusive and expensive. The National Center for Juvenile Justice has recently determined that *not one State* currently complies, and compliance will cost hundreds of millions of dollars -- far more than is available under the block grant. We strenuously oppose this condition.

4. Erosion of the Mandates (especially Housing Juveniles with Adults)

Issue: The groups are very upset that the new JJ bills might permit the housing of juvenile delinquents with adults in state custody. They fear a return to the levels of abuse and suicide that prompted the separation requirements in the first place.

Background: This issue involves two of the four core requirements (aka "fundamental protections") that states must satisfy in order to obtain the formula grant money administered by OJJDP: sight and sound separation of juveniles from adults while in state custody; and removal of juveniles from adult jails and lock-ups. (The other two requirements are deinstitutionalization of status offenders (DSO) and disproportionate minority confinement (DMC), discussed below. Sight and sound separation and DSO have been law since 1974.) While we endorse certain minor changes to these two requirements, mostly in order to give rural jurisdictions more flexibility, we share the groups' vehement objection to the provisions in S. 10 that gut these requirements. More specifically --

- **Sight and Sound Separation** -- Under current law, in all institutions, juveniles must be completely separated, by sight and sound, from adults.

In our bill, we supported the codification of existing regulations, allowing "brief and inadvertent" contact in non-residential areas as well as transfer out of the juvenile system upon reaching the age of criminal responsibility. We would also permit the use of shared staff in colocated facilities, if such staff were trained and certified to work with juveniles. H.R. 1818 includes these changes.

S. 10, on the other hand, prohibits only "direct physical contact that provides an opportunity for an adult inmate to physically harm a juvenile," and only "sustained oral communication that easily provides an opportunity for an adult inmate orally to threaten a juvenile." This is grossly inadequate protection.

- **Jail removal** -- Passed later when Congress was concerned about high suicide rates of juveniles placed in adult facilities (even those in compliance with the separation requirements), this provision prohibits (with temporary exceptions for rural areas) placing juveniles in adult jails at all.

We would codify existing regulations, namely: a 6-hour exception for processing and release to parents; a 6-hour exception before and after an initial court appearance; and an extension of the 24-hour statutory exception for rural areas -- all with sight and sound separation. H.R. 1818 includes these changes.

S. 10 eliminates the jail removal requirement altogether.

Talking Points:

- *The Administration is committed to the preservation of all four core requirements.* Our minor changes were designed after very serious deliberation, based on thorough review of communities' experiences implementing the requirements, and our adjustments are narrowly tailored to permit flexibility *without* undermining protections of juveniles.
- These changes had overwhelming bipartisan support in the House -- led on the Democratic side by Congressmen Scott and Martinez. We think these are sound, reasonable changes.

Issue: The groups are further concerned about the erosion of the other two mandates, deinstitutionalization of status offenders (DSO) and disproportionate minority confinement (DMC).

Background:

- **Deinstitutionalization of status offenders (DSO)** -- Prohibits the incarceration of status offenders (e.g., truants, runaways), with narrow, court-ordered exceptions.

We would again codify existing regulations: permitting detention in a juvenile facility 24 hours before and after an initial court appearance. By virtue of a Biden-Grassley amendment at the end of Committee markup, S. 10 permits incarceration of runaways for up to 14 days and other status offenders for up to 3 days, with a required court appearance within 24 hours. Child advocates are furious about this. We'd like to change it, too, but Biden-Grassley may have been as much as we'll get on this issue, at least until conference.

- **Disproportionate minority confinement (DMC)** -- Requires states to examine their incarcerated juveniles and, if confinement of minorities is disproportionate to the minority proportion of the general population in that jurisdiction, to alter policies and practices in the juvenile justice and law enforcement systems in that jurisdiction that contribute to the "DMC."

We continue to support this requirement, codifying only that it does not require quotas. S. 10 virtually eliminates it.

Talking Points:

- *Again, the Administration is committed to the preservation of all four core requirements. We couldn't agree more that status offenders do not belong in custody, and have supported only the most minimal changes to provide for identification and release to parents where appropriate. We are also committed to the requirement that states be vigilant about race discrimination. We are working with House Republicans to ensure that they will stand strong on those protections in H.R. 1818 during conference.*

5. Inadequate Prevention Spending

Issue: The groups are frustrated that while H.R. 1818 authorized a substantial block grant for prevention and intervention, only H.R. 3's accountability block grant got funded. Moreover, S. 10 -- while guaranteeing funding for facilities, sanctions, recordkeeping, and drug testing -- refuses to guarantee funding for prevention.

They may also be annoyed at us for claiming to want "balance" between accountability and prevention -- but seeking only \$75M for prevention while seeking \$150M for state and local prosecutors and courts. They still think \$100M (20% of the \$500M block grant) is not nearly a large enough request.

Talking Points:

- A guaranteed, dedicated prevention funding stream for prevention is our top priority as we head on to the Senate Floor. The federal government now provides funding streams for state and local police, prisons, and -- with the new Accountability Block Grant -- prosecutors, and courts. Prevention is the final, critical funding stream in the area of juvenile justice, and we are committed to assuring a substantial authorization *and* appropriation for this purpose.
- We aim to establish this funding stream in law first, and then work toward building up the actual number. Our goal, of course, is to obtain the maximum portion of the new juvenile justice money for prevention purposes.

6. The "Federalization" of Juvenile Crime

Issue: The groups are critical of the new bills' effect on "federalizing" juvenile crime. Even Chief Justice Rehnquist warned against that!

Background: When critics charge "federalization," they generally have two major concerns: 1) federal prosecutors will start taking *serious* juvenile cases traditionally left to states, because with greater ease trying juveniles as adults, prosecutors can get longer sentences and higher-profile verdicts; and 2) federal prosecutors will start taking *minor* juvenile cases traditionally left to states, because S. 10 eliminates states' right of first refusal, and requires federal prosecutors merely to assert that "the ends of justice so require" rather than a "substantial federal interest."

Talking Points:

- I understand this concern, but believe it is largely theoretical. As I said earlier, federal prosecutors don't want juvenile cases -- especially minor cases -- and federal judges surely don't want them. Of course it is conceivable that the culture of the courts could change, and therefore we support amendments to limit prosecutors' discretion and to restore states' right of first refusal. But frankly, I don't see this as the biggest problem with these bills. When I think ahead to solutions for juvenile crime, I am focused primarily on dedicated prevention funds and on the preservation of the protections for juveniles in custody.

LEVEL 1 - 5 OF 7 STORIES

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Los Angeles Times

September 16, 1998, Wednesday, Home Edition

SECTION: Metro; Part B; Page 6; Editorial Writers Desk

LENGTH: 655 words

HEADLINE: UNITE ON JUVENILE CRIME

BODY:

At least six times in the last year and a half, U.S. teenagers have opened fire on school campuses, leaving 13 students dead and 44 wounded. While overall **juvenile crime** has been declining since 1994, the crimes juveniles are committing are often more heinous. Only last week, for instance, two 17-year-olds allegedly killed five people in two Aurora, Colo., homes.

At a **Senate** hearing earlier this month, liberal and conservative criminologists rallied around a common solution to the problem: more federal funding for truancy, mentoring and other programs in which police, teachers and counselors intervene early in the lives of errant teenagers--before their behavior can escalate from "acting out" to violence.

Unfortunately, **congressional** support for a bill that would do just that is now eroding. Last year, the bill, by Rep. Frank Riggs (R-Windsor), passed the **House** of Representatives by an overwhelming 413 to 14. But on Tuesday, **House** Republicans combined the Riggs bill with a hard-line measure by Rep. Bill McCollum (R-Fla.) that provides **juvenile crime** dollars to states only if they agree to implement a series of hard-line punishments against errant juveniles. And **Senate** Democrats, rather than rallying behind the Riggs bill, are introducing their own crime measure today.

This divided effort will enable both parties to posture--with Republicans painting themselves as tough on crime and with Democrats presenting themselves as champions of crime prevention--but it will defeat bipartisan momentum that could make good on **Congress'** professed intent to pass a **juvenile crime** bill before its October recess.

What's most unfortunate about this new partisan tinge is that it misleadingly characterizes the **juvenile crime** bills as either "hard" or "soft" on juvenile offenders. In fact, the "hard" McCollum bill, by failing to discipline juvenile offenders until they commit heinous offenses, is arguably "soft" on crime, whereas the "soft" Riggs bill, by focusing on catching young offenders early, comes down hard with discipline that has a chance to change behavior.

The **Senate** should remove the most harmful elements of the McCollum measure



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The Riggs bill, in contrast, would give teachers, police and other local authorities the resources they need to spot warning signs. Remember 15-year-old Kip Kinkel, who killed both of his parents, then went to his high school and killed two students earlier this year in Oregon? All of the tell-tale warnings were ignored. Kinkel was known to have tortured animals and constructed homemade bombs. The day before his outburst of killing, he was arrested for bringing a stolen gun to school, but local authorities released him to his parents without evaluation, detention or sanction.

Criminologists like George L. Kelling of Rutgers University, who helped fashion New York City's successful zero-tolerance crackdown on juvenile crime, say the key lies in acting immediately on the minor offenses that often mark the beginning of an increasingly violent life in crime. As Kelling puts it, "Just as a broken window left untended is a sign that nobody cares and leads to more serious damage, so disorderly behavior is a sign that nobody cares and leads to fear of crime, more serious crime and urban decay."

The Riggs bill, not more political posturing, would help give authorities a real chance of fixing the window now.

LANGUAGE: English

LOAD-DATE: September 16, 1998



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Office of the Attorney General
Washington, D. C. 20530

January 28, 1998

MEMORANDUM FOR: Rahm Emanuel
Elana Kagan

FROM: Kent Markus, Office of the Attorney General, DOJ *Kent*
Kinney Zalesne, Office of the Attorney General, DOJ *KZ*

SUBJECT: The Current Climate Surrounding the Juvenile Justice Bill;
Your Meeting with the Children's Defense Fund Today

This memorandum is intended to provide an update on developments in the climate regarding the youth violence legislation. It is particularly relevant to your meeting this morning with religious leaders requested by Marian Wright Edelman of the Children's Defense Fund.

We have known for some time that various groups -- including child advocates such as CDF, the NAACP, the ACLU, and others -- share our opposition to many of the current provisions of the majority juvenile justice bill in the Senate, S. 10. Overall, they believe the various legislative proposals under consideration in this area abandon the rehabilitative approach to juvenile justice in favor of pure punishment. More specifically, they are concerned about both House and Senate legislation designed to increase prosecutions of juveniles as adults, expand access to juvenile records, and erode the "core requirements" (aka "fundamental protections") -- especially the one requiring separation of delinquents from adults in state custody. As you know, some of these groups also expressed concerns about the Administration bill, which was far more centrist than the majority legislation.

It has recently become clear that many of these interest groups now want to take affirmative steps to block passage of any juvenile justice legislation this year, particularly the Senate bill, S. 10. They think that the objectionable provisions in the bill far outweigh the good that it might produce, even in the best of circumstances. Some of this sentiment has a sympathetic ear among some Senate Democrats, who may themselves be content to seek prevention funding through the appropriations process -- and abandon S. 10 with its onerous "reform" requirements for states, its demolition of the fundamental protections, its increased discretion for federal prosecutors, and its various enhanced sentencing provisions.

Our approach, by contrast, has been to try to modify or eliminate the most objectionable parts of S. 10, while retaining the important crime-fighting provisions it already contains. We think its reforms to the federal juvenile system, including increased prosecutorial discretion and greater protections for victims and witnesses, are very important. Many of its amendments to federal criminal law that will make it easier for prosecutors to combat gangs, guns, and drugs

came straight out of the Administration bill. While we were pleased with the funding streams for prosecutors and courts achieved in the appropriations process -- and think it may be possible that such a result could be accomplished for prevention -- we believe it is far preferable to establish a statutorily authorized basis for each of these three funding streams, as they exist now for police and for prisons. Finally, we enthusiastically support certain other miscellaneous provisions in the bill, such as the set-aside for Indian tribes, felony treatment for failure to pay child support, and authorization to spend prison drug treatment funds (RSAT funds) on non-residential aftercare. Consequently, we have been working to effect critical changes to S. 10, primarily dedicated prevention funds, preservation of the core mandates, judicial safeguards for juveniles in the federal system, and far greater flexibility for states in the administration of their own juvenile justice systems.

From what we can discern -- and the White House Legislative Affairs office seems to agree -- it appears likely that juvenile justice legislation *will* move through Congress this year, whether or not some might prefer that it not. We continue to understand that Senate action will probably commence in mid- to late February or early March.

We are concerned that the commitment of the groups to block juvenile justice legislation generally, and S. 10 in particular, may result in their determination *not* to improve S. 10. This creates the dangerous dynamic that if the bill is not stopped, it may be passed in a far more objectionable form than if the groups had deployed their energy toward improving it. This would make the President's decision about signing the bill much more difficult. We need to assure the groups that we, too, oppose nearly everything they oppose in S. 10 -- but that we intend to try to improve it, because we think there are important provisions already in the bill and because it is unlikely that in this election year, Congress will not move forward with this year's "crime bill."

What follows is more detailed background of the issues that may be raised in the meeting, and suggested talking points on each. The topics we think they are likely to raise are:

1. Prosecuting Juveniles as Adults
2. Increased Mandatory Minimums
3. Expanded Access to Juvenile Records
4. Erosion of the Mandates (especially Housing Juveniles with Adults)
5. Inadequate Funding for Prevention
6. The "Federalization" of Juvenile Crime

Each is addressed below.

1. Prosecuting Juveniles as Adults

Issue: The groups are distressed that the new bills expand the list of offenses for which a juvenile may be tried as an adult in the federal system, and give U.S. Attorneys the discretion to charge juveniles as adults. They think these changes give prosecutors too much power and unnecessarily "federalize" juvenile crime. Moreover, they say studies "prove" that juveniles tried as adults have higher rates of recidivism than those tried as juveniles.

Background: Like the Republican bills, the Administration's bill also proposed expanding the list of offenses for which a juvenile could be tried as an adult in the federal system, and gave U.S. Attorneys the discretion to charge juveniles as adults -- although we provided for judicial review of this decision in all but the most serious cases. We believe the increased prosecutorial discretion is critical because the current process for determining whether a juvenile may be tried as an adult is often highly unpredictable and fraught with delay.

Talking Points:

- As you know, we support the expansion of the list of offenses for which juveniles may be charged as adults and the increased discretion for prosecutors. Our goal is not, however, to expand the number of federal juvenile prosecutions. Our goal is to try juveniles federally in an expeditious way, whenever there is an appropriate reason for them to be in federal court in the first place.
- Moreover, while we believe these changes are necessary in order to protect the rights of victims and the resources of the courts, we fully agree that prosecutors should not have unfettered discretion. Some U.S. Attorneys have told us even *they* want judicial review. We will vigorously support a Floor amendment to provide the opportunity for a "reverse waiver" hearing in all but the most serious cases.
- On the question of "federalization," I just don't believe these adjustments will federalize juvenile crime. In general, federal prosecutors don't want juvenile cases, and federal judges surely frown upon them. These changes will result in fairer, more expeditious proceedings for defendants who are already in federal court, but I do not expect a mass importation of state cases to the federal system. [Note: more on federalization below.]
- With regard to the research you cite, it is my understanding that those studies show *correlation* between adult prosecution and recidivism, but not *causation*. In other words, they might just as likely prove that offenders who are more likely to recidivate are being properly diverted into the adult system. In any event, we are encouraging further study on this matter.

Issue: The groups are even more upset that the new bills would require, as a condition of receipt of new federal JJ money, that States prosecute more juveniles as adults.

Background: S. 10 makes it a condition that juveniles 14 and older *may* be prosecuted under State law as adults for an act that would be a serious violent felony if committed by an adult. H.R. 3's condition is even stricter: States must provide that juveniles 15 or older charged with serious violent crimes can be tried as adults *either as a matter of law or prosecutorial discretion*.

Talking Points:

- We completely agree that the requirement imposed by the new Republican bills is wrongheaded -- not to mention hypocritical, coming from Republicans who have long criticized Democrats for thinking Washington knows best. Most states have already made substantial changes in their juvenile transfer laws and don't need instruction from Washington. We have never proposed to tell States what to do in this area.
- Fortunately, we succeeded in watering down the Senate condition to such a point that most States now comply, since the Senate condition (unlike the one in the House) deems judicial waiver states in compliance. At a minimum, we will push for this in the final bill.

2. Mandatory Minimum Sentences

Issue: The groups oppose mandatory minimums in general, and are particularly upset that: 1) more juveniles will be subject to existing ones if tried as adults, and 2) S. 10 increases certain existing mandatory minimums as well as creates several entirely new ones.

Background: Our bill proposed only one new mandatory minimum: 3 years for the transfer of a handgun to a juvenile *knowing* it will be used to commit a crime of violence. We also raised existing mandatory minimums (from 1 to 3 years) for the most egregious forms of drug trafficking: selling drugs to children, using children to sell drugs, and selling drugs near schools.

S. 10 includes versions of both of those provisions, plus several new mandates: 1 year for soliciting criminal gang activity, 4 years for soliciting a minor for criminal gang activity, 5 years for a "pattern" of criminal gang activity, and 25 years for a second offense under the new "pattern of criminal gang activity" statute.

Talking Points:

- We have had concerns from the outset about the new "Federal Gang Violence Act" in S. 10 that aims to crack down on gangs. We think it may be unnecessary,

given existing federal tools of prosecution.

- The one new mandatory and the few increases that we did include in our bill are necessary to punish the most egregious behavior we can think of: transferring guns to children knowing they will commit crimes of violence; selling drugs to children, using children to sell drugs, and selling drugs near schools.
- Moreover, we were adamant about several important safety valves to protect juveniles. Intact is the provision under current law that permits judges to ignore mandatory minimum penalties for defendants who meet certain criteria (i.e., low criminal history, offense did not involve use of violence or a firearm, defendant was not a leader or organizer of others in the offense).
- Also, under S. 10, no mandatory minimum will apply to a juvenile under 16 who does not commit a Three Strikes offense. And S. 10 provides for the creation of new sentencing guidelines both for juveniles tried as juveniles and juveniles tried as adults -- giving judges greater flexibility in their sentencing determinations.
- And I should stress again -- I think this question will be largely academic. Only about 200 juveniles come before the federal courts annually now (more than half of those are Native American) -- and I doubt the number will dramatically increase even under these new rules. To my mind, the primary focus of our energy here should be in assisting states and local governments in their prosecutions and their efforts at juvenile crime prevention.

3. Expanding Access to Juvenile Records

Issue: The groups are angry that the new bills drastically increase access to juvenile records, especially state records. They argue, correctly, that most juvenile offenders never return to the justice system, and youthful indiscretions should not follow them forever. Specifically, they see this as one more unnecessary obstacle many young black men will face in trying to seek employment.

Background: There is no question that state juvenile records are years, if not decades, behind state criminal records -- and state criminal records are not in such good shape. We proposed incentive grants to help states modernize their juvenile recordkeeping systems. But S. 10 and H.R. 3 go much further, imposing a heavy-handed requirement on States to fingerprint and photograph juveniles, keep most juvenile records in a manner equivalent to adult records, send juvenile records to the FBI, and (Senate only) dramatically expand access to those records by schools, courts, and law enforcement of any jurisdiction.

Talking Points:

- We think the new recordkeeping requirement, particularly in S. 10, is

extraordinarily intrusive and expensive. The National Center for Juvenile Justice has recently determined that *not one State* currently complies, and compliance will cost hundreds of millions of dollars -- far more than is available under the block grant. We strenuously oppose this condition.

4. Erosion of the Mandates (especially Housing Juveniles with Adults)

Issue: The groups are very upset that the new JJ bills might permit the housing of juvenile delinquents with adults in state custody. They fear a return to the levels of abuse and suicide that prompted the separation requirements in the first place.

Background: This issue involves two of the four core requirements (aka "fundamental protections") that states must satisfy in order to obtain the formula grant money administered by OJJDP: sight and sound separation of juveniles from adults while in state custody; and removal of juveniles from adult jails and lock-ups. (The other two requirements are deinstitutionalization of status offenders (DSO) and disproportionate minority confinement (DMC), discussed below. Sight and sound separation and DSO have been law since 1974.) While we endorse certain minor changes to these two requirements, mostly in order to give rural jurisdictions more flexibility, we share the groups' vehement objection to the provisions in S. 10 that gut these requirements. More specifically --

- **Sight and Sound Separation** -- Under current law, in all institutions, juveniles must be completely separated, by sight and sound, from adults.

In our bill, we supported the codification of existing regulations, allowing "brief and inadvertent" contact in non-residential areas as well as transfer out of the juvenile system upon reaching the age of criminal responsibility. We would also permit the use of shared staff in colocated facilities, if such staff were trained and certified to work with juveniles. H.R. 1818 includes these changes.

S. 10, on the other hand, prohibits only "direct physical contact that provides an opportunity for an adult inmate to physically harm a juvenile," and only "sustained oral communication that easily provides an opportunity for an adult inmate orally to threaten a juvenile." This is grossly inadequate protection.

- **Jail removal** -- Passed later when Congress was concerned about high suicide rates of juveniles placed in adult facilities (even those in compliance with the separation requirements), this provision prohibits (with temporary exceptions for rural areas) placing juveniles in adult jails at all.

We would codify existing regulations, namely: a 6-hour exception for processing and release to parents; a 6-hour exception before and after an initial court appearance; and an extension of the 24-hour statutory exception for rural areas -- all with sight and sound separation. H.R. 1818 includes these changes.

S. 10 eliminates the jail removal requirement altogether.

Talking Points:

- *The Administration is committed to the preservation of all four core requirements.* Our minor changes were designed after very serious deliberation, based on thorough review of communities' experiences implementing the requirements, and our adjustments are narrowly tailored to permit flexibility *without* undermining protections of juveniles.
- These changes had overwhelming bipartisan support in the House -- led on the Democratic side by Congressmen Scott and Martinz. We think these are sound, reasonable changes.

Issue: The groups are further concerned about the erosion of the other two mandates, deinstitutionalization of status offenders (DSO) and disproportionate minority confinement (DMC).

Background:

- **Deinstitutionalization of status offenders (DSO)** -- Prohibits the incarceration of status offenders (e.g., truants, runaways), with narrow, court-ordered exceptions.

We would again codify existing regulations: permitting detention in a juvenile facility 24 hours before and after an initial court appearance. By virtue of a Biden-Grassley amendment at the end of Committee markup, S. 10 permits incarceration of runaways for up to 14 days and other status offenders for up to 3 days, with a required court appearance within 24 hours. Child advocates are furious about this. We'd like to change it, too, but Biden-Grassley may have been as much as we'll get on this issue, at least until conference.

- **Disproportionate minority confinement (DMC)** -- Requires states to examine their incarcerated juveniles and, if confinement of minorities is disproportionate to the minority proportion of the general population in that jurisdiction, to alter policies and practices in the juvenile justice and law enforcement systems in that jurisdiction that contribute to the "DMC."

We continue to support this requirement, codifying only that it does not require quotas. S. 10 virtually eliminates it.

Talking Points:

- *Again, the Administration is committed to the preservation of all four core requirements.* We couldn't agree more that status offenders do not belong in custody, and have supported only the most minimal changes to provide for identification and release to parents where appropriate. We are also committed to the requirement that states be vigilant about race discrimination. We are working with House Republicans to ensure that they will stand strong on those protections in H.R. 1818 during conference.

5. Inadequate Prevention Spending

Issue: The groups are frustrated that while H.R. 1818 authorized a substantial block grant for prevention and intervention, only H.R. 3's accountability block grant got funded. Moreover, S. 10 -- while guaranteeing funding for facilities, sanctions, recordkeeping, and drug testing -- refuses to guarantee funding for prevention.

They may also be annoyed at us for claiming to want "balance" between accountability and prevention -- but seeking only \$75M for prevention while seeking \$150M for state and local prosecutors and courts. They still think \$100M (20% of the \$500M block grant) is not nearly a large enough request.

Talking Points:

- A guaranteed, dedicated prevention funding stream for prevention is our top priority as we head on to the Senate Floor. The federal government now provides funding streams for state and local police, prisons, and -- with the new Accountability Block Grant -- prosecutors, and courts. Prevention is the final, critical funding stream in the area of juvenile justice, and we are committed to assuring a substantial authorization *and* appropriation for this purpose.
- We aim to establish this funding stream in law first, and then work toward building up the actual number. Our goal, of course, is to obtain the maximum portion of the new juvenile justice money for prevention purposes.

6. The "Federalization" of Juvenile Crime

Issue: The groups are critical of the new bills' effect on "federalizing" juvenile crime. Even Chief Justice Rehnquist warned against that!

Background: When critics charge "federalization," they generally have two major concerns: 1) federal prosecutors will start taking *serious* juvenile cases traditionally left to states, because with greater ease trying juveniles as adults, prosecutors can get longer sentences and higher-profile verdicts; and 2) federal prosecutors will start taking *minor* juvenile cases traditionally left to states, because S. 10 eliminates states' right of first refusal, and requires federal prosecutors merely to assert that "the ends of justice so require" rather than a "substantial federal interest."

Talking Points:

- I understand this concern, but believe it is largely theoretical. As I said earlier, federal prosecutors don't want juvenile cases -- especially minor cases -- and federal judges surely don't want them. Of course it is conceivable that the culture of the courts could change, and therefore we support amendments to limit prosecutors' discretion and to restore states' right of first refusal. But frankly, I don't see this as the biggest problem with these bills. When I think ahead to solutions for juvenile crime, I am focused primarily on dedicated prevention funds and on the preservation of the protections for juveniles in custody.