



Office of the Attorney General
United States Department of Justice
950 Pennsylvania Ave. NW
Washington, D. C. 20530

TO
Name:

Jose Cerda

Joe G

FAX Number

456-7028

52643

Telephone Number:

456-5568

43951

FROM

Name:

Kinney Zalesne

MAIN JUSTICE - ROOM 5231

FAX Number: 514-1724

Telephone Number: 514-2927

Date: 4-16-99

Number of Pages Transmitted (including cover sheet)

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COMMENTS

CRIME - JULIE

4/16/99

Attached are two draft alternatives to the Administration's federal JJ provisions, reflecting the concerns discussed at our meeting earlier this week. The two options differ only in regard to paragraph (2) below, concerning prosecution of juveniles as adults.

The plain text here represents the Administration's Anti-Gang and Youth Violence Bill of 1997, which was introduced as H.R. 810 in the 105th Congress. The bold and strikeouts represent proposed changes to that bill.

Specifically -

1) **Housing 16-year-olds Tried as Adults with Adults.** These provisions have been removed (see proposed amendments to sections 5035 and 5039).

2) **Prosecution of Juveniles as Adults.** Here we have provided two alternatives, as we discussed. In both, the problem of delay would be substantially reduced by requiring district court judges to determine these motions "on an expedited basis," and (as was always in our bill) by eliminating the possibility of defendants' interlocutory appeals. In addition:

- "Option 1" would permit reverse waiver in *all* cases, including -- unlike in our original proposal -- the oldest juveniles charged with three-strikes offenses. In addition, pursuant to your concern about juvenile records, we have offered a provision requiring that if a juvenile charged as an adult is "reverse waived" to delinquency court, any arrest or court records relating to those charges shall be treated as if they were records pertaining to a charge of delinquency. (See amendments to section 5031.)
- "Option 2" would leave the current "waiver" system in place, with one modification. For 16- and 17-year-olds, charged with a *narrower* class of offenses than even the three-strikes list -- meaning murder, manslaughter (excepting involuntary), assault with intent to commit murder, aggravated sexual abuse, robbery, carjacking, serious drug offenses (MM of at least 10 years), and conspiracy to attempt or commit any of those -- prosecutors would have the right to file directly in criminal court. The Executive Office for United States Attorneys estimates that about 40% of juveniles charged in federal court are charged with an offense on this narrowed list.

3) **Crimes for Which Juveniles May Be Prosecuted As Adults.** As we discussed, we narrowed the class of computer crimes for which juveniles may be prosecuted as adults to felony hacking crimes that cause physical injury to any person or threaten public health or safety. (The national security concern is included in the latter.)

4) Other Housing Provisions. Our current amendments to section 5039 (commitment) would permit BOP to place juveniles in half-way houses once they turn 18, in order to ease reintegration into their communities. We had discussed this in some detail at the first meeting. Also attached are some Q & A concerning that provision. As you will see, this transition stage is important to the juveniles' reintegration and, as it does not apply to *secure* facilities, does not offend traditional notions of sight and sound separation.

5) Miscellaneous. The only other change reflected here that we didn't discuss is an addition to the list of factors the district court ought to consider in the reverse waiver hearing. HHS has recommended we include "mental health" in these factors, and we like that change, as we expect you will.

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OPTION 1
SUBTITLE D — FEDERAL PROSECUTION OF SERIOUS AND VIOLENT
JUVENILE OFFENDERS

SEC. 5051. DELINQUENCY PROCEEDINGS OR CRIMINAL PROSECUTIONS IN DISTRICT COURTS.

(a) IN GENERAL.-- Section 5032 of title 18, United States Code, is amended to read as follows:

"§ 5032. Delinquency proceedings or criminal prosecutions in district courts

"(a)(1) A juvenile alleged to have committed an offense against the United States or an act of juvenile delinquency may be surrendered to State authorities or proceeded against as a juvenile under this subsection, or tried as an adult in the circumstances described in subsections (b) and (c).

"(2) Such juvenile may be proceeded against as a juvenile in a court of the United States under this subsection for offenses committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed six months, or if the Attorney General after investigation certifies to the appropriate United States district court that--

"(A)(i) the juvenile court or other appropriate court of a State does not have jurisdiction or declines to assume jurisdiction over the juvenile with respect to such act of alleged juvenile delinquency; or

"(ii) the offense charged is described in subsections (b)(2), ~~(b)(3)~~ or (c); and

"(B) there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction.

"(3) If, where required, the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State.

"(4) If a juvenile alleged to have committed an act of juvenile delinquency is not surrendered to the authorities of a state pursuant to this section, any proceedings against the juvenile shall be in an appropriate district court of the United States. For such purposes, the court may be convened at any time and place within the district, and shall be open to the public, except that the court may exclude all or some members of the public from the proceedings if required by the interests of justice or if other good cause is shown. Even if all or some of the members of the public are excluded from the proceedings, the proceedings shall be open to victims of the alleged offense and their relatives and legal guardians unless required by the interests of justice or otherwise good cause is shown. The Attorney General shall proceed by information or as authorized by section 3401(g) of this title, and no criminal prosecution shall be instituted except as provided in this chapter.

"(b) A juvenile may be prosecuted as an adult--

"(1) if the juvenile has requested in writing upon advice of counsel to be prosecuted as an adult;

"(2) **except as provided in paragraph (3),** if the juvenile is alleged to have committed an act on or after the day the juvenile attains the age of 13 ~~16~~ years ~~which if~~

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~~committed by an adult would be a serious violent felony or a serious drug offense as described in section 3559(c)(2) and (c)(3) or a conspiracy or attempt under section 406 of the Controlled Substances Act or under section 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 846 or 963) to commit an offense described in section 3559(c)(2); or~~

~~"(3) if the juvenile is alleged to have committed an act, which is not described in paragraph (b)(2), on or after the day the juvenile attains the age of 16 years and which if committed by an adult would be--~~

~~"(A) a crime of violence (as defined in section 3156(a)(4)) that is a felony, or a violation of section 1030(a)(1) or a felony violation of section 1030(a)(5) that causes physical injury or threatens public health or safety;~~

~~"(B) an offense described in section 844(d), (k), or (l), or paragraph (a)(6) or subsection (b), (g), (h), (j), (k), or (l), of section 924;~~

~~"(C) a violation of section 922(o) that is an offense under section 924(a)(2);~~

~~"(D) a violation of section 5861 of the Internal Revenue Code of 1986 that is an offense under section 5871 of such Code (26 U.S.C. 5871);~~

~~"(E) a conspiracy to commit an offense described in any of subparagraphs (A) through (D); or~~

~~"(F) an offense described in section 401 or 408 of the Controlled Substances Act (21 U.S.C. 841, 848) or a conspiracy or attempt to commit that offense which is punishable under section 406 of the Controlled Substances Act (21 U.S.C. 846), or an offense punishable under section 409 or 419 of the Controlled Substances Act (21 U.S.C. 849, 860), or an offense described in section 1002, 1003, 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952, 953, 955 or 959), or a conspiracy or attempt to commit that offense which is punishable under section 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 963).~~

~~"(c)(1) A juvenile may also be prosecuted as an adult if the juvenile is alleged to have committed an act on or after the day on which the juvenile has attained the age of 13 years but before the juvenile has attained the age of 16 years, which if committed by an adult would be an offense described in paragraph (2) and (3) of subsection (b), upon approval of the Attorney General or the Attorney General's designee.~~

~~"(2) Any such designee shall be at a level not lower than a Deputy Assistant Attorney General.~~

~~"(3) Such approval shall not be granted, with respect to such a juvenile alleged to have committed an act before the juvenile attained the age of 16 years who is subject to the criminal jurisdiction of an Indian tribal government and who is alleged to have committed an act over which, if committed by an adult, there would be Federal jurisdiction based solely on its commission in Indian country (as defined in section 1151), may not be prosecuted as an adult unless the governing body of the tribe having jurisdiction over the place in which the alleged act was committed has before such act notified the Attorney General in writing of its election that prosecution may take place under this subsection.~~

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" ~~(d)~~ (4) A determination to ~~approve or not to approve, or to institute or not to institute~~ a prosecution under paragraph (b) or (c) shall not be reviewable in any court except as described in subsection ~~(f)~~ (d).

" (c) In a prosecution under subsection (b) the juvenile may be prosecuted and convicted as an adult for any other offense which is properly joined under the Federal Rules of Criminal Procedure, and may also be convicted of a lesser included offense.

" ~~(f)(1)~~ (d)(1) In any prosecution of a juvenile **under subsection (b) or (c), under paragraph (b)(3) or (c)(1)**, upon motion of the defendant, the court in which criminal charges have been filed shall after a hearing determine whether to issue an order that the defendant should be transferred to juvenile status and proceeded against under paragraph (a)(2).

"(2) A motion by a defendant under paragraph ~~(f)(1)~~ (d)(1) shall not be considered unless filed not later than 20 days after the date on which the defendant initially appears through counsel or expressly waives the right to counsel and elects to proceed pro se. **The court shall hear and determine a motion filed under this subsection on an expedited basis.**

"(3) The court shall not order the transfer of a defendant to juvenile status under this paragraph unless the defendant establishes by clear and convincing evidence or information that removal to juvenile status would be in the interest of justice. In making a determination under paragraph (1), the court shall consider--

"(A) the nature of the alleged offense, including the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use or distribution of controlled substances or firearms;

"(B) whether prosecution of the juvenile as an adult is necessary to protect public safety;

"(C) the age and social background of the juvenile;

"(D) the extent and nature of the prior delinquency record of the juvenile;

"(E) the **mental condition**, intellectual development and psychological maturity of the juvenile;

"(F) the nature of any treatment efforts and the response of the juvenile to those efforts; and

"(G) the availability of programs designed to treat the behavioral problems of the juvenile.

"(4) An order of the court made in ruling on a motion by a defendant to transfer a defendant to juvenile status under this paragraph shall not be a final order for the purpose of enabling an appeal, except that an appeal by the United States shall lie to a court of appeals pursuant to section 3731 of this title from an order of a district court removing a defendant to juvenile status. Upon receipt of a notice of appeal of an order under this paragraph, a court of appeals shall hear and determine the appeal on an expedited basis.

"(5) No statement made by a defendant during or in connection with a hearing under this subsection shall be admissible against the defendant in any criminal prosecution, except for impeachment purposes or in a prosecution for perjury or giving a false statement.

"(6) The rules concerning the receipt and admissibility of evidence shall be the same as prescribed in subsection 3142(f) of this title."

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(b) CONFORMING AMENDMENT TO ADULT SENTENCING SECTION.--Section 3553 of title 18, United States Code, is amended by adding at the end the following:

"(g) Limitation on applicability of statutory minimums in certain prosecutions of persons under the age of 16.-- Notwithstanding any other provision of law, in the case of a juvenile alleged to have committed an act on or after the day on which the juvenile has attained the age of 13 years but before the juvenile has attained the age of 16 years, which if committed by an adult would be an offense described in paragraph 5032(b)(3) or subsection 5032(e) of this title, the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that the juvenile has not been previously adjudicated delinquent for or convicted of an offense described in section 5032(b)(2) of this title."

(c) CONFORMING AMENDMENT TO DEFINITIONS SECTION.--Section 5031 of title 18, United States Code, is amended by adding at the end the following: "As used in this chapter, the term 'State' includes a State of the United States, the District of Columbia, any commonwealth, territory, or possession of the United States and, with regard to an act of juvenile delinquency that would have been a misdemeanor if committed by an adult, a federally recognized indian tribe."

SEC. 5061. DETENTION OF JUVENILES PRIOR TO DISPOSITION OR SENTENCING.

Section 5035 of title 18, United States Code, is amended to read as follows:

~~"§ 5035. Detention prior to disposition or sentencing~~

~~"(a)(1) A juvenile prosecuted pursuant to paragraphs (b)(2) or (b)(3) of section 5032, if detained at any time prior to sentencing, shall be detained in such suitable place as the Attorney General may designate. Preference shall be given to a place located within, or within a reasonable distance of, the district in which the juvenile is being prosecuted.~~

~~"(2) A juvenile less than 16 years of age prosecuted pursuant to subsections (b) or (c) of section 5032, if detained at any time prior to sentencing, shall be detained in a suitable juvenile facility located within, or within a reasonable distance of, the district in which the juvenile is being prosecuted. If such a facility is not available, such a juvenile may be detained in any other suitable facility located within, or within a reasonable distance of, such district. If no such facility is available, such a juvenile may be detained in any other suitable place as the Attorney General may designate.~~

~~"(3) To the maximum extent feasible, a juvenile less than 16 years of age prosecuted pursuant to subsection (b) or (c) of Section 5032 shall not be detained prior to sentencing in any facility in which the juvenile has regular contact with adult persons convicted of a crime or awaiting trial on criminal charges.~~

~~"(b) A juvenile proceeded against under section 5032(a) shall not be detained prior to disposition in any facility in which the juvenile has regular contact with adult persons convicted of a crime or awaiting trial on criminal charges.~~

~~"(c) Every juvenile who is detained prior to disposition or sentencing shall be provided with reasonable safety and security and with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, education, and medical care, including necessary psychiatric, psychological, or other care and treatment."~~

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Section 5035 of title 18, United States code, is amended —

(1) by inserting "or a juvenile being prosecuted as an adult" after "juvenile alleged to be delinquent" each place it appears; and

(2) by striking "Whenever possible" and inserting "Whenever appropriate".

SEC. 5062. RULES GOVERNING THE COMMITMENT OF JUVENILES.

~~Section 5039 of title 18, United States Code, is amended to read as follows:~~

~~"§ 5039. Commitment~~

~~"(a) The Attorney General shall not cause any person less than 18 years of age adjudicated delinquent under section 5032(a), or any person less than 16 years of age convicted of an offense, to be placed or retained in an adult jail or correctional facility in which the person has regular contact with adults incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges, except for placement in a community-based facility.~~

~~"(b) Every juvenile adjudicated delinquent who has been committed shall be provided with reasonable safety and security and with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, counseling, education, training, and medical care including necessary psychiatric, psychological, or other care or treatment."~~

Section 5039 of title 18, United States Code, is amended —

(1) in the first undesignated paragraph, by inserting before the period ", except that the Attorney General may place and retain a person 18 years of age or older and adjudicated delinquent under section 5032(a) in an appropriate community-based facility"; and

(2) in the third undesignated paragraph, by striking "Whenever possible" and inserting "Whenever appropriate".

SEC. 5041. ACCESS OF VICTIMS AND PUBLIC TO RECORDS OF CRIMES COMMITTED BY JUVENILE DELINQUENTS.

Section 5038 of title 18, United States Code, is amended--

(5) by --

(A) striking subsections (d) and (f);

(B) redesignating subsection (e) as subsection (d);

(C) inserting "pursuant to section 5032(b) or (c)" after "adult" in subsection (d) as so designated by subparagraph (B); and

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(D) by adding at the end new subsections (e) and (f) as follows:

"(e) Whenever a juvenile has been adjudicated delinquent for an act that if committed by an adult would be a felony or for a violation of section 924(a)(6), the juvenile shall be fingerprinted and photographed, and the fingerprints and photograph shall be sent to the Federal Bureau of Investigation. The court shall also transmit to the Federal Bureau of Investigation the information concerning the adjudication, including name, date of adjudication, court, offenses, and sentence, along with the notation that the matter was a juvenile adjudication. The fingerprints, photograph, and other records and information relating to a juvenile described in this subsection, or to a juvenile who is prosecuted as an adult pursuant to sections 5032(b) or (c), shall be made available in the manner applicable to adult defendants. [INSERT THE FOLLOWING ONLY IF OPTION 1 IS ADOPTED] **But if the court grants a motion under section 5032(d) to transfer a juvenile being prosecuted as an adult to juvenile status, any arrest or court records relating to the charge or charges so transferred shall be treated as if they were records pertaining to a charge or charges of juvenile delinquency.**

"(f) In addition to any other authorization under this section for the reporting, retention, disclosure, or availability of records or information, if the law of the State in which a Federal juvenile delinquency proceeding takes place permits or requires the reporting, retention, disclosure, or availability of records or information relating to a juvenile or to a juvenile delinquency proceeding or adjudication in certain circumstances, then such reporting, retention, disclosure, or availability is permitted under this section whenever the same circumstances exist."

DRAFT**OPTION 2****SUBTITLE D -- FEDERAL PROSECUTION OF SERIOUS AND VIOLENT
JUVENILE OFFENDERS****SEC. 5051. DELINQUENCY PROCEEDINGS OR CRIMINAL PROSECUTIONS IN
DISTRICT COURTS.**

(a) IN GENERAL.-- Section 5032 of title 18, United States Code, is amended to read as follows:

"§ 5032. Delinquency proceedings or criminal prosecutions in district courts

"(a)(1) A juvenile alleged to have committed an offense against the United States or an act of juvenile delinquency may be surrendered to State authorities or proceeded against as a juvenile under this subsection, or tried as an adult in the circumstances described in subsections (b) and (c).

"(2) Such juvenile may be proceeded against as a juvenile in a court of the United States under this subsection for offenses committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed six months, or if the Attorney General after investigation certifies to the appropriate United States district court that--

"(A)(i) the juvenile court or other appropriate court of a State does not have jurisdiction or declines to assume jurisdiction over the juvenile with respect to such act of alleged juvenile delinquency; or

"(ii) the offense charged is described in subsections (b)(2) or (e);

and

"(B) there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction.

"(3) If, where required, the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State.

"(4) If a juvenile alleged to have committed an act of juvenile delinquency is not surrendered to the authorities of a state pursuant to this section, any proceedings against the juvenile shall be in an appropriate district court of the United States. For such purposes, the court may be convened at any time and place within the district, and shall be open to the public, except that the court may exclude all or some members of the public from the proceedings if required by the interests of justice or if other good cause is shown. Even if all or some of the members of the public are excluded from the proceedings, the proceedings shall be open to victims of the alleged offense and their relatives and legal guardians unless required by the interests of justice or otherwise good cause is shown. The Attorney General shall proceed by information or as authorized by section 3401(g) of this title, and no criminal prosecution shall be instituted except as provided in this chapter.

"(b) A juvenile may be prosecuted as an adult--

"(1) if the juvenile has requested in writing upon advice of counsel to be prosecuted as an adult; or

"(2) if the juvenile is alleged to have committed an act on or after the day the juvenile attains the age of 16 years which if committed by an adult would be a serious violent felony or a serious drug offense as described in section 3559(c)(2) and (c)(3) or a

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~~conspiracy or attempt under section 406 of the Controlled Substances Act or section 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 846 or 963) to commit an offense described in section 3559(c)(2) any of the following offenses: murder (as described in section 1111, 1114 or 1153); manslaughter other than involuntary manslaughter (as described in section 1112 or 1153); assault with intent to commit murder (as described in section 113(a) or 1153); a felony under chapter 109A consisting of aggravated sexual abuse (as described in section 1153 or 2241); robbery (as described in section 1153, 1951, 2111, 2113, or 2118); carjacking (as described in section 2119); a serious drug offense (as described in section 3559(c)(2)(H)(i)); or a conspiracy or attempt to commit any of the above offenses.~~

~~"(c)(1) A juvenile may also be prosecuted as an adult, upon approval of the Attorney General or the Attorney general's designee, if the juvenile is alleged to have committed an act on or after the day on which the juvenile has attained the age of 13 years but before the juvenile has attained the age of 16 years, which if committed by an adult would be an offense described in paragraph (2) of subsection (b) or if the juvenile is alleged to have committed an act on or after the day the juvenile has attained the age of 13 years which if committed by an adult would be any of the following offenses (other than an offense described in paragraph (2) of subsection (b)):~~

~~"(A) a crime of violence (as defined in section 3156(a)(4)) that is a felony, or a violation of section 1030(a)(1), or a felony violation of section 1030(a)(5) that causes physical injury to any person or threatens public health or safety;~~

~~"(B) an offense described in section 844(d), (k), or (l), or paragraph (a)(6) or subsection (b), (g), (h), (j), (k), or (l), of section 924;~~

~~"(C) a violation of section 922(o) that is an offense under section 924(a)(2);~~

~~"(D) a violation of section 5861 of the Internal Revenue Code of 1986 that is an offense under section 5871 of such Code (26 U.S.C. 5871);~~

~~"(E) a conspiracy to commit an offense described in any of subparagraphs (A) through (D); or~~

~~"(F) an offense described in section 401 or 408 of the Controlled Substances Act (21 U.S.C. 841, 848) or a conspiracy or attempt to commit that offense which is punishable under section 406 of the Controlled Substances Act (21 U.S.C. 846), or an offense punishable under section 409 or 419 of the Controlled Substances Act (21 U.S.C. 849, 860), or an offense described in section 1002, 1003, 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952, 953, 955 or 959), or a conspiracy or attempt to commit that offense which is punishable under section 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 963).~~

~~"(2) Any such designee shall be at a level not lower than a Deputy Assistant Attorney General.~~

~~"(3) (2) Such approval shall not be granted, with respect to a juvenile alleged to have committed an act before the juvenile attained the age of 16 years who is subject to the criminal jurisdiction of an Indian tribal government and who is alleged to have committed an act over which, if committed by an adult, there would be Federal~~

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jurisdiction based solely on its commission in Indian country (as defined in section 1151), **may not be prosecuted as an adult** unless the governing body of the tribe having jurisdiction over the place in which the alleged act was committed has before such act notified the Attorney General in writing of its election that prosecution may take place under this subsection.

"(d) A determination to ~~approve or not to approve~~, or to institute or not to institute a prosecution under paragraph (b), or (c), or (e) shall not be reviewable in any court except as described in subsection (f).

"(e) In a prosecution under subsection (b) or (c) the juvenile may be prosecuted and convicted as an adult for any other offense which is properly joined under the Federal Rules of Criminal Procedure, and may also be convicted of a lesser included offense.

"(f)(1) In any prosecution of a juvenile under paragraph (c)(1), upon motion of the ~~defendant, government~~, the court in which criminal charges have been filed shall after a hearing determine whether to issue an order that the defendant should be transferred to juvenile status and proceeded against under paragraph (a)(2). **The court shall hear and determine a motion filed under this subsection on an expedited basis.**

"(2) A motion by a defendant under paragraph (f)(1) shall not be considered unless filed not later than 20 days after the date on which the defendant initially appears through counsel or expressly waives the right to counsel and elects to proceed pro se.

"(3) The court shall not order the transfer of a defendant to juvenile status under this paragraph unless ~~the defendant establishes by clear and convincing evidence or information~~ it finds that removal to juvenile status would be in the interests of justice.

In making a determination under paragraph (1), the court shall consider--

"(A) the nature of the alleged offense, including the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use or distribution of controlled substances or firearms;

"(B) whether prosecution of the juvenile as an adult is necessary to protect public safety;

"(C) the age and social background of the juvenile;

"(D) the extent and nature of the prior delinquency record of the juvenile;

"(E) the **mental condition**, intellectual development and psychological maturity of the juvenile;

"(F) the nature of any treatment efforts and the response of the juvenile to those efforts; and

"(G) the availability of programs designed to treat the behavioral problems of the juvenile.

"(4) An order of the court made in ruling on a motion by a defendant to transfer a defendant to juvenile status under this paragraph shall not be a final order for the purpose of enabling an appeal, except that an appeal by the United States shall lie to a court of appeals pursuant to section 3731 of this title from an order of a district court removing a defendant to juvenile status. Upon receipt of a notice of appeal of an order under this paragraph, a court of appeals shall hear and determine the appeal on an expedited basis.

"(5) No statement made by a defendant during or in connection with a hearing under this subsection shall be admissible against the defendant in any criminal

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prosecution, except for impeachment purposes or in a prosecution for perjury or giving a false statement.

"(6) The rules concerning the receipt and admissibility of evidence shall be the same as prescribed in subsection 3142(f) of this title."

(b) CONFORMING AMENDMENT TO ADULT SENTENCING SECTION.--Section 3553 of title 18, United States Code, is amended by adding at the end the following:

"(g) Limitation on applicability of statutory minimums in certain prosecutions of persons under the age of 16.-- Notwithstanding any other provision of law, in the case of a juvenile alleged to have committed an act on or after the day on which the juvenile has attained the age of 13 years but before the juvenile has attained the age of 16 years, which if committed by an adult would be an offense described in paragraph 5032(c)(1) or subsection 5032(e) of this title, the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that the juvenile has not been previously adjudicated delinquent for or convicted of an offense described in section 5032(b)(2) of this title."

(c) CONFORMING AMENDMENT TO DEFINITIONS SECTION.--Section 5031 of title 18, United States Code, is amended by adding at the end the following: "As used in this chapter, the term 'State' includes a State of the United States, the District of Columbia, any commonwealth, territory, or possession of the United States and, with regard to an act of juvenile delinquency that would have been a misdemeanor if committed by an adult, a federally recognized indian tribe."

SEC. 5061. DETENTION OF JUVENILES PRIOR TO DISPOSITION OR SENTENCING.

~~Section 5035 of title 18, United States Code, is amended to read as follows:~~

~~"§ 5035. Detention prior to disposition or sentencing~~

~~"(a)(1) A juvenile prosecuted pursuant to paragraphs (b)(2) or (b)(3) of section 5032, if detained at any time prior to sentencing, shall be detained in such suitable place as the Attorney General may designate. Preference shall be given to a place located within, or within a reasonable distance of, the district in which the juvenile is being prosecuted.~~

~~"(2) A juvenile less than 16 years of age prosecuted pursuant to subsections (b) or (c) of section 5032, if detained at any time prior to sentencing, shall be detained in a suitable juvenile facility located within, or within a reasonable distance of, the district in which the juvenile is being prosecuted. If such a facility is not available, such a juvenile may be detained in any other suitable facility located within, or within a reasonable distance of, such district. If no such facility is available, such a juvenile may be detained in any other suitable place as the Attorney General may designate.~~

~~"(3) To the maximum extent feasible, a juvenile less than 16 years of age prosecuted pursuant to subsection (b) or (c) of Section 5032 shall not be detained prior to sentencing in any facility in which the juvenile has regular contact with adult persons convicted of a crime or awaiting trial on criminal charges.~~

~~"(b) A juvenile proceeded against under section 5032(a) shall not be detained prior to disposition in any facility in which the juvenile has regular contact with adult persons convicted of a crime or awaiting trial on criminal charges.~~

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~~“(c) Every juvenile who is detained prior to disposition or sentencing shall be provided with reasonable safety and security and with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, education, and medical care, including necessary psychiatric, psychological, or other care and treatment.”~~

Section 5035 of title 18, United States code, is amended —

(1) by inserting “or a juvenile being prosecuted as an adult” after “juvenile alleged to be delinquent” each place it appears; and

(2) by striking “Whenever possible” and inserting “Whenever appropriate”.

SEC. 5062. RULES GOVERNING THE COMMITMENT OF JUVENILES.

~~Section 5039 of title 18, United States Code, is amended to read as follows:~~

~~“§ 5039. Commitment~~

~~“(a) The Attorney General shall not cause any person less than 18 years of age adjudicated delinquent under section 5032(a), or any person less than 16 years of age convicted of an offense, to be placed or retained in an adult jail or correctional facility in which the person has regular contact with adults incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges, except for placement in a community-based facility.~~

~~“(b) Every juvenile adjudicated delinquent who has been committed shall be provided with reasonable safety and security and with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, counseling, education, training, and medical care including necessary psychiatric, psychological, or other care or treatment.”~~

Section 5039 of title 18, United States Code, is amended —

(1) in the first undesignated paragraph, by inserting before the period “, except that the Attorney General may place and retain a person 18 years of age or older and adjudicated delinquent under section 5032(a) in an appropriate community-based facility”; and

(2) in the third undesignated paragraph, by striking “Whenever possible” and inserting “Whenever appropriate”.

DRAFTQuestions and Answers (BOP)

1. What are halfway houses?

Halfway houses are non-secure, community-based correctional facilities. They provide supportive counseling, programming, and supervision for offenders who are returning to their home communities after a period of incarceration.

2. In the adult system, who goes to a halfway house and when?

In the BOP system, halfway houses derive their population from three sources. A small number of minimum-security offenders are permitted to serve their entire sentence at a halfway house in lieu of placement at a BOP facility. They are serving short sentences, usually six months or less. Another group of offenders are under the supervision of the local U.S. Probation Office and have been ordered to reside at a halfway house as a condition of supervision. This type of placement generally does not exceed six months.

However, inmates who have been incarcerated at a BOP facility and are nearing the end of their sentence are by far the largest group of halfway house residents. 70% of all inmates releasing from the BOP receive a halfway house placement in order to assist them in the process of transition and reintegration into their home communities. The length of the pre-release placement is up to six months.

3. Why does the BOP want to send juveniles to adult CCCs?

Currently, because of the lack juvenile halfway house resources, juveniles are released at the end of their sentences directly to the community with no transition assistance. This is especially problematic in that this population does not have supervision with U.S. Probation following the period of incarceration. It is noted that the Bureau has consistently supported legislation which would allow the Court to impose a period of supervised release to follow incarceration.

It is strongly believed that juveniles could benefit from a period of transition through a halfway house environment during the last phase of their sentence. We currently have a network of approximately 275 adult halfway houses.

We have checked with our BOP Community Corrections staff, OJJDP, and the ACA directory, and though many states and

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localities do have community based juvenile correctional facilities, we have found that "transition" type programs are very limited . Where independent living or transition programming is available, it is rarely in the community where the individual is releasing. Almost none of these facilities are dedicated to the mission of assisting the transition back into the home community.

OJJDP's enabling legislation only requires that states keep juveniles separated from adults in "secure" facilities.

U. S. Probation places juveniles aged 18-21 into our adult halfway houses as a condition of probation. This is significant in that approximately half of our 275 juveniles are probationers and NOT inmates.

We do not see juveniles in this age group (18 to 21), being in personal jeopardy if placed in the structured community based environment of our adult halfway houses. From anecdotal experience, we rarely find any violent behavior, such as fights and assaults, in our adult halfway houses. The adult halfway house inmate population is 75% minimum security inmates, 17% low, 8% medium and .5% high.

With only 275 juveniles releasing to 33 different states, it would be extremely impractical to try to contract for specialized halfway house services for this population. Our requirement in any given community would rarely exceed more than a few beds. We estimate that based on the current inmate juvenile population, if we placed every juvenile in a halfway house, our national average daily population would be between 30 and 50.

The current adult halfway house per capita rate is \$41, which compares to \$117 for juveniles. Though it is difficult to make a totally accurate comparison, it would be a safe assumption that if we pursued separate juvenile halfway houses they would be significantly more than \$41 per day.

We have found it extremely difficult to contract with states for secure beds because of local overcrowding. Though we have not actively pursued this avenue for halfway house beds, though we doubt few exist, it is believed we would experience the same problem.



Office of the Attorney General
United States Department of Justice
950 Pennsylvania Ave. NW
Washington, D. C. 20530

TO

Name:

JOSE CERDA

FAX Number

456-7028

Telephone Number:

456-5568

FROM

Name:

Kinney Zalesne

MAIN JUSTICE - ROOM 5231

FAX Number:

514-1724

Telephone Number: 514-2927

Date:

4-16-99

Number of Pages Transmitted (including cover sheet)

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COMMENTS

Jose - Please call before you send anything.

There are a couple of issues I want
to clarify.

Thanks.

Kinney

4/16/99

Attached are two draft alternatives to the Administration's federal JJ provisions, reflecting the concerns discussed at our meeting earlier this week. They differ only in regard to paragraph (2) below, concerning prosecution of juveniles as adults.

The plain text here represents the Administration's Anti-Gang and Youth Violence Bill of 1997, which was introduced as H.R. 810 in the 105th Congress. The bold and strikeouts represent proposed changes to that bill.

Specifically -

1) **Housing 16-year-olds Tried as Adults with Adults.** These provisions have been removed (see proposed amendments to sections 5035 and 5039).

2) **Prosecution of Juveniles as Adults.** Here we have provided two alternatives, as we discussed. In both, the problem of delay would be substantially reduced by requiring district court judges to determine these motions "on an expedited basis" and, as was always the case in our bill, by eliminating the possibility of defendants' interlocutory appeals. In addition:

- "Option 1" would permit reverse waiver in *all* cases, including -- unlike in our original proposal -- the oldest juveniles charged with three-strikes offenses. In addition, pursuant to your concern about juvenile records, we have offered a provision requiring that if a juvenile charged as an adult is "reverse waived" to delinquency court, any arrest or court records relating to those charges shall be treated as if they were records pertaining to a charge of delinquency. (See amendments to section 5031.)
- "Option 2" would leave the current "waiver" system in place, with one modification. For 16-year-olds and older, charged with a *narrower* class of offenses than even the three-strikes list -- meaning murder, manslaughter (excepting involuntary), assault with intent to commit murder, aggravated sexual abuse, robbery, carjacking, serious drug offenses (MM of at least 10 years), and conspiracy to attempt or commit any of those -- prosecutors would have the right to file directly in criminal court. The Executive Office for United States Attorneys estimates that between 40-50% of juveniles charged in federal court are charged with an offense on this narrowed list.

3) **Crimes for Which Juveniles May Be Prosecuted As Adults.** As we discussed, we have narrowed the class of computer crimes for which juveniles may be prosecuted as adults to felony hacking crimes that cause physical injury to

any person or threaten public health or safety. (The national security concern is included in the latter.)

4) Other Housing Provisions. Finally, our current amendments to section 5039 (commitment) would permit BOP to place juveniles in half-way houses once they turn 18, in order to ease reintegration into their communities. We had discussed this in some detail at the first meeting. Also attached are some Q & A concerning that provision. As you will see, this transition stage is important to the juveniles' reintegration and, as it does not apply to *secure* facilities, does not offend traditional notions of sight and sound separation.

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4/16/99

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OPTION 1
SUBTITLE D — FEDERAL PROSECUTION OF SERIOUS AND VIOLENT
JUVENILE OFFENDERS

SEC. 5051. DELINQUENCY PROCEEDINGS OR CRIMINAL PROSECUTIONS IN DISTRICT COURTS.

(a) IN GENERAL.— Section 5032 of title 18, United States Code, is amended to read as follows:

"§ 5032. Delinquency proceedings or criminal prosecutions in district courts

"(a)(1) A juvenile alleged to have committed an offense against the United States or an act of juvenile delinquency may be surrendered to State authorities or proceeded against as a juvenile under this subsection, or tried as an adult in the circumstances described in subsections (b) and (c).

"(2) Such juvenile may be proceeded against as a juvenile in a court of the United States under this subsection for offenses committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed six months, or if the Attorney General after investigation certifies to the appropriate United States district court that—

"(A)(i) the juvenile court or other appropriate court of a State does not have jurisdiction or declines to assume jurisdiction over the juvenile with respect to such act of alleged juvenile delinquency; or

"(ii) the offense charged is described in subsections (b)(2), ~~(b)(3)~~ or (c); and

"(B) there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction.

"(3) If, where required, the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State.

"(4) If a juvenile alleged to have committed an act of juvenile delinquency is not surrendered to the authorities of a state pursuant to this section, any proceedings against the juvenile shall be in an appropriate district court of the United States. For such purposes, the court may be convened at any time and place within the district, and shall be open to the public, except that the court may exclude all or some members of the public from the proceedings if required by the interests of justice or if other good cause is shown. Even if all or some of the members of the public are excluded from the proceedings, the proceedings shall be open to victims of the alleged offense and their relatives and legal guardians unless required by the interests of justice or otherwise good cause is shown. The Attorney General shall proceed by information or as authorized by section 3401(g) of this title, and no criminal prosecution shall be instituted except as provided in this chapter.

"(b) A juvenile may be prosecuted as an adult—

"(1) if the juvenile has requested in writing upon advice of counsel to be prosecuted as an adult;

"(2) **except as provided in paragraph (3)**, if the juvenile is alleged to have committed an act on or after the day the juvenile attains the age of 13 ~~16~~ years ~~which if~~

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~~committed by an adult would be a serious violent felony or a serious drug offense as described in section 3559(c)(2) and (c)(3) or a conspiracy or attempt under section 406 of the Controlled Substances Act or under section 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 846 or 963) to commit an offense described in section 3559(c)(2); or~~

~~"(3) if the juvenile is alleged to have committed an act, which is not described in paragraph (b)(2), on or after the day the juvenile attains the age of 16 years and which if committed by an adult would be--~~

~~"(A) a crime of violence (as defined in section 3156(a)(4)) that is a felony, or a violation of section 1030(a)(1) or a felony violation of section 1030(a)(5) that causes physical injury or threatens public health or safety;~~

~~"(B) an offense described in section 844(d), (k), or (l), or paragraph (a)(6) or subsection (b), (g), (h), (j), (k), or (l), of section 924;~~

~~"(C) a violation of section 922(o) that is an offense under section 924(a)(2);~~

~~"(D) a violation of section 5861 of the Internal Revenue Code of 1986 that is an offense under section 5871 of such Code (26 U.S.C. 5871);~~

~~"(E) a conspiracy to commit an offense described in any of subparagraphs (A) through (D); or~~

~~"(F) an offense described in section 401 or 408 of the Controlled Substances Act (21 U.S.C. 841, 848) or a conspiracy or attempt to commit that offense which is punishable under section 406 of the Controlled Substances Act (21 U.S.C. 846), or an offense punishable under section 409 or 419 of the Controlled Substances Act (21 U.S.C. 849, 860), or an offense described in section 1002, 1003, 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952, 953, 955 or 959), or a conspiracy or attempt to commit that offense which is punishable under section 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 963).~~

~~"(c)(1) A juvenile may also be prosecuted as an adult if the juvenile is alleged to have committed an act on or after the day on which the juvenile has attained the age of 13 years but before the juvenile has attained the age of 16 years, which if committed by an adult would be an offense described in paragraph (2) and (3) of subsection (b), upon approval of the Attorney General or the Attorney General's designee.~~

~~"(2) Any such designee shall be at a level not lower than a Deputy Assistant Attorney General.~~

~~"(3) Such approval shall not be granted, with respect to such a juvenile alleged to have committed an act before the juvenile attained the age of 16 years who is subject to the criminal jurisdiction of an Indian tribal government and who is alleged to have committed an act over which, if committed by an adult, there would be Federal jurisdiction based solely on its commission in Indian country (as defined in section 1151), may not be prosecuted as an adult unless the governing body of the tribe having jurisdiction over the place in which the alleged act was committed has before such act notified the Attorney General in writing of its election that prosecution may take place under this subsection.~~

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" ~~(d)~~ (4) A determination to ~~approve or not to approve, or to~~ institute or not to institute a prosecution under paragraph (b) or (c) shall not be reviewable in any court except as described in subsection ~~(f)~~ (d).

" (c) In a prosecution under subsection (b) the juvenile may be prosecuted and convicted as an adult for any other offense which is properly joined under the Federal Rules of Criminal Procedure, and may also be convicted of a lesser included offense.

" ~~(f)(1)~~ (d)(1) In any prosecution of a juvenile under subsection (b) or (c), under paragraph ~~(b)(3) or (c)(1)~~, upon motion of the defendant, the court in which criminal charges have been filed shall after a hearing determine whether to issue an order that the defendant should be transferred to juvenile status and proceeded against under paragraph (a)(2).

"(2) A motion by a defendant under paragraph ~~(f)(1)~~ (d)(1) shall not be considered unless filed not later than 20 days after the date on which the defendant initially appears through counsel or expressly waives the right to counsel and elects to proceed pro se. The court shall hear and determine a motion filed under this subsection on an expedited basis.

"(3) The court shall not order the transfer of a defendant to juvenile status under this paragraph unless the defendant establishes by clear and convincing evidence or information that removal to juvenile status would be in the interest of justice. In making a determination under paragraph (1), the court shall consider--

"(A) the nature of the alleged offense, including the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use or distribution of controlled substances or firearms;

"(B) whether prosecution of the juvenile as an adult is necessary to protect public safety;

"(C) the age and social background of the juvenile;

"(D) the extent and nature of the prior delinquency record of the juvenile;

"(E) the mental condition, intellectual development and psychological maturity of the juvenile;

"(F) the nature of any treatment efforts and the response of the juvenile to those efforts; and

"(G) the availability of programs designed to treat the behavioral problems of the juvenile.

"(4) An order of the court made in ruling on a motion by a defendant to transfer a defendant to juvenile status under this paragraph shall not be a final order for the purpose of enabling an appeal, except that an appeal by the United States shall lie to a court of appeals pursuant to section 3731 of this title from an order of a district court removing a defendant to juvenile status. Upon receipt of a notice of appeal of an order under this paragraph, a court of appeals shall hear and determine the appeal on an expedited basis.

"(5) No statement made by a defendant during or in connection with a hearing under this subsection shall be admissible against the defendant in any criminal prosecution, except for impeachment purposes or in a prosecution for perjury or giving a false statement.

"(6) The rules concerning the receipt and admissibility of evidence shall be the same as prescribed in subsection 3142(f) of this title."

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(b) CONFORMING AMENDMENT TO ADULT SENTENCING SECTION.--Section 3553 of title 18, United States Code, is amended by adding at the end the following:

"(g) Limitation on applicability of statutory minimums in certain prosecutions of persons under the age of 16.-- Notwithstanding any other provision of law, in the case of a juvenile alleged to have committed an act on or after the day on which the juvenile has attained the age of 13 years but before the juvenile has attained the age of 16 years, which if committed by an adult would be an offense described in paragraph 5032(b)(3) or subsection 5032(e) of this title, the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that the juvenile has not been previously adjudicated delinquent for or convicted of an offense described in section 5032(b)(2) of this title."

(c) CONFORMING AMENDMENT TO DEFINITIONS SECTION.--Section 5031 of title 18, United States Code, is amended by adding at the end the following: "As used in this chapter, the term 'State' includes a State of the United States, the District of Columbia, any commonwealth, territory, or possession of the United States and, with regard to an act of juvenile delinquency that would have been a misdemeanor if committed by an adult, a federally recognized indian tribe."

SEC. 5061. DETENTION OF JUVENILES PRIOR TO DISPOSITION OR SENTENCING.

Section 5035 of title 18, United States Code, is amended to read as follows:

~~"§ 5035. Detention prior to disposition or sentencing~~

~~"(a)(1) A juvenile prosecuted pursuant to paragraphs (b)(2) or (b)(3) of section 5032, if detained at any time prior to sentencing, shall be detained in such suitable place as the Attorney General may designate. Preference shall be given to a place located within, or within a reasonable distance of, the district in which the juvenile is being prosecuted:~~

~~"(2) A juvenile less than 16 years of age prosecuted pursuant to subsections (b) or (c) of section 5032, if detained at any time prior to sentencing, shall be detained in a suitable juvenile facility located within, or within a reasonable distance of, the district in which the juvenile is being prosecuted. If such a facility is not available, such a juvenile may be detained in any other suitable facility located within, or within a reasonable distance of, such district. If no such facility is available, such a juvenile may be detained in any other suitable place as the Attorney General may designate:~~

~~"(3) To the maximum extent feasible, a juvenile less than 16 years of age prosecuted pursuant to subsection (b) or (c) of Section 5032 shall not be detained prior to sentencing in any facility in which the juvenile has regular contact with adult persons convicted of a crime or awaiting trial on criminal charges:~~

~~"(b) A juvenile proceeded against under section 5032(a) shall not be detained prior to disposition in any facility in which the juvenile has regular contact with adult persons convicted of a crime or awaiting trial on criminal charges:~~

~~"(c) Every juvenile who is detained prior to disposition or sentencing shall be provided with reasonable safety and security and with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, education, and medical care, including necessary psychiatric, psychological, or other care and treatment."~~

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Section 5035 of title 18, United States code, is amended —

(1) by inserting "or a juvenile being prosecuted as an adult" after "juvenile alleged to be delinquent" each place it appears; and

(2) by striking "Whenever possible" and inserting "Whenever appropriate".

SEC. 5062. RULES GOVERNING THE COMMITMENT OF JUVENILES.

~~Section 5039 of title 18, United States Code, is amended to read as follows:~~

~~"§ 5039. Commitment~~

~~— "(a) The Attorney General shall not cause any person less than 18 years of age adjudicated delinquent under section 5032(a), or any person less than 16 years of age convicted of an offense, to be placed or retained in an adult jail or correctional facility in which the person has regular contact with adults incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges, except for placement in a community-based facility.~~

~~— "(b) Every juvenile adjudicated delinquent who has been committed shall be provided with reasonable safety and security and with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, counseling, education, training, and medical care including necessary psychiatric, psychological, or other care or treatment."~~

Section 5039 of title 18, United States Code, is amended —

(1) in the first undesignated paragraph, by inserting before the period ", except that the Attorney General may place and retain a person 18 years of age or older and adjudicated delinquent under section 5032(a) in an appropriate community-based facility"; and

(2) in the third undesignated paragraph, by striking "Whenever possible" and inserting "Whenever appropriate".

SEC. 5041. ACCESS OF VICTIMS AND PUBLIC TO RECORDS OF CRIMES COMMITTED BY JUVENILE DELINQUENTS.

Section 5038 of title 18, United States Code, is amended--

(5) by --

(A) striking subsections (d) and (f);

(B) redesignating subsection (e) as subsection (d);

(C) inserting "pursuant to section 5032(b) or (c)" after "adult" in subsection (d) as so designated by subparagraph (B); and

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(D) by adding at the end new subsections (e) and (f) as follows:

"(e) Whenever a juvenile has been adjudicated delinquent for an act that if committed by an adult would be a felony or for a violation of section 924(a)(6), the juvenile shall be fingerprinted and photographed, and the fingerprints and photograph shall be sent to the Federal Bureau of Investigation. The court shall also transmit to the Federal Bureau of Investigation the information concerning the adjudication, including name, date of adjudication, court, offenses, and sentence, along with the notation that the matter was a juvenile adjudication. The fingerprints, photograph, and other records and information relating to a juvenile described in this subsection, or to a juvenile who is prosecuted as an adult pursuant to sections 5032(b) or (c), shall be made available in the manner applicable to adult defendants. [INSERT THE FOLLOWING ONLY IF OPTION 1 IS ADOPTED] **But if the court grants a motion under section 5032(d) to transfer a juvenile being prosecuted as an adult to juvenile status, any arrest or court records relating to the charge or charges so transferred shall be treated as if they were records pertaining to a charge or charges of juvenile delinquency.**

"(f) In addition to any other authorization under this section for the reporting, retention, disclosure, or availability of records or information, if the law of the State in which a Federal juvenile delinquency proceeding takes place permits or requires the reporting, retention, disclosure, or availability of records or information relating to a juvenile or to a juvenile delinquency proceeding or adjudication in certain circumstances, then such reporting, retention, disclosure, or availability is permitted under this section whenever the same circumstances exist."

DRAFT**OPTION 2****SUBTITLE D – FEDERAL PROSECUTION OF SERIOUS AND VIOLENT
JUVENILE OFFENDERS****SEC. 5051. DELINQUENCY PROCEEDINGS OR CRIMINAL PROSECUTIONS IN
DISTRICT COURTS.**

(a) IN GENERAL.-- Section 5032 of title 18, United States Code, is amended to read as follows:

"§ 5032. Delinquency proceedings or criminal prosecutions in district courts

"(a)(1) A juvenile alleged to have committed an offense against the United States or an act of juvenile delinquency may be surrendered to State authorities or proceeded against as a juvenile under this subsection, or tried as an adult in the circumstances described in subsections (b) and (c).

"(2) Such juvenile may be proceeded against as a juvenile in a court of the United States under this subsection for offenses committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed six months, or if the Attorney General after investigation certifies to the appropriate United States district court that--

"(A)(i) the juvenile court or other appropriate court of a State does not have jurisdiction or declines to assume jurisdiction over the juvenile with respect to such act of alleged juvenile delinquency; or

"(ii) the offense charged is described in subsections (b)(2) or (e);

and

"(B) there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction.

"(3) If, where required, the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State.

"(4) If a juvenile alleged to have committed an act of juvenile delinquency is not surrendered to the authorities of a state pursuant to this section, any proceedings against the juvenile shall be in an appropriate district court of the United States. For such purposes, the court may be convened at any time and place within the district, and shall be open to the public, except that the court may exclude all or some members of the public from the proceedings if required by the interests of justice or if other good cause is shown. Even if all or some of the members of the public are excluded from the proceedings, the proceedings shall be open to victims of the alleged offense and their relatives and legal guardians unless required by the interests of justice or otherwise good cause is shown. The Attorney General shall proceed by information or as authorized by section 3401(g) of this title, and no criminal prosecution shall be instituted except as provided in this chapter.

"(b) A juvenile may be prosecuted as an adult--

"(1) if the juvenile has requested in writing upon advice of counsel to be prosecuted as an adult; or

"(2) if the juvenile is alleged to have committed an act on or after the day the juvenile attains the age of 16 years which if committed by an adult would be a serious violent felony or a serious drug offense as described in section 3559(c)(2) and (c)(3) or a

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~~conspiracy or attempt under section 406 of the Controlled Substances Act or section 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 846 or 963) to commit an offense described in section 3559(c)(2) any of the following offenses: murder (as described in section 1111, 1114 or 1153); manslaughter other than involuntary manslaughter (as described in section 1112 or 1153); assault with intent to commit murder (as described in section 113(a) or 1153); a felony under chapter 109A consisting of aggravated sexual abuse (as described in section 1153 or 2241); robbery (as described in section 1153, 1951, 2111, 2113, or 2118); carjacking (as described in section 2119); a serious drug offense (as described in section 3559(c)(2)(H)(i)); or a conspiracy or attempt to commit any of the above offenses.~~

~~"(c)(1) A juvenile may also be prosecuted as an adult, upon approval of the Attorney General or the Attorney general's designee, if the juvenile is alleged to have committed an act on or after the day on which the juvenile has attained the age of 13 years but before the juvenile has attained the age of 16 years, which if committed by an adult would be an offense described in paragraph (2) of subsection (b) or if the juvenile is alleged to have committed an act on or after the day the juvenile has attained the age of 13 years which if committed by an adult would be any of the following offenses (other than an offense described in paragraph (2) of subsection (b)):~~

~~"(A) a crime of violence (as defined in section 3156(a)(4)) that is a felony, or a violation of section 1030(a)(1), or a felony violation of section 1030(a)(5) that causes physical injury to any person or threatens public health or safety;~~

~~"(B) an offense described in section 844(d), (k), or (l), or paragraph (a)(6) or subsection (b), (g), (h), (j), (k), or (l), of section 924;~~

~~"(C) a violation of section 922(o) that is an offense under section 924(a)(2);~~

~~"(D) a violation of section 5861 of the Internal Revenue Code of 1986 that is an offense under section 5871 of such Code (26 U.S.C. 5871);~~

~~"(E) a conspiracy to commit an offense described in any of subparagraphs (A) through (D); or~~

~~"(F) an offense described in section 401 or 408 of the Controlled Substances Act (21 U.S.C. 841, 848) or a conspiracy or attempt to commit that offense which is punishable under section 406 of the Controlled Substances Act (21 U.S.C. 846), or an offense punishable under section 409 or 419 of the Controlled Substances Act (21 U.S.C. 849, 860), or an offense described in section 1002, 1003, 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952, 953, 955 or 959), or a conspiracy or attempt to commit that offense which is punishable under section 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 963).~~

~~"(2) Any such designee shall be at a level not lower than a Deputy Assistant Attorney General.~~

~~"(3) (2) Such approval shall not be granted, with respect to a A juvenile alleged to have committed an act before the juvenile attained the age of 16 years who is subject to the criminal jurisdiction of an Indian tribal government and who is alleged to have committed an act over which, if committed by an adult, there would be Federal~~

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jurisdiction based solely on its commission in Indian country (as defined in section 1151), **may not be prosecuted as an adult** unless the governing body of the tribe having jurisdiction over the place in which the alleged act was committed has before such act notified the Attorney General in writing of its election that prosecution may take place under this subsection.

"(d) A determination ~~to approve or not to approve, or to institute or not to institute~~ a prosecution under paragraph (b), ~~or (c), or (e)~~ shall not be reviewable in any court except as described in subsection (f).

"(e) In a prosecution under subsection (b) or (c) the juvenile may be prosecuted and convicted as an adult for any other offense which is properly joined under the Federal Rules of Criminal Procedure, and may also be convicted of a lesser included offense.

"(f)(1) In any prosecution of a juvenile under paragraph (c)(1), upon motion of the ~~defendant, government,~~ the court in which criminal charges have been filed shall after a hearing determine whether to issue an order that the defendant should be transferred to juvenile status and proceeded against under paragraph (a)(2). **The court shall hear and determine a motion filed under this subsection on an expedited basis.**

"(2) A motion by a defendant under paragraph (f)(1) shall not be considered unless filed not later than 20 days after the date on which the defendant initially appears through counsel or expressly waives the right to counsel and elects to proceed pro se.

"(3) The court shall not order the transfer of a defendant to juvenile status under this paragraph ~~unless the defendant establishes by clear and convincing evidence or information~~ **it finds** that removal to juvenile status would be in the interests of justice. In making a determination under paragraph (1), the court shall consider--

"(A) the nature of the alleged offense, including the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use or distribution of controlled substances or firearms;

"(B) whether prosecution of the juvenile as an adult is necessary to protect public safety;

"(C) the age and social background of the juvenile;

"(D) the extent and nature of the prior delinquency record of the juvenile;

"(E) the **mental condition**, intellectual development and psychological maturity of the juvenile;

"(F) the nature of any treatment efforts and the response of the juvenile to those efforts; and

"(G) the availability of programs designed to treat the behavioral problems of the juvenile.

"(4) An order of the court made in ruling on a motion by a defendant to transfer a defendant to juvenile status under this paragraph shall not be a final order for the purpose of enabling an appeal, except that an appeal by the United States shall lie to a court of appeals pursuant to section 3731 of this title from an order of a district court removing a defendant to juvenile status. Upon receipt of a notice of appeal of an order under this paragraph, a court of appeals shall hear and determine the appeal on an expedited basis.

"(5) No statement made by a defendant during or in connection with a hearing under this subsection shall be admissible against the defendant in any criminal

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prosecution, except for impeachment purposes or in a prosecution for perjury or giving a false statement.

"(6) The rules concerning the receipt and admissibility of evidence shall be the same as prescribed in subsection 3142(f) of this title."

(b) CONFORMING AMENDMENT TO ADULT SENTENCING SECTION.--Section 3553 of title 18, United States Code, is amended by adding at the end the following:

"(g) Limitation on applicability of statutory minimums in certain prosecutions of persons under the age of 16.-- Notwithstanding any other provision of law, in the case of a juvenile alleged to have committed an act on or after the day on which the juvenile has attained the age of 13 years but before the juvenile has attained the age of 16 years, which if committed by an adult would be an offense described in paragraph 5032(c)(1) or subsection 5032(e) of this title, the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that the juvenile has not been previously adjudicated delinquent for or convicted of an offense described in section 5032(b)(2) of this title."

(c) CONFORMING AMENDMENT TO DEFINITIONS SECTION.--Section 5031 of title 18, United States Code, is amended by adding at the end the following: "As used in this chapter, the term 'State' includes a State of the United States, the District of Columbia, any commonwealth, territory, or possession of the United States and, with regard to an act of juvenile delinquency that would have been a misdemeanor if committed by an adult, a federally recognized indian tribe."

SEC. 5061. DETENTION OF JUVENILES PRIOR TO DISPOSITION OR SENTENCING.

~~Section 5035 of title 18, United States Code, is amended to read as follows:~~

~~"§ 5035. Detention prior to disposition or sentencing~~

~~"(a)(1) A juvenile prosecuted pursuant to paragraphs (b)(2) or (b)(3) of section 5032, if detained at any time prior to sentencing, shall be detained in such suitable place as the Attorney General may designate. Preference shall be given to a place located within, or within a reasonable distance of, the district in which the juvenile is being prosecuted.~~

~~"(2) A juvenile less than 16 years of age prosecuted pursuant to subsections (b) or (c) of section 5032, if detained at any time prior to sentencing, shall be detained in a suitable juvenile facility located within, or within a reasonable distance of, the district in which the juvenile is being prosecuted. If such a facility is not available, such a juvenile may be detained in any other suitable facility located within, or within a reasonable distance of, such district. If no such facility is available, such a juvenile may be detained in any other suitable place as the Attorney General may designate.~~

~~"(3) To the maximum extent feasible, a juvenile less than 16 years of age prosecuted pursuant to subsection (b) or (c) of Section 5032 shall not be detained prior to sentencing in any facility in which the juvenile has regular contact with adult persons convicted of a crime or awaiting trial on criminal charges.~~

~~"(b) A juvenile proceeded against under section 5032(a) shall not be detained prior to disposition in any facility in which the juvenile has regular contact with adult persons convicted of a crime or awaiting trial on criminal charges.~~

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~~“(c) Every juvenile who is detained prior to disposition or sentencing shall be provided with reasonable safety and security and with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, education, and medical care, including necessary psychiatric, psychological, or other care and treatment.”.~~

Section 5035 of title 18, United States code, is amended —

(1) by inserting “or a juvenile being prosecuted as an adult” after “juvenile alleged to be delinquent” each place it appears; and

(2) by striking “Whenever possible” and inserting “Whenever appropriate”.

SEC. 5062. RULES GOVERNING THE COMMITMENT OF JUVENILES.

~~Section 5039 of title 18, United States Code, is amended to read as follows:~~

~~**“§ 5039. Commitment**~~

~~“(a) The Attorney General shall not cause any person less than 18 years of age adjudicated delinquent under section 5032(a), or any person less than 16 years of age convicted of an offense, to be placed or retained in an adult jail or correctional facility in which the person has regular contact with adults incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges, except for placement in a community-based facility.~~

~~“(b) Every juvenile adjudicated delinquent who has been committed shall be provided with reasonable safety and security and with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, counseling, education, training, and medical care including necessary psychiatric, psychological, or other care or treatment.”.~~

Section 5039 of title 18, United States Code, is amended —

(1) in the first undesignated paragraph, by inserting before the period “, except that the Attorney General may place and retain a person 18 years of age or older and adjudicated delinquent under section 5032(a) in an appropriate community-based facility”; and

(2) in the third undesignated paragraph, by striking “Whenever possible” and inserting “Whenever appropriate”.

DRAFTQuestions and Answers

1. What are halfway houses?

Halfway houses are non-secure, community-based correctional facilities. They provide supportive counseling, programming, and supervision for offenders who are returning to their home communities after a period of incarceration.

2. In the adult system, who goes to a halfway house and when?

In the BOP system, halfway houses derive their population from three sources. A small number of minimum-security offenders are permitted to serve their entire sentence at a halfway house in lieu of placement at a BOP facility. They are serving short sentences, usually six months or less. Another group of offenders are under the supervision of the local U.S. Probation Office and have been ordered to reside at a halfway house as a condition of supervision. This type of placement generally does not exceed six months.

However, inmates who have been incarcerated at a BOP facility and are nearing the end of their sentence are by far the largest group of halfway house residents. 70% of all inmates releasing from the BOP receive a halfway house placement in order to assist them in the process of transition and reintegration into their home communities. The length of the pre-release placement is up to six months.

3. Why does the BOP want to send juveniles to adult CCCs?

Currently, because of the lack juvenile halfway house resources, juveniles are released at the end of their sentences directly to the community with no transition assistance. This is especially problematic in that this population does not have supervision with U.S. Probation following the period of incarceration. It is noted that the Bureau has consistently supported legislation which would allow the Court to impose a period of supervised release to follow incarceration.

It is strongly believed that juveniles could benefit from a period of transition through a halfway house environment during the last phase of their sentence. We currently have a network of approximately 275 adult halfway houses.

We have checked with our BOP Community Corrections staff, OJJDP, and the ACA directory, and though many states and

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localities do have community based juvenile correctional facilities, we have found that "transition" type programs are very limited (see attached). Where independent living or transition programming is available, it is rarely in the community where the individual is releasing. Almost none of these facilities are dedicated to the mission of assisting the transition back into the home community.

OJJDP's enabling legislation only requires that states keep juveniles separated from adults in "secure" facilities (see attached).

U. S. Probation places juveniles aged 18-21 into our adult halfway houses as a condition of probation. This is significant in that approximately half of our 275 juveniles are probationers and NOT inmates.

We do not see juveniles in this age group (18 to 21), being in personal jeopardy if placed in the structured community based environment of our adult halfway houses. From anecdotal experience, we rarely find any violent behavior, such as fights and assaults, in our adult halfway houses. The adult halfway house inmate population is 75% minimum security inmates, 17% low, 8% medium and .5% high.

With only 275 juveniles releasing to 33 different states, it would be extremely impractical to try to contract for specialized halfway house services for this population. Our requirement in any given community would rarely exceed more than a few beds. We estimate that based on the current inmate juvenile population, if we placed every juvenile in a halfway house, our national average daily population would be between 30 and 50.

The current adult halfway house per capita rate is \$41, which compares to \$117 for juveniles. Though it is difficult to make a totally accurate comparison, it would be a safe assumption that if we pursued separate juvenile halfway houses they would be significantly more than \$41 per day.

We have found it extremely difficult to contract with states for secure beds because of local overcrowding. Though we have not actively pursued this avenue for halfway house beds, though we doubt few exist, it is believed we would experience the same problem.

Congressional Black Caucus
Administration's Juvenile Crime Legislation

Issue: Prevention Funding. The CBC may criticize the Administration's Anti-Gang and Youth Violence Act as lacking in substantial prevention funding.

- Unlike the House-passed bill which has no earmarked prevention funding, we have targeted prevention funding in our legislation. Our bill contains \$75 million for a new At-Risk Children's Initiative. The funding can be used for anti-truancy, curfews programs, and other prevention and intervention initiatives.
- Our juvenile crime strategy also provides over \$60 million for afterschool programs (FY 1998 budget request) to keep schools open late, on the weekends and in the summer. We are trying to specifically incorporate afterschool programs into the Senate juvenile bill.

Issue: Incarceration of juveniles with adults in the federal system. The CBC is likely to criticize the Administration's bill for weakening the strictures on allowing juveniles to be housed with adults. Our legislation allows juveniles prosecuted as adults to be housed with adults after they reach the age of 16, at the discretion of the Bureau of Prisons.

- Under the Administration's bill, juveniles prosecuted as juveniles could not be housed with adults until they reach age 18, regardless of the offense. No juvenile under age 16 who has been charged or convicted as an adult could be housed with an adult.
- As juveniles have become increasingly violent, housing dangerous juveniles with other juveniles can endanger younger, and sometimes more vulnerable, delinquents. It is appropriate to give federal prison authorities the ability to be flexible depending upon the attributes of the individual defendant.

Issue: Prosecution of more juveniles as adults. The Administration's bill expands the circumstances in which federal prosecutors can transfer juveniles to adult criminal court.

- In most cases, juveniles charged as adults may petition the court to be tried as juveniles.
- The proposed change contained in our bill is designed to ensure that these decisions are made fairly and expeditiously, and that they appropriately reflect the dangers that some juveniles pose to their communities.

Issue: More mandatory minimum sentences for juveniles. The Administration's legislation increases mandatory minimum sentences from one year to three years for three narrowly targeted crimes: selling drugs to minors; using minors to distribute drugs; and trafficking drugs in or near a school or other protected location.

- Our bill permits judges sentencing youths ages 13 to 15 who are convicted in adult court and do not have previous serious violent felony or serious drug offense conviction to

sentence them as juveniles-- avoiding mandatory minimum penalties entirely.

Issue: Availability of public records. Our bill clarifies current law by ensuring that victims of juvenile offenders have access to similar information as do other victims (e.g., victims would be able to find out about the status of the proceedings). Fingerprints and photos of delinquents who have committed the equivalent of an adult felony or a federal gun offense would be sent to the FBI and made available in the same manner as adult offenders.

- President Clinton has had a longstanding commitment to protect the rights of victims of crime. Our bill contains important protections for the rights of victims, including victims of crimes committed by juvenile offenders.
- The Administration believes these changes represent a fair balance between maintaining important protections for juveniles and expanding the information available to their victims.

January 28, 1998

MEMORANDUM FOR: **Rahm Emanuel**
 Elana Kagan

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

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

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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.

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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* ^{of} _R *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 mandatories: 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

*we have more
than this --
we agreed
for adult felonies
→ rec. sent
to FBI
S. 10
NO*

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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.

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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."

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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. 7

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.

January 28, 1998

MEMORANDUM FOR: **Rahm Emanuel**
 Elana Kagan

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

SUBJECT: **The Current Climate Surrounding the Juvenile Justice Bill;**
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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.

LEAHY REVERSE WAIVER - IN OUR BILL
DOO

EN CURRENT
DRAFT !!

* SCOTT AMENDMENT
ACCEPTED BY HYDE/MCCORMACK
DISCRETION FOR JUVENILES
AS ADULTS TO BE
IMPRISONED W/ADULTS.

NO
AUTHORITY,
BUT REALLY
BOP

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* ^{of} ₂ *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,

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.



OFFICE OF THE ATTORNEY GENERAL

TO

FAX Number 456-7028Name: Jose CerdaTelephone Number: 456-5568Organization: WHI DPC

Building, Room Number, etc. _____

Number of Pages Transmitted (including cover sheet)

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FROM

FAX Number: 202/514-1724Name: Kinney ZalesneTelephone Number: 202/514-2927Date: 3 / 24 / 99Building, Room Number, etc. MAIN JUSTICE - ROOM 5233

COMMENTS

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**Juvenile Justice Legislation Meeting
March 24, 1999**

I. Reforms to the Federal System

A. Prosecutorial Discretion to Try Juveniles 14+ as Adults

What Our Bill Would Do: Give prosecutors discretion to directly charge juveniles as adults for certain serious felonies, rather than making them seek judicial approval. Safeguards: opt-in provision for younger Indian juveniles; DAAG approval for anyone under 16; "reverse waiver" opportunity for all but oldest juveniles charged with most serious offenses. (Also, no MMs for non-repeat offenders under 16.)

How it Compares to Other Bills: Basically identical to the Senate compromise bill. Much less drastic than H.R. 3, which would have *presumed* adult prosecution.

Justification: Prosecutors are in a better position than judges to make determinations about whether, and how, to bring criminal charges. The current waiver system has caused undue burdens on victims, witnesses, and the courts as cases are splintered, and sometimes unreasonably delayed, by judicial determinations including interlocutory appeals.

Possible Room for Reconsideration: It is probably not wise to maneuver here, but if we had to, the best compromise might be the time limit on district court determinations (as proposed by House Dems last year) *plus elimination of defendants' interlocutory appeals*. (Limiting the provision to juvenile defendants involved in multi-defendant cases would probably be indefensible as a matter of law, and may also raise civil liberties concerns.) Reverse waiver for all juveniles, or expanded DAAG requirements, may also be possible.

B. Expansion of Crimes for which Juveniles can be Tried as Adults

What Our Bill Would Do: Expand the list of serious felonies for which a juvenile can be prosecuted as an adult to include additional violent crimes, firearms charges, and drug offenses. In this year's version, computer crimes (hacking) would also be included. Safeguards: same as above.

How it Compares to Other Bills: More limited than the Senate version, which would have permitted adult prosecution for **any** felony. Very close to H.R. 3.

Justification: The additional offenses are serious felonies frequently committed by

violent juveniles, although the crimes themselves may not be violent. Computer hacking is its own new serious threat.

Possible Room for Reconsideration: There may be some on the list that could be excluded, although not drug conspiracy.

C. Incarceration of Juveniles in the Federal System

What Our Bill Would Do: Give USMS / BOP discretion to house: 1) 16-year-olds charged and/or tried as adults with adults; 2) 18-year-olds adjudicated delinquent (as juveniles) with adults; and 3) juveniles released to community-based facilities (halfway houses) with adults. Safeguards: No juvenile could be housed pre-trial with adults without a judicial determination that he poses a danger to the community.

Justification: 1) Serious, violent 16-year-olds should not be able to endanger other, weaker juveniles -- and housing them in State facilities where 16-year-olds are defined as adults is very difficult. 2) 18-year-olds are not easily housed in state juvenile facilities. 3) Halfway-houses near home are a critical step to successful reintegration in the community. Since the juveniles are about to move back into the community, anyway, and will likely encounter adults similarly just released, the danger of that encounter seems outweighed by the juvenile's need to find employment, etc.

Possible Room for Reconsideration: Maybe on the provision concerning 16-year-olds -- e.g., perhaps inclusion of a physical separation requirement. Or maybe permit such housing only if consistent with rules of state where case is brought.

D. Expansion of Access to Federal Delinquency Records

What Our Bill Would Do: Expand provision of information to FBI to include equivalent of adult felony, juvenile gun possession, and transfer of a handgun to a juvenile. Also, permit sharing of records to same extent permitted by law in state where delinquency proceeding took place.

How it Compares to Other Bills: Much less drastic change than that proposed by the majority, who would have opened records to schools (Senate), as well as to the public to the same extent as criminal records (House). Both of them would have also interfered with access to *State* delinquency records.

Justification: Federal felony-equivalent and gun cases are serious enough to justify access to records for law enforcement personnel.

Possible Room for Reconsideration: Not really.

E. Presumptively Open Proceedings

What Our Bill Would Do: Clarify that federal juvenile proceedings are open to the public but may be closed in the interests of justice or for good cause shown. Also allows victims, families, or guardians to be included when public is otherwise excluded, unless those same tests independently require exclusion.

How it Compares to Other Bills: Both the House and Senate majority bills had comparable provisions last year.

Justification: Public confidence in the juvenile court. Rights of victims. This was recommended by the National Juvenile Judges Association, and almost every state has done this already.

Possible Room for Reconsideration: Not really.

F. Juvenile Brady ??

II. Reforms to the State System

A. Mandates / Core Requirements / Fundamental Protections

What Our Bill Would Do: Preserve principles of these protections while providing greater flexibility to states and local jurisdictions. In particular, on DMC, it would require states to address DMC where it exists, without creating quotas or numerical standards.

How it Compares to Other Bills: Our DMC remains focused on minority detention and confinement. The 1818 provision focuses on minorities who "come in contact with" the system. We think that is more amorphous, and requires only a general commitment to prevention and diversion programs that target minorities. Our focus requires attention to minorities who are about to be detained, and for whom alternative solutions need to be devised.

Justification: See above.

Possible Room for Reconsideration: If Scott et al. really prefer 1818, we will support it, but we think it provides less specific protection for minorities in the JJ system than our proposal.

BILL SUMMARY

House Democrats' Families First Juvenile Offender Control and Prevention Act

I. PROTECT JUVENILES FROM BECOMING JUVENILE DELINQUENTS AND THE VICTIMS OF JUVENILE CRIME

1. Provide funding to local communities for the implementation of a variety of comprehensive initiatives that are a part of a community-based strategy for preventing juvenile crime. The initiatives funded under this grant should be research-proven, cost-effective efforts that emphasize and include:
 - Strengthening the family unit;
 - Safe Haven after-school programs in neighborhoods with high poverty and high crime rates;
 - Drug prevention, treatment, and education; and
 - Other initiatives with demonstrable success at addressing juvenile delinquency

Initiatives funded under this grant shall be subject to comprehensive review and evaluation.

2. Establish a resource center at the Juvenile Delinquency Prevention Clearinghouse to provide technical assistance to communities to assist and support them in seeking information on how to establish successful prevention efforts. The resource center will disseminate information on model prevention programs across the country and assist localities in the replication of these initiatives in their communities.

II. ENHANCE AND STRENGTHEN THE JUVENILE JUSTICE SYSTEM

1. Provide funding to localities for the construction and operation of secure juvenile facilities for violent juvenile offenders or for the administration of accountability-based sanctions that include alternatives to incarceration on the condition that they:
1) establish comprehensive treatment, education, training, and after-care programs for juveniles in juvenile delinquency facilities that focus on reducing recidivism; 2) implement graduated sanctions for juvenile offenders; and 3) establish initiatives that reduce juveniles access to guns.
2. Provide funding for juvenile courts to implement intensive delinquency supervision efforts. Such efforts should focus on identification and early intervention with at-risk youth on a case-by-case basis.

III. TARGET VIOLENT JUVENILE OFFENDERS

1. Extend from 21 to 26 the age that juveniles adjudicated as violent juvenile offenders in the federal system may be held in contract corrections facilities. Juveniles held beyond the age of 21 must be held in secure facilities for violent juvenile offenders or in contract juvenile facilities in which they are "substantially segregated" from nonviolent juvenile offenders.
2. Eliminate the statute of limitations for offenses involving murder or where the maximum penalty is life imprisonment.
3. Expedite to 90 days the time in which a judge in the federal system must decide whether to transfer a juvenile to adult court.
4. Establish gun purchase disability, for any juvenile adjudicated delinquent of a "Three Strikes" predicate and require a finding by a state official to restore gun possession civil rights.
5. Increase the penalties for the transfer of a handgun to a juvenile or for a juvenile to possess a handgun.
6. Increase the penalty for knowingly receiving a firearm with an obliterated serial number.
7. Increase the penalty for the transfer of a firearm or ammunition with knowledge or reasonable belief that the transferee is a convicted felon or otherwise prohibited from owning a firearm under current law.
8. Expand the use of federal juvenile records for federal law enforcement purposes and for use by approved social service agencies.

IV. TARGET GANG VIOLENCE

1. Provide funding to local prosecutors to enable them to develop anti-gang units, anti-gang task forces, and share information about gangs and their activities.
2. Increase existing federal penalties and create new penalties for gang witness intimidation.
3. Create a new penalty for the interstate franchising of street gangs.
4. Provide funding for city and county attorneys to pursue civil remedies against gang related activities.

V. SUPPORT COMMUNITY LAW ENFORCEMENT EFFORTS

1. Provide funding to local communities to hire law enforcement officers or officers of the court that may include: police officers; juvenile judges; probation officers; prosecutors; and defense attorneys. The work of the individuals hired under this provision shall be focused within the juvenile justice system and in the prevention of juvenile delinquence.

VI. PREVENT AND TREAT YOUTH DRUG ADDICTION

1. Provide full funding for the Safe and Drug-Free Schools Act.
2. Provide funding for drug education, treatment and prevention programs.
3. Reauthorize the Office of National Drug Policy. The current authorization for the office expires in 1998.
4. Reschedule the date rape drugs Gamma Hydroxybutyrate and ketamine hydrochloride as schedule III controlled substances under the Controlled Substance Act.
5. Give the Attorney General emergency rescheduling authority for controlled substances.

Bill Summary & Status for the 105th Congress

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H.R.1699SPONSOR: [Rep Stupak](#) (introduced 05/21/97)

SUMMARY:

(AS INTRODUCED)

TABLE OF CONTENTS:

- Title I: Juvenile Offender Control and Prevention Grants
- Title II: Violent Juvenile Offenders
- Title III: Gang Violence
- Title IV: Prevention and Treatment of Youth Drug Addiction
- Title V: Improving Juvenile Crime and Drug Prevention

Families First Juvenile Offender Control and Prevention Act of 1997 - **Title I: Juvenile Offender Control and Prevention Grants** - Juvenile Offender Control and Prevention Grant Act of 1997 - Amends the Omnibus Crime Control and Safe Streets Act of 1968 to replace provisions regarding alternative methods of punishment for young offenders with a juvenile offender control and prevention grant program. Authorizes the Director of the Bureau of Justice Assistance to make grants to qualifying units of local government, according to a specified formula, to be used for one of several specified activities, such as building or expanding secure juvenile correction or detention facilities for violent juvenile offenders.

Sets forth provisions regarding prohibited uses of grant funds, repayment of unexpended amounts, and matching funds. Authorizes appropriations. Makes specified sums available to the Attorney General for studying effectiveness and efficiency, assuring compliance, and for administrative costs. Directs the Attorney General to establish and execute an oversight plan for monitoring the activities of grant recipients.

Requires the Director to: (1) issue regulations establishing procedures under which a unit of local government is required to provide notice to the Director regarding the proposed use of grant funds; and (2) establish a process for the ongoing evaluation of projects developed with such funds. Sets forth provisions regarding sanctions for noncompliance and maintenance of effort requirements.

(Sec. 103) Directs the Administrator of the Office of Juvenile Justice and Delinquency Prevention to provide information and technical assistance to community-based organizations and units of local government to assist in the establishment, operation, and replication of model programs designed to prevent juvenile delinquency.

Title II: Violent Juvenile Offenders - Amends Federal criminal code (code) provisions regarding the transfer of a juvenile for criminal prosecution in Federal court to require that the transfer decision be made not later than 90 days after the first day of the hearing.

(Sec. 202) Eliminates the statute of limitations for a Class A felony involving murder.

(Sec. 203) Provides that, except for capital offenses and Class A felonies involving murder, no person shall be prosecuted, tried, or punished for a Class A felony that is a crime of violence or a drug trafficking crime unless the indictment is returned or the information is filed within ten years after the commission of the offense.

(Sec. 204) Modifies provisions regarding dispositional hearings to: (1) require that the probation officer prepare a predisposition report and promptly provide a copy to the juvenile, the attorney for the juvenile,

and the attorney for the Government; and (2) require the court to order restitution; and (3) authorize the court, upon suspending the findings of juvenile delinquency, to impose any fine that would be authorized if the juvenile had been tried and convicted as an adult.

Specifies that for a juvenile found to be delinquent the term for which: (1) probation may be ordered may not extend beyond the maximum term that would be authorized if the juvenile had been tried and convicted as an adult; (2) official detention may be ordered may not extend beyond the lesser of the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult, ten years, or the date on which the juvenile achieves age 26; and (3) supervised release may be ordered may not extend beyond five years.

Authorizes the court, with respect to any juvenile prosecuted and convicted as an adult, pursuant to guidelines promulgated by the United States Sentencing Commission, to determine to treat the conviction as an adjudication of delinquency and impose any disposition authorized. Directs the Commission to promulgate such guidelines within a year.

Requires that a juvenile detained pending juvenile proceedings or a criminal trial, or detained or imprisoned pursuant to an adjudication or conviction, be substantially segregated from any prisoners convicted for crimes who have attained age 21.

(Sec. 205) Amends the Brady Handgun Violence Prevention Act to increase penalties for: (1) juvenile handgun possession; and (2) knowingly receiving a firearm with an obliterated serial number.

(Sec. 207) Directs the Commission to amend the Federal sentencing guidelines to increase the base offense level for certain offenses relating to the transfer of firearms or ammunition to prohibited persons.

(Sec. 208) Modifies code provisions regarding the use of juvenile records to direct that a juvenile who has been adjudicated delinquent for an act that, if committed by an adult, would be a felony or for a violation of juvenile handgun possession provisions shall be fingerprinted and photographed and the results sent to the Federal Bureau of Investigation (FBI). Directs the court to also transmit to the FBI information concerning the adjudication.

Specifies that if the law of the State in which a Federal juvenile delinquency proceeding takes place permits or requires the reporting, retention, disclosure, or availability of records or information relating to a juvenile or to a juvenile delinquency proceeding or adjudication in certain circumstances, then such reporting, retention, disclosure, or availability is permitted under the code whenever the same circumstances exist.

Title III: Gang Violence - Increases the penalty for, and the scope of provisions regarding, the use of physical force to tamper with witnesses, victims, or informants.

(Sec. 302) Sets penalties for interstate: (1) travel to engage in witness intimidation or obstruction of justice; and (2) franchising of criminal street gangs.

(Sec. 303) Expands pretrial detention eligibility for serious gang and other violent criminals.

(Sec. 304) Establishes a conspiracy penalty for obstruction of justice offenses involving victims, witnesses, and informants.

Title IV: Prevention and Treatment of Youth Drug Addiction - Expresses the sense of the Congress that appropriations for State grants (for drug and violence prevention programs) and national programs under the Elementary and Secondary Education Act should increase by specified amounts.

(Sec. 402) Amends: (1) the National Narcotics Leadership Act of 1988 to reauthorize the Office of National Drug Control Policy; and (2) the Controlled Substances Act (CSA) to authorize the Attorney General to reschedule certain drugs posing an imminent danger to public SAFETY.

(Sec. 403) Directs the Attorney General to add ketamine hydrochloride and gamma hydroxybutyrate to

schedule III of the CSA.

Title V: Improving Juvenile Crime and Drug Prevention - Directs the Attorney General to enter into a contract with a public or nonprofit private entity for the purpose of conducting a study or studies to: (1) evaluate the effectiveness of federally funded programs for preventing juvenile violence and juvenile substance abuse and criminal victimization of juveniles; (2) identify specific Federal programs and programs that receive Federal funds that contribute to reductions in juvenile violence, juvenile substance abuse, and risk factors among juveniles that lead to violent behavior and substance abuse and specific programs that have not achieved their intended results; and (3) make specific recommendations on programs that should receive continued or increased funding or that should have their funding terminated or reduced.

Requires the Attorney General to request the National Academy of Sciences to enter into such contract, and if it declines, to carry out this title through other public or nonprofit private entities. Allows the contracting party to request assistance from the Department of Justice and any other appropriate Federal agency.

Sets forth reporting requirements. Authorizes appropriations.

HR 1699 IH

105th CONGRESS

1st Session

H. R. 1699

To amend the Omnibus Crime Control and Safe Streets Act of 1968 to establish a grant program to prevent and control juvenile crime; to modify Federal court procedures applicable to violent juvenile offenders, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

May 21, 1997

Mr. STUPAK (for himself, Ms. LOFGREN, Mr. SCOTT, Mr. STENHOLM, Mr. GEPHARDT, Mr. FAZIO of California, Mr. BONIOR, Mrs. KENNELLY of Connecticut, Ms. DELAURO, Ms. CARSON, Mr. BOSWELL, Ms. HOOLEY of Oregon, Mr. JEFFERSON, Mr. MEEHAN, Mr. TURNER, Mr. PASCRELL, Mr. SANDLIN, Ms. KILPATRICK, Ms. CHRISTIAN-GREEN, Mr. WATT of North Carolina, Mr. SHERMAN, Mr. KENNEDY of Rhode Island, Mr. MANTON, Mr. WYNN, Mr. VENTO, Ms. JACKSON-LEE of Texas, Mr. DELAHUNT, Mr. FARR of California, Mr. ALLEN, Mr. LAFALCE, Mr. MARKEY, Mr. CRAMER, Ms. MILLENDER-MCDONALD, Mr. BROWN of California, Mr. MCINTYRE, Mr. JOHNSON of Wisconsin, Mr. TORRES, Mr. KENNEDY of Massachusetts, Mr. ROTHMAN, Mr. HOLDEN, Mr. HINOJOSA, and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Education and the Workforce, Commerce, and Government Reform and Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Omnibus Crime Control and Safe Streets Act of 1968 to establish a grant program to prevent and control juvenile crime; to modify Federal court procedures applicable to violent juvenile offenders, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE- This Act may be cited as the 'Families First Juvenile Offender Control and Prevention Act of 1997'.

(b) TABLE OF CONTENTS- The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I--JUVENILE OFFENDER CONTROL AND PREVENTION GRANTS

Sec. 101. Short title.

Sec. 102. Grant program.

Sec. 103. Model programs to prevent juvenile delinquency.

TITLE II--VIOLENT JUVENILE OFFENDERS

Sec. 201. Time limit on transfer decision.

Sec. 202. Elimination of statute of limitations for murder.

Sec. 203. Extension of statute of limitations for violent and drug trafficking crimes.

Sec. 204. Increased detention, mandatory restitution, and additional sentencing options for youth offenders.

Sec. 205. Juvenile handgun possession.

Sec. 206. Increased penalty for knowingly receiving firearm with obliterated serial number.

Sec. 207. Amendment of the sentencing guidelines for transfers of firearms to prohibited persons.

Sec. 208. Access to records of crimes committed by juvenile delinquents.

TITLE III--GANG VIOLENCE

Sec. 301. Increasing the penalty for using physical force to tamper with witnesses, victims, or informants.

Sec. 302. Interstate travel to engage in witness intimidation or obstruction of justice.

Sec. 303. Expanding pretrial detention eligibility for serious gang and other violent criminals.

Sec. 304. Conspiracy penalty for obstruction of justice offenses involving victims, witnesses, and informants.

Sec. 305. Gang franchising.

TITLE IV--PREVENTION AND TREATMENT OF YOUTH DRUG ADDICTION

Sec. 401. Sense of Congress to increase safe and drug-free schools and communities program.

Sec. 402. Reauthorization of office of national drug control policy.

Sec. 403. Rescheduling of 'club' drugs.

Sec. 404. Attorney General authority to reschedule certain drugs posing imminent danger to public safety.

TITLE V--IMPROVING JUVENILE CRIME AND DRUG PREVENTION

Sec. 501. Study by national academy of science.

TITLE I--JUVENILE OFFENDER CONTROL AND PREVENTION GRANTS

SEC. 101. SHORT TITLE.

This title may be cited as the 'Juvenile Offender Control and Prevention Grant Act of 1997'.

SEC. 102. GRANT PROGRAM.

(a) IN GENERAL- Part R of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.) is amended to read as follows:

'PART R--JUVENILE OFFENDER CONTROL AND PREVENTION GRANTS

'SEC. 1801. PAYMENTS TO LOCAL GOVERNMENTS.

'(a) PAYMENT AND USES-

'(1) PAYMENT- The Director of the Bureau of Justice Assistance may make grants to carry out this part, to units of local government that qualify for a payment under this part. Of the amount appropriated in any fiscal year to carry out this part, the Director shall obligate--

'(A) not less than 60 percent of such amount for grants for the uses specified in subparagraphs (A) and (B) of paragraph (2);

'(B) not less than 10 percent of such amount for grants for the use specified in paragraph (2)(C), and

'(C) not less than 20 percent of such amount for grants for the uses specified in subparagraphs (E) and (G) of paragraph (2).

'(2) USES- Amounts paid to a unit of local government under this section shall be used by the unit for 1 or more of the following:

'(A) Preventing juveniles from becoming involved in crime or gangs by--

'(i) operating after-school programs for at-risk juveniles;

'(ii) developing safe havens from and alternatives to street violence, including educational, vocational or other extracurricular activities opportunities;

'(iii) establishing community service programs, based on community service corps models that teach skills, discipline, and responsibility;

'(iv) establishing peer medication programs in schools;

'(v) establishing big brother programs and big sister programs;

'(vi) establishing anti-truancy programs;

'(vii) establishing and operating programs to strengthen the family unit;

'(viii) establishing and operating drug prevention, treatment and education programs; or

'(ix) establishing activities substantially similar to programs described in clauses (i) through (viii).

'(B) Establishing and operating early intervention programs for at-risk juveniles.

`(C) Building or expanding secure juvenile correction or detention facilities for violent juvenile offenders.

`(D) Providing comprehensive treatment, education, training, and after-care programs for juveniles in juvenile detention facilities.

`(E) Implementing graduated sanctions for juvenile offenders.

`(F) Establishing initiatives that reduce the access of juveniles to fire arms.

`(G) Improving State juvenile justice systems by--

 `(i) developing and administering accountability-based sanctions for juvenile offenders;

 `(ii) hiring additional prosecutors, so that more cases involving violent juvenile offenders can be prosecuted and backlogs reduced; or

 `(iii) providing funding to enable juvenile courts and juvenile probation offices to be more effective and efficient in holding juvenile offenders accountable;

`(H) providing funding to enable prosecutors--

 `(i) to address drug, gang, and violence problems involving juveniles more effectively;

 `(ii) to develop anti-gang units and anti-gang task forces to address the participation of juveniles in gangs, and to share information about juvenile gangs and their activities; or

 `(iii) providing funding for technology, equipment, and training to assist prosecutors in identifying and expediting the prosecution of violent juvenile offenders;

`(I) hiring additional law enforcement officers (including, but not limited to, police, corrections, probation, parole, and judicial officers) who are involved in the control or reduction of juvenile delinquency; or

`(J) providing funding to enable city attorneys and county attorneys to seek civil remedies for violations of law committed by juveniles who participate in gangs.

`(3) GEOGRAPHICAL DISTRIBUTION OF GRANTS- The Director shall ensure that grants made under this part are equitably distributed among all units of local government in each of the States and among all units of local government throughout the United States.

`(b) PROHIBITED USES- Notwithstanding any other provision of this title, a unit of local government may not expend any of the funds provided under this part to purchase, lease, rent, or otherwise acquire--

 `(1) tanks or armored personnel carriers;

 `(2) fixed wing aircraft;

 `(3) limousines;

 `(4) real estate;

 `(5) yachts;

`(6) consultants; or

`(7) vehicles not primarily used for law enforcement;

unless the Attorney General certifies that extraordinary and exigent circumstances exist that make the use of funds for such purposes essential to the maintenance of public safety and good order in such unit of local government.

`(c) REPAYMENT OF UNEXPENDED AMOUNTS-

`(1) REPAYMENT REQUIRED- A unit of local government shall repay to the Director, by not later than 27 months after receipt of funds from the Director, any amount that is--

`(A) paid to the unit from amounts appropriated under the authority of this section; and

`(B) not expended by the unit within 2 years after receipt of such funds from the Director.

`(2) PENALTY FOR FAILURE TO REPAY- If the amount required to be repaid is not repaid, the Director shall reduce payment in future payment periods accordingly.

`(d) NONSUPPLANTING REQUIREMENT- Funds made available under this part to units of local government shall not be used to supplant State or local funds, but shall be used to increase the amount of funds that would, in the absence of funds made available under this part, be made available from State or local sources.

`(e) MATCHING FUNDS- The Federal share of a grant received under this part may not exceed 90 percent of the costs of a program or proposal funded under this part.

`SEC. 1802. AUTHORIZATION OF APPROPRIATIONS.

`(a) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to carry out this part--

`(1) \$500,000,000 for fiscal year 1998;

`(2) \$500,000,000 for fiscal year 1999; and

`(3) \$500,000,000 for fiscal year 2000.

The appropriations authorized by this subsection may be made from the Violent Crime Reduction Trust Fund.

`(b) OVERSIGHT ACCOUNTABILITY AND ADMINISTRATION- Not more than 3 percent of the amount authorized to be appropriated under subsection (a) for each of the fiscal years 1998 through 2000 shall be available to the Attorney General for studying the overall effectiveness and efficiency of the provisions of this part, and assuring compliance with the provisions of this part and for administrative costs to carry out the purposes of this part. The Attorney General shall establish and execute an oversight plan for monitoring the activities of grant recipients. Such sums are to remain available until expended.

`(c) AVAILABILITY- The amounts authorized to be appropriated under subsection (a) shall remain available until expended.

`SEC. 1803. QUALIFICATION FOR PAYMENT.

`(a) IN GENERAL- The Director shall issue regulations establishing procedures under which a unit of local government is required to provide notice to the Director regarding the proposed use of funds made available under this part.

`(b) PROGRAM REVIEW- The Director shall establish a process for the ongoing evaluation of projects developed with funds made available under this part.

`(c) GENERAL REQUIREMENTS FOR QUALIFICATION- A unit of local government qualifies for a payment under this part for a payment period only if the unit of local government submits an application to the Director and establishes, to the satisfaction of the Director, that--

`(1) the chief executive officer of the unit of local government has had not less than 20 days to review and comment on the application prior to submission to the Director;

`(2)(A) the unit of local government will establish a trust fund in which the government will deposit all payments received under this part; and

`(B) the unit of local government will use amounts in the trust fund (including interest) during a period not to exceed 2 years from the date the first grant payment is made to the unit of local government;

`(3) the unit of local government will expend the payments received in accordance with the laws and procedures that are applicable to the expenditure of revenues of the unit of local government;

`(4) the unit of local government will use accounting, audit, and fiscal procedures that conform to guidelines which shall be prescribed by the Director after consultation with the Comptroller General and as applicable, amounts received under this part shall be audited in compliance with the Single Audit Act of 1984;

`(5) after reasonable notice from the Director or the Comptroller General to the unit of local government, the unit of local government will make available to the Director and the Comptroller General, with the right to inspect, records that the Director reasonably requires to review compliance with this part or that the Comptroller General reasonably requires to review compliance and operation;

`(6) the unit of local government will spend the funds made available under this part only for the purposes set forth in section 1801(a)(2);

`(7) the unit of local government has established procedures to give members of the Armed Forces who, on or after October 1, 1990, were or are selected for involuntary separation (as described in section 1141 of title 10, United States Code), approved for separation under section 1174a or 1175 of such title, or retired pursuant to the authority provided under section 4403 of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102-484; 10 U.S.C. 1293 note), a suitable preference in the employment of persons as additional law enforcement officers or support personnel using funds made available under this title. The nature and extent of such employment preference shall be jointly established by the Attorney General and the Secretary of Defense. To the extent practicable, the Director shall endeavor to inform members who were separated between October 1, 1990, and the date of the enactment of this section of their eligibility for the employment preference;

`(d) SANCTIONS FOR NONCOMPLIANCE-

`(1) IN GENERAL- If the Director determines that a unit of local government has not complied substantially with the requirements or regulations prescribed under subsections (a) and (c), the Director shall notify the unit of local government that if the unit of local

government does not take corrective action within 60 days of such notice, the Director will withhold additional payments to the unit of local government for the current and future payment periods until the Director is satisfied that the unit of local government--

`(A) has taken the appropriate corrective action; and

`(B) will comply with the requirements and regulations prescribed under subsections (a) and (c).

`(2) NOTICE- Before giving notice under paragraph (1), the Director shall give the chief executive officer of the unit of local government reasonable notice and an opportunity for comment.

`(e) MAINTENANCE OF EFFORT REQUIREMENT- A unit of local government qualifies for a payment under this

part for a payment period only if the unit's expenditures on law enforcement services (as reported by the Bureau of the Census) for the fiscal year preceding the fiscal year in which the payment period occurs were not less than 90 percent of the unit's expenditures on such services for the second fiscal year preceding the fiscal year in which the payment period occurs.'

(b) TECHNICAL AMENDMENT- The table of contents of the title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.) is amended by striking the matter relating to part R and inserting the following:

`Part R--Juvenile Crime Control Grants

`Sec. 1801. Payments to local governments.

`Sec. 1802. Authorization of appropriations.

`Sec. 1803. Qualification for payment.'

SEC. 103. MODEL PROGRAMS TO PREVENT JUVENILE DELINQUENCY.

The Administrator of the Office of Juvenile Justice and Delinquency Prevention shall provide, through the clearinghouse and information center established under section 242(3) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5652(3)), information and technical assistance to community-based organizations and units of local government to assist in the establishment, operation, and replication of model programs designed to prevent juvenile delinquency.

TITLE II--VIOLENT JUVENILE OFFENDERS

SEC. 201. TIME LIMIT ON TRANSFER DECISION.

Section 5032 of title 18, United States Code, is amended by inserting 'The transfer decision shall be made not later than 90 days after the first day of the hearing.' after the first sentence of the 4th paragraph.

SEC. 202. ELIMINATION OF STATUTE OF LIMITATIONS FOR MURDER.

(a) IN GENERAL- Section 3281 of title 18, United States Code, is amended to read as follows:

`Sec. 3281. Capital offenses and Class A felonies involving murder

`An indictment for any offense punishable by death or an indictment or information for a Class A

felony involving murder (as defined in section 1111 or as defined under applicable State law in the case of an offense under section 1963(a) involving racketeering activity described in section 1961(1)) may be found at any time without limitation.'

(b) APPLICABILITY- The amendment made by subsection (a) applies to any offense for which the applicable statute of limitations had not run as of the date of enactment of this Act.

SEC. 203. EXTENSION OF STATUTE OF LIMITATIONS FOR VIOLENT AND DRUG TRAFFICKING CRIMES.

(a) IN GENERAL- Chapter 213 of title 18, United States Code, is amended by adding at the end the following:

`Sec. 3295. Class A violent and drug trafficking offenses

'Except as provided in section 3281, no person shall be prosecuted, tried, or punished for a Class A felony that is a crime of violence or a drug trafficking crime (as that term is defined in section 924(c)) unless the indictment is returned or the information is filed within 10 years after the commission of the offense.'

(b) APPLICABILITY- The amendment made by subsection (a) applies to any offense for which the applicable statute of limitations had not run as of the date of enactment of this Act.

(c) CONFORMING AMENDMENTS- The chapter analysis for chapter 213 of title 18, United States Code, is amended--

(1) in the item relating to section 3281, by inserting 'and Class A felonies involving murder' before the period; and

(2) by adding at the end the following:

'3295. Class A violent and drug trafficking offenses.'

SEC. 204. INCREASED DETENTION, MANDATORY RESTITUTION, AND ADDITIONAL SENTENCING OPTIONS FOR YOUTH OFFENDERS.

Section 5037 of title 18, United States Code, is amended to read as follows:

`Sec. 5037. Dispositional hearing

'(a) IN GENERAL-

'(1) HEARING- In a juvenile proceeding under section 5032, if the court finds a juvenile to be a juvenile delinquent, the court shall hold a hearing concerning the appropriate disposition of the juvenile not later than 20 court days after the finding of juvenile delinquency unless the court has ordered further study pursuant to subsection (e).

'(2) REPORT- A predisposition report shall be prepared by the probation officer who shall promptly provide a copy to the juvenile, the attorney for the juvenile, and the attorney for the government.

'(3) ORDER OF RESTITUTION- After the dispositional hearing, and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to 994, of title 28, the court shall enter an order of restitution pursuant to section 3556, and may suspend the findings of juvenile delinquency, place the juvenile on probation, commit the juvenile to official detention (including the possibility of a term of supervised release), and impose any fine that would be authorized if the juvenile had been tried and convicted as an

adult.

`(4) RELEASE OR DETENTION- With respect to release or detention pending an appeal or a petition for a writ of certiorari after disposition, the court shall proceed pursuant to the provisions of chapter 207.

`(b) TERM OF PROBATION- The term for which probation may be ordered for a juvenile found to be a juvenile delinquent may not extend beyond the maximum term that would be authorized by section 3561(c) if the juvenile had been tried and convicted as an adult. Sections 3563, 3564, and 3565 are applicable to an order placing a juvenile on probation.

`(c) TERM OF OFFICIAL DETENTION-

`(1) MAXIMUM TERM- The term for which official detention may be ordered for a juvenile found to be a juvenile delinquent may not extend beyond the lesser of--

`(A) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult;

`(B) 10 years; or

`(C) the date on which the juvenile achieves the age of 26.

`(2) APPLICABILITY OF OTHER PROVISIONS- Section 3624 shall apply to an order placing a juvenile in detention.

`(d) TERM OF SUPERVISED RELEASE- The term for which supervised release may be ordered for a juvenile found to be a juvenile delinquent may not extend beyond 5 years. Subsections (c) through (i) of section 3583 shall apply to an order placing a juvenile on supervised release.

`(e) CUSTODY OF ATTORNEY GENERAL-

`(1) IN GENERAL- If the court desires more detailed information concerning a juvenile alleged to have committed an act of juvenile delinquency or a juvenile adjudicated delinquent, it may commit the juvenile, after notice and hearing at which the juvenile is represented by an attorney, to the custody of the Attorney General for observation and study by an appropriate agency or entity.

`(2) OUTPATIENT BASIS- Any observation and study pursuant to a commission under paragraph (1) shall be conducted on an outpatient basis, unless the court determines that inpatient observation and study are necessary to obtain the desired information, except that in the case of an alleged juvenile

delinquent, inpatient study may be ordered with the consent of the juvenile and the attorney for the juvenile.

`(3) CONTENTS OF STUDY- The agency or entity conducting an observation or study under this subsection shall make a complete study of the alleged or adjudicated delinquent to ascertain the personal traits, capabilities, background, any prior delinquency or criminal experience, any mental or physical defect, and any other relevant factors pertaining to the juvenile.

`(4) SUBMISSION OF RESULTS- The Attorney General shall submit to the court and the attorneys for the juvenile and the government the results of the study not later than 30 days after the commitment of the juvenile, unless the court grants additional time.

`(5) EXCLUSION OF TIME- Any time spent in custody under this subsection shall be excluded for purposes of section 5036.

`(f) CONVICTION AS ADULT- With respect to any juvenile prosecuted and convicted as an adult pursuant to section 5032, the court may, pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28, determine to treat the conviction as an adjudication of delinquency and impose any disposition authorized under this section. The United States Sentencing Commission shall promulgate such guidelines as soon as practicable and not later than 1 year after the date of enactment of this Act.

`(g)(1) A juvenile detained either pending juvenile proceedings or a criminal trial, or detained or imprisoned pursuant to an adjudication or conviction shall be substantially segregated from any prisoners convicted for crimes who have attained the age of 21 years.

`(2) As used in this subsection, the term `substantially segregated'--

`(A) means complete sight and sound separation in residential confinement; but

`(B) is not inconsistent with--

`(i) the use of shared direct care and management staff, properly trained and certified to interact with juvenile offenders, if the staff does not interact with adult and juvenile offenders during the same shift; and

`(ii) incidental contact during transportation to court proceedings and other activities in accordance with regulations issued by the Attorney General to ensure reasonable efforts are made to segregate adults and juveniles.'.

SEC. 205. JUVENILE HANDGUN POSSESSION.

Section 924(a)(6) of title 18, United States Code, is amended--

(1) by striking all that precedes subparagraph (B) and inserting the following:

`(6)(A) A juvenile who violates section 922(x) shall be fined under this title, imprisoned not more than 1 year, or both, and for a second or subsequent violation, or for a first violation committed after an adjudication of delinquency for an act that, if committed by an adult, would be a serious violent felony (as defined in section 3559(c) of this title), shall be fined under this title, imprisoned not more than 5 years, or both.';

(2) in subparagraph (B)(i), by striking `one year' and inserting `5 years'; and

(3) in subparagraph (B)(ii), by striking `not more than 10 years' and inserting `not less than 3 nor more than 10 years'.

SEC. 206. INCREASED PENALTY FOR KNOWINGLY RECEIVING FIREARM WITH OBLITERATED SERIAL NUMBER.

Section 924(a) of title 18, United States Code, is amended--

(1) in paragraph (1)(B), by striking `(k),'; and

(2) in paragraph (2), by inserting `(k),' after `(j),'.

SEC. 207. AMENDMENT OF THE SENTENCING GUIDELINES FOR TRANSFERS OF FIREARMS TO PROHIBITED PERSONS.

Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal sentencing guidelines to increase the base

offense level for offenses subject to section 2K2.1 of the guidelines (relating to unlawful receipt, possession, or transportation of firearms or ammunition and prohibited transactions involving firearms or ammunitions) to provide that a person who transfers a firearm or ammunition, knowing or having reasonable cause to believe that the transferee is a person described in section 922(g) of title 18, United States Code, is subject to the same base offense level as the transferee. This section shall not require the same offense level for the transferor and transferee to the extent that the transferee's base offense level is subject to an additional increase on the basis of a past criminal conviction of either a crime of violence or a controlled substance offense.

SEC. 208. ACCESS TO RECORDS OF CRIMES COMMITTED BY JUVENILE DELINQUENTS.

Section 5038 of title 18, United States Code, is amended--

(1) in subsection (a), by striking 'Throughout and upon' and all that follows through the colon and inserting the following: 'Throughout and upon completion of the juvenile delinquency proceeding pursuant to 5032(a), the court records of the original proceeding shall be safeguarded from disclosure to unauthorized persons. The records shall be released to the extent necessary to meet the following circumstances:';

(2) in subsection (a)(3), by inserting before the semicolon 'or analysis requested by the Attorney General';

(3) in subsection (c), inserting before the comma and after 'relating to the proceeding' the phrase 'other than necessary docketing data'; and

(4) by striking subsections (d) and (f), by redesignating subsection (e) as subsection (d), by inserting 'pursuant to section 5032 (b) or (c)' after 'adult' in subsection (d) as so redesignated, and by adding at the end new subsections (e) and (f) as follows:

'(e) Whenever a juvenile has been adjudicated delinquent for an act that if committed by an adult would be a felony or for a violation of section 924(a)(6), the juvenile shall be fingerprinted and photographed, and the fingerprints and photograph shall be sent to the Federal Bureau of Investigation. The court shall also transmit to the Federal Bureau of Investigation the information concerning the adjudication, including name, date of adjudication, court, offenses, and sentence, along with the notation that the matter was a juvenile adjudication. The fingerprints, photograph, and other records and information relating to a juvenile described in this subsection, or to a juvenile who is prosecuted as an adult pursuant to sections 5032 (b) or (c), shall be made available in the manner applicable to adult defendants.

'(f) In addition to any other authorization under this section for the reporting, retention, disclosure, or availability of records or information, if the law of the State in which a Federal juvenile delinquency proceeding takes place permits or requires the reporting, retention, disclosure, or availability of records or information relating to a juvenile or to a juvenile delinquency proceeding or adjudication in certain circumstances, then such reporting, retention, disclosure, or availability is permitted under this section whenever the same circumstances exist.'

TITLE III--GANG VIOLENCE

SEC. 301. INCREASING THE PENALTY FOR USING PHYSICAL FORCE TO TAMPER WITH WITNESSES, VICTIMS, OR INFORMANTS.

Section 1512 of title 18, United States Code, is amended--

(1) in subsection (a)--

(A) in paragraph (1), by striking 'as provided in paragraph (2)' and inserting 'as

provided in paragraph (3)';

(B) by redesignating paragraph (2) as paragraph (3);

(C) by inserting after paragraph (1) the following:

`(2) Whoever uses physical force or the threat of physical force, or attempts to do so, with intent to--

`(A) influence, delay, or prevent the testimony of any person in an official proceeding;

`(B) cause or induce any person to--

`(i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

`(ii) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

`(iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; and

`(iv) be absent from an official proceeding to which such person has been summoned by legal process; or

`(C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).'; and

(D) in paragraph (3)(B), as redesignated, by striking 'in the case of' and all that follows before the period and inserting 'an attempt to murder, the use of physical force, the threat of physical force, or an attempt to do so, imprisonment for not more than 20 years'; and

(2) in subsection (b), by striking 'or physical force'.

SEC. 302. INTERSTATE TRAVEL TO ENGAGE IN WITNESS INTIMIDATION OR OBSTRUCTION OF JUSTICE.

Section 1952 of title 18, United States Code, is amended--

(1) by redesignating subsections (b) and (c) as (c) and (d), respectively; and

(2) by adding a new subsection (b), as follows:

`(b) Whoever travels in interstate or foreign commerce with intent by bribery, force, intimidation, or threat, directed against any person, to delay or influence the testimony of or prevent from testifying a witness in a State criminal proceeding or by any such means to cause any person to destroy, alter, or conceal a record, document, or other object, with intent to impair the object's integrity or availability for use in such a proceeding, and thereafter engages or endeavors to engage in such conduct, shall be fined under this title or imprisoned not more than ten years, or both; and if serious bodily injury (as defined in section 1365 of this title) results, shall be so fined or imprisoned for not more than twenty years, or both; and if death results, shall be so fined and

imprisoned for any term of years or for life, or both, and may be sentenced to death.'.

SEC. 303. EXPANDING PRETRIAL DETENTION ELIGIBILITY FOR SERIOUS GANG AND OTHER VIOLENT CRIMINALS.

(a) DEFINITION OF 'CONVICTED'- Section 3142(f)(1)(D) of title 18, United States Code, is amended by inserting after the semicolon 'for purposes of this subparagraph, the term 'convicted' includes a finding, under State or Federal law, that a person has committed an act of juvenile delinquency;'.

(b) INCLUSION OF CERTAIN OFFENSES- Section 3156(a)(4) of title 18, United States Code, is amended--

(1) by striking 'or' at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting '; or'; and

(3) by adding after subparagraph (C) the following:

'(D) an offense that is a violation of section 842(i) or 922(g) of this title (relating to possession of explosives or firearms by convicted felons and other categories of prohibited persons).'

(c) MEMBERSHIP IN GANGS- Section 3142(g)(3)(B) of title 18, United States Code, is amended--

(1) by inserting '(i)' after 'the person'; and

(2) by inserting the following before the semicolon: ', or (ii) was a member of or participated in a criminal street gang, racketeering enterprise, or other criminal organization'.

SEC. 304. CONSPIRACY PENALTY FOR OBSTRUCTION OF JUSTICE OFFENSES INVOLVING VICTIMS, WITNESSES, AND INFORMANTS.

Section 1512 of title 18, United States Code, is amended by adding at the end a new subsection, as follows:

'(i) Whoever conspires to commit any offense defined in this section or section 1513 of this title shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.'

SEC. 305. GANG FRANCHISING.

(a) IN GENERAL- Chapter 26 of title 18, United States Code, is amended by adding at the end the following:

'SEC. 522. INTERSTATE FRANCHISING OF CRIMINAL STREET GANGS.

'(a) PROHIBITED ACT- Whoever travels in interstate or foreign commerce, or causes another to do so, to recruit, solicit, induce, command, or cause to create, or attempt to create a franchise of a criminal street gang shall be punished in accordance with subsection (c).

'(b) DEFINITIONS-

'(1) CRIMINAL STREET GANG- The term 'criminal street gang' has the meaning given that term in section 521 of title 18, United States Code.

`(2) FRANCHISE- The term `franchise' means an organized group of individuals related by name, moniker, or other identifier, that engages in coordinated violent crime or drug trafficking activities in interstate or foreign commerce with a criminal street gang in another State.

`(c) PENALTIES- A person who violates subsection (a) shall be imprisoned for not more than 10 years, fined under this title, or both.

`(d) SENTENCING ENHANCEMENT- Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal sentencing guidelines to provide an appropriate enhancement for the recruitment of minors in furtherance of the creation of a criminal street gang franchise.'

(b) CLERICAL AMENDMENT- The table of sections at the beginning of chapter 26 of title 18, United States Code, is amended by adding at the end the following new item:

`522. Interstate franchising of criminal street gangs.'

TITLE IV--PREVENTION AND TREATMENT OF YOUTH DRUG ADDICTION

SEC. 401. SENSE OF CONGRESS TO INCREASE SAFE AND DRUG-FREE SCHOOLS AND COMMUNITIES PROGRAM.

It is the sense of the Congress that appropriations for State grants under subpart 1 and national programs under subpart 2 of title IV of the Elementary and Secondary Education Act (20 U.S.C. 7104 et seq.) should increase to a total of \$655,000,000 for each of fiscal years 1998 through 2000, and \$955,000,000 for each of the fiscal years 2001 through 2002.

SEC. 402. REAUTHORIZATION OF OFFICE OF NATIONAL DRUG CONTROL POLICY.

(a) REAUTHORIZATION- Section 1009 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1506) is amended by striking `1997' and inserting `2002'.

(b) AUTHORIZATION OF APPROPRIATIONS- Section 1011 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1508) is amended by striking `8' and inserting `13'.

SEC. 403. RESCHEDULING OF `CLUB' DRUGS.

Notwithstanding section 201 or subsection (a) or (b) of section 202 of the Controlled Substances Act (21 U.S.C. 811, 812(a), 812(b)) respecting the scheduling of controlled substances, the Attorney General shall, by order add ketamine hydrochloride and gamma hydroxybutyrate to schedule III of such Act.

SEC. 404. ATTORNEY GENERAL AUTHORITY TO RESCHEDULE CERTAIN DRUGS POSING IMMINENT DANGER TO PUBLIC SAFETY.

Section 201(h) of the Controlled Substances Act (21 U.S.C. 811)(h)) is amended--

(1) in paragraph (1) by striking `if the substance is not listed in any other schedule in section 812 of this title or' and by inserting `or the rescheduling of a previously scheduled substance' after `the scheduling of a substance'; and

(2) in paragraph (2) by inserting `or rescheduling' after `scheduling' each time it appears.

TITLE V--IMPROVING JUVENILE CRIME AND DRUG PREVENTION

SEC. 501. STUDY BY NATIONAL ACADEMY OF SCIENCE.

(a) **IN GENERAL-** The Attorney General shall enter into a contract with a public or nonprofit private entity, subject to subsection (b), for the purpose of conducting a study or studies--

(1) to evaluate the effectiveness of federally funded programs for preventing juvenile violence and juvenile substance abuse;

(2) to evaluate the effectiveness of federally funded grant programs for preventing criminal victimization of juveniles;

(3) to identify specific Federal programs and programs that receive Federal funds that contribute to reductions in juvenile violence, juvenile substance abuse, and risk factors among juveniles that lead to violent behavior and substance abuse;

(4) to identify specific programs that have not achieved their intended results; and

(5) to make specific recommendations on programs that--

(A) should receive continued or increased funding because of their proven success; or

(B) should have their funding terminated or reduced because of their lack of effectiveness.

(b) **NATIONAL ACADEMY OF SCIENCES-** The Attorney General shall request the National Academy of Sciences to enter into the contract under subsection (a) to conduct the study or studies described in subsection (a). If the Academy declines to conduct the study, the Attorney General shall carry out such subsection through other public or nonprofit private entities.

(c) **ASSISTANCE-** In conducting the study under subsection (a) the contracting party may request analytic assistance, data, and other relevant materials from the Department of Justice and any other appropriate Federal agency.

(d) REPORTING REQUIREMENTS-

(1) **IN GENERAL-** Not later than January 1, 2000, the Attorney General shall submit a report describing the findings made as a result of the study required by subsection (a) to the Committee on the Judiciary and the Committee on Education and the Workforce of the House of Representatives, and to the Committee on the Judiciary and the Committee on Labor and Human Resources of the Senate.

(2) **CONTENTS-** The report required by this subsection shall contain specific recommendations concerning funding levels for the programs evaluated. Reports on the effectiveness of such programs and recommendations on funding shall be provided to the appropriate subcommittees of the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate.

(e) **FUNDING-** There are authorized to be appropriated to carry out the study under subsection (a) such sums as may be necessary.

END

**COMPARISON OF ADULT PROSECUTION:
CURRENT LAW, ADMINISTRATION and McCOLLUM BILL**

Provision	Current Law	Administration Bill (H.R. 810)	McCollum Bill (Draft)
What juveniles can be tried in adult court? (§5032)	Ages: 13-17 years old Offenses (15-17) year olds: (1) "crimes of violence" and (2) limited number of serious drug crimes Offenses (13-14 year olds): only murder, serious assaults, armed robbery, armed rape	Ages: 13-17 year olds Offenses (13-17): All crimes for which juveniles can be prosecuted under current law <u>and</u> adds a broader range of gun and serious drug crimes.	Ages: 13-17 years old Offenses: <u>Any</u> federal felony.
Who decides if a juvenile is tried as an adult? (§5032)	All cases: judge (only after motion by prosecutor)	16-17 year olds charged with extremely serious/violent crimes: prosecutor (no judicial review) 16-17 year olds charged with relatively serious/violent crimes: prosecutor (with up front judicial review) 13-15 year olds: prosecutor (with up front judicial review)	14-17 year olds charged with serious violent or drug crime: must be charged as an adult (unless prosecutor certifies juvenile trial is in interests of justice) 13 year olds (all) and 14-17 charged with less serious crimes: prosecutor (no judicial review)

Who can appeal the decision to try a juvenile as an adult? (§5032)	Both (appeal is interlocutory)	16-17 year olds charged with extremely serious/violent crimes: no appeal 16-17 year olds charged with relatively serious/violent crimes: prosecutor before trial; juvenile after trial 13-15 year olds: prosecutor before trial; juvenile after trial	No appeals
What prevents improper prosecution of juveniles in adult court? (§5032)	(1) Transfer decision is left with judge (2) only for most serious crimes (3) interlocutory appeal by either side	(1) Only for serious crimes (as compared to all felonies in McCollum bill) (2) AG approval for 13-15 year olds (3) Judicial review for all 13-15 year olds <u>and</u> 16-17 year olds charged with relatively serious/violent crimes (4) Relief from mandatory minimum penalties for 13-15 year olds charged with relatively serious/violent crimes and with no record	(1) AG approval in limited circumstances (2) Relief from mandatory minimum penalties for 13-15 year olds charged with no previous serious convictions

When can a juvenile be incarcerated in adult facility? (§5039)	Juvenile tried as juvenile: not until 21st birthday Juvenile tried as adult: not until 18th birthday	Juvenile tried as juvenile: not until 18th birthday Juvenile tried as adult: not until 16th birthday	Same as current law
When is a juvenile subject to mandatory minimum penalties?	When tried as an adult (although list of crimes with mandatory penalties is limited)	Provides relief from mandatory penalties for 13-15 year olds charged with relatively serious/violent crimes who have no prior conviction for extremely serious/violent crimes	Provides relief from mandatory penalties for 13-15 year olds who have no prior conviction for extremely serious/violent crimes
How long can juveniles tried as juveniles be incarcerated?	Until 21st birthday	Until 26th birthday	Until 26th birthday
Public/victim access to courtrooms	Limited access	Courtroom proceedings are presumptively upon; can be closed only upon judicial order for cause	Courtroom proceedings are presumptively upon; can be closed only upon judicial order for cause but victim can not be excluded.

**KEY JUVENILE JUSTICE LEGISLATION
105TH CONGRESS**

PROVISION	H.R. 3 (MCCOLLUM) JUVENILE CRIME CONTROL ACT OF 1997	H.R. 810/S. 362 (ADMINISTRATION) ANTI-GANG AND YOUTH VIOLENCE ACT OF 1997	S.10 (HATCH) VIOLENT AND REPEAT JUVENILE OFFENDER ACT OF 1997	S.15 (DASCHLE, BIDEN, LEAHY) THE YOUTH VIOLENCE, CRIME AND DRUG ABUSE CONTROL ACT OF 1997
Sentencing of Juveniles who Commit Serious Federal Violent Crimes or Major Drug Trafficking Offenses	• Lowers age to 14 years of age or older for prosecution as adult for serious violent crimes; • may be surrendered to state authorities for prosecution if no significant federal interest, jurisdiction.	• Retains minimum age in existing law but expands list of offenses (similar to a number of states); gives federal prosecutors discretion to charge juvenile as an adult or juvenile; • requires AG approval for prosecution of juveniles 13-15 years of age; • divides up juvenile defendants by: 1) age, 2) severity of offense (extremely serious or moderately serious); • lowers federal death penalty to age 16; • eliminates statutes of limitation for murder or where the maximum penalty is life imprisonment.	• Lowers age to 14 years; • lowers federal death penalty to age 16.	• Raises mandatory release age from 21 years to 26 years of age.
Funding, including Block Grants to States	• Establishes new Juvenile Accountability Block Grant to states and local governments for expanding, building or operating juvenile facilities, or for developing alternative sanctions for youth offenders. Such grants are only available if the states have: 1) authorized the prosecution of 14 year olds as adults for serious violent crimes, 2) established graduated sanctions programs for juvenile offenders, 3) permitted juvenile records for conduct that would be a felony if committed by any adult to be released for "official purposes" and to the public to the same extent as adult criminal court records; • authorizes \$1.5 billion over 3 years.	• Adds requirements to conditions for states to receive VOI/TIS grants (requires plan for drug testing, monitoring, and treatment for violent offenders, with sanctions for those testing positive, and permits states to use VOI/TIS' funds for drug testing); • calls for grants of \$200 million for two years for prosecutor's Offices to target gang crime and violent juveniles; • creates \$50 million in new grant authority for FY98 to establish juvenile gun courts, drug courts, focusing on community-based initiatives to deal with juvenile offenders and their reintegration into the community; • Formula grant assistance: allocates 10% set aside of all grant programs for research activities, 2% for training and technical assistance of initiative/programs that have demonstrated high success rate. All states receive 50% of their allocation, the remaining for following established practices and procedures for protecting juveniles according to DOJ regulations, 28CFR Part 31; • calls for At-Risk Children Grants Program awards grants to states for distribution for a wide variety of efforts for assisting high risk juveniles. President's request for FY98 is \$75 million; • calls for \$50 million for after school programs to be administered through the Dept. of Health and Human Services(DHHS)	• Creates new Juvenile Crime Control and Juvenile Offender Accountability Incentive Block Grants and allocates \$500 million for a new block grant program planned and coordinated by the Office of Juvenile Crime Control and Juvenile Offender Accountability (OJCCA). The funding is to be used for: • development of more effective investigation, prosecution, and punishment; • improving administration of justice for and ensuring accountability of juvenile offenders; • programs to reduce the factors that place youth at risk of delinquent and criminal behavior. The \$500 million allocation would require the same stipulations for states as H.R. 3, but would add that juvenile court systems provide uniformity in treatment of offenders; • authorizes \$20 million to hire additional U.S. Attorneys to prosecute juvenile criminal street gangs.	• Extends Violent Offender Incarceration and Truth-in-Sentencing Grant Program (VOI/TIS) for two years; • extends Violence Against Women Grant Program for two years; • provides \$1 billion to assist states in building prisons for violent juveniles; • extends Violent Crime Reduction Trust Fund for two years; • gives AG authorization to make grants to states Indian tribes.

PROVISION	H.R. 3 (McCOLLUM) JUVENILE CRIME CONTROL ACT OF 1997	H.R. 810/S. 362 (ADMINISTRATION) ANTI-GANG AND YOUTH VIOLENCE ACT OF 1997	S.10 (HATCH) VIOLENT AND REPEAT JUVENILE OFFENDER ACT OF 1997	S.15 (DASCHLE) THE YOUTH VIOLENCE, CRIME AND DRUG ABUSE CONTROL ACT OF 1997
Criminal Records (Federal)	- Requires court-kept record of arrest and adjudication; - makes records available for official purposes (i.e. school officials, victims, with guidelines for fingerprinting and photographing.	Gives greater access to juvenile records.	- Gives complete access to prior federal juvenile records and to state juvenile records if state law permits. Records may be released to government authorities, school officials. - Calls for fingerprinting and photos of juveniles tried as adults.	Give greater access to records.
Targeting Gangs		- facilitates prosecution under federal car-jacking statute by eliminating need to prove that the defendant intended to cause death or serious bodily injury; - facilitates prosecution of certain RICO cases by providing that prosecutors need only to prove that the defendant participated in the racketeering enterprise; - authorizes \$200 million for two years to establish Prosecutorial Initiatives Targeting Gang Crime and Violent Juveniles program. Grants would go to prosecutors offices for at least 1000 new initiatives to pursue, prosecute and punish gang members for their crimes.	- increases penalties for gang participation; interstate travel and spread of gangs, gang solicitation and recruitment, use of body armor; - creates mandatory minimum penalties for "engaging in patterns of criminal activity"; - adds gang recruitment to RICO predicates.	- Increases penalties for use of protective body armor and "laser sighting" devices, victim/witness intimidation, crimes to further gang activity; - creates new federal crimes against interstate expansion of gangs; - extends statute of limitations on drug and violent crimes; eliminates statute of limitation for all murders.
Victims Rights		Includes two new provisions that expand the rights and protections of victims, particularly for crimes committed by juvenile offenders and crimes committed against children.	Requires restitution to victims.	Increases penalties for witness intimidation.
Programs Created or Extended	- Creates new "Juvenile Accountability Block Grants" for the purposes of expanding, building or operating juvenile facilities, or for developing alternative sanctions for youth offenders. States would be eligible if they have laws that: - authorize adult prosecution of 14 year-olds charged with serious violent crimes; - establish graduated sanctions; - permit the opening of juvenile records for violent youth; - creates an Armed Violent Youth Apprehension Directive in each U.S. Attorney's office.	- Replaces OJJDP with the Office of Juvenile Crime Control and Prevention (OJCCP), along with a Formula Grant Program, the Indian Tribal Grant Programs, the At-Risk Children Grants Program, the Developing, testing and Demonstrating Promising Programs Program, the Incentive Grant Programs, the Research, Statistics, and Evaluation Grants, the training and Technical Assistance grants (all under the Office of Justice Programs. - Administration's bill also builds in authority for the Director of the OJCCP to provide waivers to states seeking to comply with the JJDPA mandates with unique situations or those trying innovative techniques who want to demonstrate flexibility in operations while protecting incarcerated youth.	- Replaces OJJDP with the Office of Juvenile Crime Control and Juvenile Offender Accountability (OJCCA) for: - development of more effective investigation, prosecution, and punishment; - improving administration of justice for and ensuring accountability of juvenile offenders; - programs to reduce the factors that place youth at risk of delinquent and criminal behavior.	- Extends Violent Offender Incarceration and Truth-in-Sentencing Grant Program (VOI/TIS) for two years; - extends Violence Against Women Grant Program for two years; - extends Violent Crime Reduction Trust Fund for two years; - extends Cops on the Beat Program (adds 25,000 police) for two years; - creates juvenile gun courts on expedited basis; - calls for study of federal prevention effort; - reauthorizes the Office of the National Drug Control Policy (ONDCP) and the Safe and Drug Free Schools Program.

PROVISION	H.R. 3 (McCOLLUM) JUVENILE CRIME CONTROL ACT OF 1997	H.R. 810/S. 362 (ADMINISTRATION) ANTI-GANG AND YOUTH VIOLENCE ACT OF 1997	S.10 (HATCH) VIOLENT AND REPEAT JUVENILE OFFENDER ACT OF 1997	S.15 (DASCHLE) THE YOUTH VIOLENCE, CRIME AND DRUG ABUSE CONTROL ACT OF 1997
Guns		• Makes it unlawful for serious violent juvenile offenders to receive or posses firearms; • requires locking devices for firearms sold; • "Bailey Fix": possession equals use.		
Drugs		• Increases minimum penalties for using minors to traffick drugs, distributing drugs to minors, drug trafficking near a school, using federal property to grow drugs; • adds serious juvenile drug offenses to the list of predicates under the Armed Career Criminal statutes; • allows the Attorney General to reschedule certain substances on an emergency basis under the Controlled Substances Act in an effort to respond to public health crises (i.e. Rohypnol); • allows use of VOI/TIS grants for drug testing and treatment in adult facilities.		• Reschedules "date rape" and "club" drug ketamine to a schedule III drug under the Controlled Substances Act; • enhances penalties for using federal property to grow or manufacture controlled substances; • reschedules "date rape" and "club" drug ketamine to a schedule III drug under the Controlled Substances Act; • enhances penalties for using federal property to grow or manufacture controlled substances; • encourages private sector development of drugs to treat the addiction to cocaine and heroin; • reauthorizes the Office of the National Drug Control Policy (ONDCP) and the Safe and Drug Free Schools Program; • calls for a study on the effects of the AZ and CA medicinal marijuana initiatives; • allocates \$100 million to establish juvenile drug courts in the states to provide drug testing, treatment and aftercare programs; • allocates \$600 million for drug treatment for youth in secure facilities; • commissions a study by the National Academy of Science to study all existing crime and drug prevention programs.



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 23, 1997

The Honorable Henry Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20510

Dear Mr. Chairman:

As the Committee prepares to mark up H.R. 3, the Juvenile Crime Control Act of 1997, I write to convey the views of the Administration on this bill.

Enactment of comprehensive legislation to address youth and gang violence and drug use is a top priority of this Administration. Accordingly, on February 25, 1997, we transmitted to Congress the Anti-Gang and Youth Violence Act of 1997, which has been introduced as H.R. 810 by Congressman Charles Schumer. This bill is based in part on the recent success of Boston's three-pronged strategy of prevention, intervention and enforcement for youth violence. In Boston, youth homicides have dropped some 80% citywide from 1990 to 1996, and in 1996 not a single juvenile died in a firearm homicide in the city.

We commend you, Chairman McCollum and other Members of the Committee, for taking up this issue and hope that we can work together to enact the best possible legislation to both fight and prevent juvenile and youth crime. We understand that the Committee will consider a substitute amendment to H.R. 3 which will modify this legislation in several respects. We believe, however, that this bill can still be greatly improved to reflect the comprehensive enforcement and prevention approach represented by the Administration's legislation.

We agree with law enforcement officials all over this nation who believe that legislation to address youth and gang violence in a comprehensive and effective manner must adopt a balanced approach that combines elements of enforcement and prosecution with targeted and selective prevention efforts. Specifically, we believe that any bill that emerges from the Congress should include the following elements:

-- meaningful reform of the federal juvenile justice system that, inter alia, allows prosecutors greater flexibility in

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prosecuting juveniles as adults and that is more responsive to the rights of victims;

-- a provision that child safety locks be required to be purchased with each firearm sold by a federally licensed dealer;

-- a prohibition on firearm possession by juveniles adjudicated delinquent of offenses that would have been felonies (and thus barred the offender from gun possession) if committed by an adult;

-- targeted funding to ensure that local prosecutors can hire additional gang prosecutors;

-- targeted funding, beginning in FY 1998, to ensure localities can establish court-based programs to specifically address issues of juvenile and youth violence;

-- tough enforcement provisions to protect witnesses who help prosecute gangs and other violent offenders;

-- tough drug enforcement provisions to increase penalties for selling drugs to kids, using kids to sell drugs and selling drugs in schools, and provisions requiring drug testing of violent offenders and authorizing use of prison grant funds for drug testing, treatment and supervision of incarcerated offenders;

-- tough enforcement provisions for possessing firearms while committing violent or drug crimes; and

-- targeted funding, beginning in FY 1998, for effective prevention programs that target at risk youth and keep schools open to provide young people with alternatives to criminal activity.

These and other provisions included in the Administration's proposal are essential elements of an effective, comprehensive approach to preventing and fighting youth and gang violence and drug related crime. We look forward to working with the Committee and other Members of the Congress to ensure that these elements are included in the final bill.

We now turn specifically to the provisions of the bill to be marked up tomorrow. We are pleased that Title I of H.R. 3, as it would be amended by the substitute, recognizes the need to revise the statutes governing prosecution of juveniles as adults. We support the bulk of this title, many of the provisions of which are the same or substantially similar to our proposal. Both H.R. 3 and H.R. 810, for example, would transfer from the court to the prosecutor the discretion to charge juveniles as adults. We believe, however, that our proposed formulation

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better achieves the goals of simplifying this process and holding juveniles accountable for serious crimes.

The bill under consideration by the Committee would require that juveniles alleged to have committed certain violent or drug trafficking crimes after having reached 14 years of age be prosecuted as adults unless the prosecutor certifies to the court that the interests of public safety are best served by a juvenile proceeding. We believe that this requirement unwisely and unnecessarily restricts prosecutorial discretion in this sensitive charging decision. Also, our proposal would allow certain juveniles to file a motion with the court for an expedited consideration of a request to be proceeded against in a delinquency proceeding. Thus, H.R. 810's approach recognizes the need to streamline this process, while ensuring that juveniles are held accountable for serious crimes.

Title II of H.R. 3, as it would be amended by the substitute, contains an "armed violent youth apprehension directive" that requires that each U.S. Attorney take certain steps to establish armed violent youth task forces and that the Department of Justice periodically submit statistical information concerning prosecutions brought by the task forces to Congress. We believe this level of management of the Department by the Congress is unnecessary and would have the unintended effect of reducing the flexibility that our U.S. Attorney's offices must have in order to have the maximum impact against the predominant crime problems in their respective districts.

Title III of H.R. 3, as it would be amended by the substitute, would establish a block grant program whose stated goal is to assist state and local law enforcement agencies implement accountability-based, graduated sanctions for juvenile offenders. We applaud the goals of this program and agree that there is a need for intervention and accountability in the juvenile justice system early in the process. We have certain concerns about how the program is structured and intended to operate as well as the conditions for receipt of the funds that we believe unnecessarily limits the pool of prospective recipients. We would be happy to work with the Committee to address these issues.

More fundamentally, however, the block grant program will not ensure that needed funds for additional gang prosecutors will actually be available to state and local prosecutors for that purpose and that funds to establish court-based programs to better address youth violence will also not be ensured. The Administration's proposal includes programs to provide assistance to prosecutors' offices to fight gangs and assistance to courts to expedite and more effectively handle violent juveniles in the court system, in addition to important programs providing funding for prevention and intervention initiatives.

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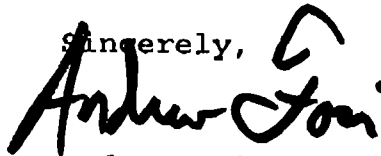
Although we are cognizant of the jurisdictional issues with which the Committee is dealing, we believe that it is essential that Congress authorize and appropriate in the coming fiscal year adequate funds to be distributed to state and local prevention and intervention programs to help juveniles at risk stay on or get back on the right track, and that we maintain basic protections for juvenile delinquents in custody. We can leave no stone unturned in this legislative effort to fight juvenile crime and we cannot afford to have future generations ask why we did not do more to stem the tide of youth violence.

Notably absent from H.R. 3 are provisions such as those in H.R. 810 to promote firearms safety and target illegal firearms possession and distribution. Our proposed requirement that child safety locks be sold with every gun is essential to protect our children. This provision is intended to provide added safety to gun owners and to prevent accidental discharges that can result when children gain access to firearms. I hope that the Committee will join the Administration in supporting this important safety measure as well as our provision to keep firearms out of the hands of those who have committed serious offenses as juveniles.

H.R. 3 omits certain other critical elements. We would urge the Committee, at some point in the legislative process, to adopt from H.R. 810 provisions providing new laws and stiffer penalties to fight gangs, disrupt their illegal gun and drug markets and protect the witnesses who want to testify against them.

We all look forward to working with you to improve H.R. 3 so that we can enact the best possible youth crime legislation. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,



Andrew Foia
Assistant Attorney General

cc: The Honorable John Conyers, Jr.
Ranking Minority Member

The Honorable Bill McCollum
Chairman
Subcommittee on Crime

The Honorable Charles E. Schumer
Ranking Minority Member
Subcommittee on Crime



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

May 7, 1997 (SENT)
(House)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

H.R. 3 - Juvenile Crime Control Act of 1997
(McCollum (R) Florida and five cosponsors)

Enactment of comprehensive legislation to address youth and gang violence and drug use is a top Administration priority. Accordingly, on February 25, 1997, the Department of Justice transmitted to Congress the Anti-gang and Youth Violence Act of 1997, which was introduced as H.R. 810 by Representative Schumer. The Administration's proposal was designed in conjunction with law enforcement officials around the country, including those in Boston, Massachusetts, who have implemented balanced and comprehensive programs that successfully fight youth and gang violence. Those programs combine elements of enforcement and prosecution with targeted and selective prevention and intervention efforts. Unfortunately, H.R. 3 fails to embody such an approach and, consequently, misses an important opportunity to fight and prevent juvenile crime. Therefore, the Administration opposes House passage of H.R. 3.

H.R. 3 is neither comprehensive nor balanced because it fails to include:

- a requirement that every Federally-licensed firearms dealer provide a child safety lock with each firearm sold;
- a prohibition on firearm possession by juveniles adjudicated delinquent of offenses that would have been felonies if committed by an adult (and thus barring the offender from gun possession);
- targeted funding to ensure that local prosecutors can hire additional prosecutors for gang-related crimes;
- targeted funding, beginning in FY 1998, to ensure that localities can establish court-based programs specifically to address issues of juvenile and youth violence;
- greater flexibility for prosecutors in prosecuting juveniles as adults;
- provisions to protect witnesses who help prosecute gangs and other violent offenders;
- tough drug enforcement provisions to increase penalties for selling drugs to kids, using kids to sell drugs, and selling drugs in schools;

- provisions requiring drug testing of violent offenders and authorizing use of prison grant funds for drug testing, treatment, and supervision of incarcerated offenders;
- tough penalties for possessing firearms while committing violent or drug crimes; and
- targeted funding, beginning in FY 1998, for effective prevention programs that target at-risk youth and keep schools open to provide young people with alternatives to criminal activity.

The Administration believes that none of these elements can be omitted if a successful, comprehensive effort to curb youth violence is to be achieved. The Administration will work with Congress throughout the legislative process to ensure passage of legislation that will have a meaningful impact on juvenile crime.

* * * * *

(Do Not Distribute Outside Executive Office of the President)

This Statement of Administration Policy was developed by the Legislative Reference Division (Jones), in consultation with Justice (Jones), Treasury (Levy), Education (Kristy), ONDCP (Rivait), U.S. Sentencing Commission (Wroblewski), Domestic Policy Council (Cerde, Shimabukuro) TCJSD (Boden, Cichetti), HTFD (Crowley), HRD (Stack), BRCD (Theirwechter), and BASD (Balis).

HHS, Interior, White House Counsel, White House Legislative Affairs, NRD, and OMB GC did not respond to our request for comments on the draft SAP.

OMB/LA Clearance: Deich, Konigsberg (OMB), Rahm Emanuel, Chief of Staff Erskine Bowles, Hilley/Jacoby (WHLA), Reed/Kagan (DPC).

H.R. 3 was reported by the House Judiciary Committee by a vote of 15-9. The House Judiciary Committee report was filed on May 1, 1997.

Administration Position to Date

Justice (Fois) wrote a letter to the House Judiciary Committee on April 23rd citing concerns with H.R. 3. The letter stated that H.R. 3 (and the proposed amendment considered by the Committee) "can still be greatly improved to reflect the comprehensive enforcement and prevention approach represented by the Administration's legislation." The Justice report requested that the Committee amend the bill to include several of the Administration's proposals. These include: (1) requiring child safety locks on firearms sold by certain dealers; (2) targeted

funding for additional gang prosecutors and youth violence courts; and (3) stiffer penalties to fight gangs, disrupt their illegal gun and drug markets, and protect witnesses who testify against them. These amendments were not made in Committee.

Summary of H.R. 3

NOTE: The following summary is based on the reported version of H.R. 3. The contents of the expected manager's amendment are not yet known.

As reported by the House Judiciary Committee, H.R. 3:

- Requires that juveniles 14 or older who commit certain Federal violent crimes (e.g.; homicide, rape robbery, firearms-related offenses) or Federal drug-trafficking offenses generally be prosecuted as adults. In addition, the Attorney General is given discretion to prosecute as adults any 13-year old who commits the specified offenses. (Current law requires the Government to request that a juvenile be tried as an adult and gives courts discretion to approve the request.)
- Requires the AG to report annually to the Congress the number and demographic characteristics of juveniles prosecuted as adults, the offenses with which they were charged, and other factors;
- Eases requirements for placing juveniles in separate confinement facilities before and after conviction;
- Allows 45 calendar days (currently 30) to begin proceedings against a juvenile and 40 court days (currently 20) to begin disposition hearings for a juvenile found delinquent;
- Requires Federal officials to keep, retain, and make available juvenile criminal records (including photographs and fingerprints) to the same extent they keep, retain, and make available adult criminal records;
- Directs the Attorney General to establish an "armed youth apprehension program" and designate at least one Federal prosecutor in every U.S. Attorney's office to prosecute armed violent youth; and
- Authorizes \$500 million annually during FYs 1998-2000 to State and local governments to: build, expand or operate juvenile correction or detention facilities; develop alternative sanction programs; hire additional juvenile court officials, including judges and prosecutors; and fund programs for the adjudication, prevention, and supervision of juvenile crime.

Pay-As-You-Go Scoring

Per BASD (Balis) H.R. 3 would affect receipts (criminal fines for juveniles prosecuted as adults), and therefore is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act. OMB's preliminary scoring estimate is that these receipts will be less than \$500,000 annually.

LEGISLATIVE REFERENCE DIVISION

May 6, 1997 - 12:33 PM



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 9, 1997

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

As the Committee prepares to consider S. 10, the Violent and Repeat Juvenile Offender Act of 1997, I write to convey the views of the Administration on this bill.

Enactment of comprehensive legislation to address youth and gang violence and drug use is a top priority of this Administration. Accordingly, on February 25, 1997, we transmitted to Congress the Anti-Gang and Youth Violence Act of 1997, which has been introduced as S. 362 by Senators Leahy and Biden. This bill is based, in part, on the recent success of Boston's three-pronged strategy to curb youth violence: tough enforcement, early intervention, and effective crime prevention. In Boston, youth homicides have dropped some 80% citywide from 1990 to 1996, and since July, 1995, not a single Boston juvenile has died in a firearm homicide. We are also seeing the payoff from others applying this balanced approach across the country. Recently available statistics show a 25% decline in juvenile violent crime in 1995. Disturbing projections of a doubling of violent juvenile crime in the next 20 years -- projections based upon demographic and crime trend lines from the early '90s -- no longer hold given the substantial downturns in juvenile violent crime in 1994 and 1995. Yet even with recent successes, there is still too much juvenile crime and we must press on to do more.

We commend you and other Members of the Committee for taking up this issue and hope that we can work together to enact the best possible legislation to reduce juvenile crime. We believe that this bill can be greatly improved to reflect the

- 2 -

comprehensive enforcement and crime prevention approach represented by the Administration's legislation.

Specifically, we believe that any bill that emerges from the Congress should include the following elements:

- targeted funding to assist local prosecutors in combatting youth violence and gangs, and to help localities establish court-based efforts to address juvenile and youth violence;

- targeted funding for after-school, juvenile crime prevention strategies that target at-risk youth and provide alternatives to criminal activity;

- a permanent prohibition on firearm possession by anyone adjudicated delinquent as a juvenile of a serious or violent offense;

- a requirement that a child safety lock be provided with each firearm sold by a federally licensed dealer;

- tough enforcement provisions to punish the possession of firearms while committing violent or drug crimes, and the transfer of guns to minors;

- tough enforcement provisions to protect witnesses who help prosecute gangs and other violent offenders;

- tough drug enforcement provisions to increase penalties for selling drugs to kids, using kids to sell drugs, and selling drugs near schools;

- meaningful reform of the federal juvenile justice system that allows prosecutors greater flexibility in prosecuting juveniles as adults, with appropriate judicial safeguards; and that makes the system more responsive to the rights of victims; and

- provisions requiring drug testing of state and local offenders and authorizing use of state prison grant funds for drug testing, treatment and supervision of incarcerated offenders.

These and other provisions included in the Administration's proposal are essential elements of an effective, comprehensive approach to preventing and fighting youth and gang violence and related drug crime. We look forward to working with the Committee and other Members of the Congress to ensure that these elements are included in the final bill.

We turn now specifically to the provisions of S. 10, as it

- 3 -

would be modified by your substitute amendment. We support the goals of Title I and are pleased that this title recognizes the need to revise the statutes governing federal prosecution of juveniles as adults. For example, both S. 10 and S. 362 would transfer from the court to the prosecutor the discretion to charge juveniles as adults. However, our bill would allow certain juveniles to petition the court to be proceeded against as juveniles. We urge the Committee to adopt this provision as it maintains an important balance between streamlining the federal charging process and ensuring appropriate safeguards for juveniles in the federal system.

With regard to Title II, as it would be modified by your substitute amendment, we agree that targeting gang violence is an important element of this legislative effort, but we are concerned that this title, which addresses gangs, contains provisions that would federalize acts best left to traditional State and local prosecution. There are already a host of federal statutes that the Department of Justice uses successfully to prosecute criminal gang activity, including RICO, comprehensive anti-drug trafficking laws, and broad statutes punishing robbery and extortion. We question the need for the overlapping provisions proposed here that appear more cumbersome than existing tools.

The targeted approach of our bill, S. 362, gives law enforcement what it needs without over-reaching. Our bill includes several provisions designed to fill gaps in federal law relating to criminal gang activity, particularly where the States need support. For example, S. 362 includes a proposed new offense aimed at gang members who travel interstate with the intent to obstruct justice by bribery or intimidation of witnesses in State judicial proceedings. Our bill also provides other amendments, including stiffer penalties, to help fight gangs and disrupt their illegal gun and drug markets. We urge the Committee to choose this approach over the one articulated in S. 10.

Finally, we would note that the provision exempting the interception of certain communications and certain uses of pen register, trap and trace devices, and clone pagers from statutory requirements may raise constitutional concerns. A more detailed memorandum describing these concerns is attached (Attachment A).

Title III of S. 10, as it would be modified by your substitute amendment, would dramatically expand the authority and responsibility of the Department of Justice's juvenile justice office, essentially creating a "Youth Violence Czar" who would supervise and coordinate all programs and policies in the executive branch regarding juvenile crime. While the Administration supports increased interagency cooperation on juvenile justice issues, we do not believe Congress should

- 4 -

mandate in statute the detailed mechanics of such cooperation. We oppose the juvenile justice budget certification process proposed in S. 10 because it would interfere with the budget functions of the President. The legislation would also delegate important budget review functions to a subordinate official, who is not a member of the President's Cabinet. The Office of National Drug Control Policy (ONDCP) already certifies the budgets for juvenile crime programs that include anti-drug components. Consequently, conflicting certification decisions could lead to confusion for agencies with authority for reducing youth violence and substance abuse. We believe that review of the Office of Management and Budget and certification from ONDCP provides oversight of juvenile crime programs at the appropriate Executive branch level.

Indeed, although S. 10 expands the authority of the juvenile justice office, it actually reduces the office's funding. We would urge the Committee to maintain the office's current funding level and to seek greater interagency coordination through the expansion of the existing Juvenile Justice Coordinating Council. (Parenthetically, we note that the new "Czar" provision would require the Administrator of the juvenile justice office to transmit a proposed budget to both the President and to Congress. Such concurrent reporting requirements are presumptively violative of separation of powers. Therefore, the requirement as written would be constitutional only if it were construed to permit the Administrator to submit his budget to Congress after consultation with the President.) We look forward to working with the Committee on all of these issues concerning the juvenile justice office.

Title III, as it would be modified by the substitute amendment, would establish a block grant program designed to help state and local agencies investigate, prosecute, and punish juvenile crime as well as reduce the risk-factors associated with it. We applaud the goals of this program and agree that there is a need for swift and appropriate punishment of juvenile offenders as well as for early intervention and crime prevention. We do have substantial concerns about how the funds will be distributed, however, as well as about the conditions for receipt of the funds. Specifically, we note that S. 10 would require states to spend specified portions of their block grant funds on facilities and sanctions (35%), recordkeeping (10%), and drug testing (15%) -- but none on drug treatment and none on after-school programs, which we know work to keep juveniles safely and constructively occupied during the hours they are most likely to get into trouble. Nor does S. 10 set aside adequate funds for federal research and for the evaluation, training, and technical assistance that the federal government is uniquely situated to provide. We urge the Committee to ensure that substantial funds are dedicated to all of these purposes.

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While we are pleased that the bill dedicates funding for the hiring of state and local prosecutors and court personnel, as well as for their technological support, we would urge the Committee to include prosecutor- and court-based initiatives -- such as anti-gang task forces and juvenile gun and drug courts -- as well as personnel and equipment. As the success in Boston shows, these programs are critical to communities' efforts to defeat gangs, guns, and drugs.

We are also concerned that certain of the conditions on receipts of the block grant funds may unnecessarily limit the pool of prospective recipients. Moreover, at the same time S. 10 imposes these requirements, it retreats from the one set of existing requirements that are critical to the safety of and fairness to juveniles detained in state facilities. These requirements protect incarcerated juveniles while permitting states the flexibility they need. They should not be abandoned.

Last, we are concerned that the bill's provision allowing disbursement of funds to religious organizations may violate the Establishment Clause. A more detailed analysis of this issue is attached (Attachment B).

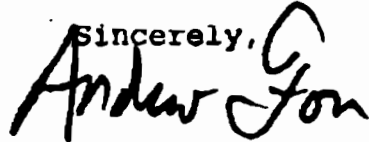
Finally, Title III repeals what it calls "unnecessary and duplicative programs," including several excellent, fully funded crime prevention initiatives that have proved effective around the nation. We urge the committee to refrain from repealing these programs.

Notably absent from S. 10, as introduced and as it would be modified by the substitute amendment, are provisions such as those in S. 362 to promote firearms safety and target illegal firearms possession and distribution. Our proposed requirement that child safety locks be sold with every gun is essential to thwart gun theft and to protect our children from using guns on themselves or each other, deliberately or by accident. I hope that the Committee will join the Administration in supporting this important safety measure as well as our provision to keep firearms out of the hands of those who have committed serious offenses as juveniles.

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We look forward to working with you to improve S. 10 so that we can enact the best possible youth crime legislation. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,



Andrew Foia
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Ranking Minority Member

The Honorable Jeff Sessions
Chairman
Subcommittee on Youth Violence

The Honorable Joseph R. Biden, Jr.
Ranking Minority Member
Subcommittee on Youth Violence

ATTACHMENT A

Section 209 of S. 10, as it would be modified by your substitute amendment, would exempt the interception of certain communications and certain usages of pen registers, trap and trace devices, and clone pagers from the statutory requirements set forth in chapters 119 and 121 of title 18. Specifically, the provision would exempt "the interception by a law enforcement officer, or a person acting on behalf of a law enforcement officer, of any wire, oral, or electronic communication" from the statutory restrictions if "at least 1 of the parties to the communication" is an inmate or detainee of the Attorney General of the United States or of a state or local political subdivision. §209(a)(1). The provision would also exempt the use by a law enforcement officer or the agent of a law enforcement officer of a pen register, a trap and trace device, or a clone pager if "the facility is regularly used by" an inmate or detainee of the Attorney General of the United States or of a state or local political subdivision. §209(a)(2).

Our concern arises from the use of the word "facility" in subsection (a)(2). We are uncertain as to the meaning of the word "facility." We doubt that the word "facility" is intended to refer to pagers because we do not understand inmates or detainees to be in a position to be able to use pagers regularly. However, we are concerned by the alternative reading that the word "facility" is intended to refer to "telephones" or other similar modes of communication that enable one to transmit information to a pager. If the word "facility" has this latter meaning, then the provision would appear to permit law enforcement officers to clone any pager that receives a single call from a telephone line that is regularly used by an inmate or detainee. This latter reading would permit law enforcement officers to use clone pagers to retrieve the contents of all of the information that is transmitted to a pager, even when neither the recipient nor the sender is an inmate or detainee, merely because an inmate uses a prison telephone to call that pager at some time. We doubt that the legislation is intended to have this broad effect, particularly given the serious constitutional concerns that it would raise under the Fourth Amendment. We therefore recommend that the provision be amended, perhaps by deleting the reference to "clone pagers."

ATTACHMENT B

This concerns the need to amend S. 10, as it would be modified by your substitute amendment, to ensure that it is not applied in a manner that would violate the Establishment Clause.

The bill provides federal block grants to states to enable them to establish juvenile justice programs. The bill provides that state and local governments may disburse some of the block grant funds to nongovernmental organizations for the purpose of providing counselling and treatment to juvenile offenders. The bill provides that state and local governments may, in disbursing the block grant funds, contract with religious organizations, or provide them with vouchers, certificates, or other forms of disbursement, on the same basis as any other nongovernmental entities.

In general, the Establishment Clause does not prohibit the government from providing funds directly to religious organizations in the course of administering a neutral program. It does, however, place two significant limitations on this general principle. First, the Establishment Clause prohibits direct governmental funding of religious activity even in otherwise substantially secular settings. See Bowen, 487 U.S. 615, 621 (majority), 623 (O'Connor, J., concurring), 624 (Kennedy and Scalia, JJ., concurring), 642-47 (dissenting justices). Second, the Establishment Clause generally precludes direct governmental funding of pervasively sectarian institutions. See Bowen v. Kendrick, 487 U.S. 589, 608-12 (1988).

Although the bill states that the block grant funds must be disbursed in accord with the Establishment Clause, its plain terms strongly suggest that state and local governments will be permitted to provide direct funding to religious organizations that are pervasively sectarian, i.e., institutions "in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission[.]" Hunt v. McNair, 413 U.S. 734, 743 (1973). For example, the bill expressly provides that neither the federal government nor the state shall require a religious organization to "remove religious art, icons, scripture, or other symbols" in order to be eligible for funding. Sec. 206(a)(4)(F)(iii)(II)(bb). Similarly, the bill states that a participating religious organization "shall retain its independence from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious belief." Moreover, the bill repeatedly refers to the "religious character" of eligible religious organizations, rather than to their religious affiliation.

The bill's restrictions on governmental authority to monitor eligible religious organizations, as well its repeated references to their "religious character," strongly imply that pervasively sectarian religious organizations will be eligible to receive direct governmental funding. See, e.g., Committee for Public Educ. v. Nyquist, 413 U.S. 756, 767-77 (religious restrictions on faculty appointments suggest school is pervasively sectarian). Thus, despite the bill's express requirement that the funds be provided in compliance with Establishment Clause, the bill might be construed to authorize the direct funding of pervasively sectarian religious organizations in violation of Bowen.

To clarify the nature of the Establishment Clause limitation that the bill itself provides, we suggest the following amendments. They are necessary to emphasize the non-pervasively sectarian nature of eligible funding recipients, and to ensure that direct governmental funding is not used to support religious activities. These amendments will therefore serve to ensure that state and local block grant recipients will administer their programs in conformity with the Constitution. They will also dramatically decrease the litigation risk that the current language presents.

First, the title to Section 206(a)(4)(F) should be amended to read "Religiously Affiliated Organizations."

Second, Section 206(a)(4)(F)(i) should be amended at lines 4-5 to change "religious organizations" to "religiously affiliated organizations," and at lines 9-10 to change "religious character" to "religious affiliation."

Third, Section 206(a)(4)(F)(ii) should be amended at line 4 by inserting "nonpervasively sectarian" prior to "religious."

Fourth, Section 206(a)(4)(F)(iii) should be amended to by substituting the word "affiliation" for the word "character."

Fifth, Section 206(a)(4)(F)(iii)(I) should be amended to provide:

(I) A nonpervasively sectarian religious organization that participates in a program authorized by this title shall retain its independence from Federal, States, and local governments, including such organizations control over its religious affiliation.

Sixth, Section 206(a)(4)(F)(iii)(I) should be amended to provide:

(II) Additional Safeguards. -- To the extent such organization is non-pervasively sectarian, neither the Federal government nor a State shall require a religious organization to --
(aa) alter its form of internal governance; or

(bb) remove all religious art icons, scripture, or other symbols;

Seventh, Section 206(a)(4)(F)(iv) should be amended by substituting the word "affiliation" for "character" in line three.

Eighth, Section 206(a)(4)(F)(v) should be amended to provide:

(V) EMPLOYMENT PRACTICES.-- A religious organization's exemption provided under section 702 of the Civil Rights Act of 1964 (42 U.S.C. 200e-1a) regarding employment practices shall not be affected by the participation of a non-pervasively affiliate in, or the receipt by such affiliate of funds , programs described in this title.

Ninth, Section 206(a)(4)(F)(vi), should be amended to provide:

(VI) NONDISCRIMINATION AGAINST BENEFICIARIES--Except as otherwise provided in law, an institution or organization shall not discriminate against an individual in regard to rendering assistance funded under any program described in this title on the basis of religion, a religious belief, or refusal to actively participate in a religious practice.

Tenth, Section 206(a)(4)(F)(vi), should be amended by inserting the words "non-pervasively sectarian" prior to "religious" in line 2.

Eleventh, Section 206(a)(4)(F)(ix), should be amended to provide:

LIMITATIONS ON USE OF FUNDS FOR CERTAIN PURPOSES.-- No forms of disbursements to institutions or organizations to provide services and administer programs under this title shall be used or expended for any sectarian activity, including sectarian worship, instruction of proselytization.

Total Pages: 5

LRM ID: REJ163

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, June 24, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference

OMB CONTACT: Ronald E. Jones

PHONE: (202)395-3386 FAX: (202)395-3109

SUBJECT: EDUCATION Report on S10 Violent and Repeat Juvenile Offender Act of 1997

DEADLINE: 5:00 PM TODAY Tuesday, June 24, 1997

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This proposed letter responds to the proposed Specter amendment distributed with the Labor Department letter as LRM REJ159 on Monday, 6/24.

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LRM ID: REJ163
Offender Act of 1997

SUBJECT: EDUCATION Report on S10 Violent and Repeat Juvenile

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Ronald E. Jones Phone: 395-3386 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: _____ (Date)
 _____ (Name)
 _____ (Agency)
 _____ (Telephone)

The following is the reponse of our agency to your request for views on the above-captioned subject:

Concur

No Objection

No Comment

See proposed edits on pages _____

Other: _____

FAX RETURN of _____ pages, attached to this reponse sheet

DRAFT

Honorable Arlen Specter
United States Senate
Washington, DC 20510

Dear Senator Specter:

Thank you for your letter of June 5, 1997, in which you request my views on amendments you may offer to S. 10, the "Violent and Repeat Juvenile Offender Act of 1997" during markup by the Senate Judiciary Committee. Among other things, your amendment would give the Attorney General broad authority to waive provisions of law that apply to numerous programs administered by the Departments of Education, Health and Human Services, and Labor, to permit the use of funds under those programs for job training, literacy training, remedial education, and substance abuse treatment for juvenile offenders. While I strongly support efforts to coordinate Federal programs that serve this critically important population more effectively, and support the goals behind your amendment, I have serious concerns about the waiver authority it contains.

As you may know, the Department of Education is currently exercising the several statutory waiver authorities it has available to great advantage to our grantees. I am pleased that the Department has granted over one hundred waivers to State and local school systems, so that they may pursue their educational reform strategies in the most effective manner possible, and without Federal statutory or regulatory impediments. Our generally positive experience in granting these waivers demonstrates the importance of ensuring that statutory waiver authority is carefully crafted so as to achieve the appropriate balance between needed flexibility, on the one hand, and program accountability and integrity, on the other. Moreover, waivers should be available not for the sake of flexibility alone, or merely to establish alternative sources of funding for unrelated programs, but to achieve some independent purpose, such as reform or experimentation, that is related to the purposes of the programs that are subject to waiver. Unfortunately, I believe this vitally important balance is lacking in your proposed amendment.

Under your amendment, the Attorney General would be authorized, "at the request of the Governor of a State," to waive any and all provisions of numerous Federal programs, including several programs that I am responsible for administering. I believe that waivers of Department of Education program requirements should be granted only by the Secretary of Education. I remain responsible, by law, for their implementation.

In addition, I am concerned that, as currently drafted, the waiver authority is apparently limitless, in terms of both time and effect. For example, because there would be no limitation against waiving the basic purposes of the listed programs, or the eligible recipients of such funds, Federal grant funds appropriated for specific educational purposes could, after a waiver, become indefinitely available for substance abuse treatment. Moreover, because your amendment contains no requirement for an application, or other means of explaining the need for, or wisdom of, a requested waiver, it is not clear how the Attorney General would exercise her discretion in the matter. Indeed, there is no standard articulated by which the Attorney General is to make such a decision.

I am also concerned about the potentially disruptive effect of the proposed waiver authority on State governance and accountability for Federal education grants. Funds under most of the Department of Education programs listed in your amendment are awarded, by law, to State and local school districts, not Governors (who, in many States, do not control education funds), and most of those funds are used, by law, by local school districts for programs of their own design, consistent with statutory purposes. Your proposed waiver authority would produce an undesirable element of uncertainty in the planning, execution, and stewardship of these Federal programs at the State and local level.

As I noted at the outset, I appreciate this opportunity to convey the views of the Department, and support the goals of your amendment. Although, as currently drafted, I cannot support your amendment, I believe that we can work together to craft a mutually satisfactory alternative within the context of existing waiver authority.

Yours sincerely,

Richard W. Riley

Date: 06/05/97 Time: 15:18

Cops say murderous drug gang used kids

NEW YORK, June 5 (UPI) — Prosecutors say they've arrested 40 members of a heroin distribution ring that raked in \$10 million a year operating out of a pool hall in New York's Lower East Side. They say the gang used at least 8 children under 16 as lookouts, couriers and pushers, paying them up to \$500 a week.

THE WHITE HOUSE

OFFICE OF LEGISLATIVE AFFAIRS

SENATE LIAISON

--- FAX COVER SHEET ---

NOTE:

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS
CONFIDENTIAL AND INTENDED FOR THE RECIPIENT ONLY.

DATE:

5/20

TO:

JOE

FAX:

FROM:

Paul Carey

Barbara Chow

X Tracey Thornton

Ben Freeland

Mike Williams

Rick Gonzales

Jeff Forbes

Stacey Rubin

PHONE (202) 456-6493

FAX (202) 456-2604

RE:

- ① Anonymous Source
- ② Not a problem
G van #'s
- ③ recognizes
resources
- ④ AG select
- ⑤ ongoing
effort

PAGE 1 of 12

CORE MANDATES

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OFFICE OF THE ATTORNEY GENERAL**FACSIMILE TRANSMITTAL COVER SHEET**

DATE: 6 / 20 / 97

TO: Tracy Thornton

FACSIMILE NO.: 456-2604 / 456-6221

TELEPHONE NO.: 456-6443

FROM: Kinney Zalesna

FACSIMILE NO.: 202-516-5117

TELEPHONE NO.: 202-514-2927 N 9665

NUMBER OF PAGES INCLUDING COVER SHEET 11

COMMENTS:

The Fundamental Protections piece is a restatement of our proposed statutory changes + our amended regulations. The local community planning piece is an amendment to their bill that would involve the whole community - not just law enforcement - in long-range community planning. This is something the AG told Sessions she was eager to work with him on and offered to design some language. We're on a tight time frame as this all was expected on Friday / Monday at the latcote

05/20/87 12:30

002

**FUNDAMENTAL PROTECTION OF JUVENILES
IN CUSTODY**

On page 100, line 1, strike paragraph (10) and insert in its place the following:

"(10) provide that juveniles who are accused or adjudicated for offenses that would not be criminal if committed by an adult, other than an offense that constitutes a violation of a valid court order or a violation of Section 922(x) of Title 18 of the United States Code or a similar State law), or alien juveniles in custody, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities; except that accused status offenders or nonoffenders in lawful custody can be held in a secure juvenile detention facility for up to 24 hours, exclusive of weekends and holidays, prior to an initial court appearance and for an additional 24 hours, exclusive of weekends and holidays, following an initial court appearance;

"(11) provide that juveniles alleged to be or found to be delinquent, and youth within the purview of subparagraph (10), shall not be detained or confined in any secure institution in which they have contact (other than brief and inadvertent or accidental contact between juvenile offenders in a secure custody status and incarcerated adults in secure areas of a facility that are not dedicated to use by juvenile offenders and which are nonresidential) with adult persons incarcerated because the adult persons have been convicted of a crime or are awaiting trial on

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003

criminal charges, or with the part-time or full-time security staff (including management) or direct-care staff of a collocated jail or lockup for adults unless such staff have been properly trained and certified by the State to supervise juveniles; and

"(12) provide that --

"(A) no juvenile shall be detained or confined in any jail or lockup for adults, except that juveniles accused or adjudicated for non-status offenses may be held in secure custody in such a facility for purposes of processing or while awaiting transfer to a juvenile facility, release, or court appearance for a period not to exceed six hours. Such exception is extended to 48 hours, excluding weekends and holidays, provided that this exception is limited to areas that are in compliance with paragraph (11) and:

"(i) are outside a Standard Metropolitan Area and have no existing acceptable alternative placement available; and

"(ii) are located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for a court appearance, transfer, or release within such 48 hours period, so that a brief (not to exceed 24 additional hours) delay is excusable;

"(iii) are located where conditions of safety exist (such as severely adverse, life threatening weather conditions that do

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004

not allow for reasonably safe travel), in which case the time for a court appearance transfer to an alternative placement, or release may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel; or

"(B) a juvenile accused of or adjudicated for a non-status offense may be detained or confined in a jail or lockup for adults provided that such jail or lockup for adults is in compliance with paragraph (11) and:

- "(i) is outside a Standard Metropolitan Area;
- "(ii) the juvenile consents;
- "(iii) the parent or legal guardian of the juvenile consents;
- "(iv) the juvenile is represented by counsel and the counsel for the juvenile concurs;
- "(v) the court reviews and approves the detention or confinement; and
- "(vi) the court approval of such detention or confinement is subject to review every seven days.

"(13) address programmatic efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups if such proportion exceeds the proportion of crimes committed by such groups, if known, or the proportion such groups represent in the general population.

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008

However, this paragraph neither establishes nor requires numerical standards or quotas in order for a jurisdiction to achieve or meet this requirements.

"(14) If a State fails to demonstrate that it fully meets one or more of the requirements of Section 222(a) (10), Section 222(a) (11), Section 222(a) (12), and Section 222(a) (13) of this title in any fiscal year beginning with fiscal year 1998, the amount allotted under Section 222 of this Title to said State shall be reduced by 50 percent unless, the Administrator of the Office of Juvenile Crime Control and Accountability has reasonably determined that the state:

"(1) has substantially met each requirement with respect to which the State had not fully met the requirement; or

"(2) has made, through appropriate State law, a commitment to meeting these requirements;

"(3) has submitted a plan sufficient to fully meet each requirement; and

"(4) has met any other appropriate stipulations as the Administrator the Office of Juvenile Crime Control and Accountability may promulgate by regulation."

"(15) The Administrator of the Office of Juvenile Crime Control and Accountability is authorized at the request of a state pursuant to its State plan, to waive, in whole or in part, any State plan requirements and/or implementing regulation as appropriate to test innovative programs and methods to meet the needs of juveniles in the juvenile justice system."

Beginning on page 100, line 6, and continuing through page 101, line 14, paragraphs "(11)", "(12)", "(13)", "(14)", "(15)", and "(16)", are redesignated as paragraphs "(16)", "(17)", "(18)", "(19)", "(20)", and "(21)", respectively; and

On page 49, line 25, add the following new paragraphs:

"(12) The term "contact" means any physical or sustained sight and sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees. Sight contact is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between incarcerated adults and juvenile offenders.

"(13) The term "residential area" means an area used to confine individuals overnight, and may include sleeping, shower and toilet, and day room areas.

"(14) The term "juvenile" means an individual who may be subject to the exercise of original juvenile court jurisdiction for purposes of adjudication and disposition based on age and offense limitations established by State law or who is in custody based on an allegation or adjudication of delinquency and having reached the age of full criminal responsibility is not subject to placement or transfer to an adult facility by State laws.

"(15) The term "collocated" means that an area designed or used for the detention or confinement of juvenile offenders is located in the same building as an adult jail or

05/20/97

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lockup or a building used for the detention or confinement of juvenile offenders is part of a related complex of buildings located on the same grounds as an adult jail or lockup. Such areas or building may be approved by the State as a juvenile detention facility when:

"(1) separation between juveniles and incarcerated adults by sight and sound is achieved architecturally or through time phasing of common use nonresidential areas;

"(2) separate juvenile and adult programs exist, including a full range of separate juvenile program services under an independent and comprehensive operational plan;

"(3) all security (including management) and direct care staff serving both adult and juvenile populations of the collocated facilities have been properly trained and certified by the State to supervise juveniles; and

"(4) the facility meets State established standards or licensing requirements for juvenile detention facilities on the same basis as a free-standing juvenile detention center and is licensed as appropriate."

EXPLANATION:

This amendment seeks to codify in one place all criteria for protecting juveniles held in

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custody. The amendment combines the language in the Administrations's Anti-Gang Bill governing the protection of juveniles in custody (S.362 at page 87, line 9 through page 91, line (4) with language contained in the Office of Juvenile Justice and Delinquency Prevention's regulations governing the fundamental protection of juveniles in custody issued in December of 1986. By combining this language, the amendment codifies these protections entirely within the statute. This is achieved in two steps. First, the language discussing the protections of juveniles in S. 10 is expanded. Second, the definitional section in S.10 is expanded to include language to clarify words used in the juvenile protection paragraphs.

The proposed additions to the definitions section [Section 103 (12)-(15)] and the insertion of Sections 222(a) (10)-(15) in lieu of Section 222(a) (10) [number Sections 222(a) (11)-(16) as Sections 222(a) (15)-(21), respectively] would preserve the fundamental protections of juveniles in custody as in the Administration's proposal. This also preserves the state reporting requirement and codifies recent regulatory changes. More specifically the amendment:

- (1) codifies the DSO 24 hour exceptions for pre and post court appearances;
- (2) codifies that brief and inadvertent or accidental contact between juveniles and adults does not violate the separation requirement;
- (3) codifies the approval of collocated facilities that share program space and use the same staff to serve both juvenile and adult populations; provided that management and security staff are trained to work with juveniles;
- (4) allows delinquents who reach the age of full criminal responsibility to

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be detained or confined in adult facilities without separation from adult where provided by State laws;

(5) codifies the general six hour hold exception for jails and lockups; extends the exception to 48 hours, exclusive of nonjudicial days, for rural jurisdictions and allows juveniles to be held indefinitely in rural jails with appropriate consents and court approval; and

(6) authorizes the Administrator to waive statutory or regulatory requirements to allow states to test innovative programs and methods to meet the needs of juveniles in the juvenile justice system.

CDP, MAY 19, 1997
[Signature]
CDP

05/20/87 12:44

05/20/87 TUE 09:45 FAX 802 307 2083

OJDP

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LOCAL COMMUNITY PLANNING AND ADVISORY GROUPS

The bill, S. 10, is amended --

On page 69, line 16, strike the words "in place a" and all that follows through the words "as enumerated in section 102", and insert in their place the words "required the use of a local advisory group by units of local government applying under this title whose purpose is to meet and discuss juvenile crime control and to enforce the purposes and policies enumerated in section 102 and 204(h)(2)"; and

On page 69, line 21, strike the words "in every phase of juvenile crime control, including", and insert in their place the words "representing members from all aspects of the community"; and

On page 70, line 2, strike the words "and other citizens," and insert in their place the words "school officials, health, mental health, and youth service providers, and child welfare and protective service, employment, and business professionals, in addition to religious leaders, parents, and family members,"; and

On page 70, line 3, strike the words "chief juvenile judge" and insert in their place the words "chief executive officer"; and

On page 70, line 5 through line 12, strike clause (ii) in its entirety and replace with the following new clause:

(ii) shall conduct a thorough assessment of the local conditions and factors relating to the range of activities provided for in section 204(h)(2), including case processing in juvenile court from arrest to disposition and punishment, and, effectuate the necessary changes to make the system more efficient, to more effectively prevent and control juvenile crime, and to ensure the accountability of juvenile offenders; and"

On page 70, line 12, add the following new clause.

"(iii) using the assessment data referenced in (ii), the unit of local government will develop the applicant jurisdiction's strategic plans and programs consistent with purposes authorized under section 204(h)(2)(A) through (L) of this title, and such plans and programs must incorporate evidence of coordination with other juvenile related programs, service providers, and related activities in the applicant jurisdiction."

Explanation:

This language amends S.10's local planning requirement [at Section 204(h)(3)(F)] under the Section 204(h) "Juvenile Crime Control and Juvenile Offender Accountability Incentive Block

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05/20/87 TUE 05:45 FAX 302 347 3093

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Grant" program. Under this amendment, the local advisory groups established under subparagraph (F) would be expanded to include greater and more wide-ranging local community representation, participation and planning. Further these advisory groups would be appointed by the chief executive officer of the applicant jurisdiction as opposed to the chief juvenile judge as provided for in S.10. The chief executive officer is in a better position to organize and coordinate a broad array of local resources. Further, the planning and coordination established would apply specifically to purpose areas (A) through (L) established under the 204(h) grant program.

SUPERVISORY BOARDS

The bill S. 10 is amended --

On page 89, line 9, between the word "plan" and the word ":", insert the following words, "and provide for the creation or designation of an appropriate supervisory board, such as a state advisory group, that includes a balance of public and private sector representation, and expertise from a variety of disciplines in juvenile justice, for the purpose of establishing policies and priorities for the planning, selection, and award of funds received by the state agency pursuant to this title".

Explanation:

This language amends S. 10's state agency requirement to provide for the establishment of a policy level board as part of the state agency structure. This supervisory board would be created by the governor or by the state agency director, as determined by the governor or state legislature, to provide policy level guidance for program administration.

DUP, MAY 12, 1987

Under-401
7:40 p.m.

DEMOCRATIC AMENDMENTS TO S. 10

TITLE ONE

1. "Safety Valve" Amendments to provision authorizing charging juveniles 14 years and older as adults in Federal court at sole, non reviewable discretion of prosecutor:

a) Sentencing safety valve - give sentencing judge authority to sentence juvenile according to sentencing guidelines without regard to statutory mandatory minimums (S.362); (LEAHY)

b) 2nd Look - At 18, juvenile would have right to petition judge for early supervised release, even if prison term is not completed; (KENNEDY)

c) Reverse waiver - after the juvenile is charged with a crime, upon motion of the defendant, the judge may hold hearing to determine whether to transfer defendant to juvenile status, upon consideration of enumerated factors (S. 362).

2. Require certification by Attorney General before U.S. Attorneys may charge juveniles as adults.

3. Narrow categories of crimes for which juvenile may be prosecuted as adult from "crime of violence" under 18 U.S.C. Sec. 16 (use of physical force against person or property of another) to "serious violent felony" under 18 U.S.C. Sec. 3559(c) (murder, manslaughter, assault, sexual abuse, kidnaping, car jacking, robbery, aircraft piracy, extortion, arson, or other offense punishable by a maximum term of imprisonment of 10 years or more and has as element use of physical force against another person). (LEAHY)

4. Right of jury trial for juveniles subject to lengthy terms of imprisonment.

5. Juvenile Death Penalty -- repeals provision lowering age to 16. (BIDEN)

6. Right to Counsel - no waiver of right to counsel without parental notification. (DURBIN)

7. Restore current certification requirement by Attorney General that prosecution of juvenile in federal court is necessary because state has refused to, or cannot, proceed against the juvenile. Also strike the "ends of justice" portion of that provision in S.10. (FEINGOLD)

TITLE THREE

8. Separate prevention funding --carve-out \$100 million from the \$500 million grant program for after-school programming with a strong evaluation component. (BIDEN/LEAHY)

9. Separate prosecutor/gang task force grant program -- stand alone funding for hiring prosecutors, court personnel to crack down on gangs and violent youth at the

state and local level. (BIDEN)

10. Conditions on \$500 million --Modify condition requiring trying 14 year olds as adults for "all" felonies to all "violent" felonies (as defined by state law). (BIDEN/LEAHY)

11. Waiver on conditions on incentive grants for \$500 million for States making progress on addressing juvenile crime and that do not meet other conditions. (KENNEDY/LEAHY)

12. Modify records provision in S. 10 to make it less expensive and to avoid preemption of state expungement laws. (BIDEN)
-If that fails, then require States to maintain all juvenile records until juvenile reaches 30 years old, and if juvenile commits crime as adult, juvenile record converted to adult record. (DURBIN)

13. Juvenile Arrestee Drug testing -- modify condition on \$500 million program so states will qualify if they test all "appropriate" offenders and provide "interventions" (BIDEN)

14. Restore certain 1994 Crime Law and other prevention programs (BIDEN/KOHL/KENNEDY), including:

- Gang Resistance Education and Training program - Amendment would retain GREAT program, an ATF-run program through which local law enforcement officers provide anti-gang education to 7th graders. The program has been appropriated with \$7 or 8 million each of the past 3 years.
- Title V local incentive prevention grants- Amendment would retain Title V local incentive prevention grants which fund community-based prevention programs and require a 50-percent nonfederal match. The program has been appropriated for \$20 million in each of past 3 years. (KOHL)

15. Substitute Thompson/Biden separation and other mandates on \$150 million for "National Juvenile Crime Control and Juvenile Offender Accountability" program. (BIDEN)

16. Change funding authorization for "National Juvenile Crime Control and Juvenile Offender Accountability" programs from \$150 million to \$170 million.

17. Administrative costs -- specific percentage set aside for administrative costs of program. (BIDEN/FEINGOLD)

18. Research funding -- increase percentage for research. (BIDEN)

19. Restrict use of 35% carve-out in \$500 million "Juvenile Crime Control and Juvenile Offender Accountability Incentive Block Grants" (35% carve out) for juvenile facilities so money cannot be used for operation of adult facilities. (BIDEN)

20. Pass through amendment - provide an allocation formula for the pass through to local units of government assuring that big cities get their fair share (with a waiver provision for states that conduct most of the law enforcement services at the State level). May be accepted by Hatch. (DURBIN)

21. Religious non-discrimination provision - Amend Ashcroft provisions so that religiously-affiliated organizations can provide services but not religious organizations. (DURBIN)

22. Revise Lobbying prohibition in S.10 to conform to OMB Circular A-122.

OTHER:

23. Prohibition of Laser-sighting devices in commission of a crime.

24. Authorize emergency re-scheduling authority for Attorney General. (BIDEN)

25. Create pilot program of challenge grant to cities that adopt Boston model. (SESSIONS/KENNEDY)

26. Juvenile Corrections Act--Amendment would set aside for juvenile corrections programs and facilities 10% of all Crime Act Trust Fund monies dedicated to prison construction. This would dedicate almost \$800 million over 3 years to juvenile corrections. (KOHL)

27. Restore earmarked funds for the National Runaway Hotline. (DURBIN/FEINSTEIN)

28. Local Law Enforcement Block Grant - reauthorize funding. (FEINSTEIN)

29. Police Athletic Leagues - provide funding for programs. (KENNEDY)

30. Deadbeat Parents Punishment Act - Amendment would increase penalties for deadbeat parents who fail to pay child support for out-of-state child. (KOHL/SHELBY)

31. Hate Crimes Amendment. (KENNEDY)

32. Small State minimum - amendment to add a small state floor of 2% to the DOJ Truth-In-Sentencing Incentive Grants. (LEAHY)

GUN AMENDMENTS

33. Child Safety Locks For Handguns--require licensed gun manufacturers, dealers, importers to sell handguns with and locking devices preventing the handgun from being discharged without first deactivating the device by means of a key or combination lock, and all firearms to carry a warning about the dangers of improper firearm storage. (KOHL/DURBIN/TORRICELLI)

U. S. HOUSE OF REPRESENTATIVES

Committee on the Judiciary
Democratic Staff Office - Subcommittee on Crime
B-336 Rayburn House Office Building
Washington, D.C. 20515

FACSIMILE COVER LETTER

TO:

Jose Gorda

FAX NO:

456-7028

PAGES:

8

(including this page)

FROM: DAVID YASSKY

COMMENTS:

If parts of this transmission are unclear or transmission
was faulted, please call: (202) 225-7087.

AMENDMENT TO H.R. 3
OFFERED BY MR. SCHUMER

Schumer 3

Add at the end the following new title:

1 **TITLE ~~VII~~—AFTER SCHOOL**
2 **CRIME PREVENTION ACT**

3 **SECTION 701. SHORT TITLE.**

4 This title may be cited as the “After School Crime
5 Prevention Act”.

6 **SEC. 702. PROGRAM AUTHORITY.**

7 (a) **IN GENERAL.**—The Attorney General may pro-
8 vide grants to eligible entities.

9 (b) **EQUITABLE ALLOCATION.**—The Secretary shall
10 attempt, to the extent practicable, to achieve an equitable
11 geographic allocation of grant funds awarded under this
12 title.

13 **SEC. 703. PROGRAM REQUIREMENTS.**

14 (a) **LOCATION.**—An eligible entity that receives a
15 grant under this section shall ensure that the program is
16 carried out—

17 (1) when appropriate, in the facilities of a pub-
18 lic school during nonschool hours; or

19 (2) in another appropriate local facility, such as
20 a college or university, a local or State park or
21 recreation center, church, or military base, that is—

1 (A) in a location that is easily accessible to
2 children in the community; and

3 (B) in compliance with all applicable local
4 ordinances.

5 (b) USE OF FUNDS.—

6 (1) IN GENERAL.—Such entity shall use funds
7 made available through the grant under this title to
8 provide children in the eligible community services
9 and activities that include extracurricular and aca-
10 demic programs, that are offered—

11 (A) after school and on weekends and holi-
12 days, during the school year; and

13 (B) as daily full-day programs (to the ex-
14 tent available resources permit) or as part-day
15 programs, during the summer months;

16 (2) ADMINISTRATIVE COSTS.—An entity that
17 receives funds under this title may not use more
18 than 5 percent of such funds to pay for the adminis-
19 trative costs of the program.

20 (3) CONTINUED AVAILABILITY OF GRANT
21 FUNDS.—Amounts made available under this title
22 shall remain available until expended.

23 SEC. 704. APPLICATIONS.

24 (a) APPLICATION REQUIRED.—To be eligible to re-
25 ceive a grant under this section, an eligible entity shall

1 submit an application to the Secretary at such time, in
2 such manner, and accompanied by such information, as
3 the Secretary may reasonably require, and obtain approval
4 of such application.

5 (b) CONTENTS OF APPLICATION.—Each application
6 submitted pursuant to subsection (a) shall—

7 (1) describe the area to be served, including the
8 level of poverty and juvenile delinquency for such
9 area;

10 (2) describe the activities and services to be
11 provided through the program for which the grant is
12 sought;

13 (3) contain a comprehensive plan for the pro-
14 gram that is designed to achieve identifiable goals
15 for children in the eligible community;

16 (4) demonstrate the manner in which the com-
17 munity-based organization will make use of the re-
18 sources, expertise, and commitment of private enti-
19 ties in carrying out the program for which the grant
20 is sought;

21 (5) include an estimate of the number of chil-
22 dren in the eligible community expected to be served
23 pursuant to the program;

1 (6) include a description of charitable private
2 resources, and all other resources, that will be made
3 available to achieve the goals of the program; and

4 (7) contain an assurance that the eligible entity
5 will use competitive procedures when purchasing,
6 contracting, or otherwise providing for goods, activi-
7 ties, or services to carry out programs under this
8 section.

9 **SEC. 705. ELIGIBILITY OF PARTICIPANTS.**

10 (a) **IN GENERAL.**—To the extent possible, each child
11 who resides in an eligible community shall be eligible to
12 participate in a program carried out in a community that
13 receives assistance under this title.

14 (b) **ELIGIBILITY.**—To be eligible to participate in a
15 program that receives assistance under this title, a child
16 shall provide the express written approval of a parent or
17 guardian, and shall submit an official application and
18 agree to the terms and conditions of participation in the
19 program.

20 (c) **NONDISCRIMINATION.**—In selecting children to
21 participate in a program that receives assistance under
22 this title, an eligible entity shall not discriminate on the
23 basis of race, color, religion, sex, national origin, or dis-
24 ability.

1 SEC. 706. INVESTIGATIONS AND INSPECTIONS.

2 The Secretary, in consultation with the Attorney
3 General, may conduct such investigations and inspections
4 as may be necessary to ensure compliance with the provi-
5 sions of this title.

6 SEC. 707. FEDERAL SHARE.

7 (a) IN GENERAL.—The Federal share of a grant
8 made under this title may not exceed 90 percent of the
9 total costs of the program described in the application sub-
10 mitted under section 714 for the fiscal year for which the
11 program receives assistance under this title.

12 (b) WAIVER.—The Secretary may waive, in whole or
13 in part, the requirement of a matching contribution under
14 subsection (a).

15 (c) IN-KIND CONTRIBUTIONS.—In-kind contributions
16 may constitute a portion of the non-Federal share of a
17 grant under this title.

18 SEC. 708. DEFINITIONS.

19 For purposes of this title—

20 (1) the term “child” has the same meaning
21 given such term under State law;

22 (2) the term “community-based organization”
23 means a private, locally initiated, community-based
24 organization that—

25 (A) is a nonprofit organization, as defined
26 in section 103(23) of the Juvenile Justice and

1 Delinquency Prevention Act of 1974 (42 U.S.C.
2 5603(23)); and

3 (B) is operated by a consortium of service
4 providers, consisting of representatives of 5 or
5 more of the following categories of persons—

6 (i) residents of the community;

7 (ii) business and civic leaders actively
8 involved in providing employment and busi-
9 ness development opportunities in the com-
10 munity;

11 (iii) educators;

12 (iv) religious organizations;

13 (v) law enforcement agencies;

14 (vi) public housing agencies;

15 (vii) other public agencies; and

16 (viii) other interested parties;

17 (3) the term “eligible community” means an
18 area which meets specific criteria regarding signifi-
19 cant poverty and juvenile crime and delinquency,
20 and such additional criteria as the Secretary may re-
21 quire by regulation;

22 (4) the term “eligible entity” means a commu-
23 nity-based organization or an Indian tribe;

24 (5) the term “Indian tribe” means a tribe,
25 band, pueblo, nation, or other organized group or

1 community of Indians, including an Alaska Native
2 village (as defined in or established under the Alaska
3 Native Claims Settlement Act (43 U.S.C. 1601 et
4 seq.)), that is recognized as eligible for the special
5 programs and services provided by the United States
6 to Indians because of their status as Indians; and

7 (6) the term "public school" has the same
8 meaning given such term in section 14101 of the El-
9 ementary and Secondary Education Act of 1965 (20
10 U.S.C. 8801).

11 **SEC. 709. AUTHORIZATION OF APPROPRIATIONS.**

12 There are authorized to be appropriated to carry out
13 this title—

14 (1) \$100,000,000 for fiscal year 1998;

15 (2) \$100,000,000 for fiscal year 1999; and

16 (3) \$100,000,000 for fiscal year 2000.

Total Pages: 13

LRM ID: REJ100

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001**

Tuesday, May 20, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference *Jim*
OMB CONTACT: Ronald E. Jones
PHONE: (202)395-3386 FAX: (202)395-3109

SUBJECT: JUSTICE Amendment(s) on S10 Violent and Repeat Juvenile Offender Act of 1997 

DEADLINE: Noon Wednesday, May 21, 1997

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: DOJ has asked that these amendments, which were prepared at the request of the Senate Judiciary Committee staff, be given expedited review for use at a possible markup of S. 10 on Thursday, May 22. According to DOJ, the first set of proposals ("Fundamental Protection of Juveniles in Custody") combine language cleared as part of the Administration's Anti-Gang and Youth Violence Act that was sent to the Congress earlier this year and regulations published in December 1996.

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LRM ID: REJ100 SUBJECT: JUSTICE Amendment(s) on S10 Violent and Repeat Juvenile Offender Act of 1997

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Ronald E. Jones Phone: 395-3388 Fax: 395-3109
 Office of Management and Budget
 Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: _____ (Date)
 _____ (Name)
 _____ (Agency)
 _____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

**FUNDAMENTAL PROTECTION OF JUVENILES
IN CUSTODY**

On page 100, line 1, strike paragraph (10) and insert in its place the following:

“(10) provide that juveniles who are accused or adjudicated for offenses that would not be criminal if committed by an adult, other than an offense that constitutes a violation of a valid court order or a violation of Section 922(x) of Title 18 of the United States Code or a similar State law), or alien juveniles in custody, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities; except that accused status offenders or nonoffenders in lawful custody can be held in a secure juvenile detention facility for up to 24 hours, exclusive of weekends and holidays, prior to an initial court appearance and for an additional 24 hours, exclusive of weekends and holidays, following an initial court appearance;

“(11) provide that juveniles alleged to be or found to be delinquent, and youth within the purview of subparagraph (10), shall not be detained or confined in any secure institution in which they have contact (other than brief and inadvertent or accidental contact between juvenile offenders in a secure custody status and incarcerated adults in secure areas of a facility that are not dedicated to use by juvenile offenders and which are nonresidential) with adult persons incarcerated because the adult persons have been convicted of a crime or are awaiting trial on

criminal charges, or with the part-time or full-time security staff (including management) or direct-care staff of a collocated jail or lockup for adults unless such staff have been properly trained and certified by the State to supervise juveniles; and

"(12) provide that -

"(A) no juvenile shall be detained or confined in any jail or lockup for adults, except that juveniles accused or adjudicated for non-status offenses may be held in secure custody in such a facility for purposes of processing or while awaiting transfer to a juvenile facility, release, or court appearance for a period not to exceed six hours. Such exception is extended to 48 hours, excluding weekends and holidays, provided that this exception is limited to areas that are in compliance with paragraph (11) and:

"(i) are outside a Standard Metropolitan Area and have no existing acceptable alternative placement available; and

"(ii) are located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for a court appearance, transfer, or release within such 48 hours period, so that a brief (not to exceed 24 additional hours) delay is excusable;

"(iii) are located where conditions of safety exist (such as severely adverse, life threatening weather conditions that do

not allow for reasonably safe travel), in which case the time for a court appearance transfer to an alternative placement, or release may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel; or

"(B) a juvenile accused of or adjudicated for a non-status offense

may be detained or confined in a jail or lockup for adults provided that such jail or lockup for adults is in compliance with paragraph (11) and;

"(i) is outside a Standard Metropolitan Area;

"(ii) the juvenile consents;

"(iii) the parent or legal guardian of the juvenile consents;

"(iv) the juvenile is represented by counsel and the counsel for the juvenile concurs;

"(v) the court reviews and approves the detention or confinement; and

"(vi) the court approval of such detention or confinement is subject to review every seven days.

"(13) address programmatic efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups if such proportion exceeds the proportion of crimes committed by such groups, if known, or the proportion such groups represent in the general population.

However, this paragraph neither establishes nor requires numerical standards or quotas in order for a jurisdiction to achieve or meet this requirements.

"(14) "If a State fails to demonstrate that it fully meets one or more of the requirements of Section 222(a) (10), Section 222(a) (11), Section 222(a) (12), and Section 222(a) (13) of this title in any fiscal year beginning with fiscal year 1998, the amount allotted under Section 222 of this Title to said State shall be reduced by 50 percent unless, the Administrator of the Office of Juvenile Crime Control and Accountability has reasonably determined that the state:

"(1) has substantially met each requirement with respect to which the State had not fully met the requirement; or

"(2) has made, through appropriate State law, a commitment to meeting these requirements;

"(3) has submitted a plan sufficient to fully meet each requirement; and

"(4) has met any other appropriate stipulations as the Administrator the Office of Juvenile Crime Control and Accountability may promulgate by regulation."

"(15) The Administrator of the Office of Juvenile Crime Control and Accountability is authorized at the request of a state pursuant to its State plan, to waive, in whole or in part, any State plan requirement and/or implementing regulation as appropriate to test innovative programs and methods to meet the needs of juveniles in the juvenile justice system."

Beginning on page 100, line 6, and continuing through page 101, line 14, paragraphs "(11)", "(12)", "(13)", "(14)", "(15)", and "(16)", are redesignated as paragraphs "(16)", "(17)", "(18)", "(19)", "(20)", and "(21)", respectively; and

On page 49, line 25, add the following new paragraphs:

"(12) The term "contact" means any physical or sustained sight and sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees. Sight contact is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between incarcerated adults and juvenile offenders.

"(13) The term "residential area" means an area used to confine individuals overnight, and may include sleeping, shower and toilet, and day room areas.

"(14) The term "juvenile" means an individual who may be subject to the exercise of original juvenile court jurisdiction for purposes of adjudication and disposition based on age and offense limitations established by State law or who is in custody based on an allegation or adjudication of delinquency and having reached the age of full criminal responsibility is not subject to placement or transfer to an adult facility by State laws.

"(15) The term "collocated" means that an area designed or used for the detention or confinement of juvenile offenders is located in the same building as an adult jail or

lockup or a building used for the detention or confinement of juvenile offenders is part of a related complex of buildings located on the same grounds as an adult jail or lockup. Such areas or building may be approved by the State as a juvenile detention facility when:

"(1) separation between juveniles and incarcerated adults by sight and sound is achieved architecturally or through time phasing of common use nonresidential areas;

"(2) separate juvenile and adult programs exist, including a full range of separate juvenile program services under an independent and comprehensive operational plan;

"(3) all security (including management) and direct care staff serving both adult and juvenile populations of the collocated facilities have been properly trained and certified by the State to supervise juveniles; and

"(4) the facility meets State established standards or licensing requirements for juvenile detention facilities on the same basis as a free-standing juvenile detention center and is licensed as appropriate."

EXPLANATION:

This amendment seeks to codify in one place all criteria for protecting juveniles held in

custody. The amendment combines the language in the Administrations's Anti-Gang Bill governing the protection of juveniles in custody (S.362 at page 87, line 9 through page 91, line 18) with language contained in the Office of Juvenile Justice and Delinquency Prevention's regulations governing the fundamental protection of juveniles in custody issued in December of 1996. By combining this language, the amendment codifies these protections entirely within the statute. This is achieved in two steps. First, the language discussing the protections of juveniles in S. 10 is expanded. Second, the definitional section in S.10 is expanded to include language to clarify words used in the juvenile protection paragraphs.

The proposed additions to the definitions section [Section 103 (12)-(15)] and the insertion of Sections 222(a) (10)-(15) in lieu of Section 222(a) (10) [number Sections 222(a) (11)-(16) as Sections 222(a) (15)-(21), respectively] would preserve the fundamental protections of juveniles in custody as in the Administration's proposal. This also preserves the state reporting requirement and codifies recent regulatory changes. More specifically the amendment:

- (1) codifies the DSO 24 hour exceptions for pre and post court appearances;
- (2) codifies that brief and inadvertent or accidental contact between juveniles and adults does not violate the separation requirement;
- (3) codifies the approval of colocated facilities that share program space and use the same staff to serve both juvenile and adult populations; provided that management and security staff are trained to work with juveniles;
- (4) allows delinquents who reach the age of full criminal responsibility to

be detained or confined in adult facilities without separation from adult where provided by State laws;

(5) codifies the general six hour hold exception for jails and lockups; extends the exception to 48 hours, exclusive of nonjudicial days, for rural jurisdictions and allows juveniles to be held indefinitely in rural jails with appropriate consents and court approval; and

(6) authorizes the Administrator to waive statutory or regulatory requirements to allow states to test innovative programs and methods to meet the needs of juveniles in the juvenile justice system.

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LOCAL COMMUNITY PLANNING AND ADVISORY GROUPS

The bill, S. 10, is amended --

On page 69, line 16, strike the words "in place a" and all that follows through the words "as enumerated in section 102", and insert in their place the words "required the use of a local advisory group by units of local government applying under this title whose purpose is to meet and discuss juvenile crime control and to enforce the purposes and policies enumerated in section 102 and 204(h)(2)"; and

On page 69, line 21, strike the words "in every phase of juvenile crime control, including", and insert in their place the words "representing members from all aspects of the community"; and

On page 70, line 2, strike the words "and other citizens," and insert in their place the words "school officials, health, mental health, and youth service providers, and child welfare and protective service, employment, and business professionals, in addition to religious leaders, parents, and family members,"; and

On page 70, line 3, strike the words "chief juvenile judge" and insert in their place the words "chief executive officer"; and

On page 70, line 5 through line 12, strike clause (ii) in its entirety and replace with the following new clause:

(ii) shall conduct a thorough assessment of the local conditions and factors relating to the range of activities provided for in section 204(h)(2), including case processing in juvenile court from arrest to disposition and punishment, and, effectuate the necessary changes to make the system more efficient, to more effectively prevent and control juvenile crime, and to ensure the accountability of juvenile offenders; and"

On page 70, line 12, add the following new clause,

"(iii) using the assessment data referenced in (ii), the unit of local government will develop the applicant jurisdiction's strategic plans and programs consistent with purposes authorized under section 204(h)(2)(A) through (L) of this title, and such plans and programs must incorporate evidence of coordination with other juvenile related programs, service providers, and related activities in the applicant jurisdiction."

Explanation:

This language amends S.10's local planning requirement [at Section 204(h)(3)(F)] under the Section 204(h) "Juvenile Crime Control and Juvenile Offender Accountability Incentive Block

Grant" program. Under this amendment, the local advisory groups established under subparagraph (F) would be expanded to include greater and more wide-ranging local community representation, participation and planning. Further these advisory groups would be appointed by the chief executive officer of the applicant jurisdiction as opposed to the chief juvenile judge as provided for in S.10. The chief executive officer is in a better position to organize and coordinate a broad array of local resources. Further, the planning and coordination established would apply specifically to purpose areas (A) through (L) established under the 204(h) grant program.

SUPERVISORY BOARDS

The bill S. 10 is amended --

On page 89, line 9, between the word "plan" and the word ",", insert the following words, "and provide for the creation or designation of an appropriate supervisory board, such as a state advisory group, that includes a balance of public and private sector representation, and expertise from a variety of disciplines in juvenile justice, for the purpose of establishing policies and priorities for the planning, selection, and award of funds received by the state agency pursuant to this title".

Explanation:

This language amends S. 10's state agency requirement to provide for the establishment of a policy level board as part of the state agency structure. This supervisory board would be created by the governor or by the state agency director, as determined by the governor or state legislature, to provide policy level guidance for program administration.

OJP, MAY 19, 1997
jjadgrp:doj
7:30 p.m.