

Several Members of Congress Have Spoken Out Against S.10

Members of Congress and the Congressional Black and Hispanic caucuses have sounded an alarm. In the floor debate about the House companion bill to S.10, H.R.3, several members raised concerns about civil rights.

Rep. Louis Stokes (D-Ohio):

There can be no doubt that the draconian measures mandated by this legislation will have a disproportionately unfair impact on African American young people. As the nation experiences a slight overall decline in the crime rate, 5,300 black men of every 100,000 in the United States are in prison or jail.

This compares to an overall rate of 500 per 100,000 for the general population and is nearly five times the rate at which Black men were imprisoned in the apartheid era of South Africa. America is now the biggest incarcerator in the world and spends billions of dollars each year to incarcerate young people The number of African American males under criminal justice control is over 827,000. This figure exceeds the number of African-American males enrolled in higher education.

The Juvenile Justice Act of 1997 is a step in the wrong direction. We need to do all that we can to promote crime prevention measures to ensure that our children never start a life of crime. Furthermore, we must not give up our nation's most valuable resource, our young people.

I urge my colleagues to protect our youth and vote down this unconscionable measure. We are doing nothing to address this serious issue. Under this legislation, we can expect to see a significant increase in the number of African-American juveniles receiving mandatory minimum sentences.¹

Rep. Maxine Waters (D-Calif.), chair of the Congressional Black Caucus:

H.R.3 would for the first time allow juveniles to be prosecuted for conspiracy and result in another attempt to ensnare our youth into the criminal justice system.²

Rep. Nydia Velazquez (D-N.Y.):

I rise in strong opposition to H.R.3, the so-called Juvenile Crime Control Act, and in support of the Democratic substitute.

We might as well call the Republican version the throw-away-the-key act. Instead of providing education for children, the Republicans offer them prison with adults. Instead of offering programs to inspire and challenge children in poor communities, the Republicans offer them prison with adults. Instead of properly protecting children from firearms and drugs, the Republicans offer them prison with adults.³

¹ 143 Congressional Record. H2389 (May 8, 1997)

² 143 Congressional Record. H2373 (May 8, 1997)

³ 143 Congressional Record. H2365 (May 8, 1997)

March 12, 1998

The Honorable Bill Lan Lee
Acting Assistant Attorney General
U.S. Dept. of Justice
10th Street & Constitution Ave., N.W.
Washington, D.C. 20530

Dear Mr. Lan Lee:

We write to express our opposition to the current proposed juvenile justice bill S.10, the "Violent and Repeat Juvenile Offender Act of 1997." For the first time in nearly a decade juvenile arrests for violent crimes — murder, rape, robbery, and aggravated assault — declined, according to a recently released report by the U.S. Department of Justice. Young people under age 15 accounted for more than half of the decline for those arrests between 1994 and 1995, suggesting that there is no wave of youth crime on the rise (DOJ 1997). Despite these facts, S.10 is pending before the Senate and H.R. 3 and H.R. 1818 (the "Juvenile Crime Control Act of 1997") have been passed by the House during the first session.

S.10 represents a radical overhaul of our nation's juvenile justice system by erasing any distinction between troubled youth and adult criminal offenders. **Specifically, children will be locked up with adult inmates in jails and prisons; children who run away or skip school will be jailed; and children will be out of school and onto the streets for possession of tobacco, alcohol or drugs.** This legislation presents serious civil liberty violations to our nation's children and is counterproductive for public safety. Tragically, it is based on the chilling premise that many of the children who commit criminal offenses in our country are simply not worth saving or rehabilitating.

The following represents the major civil liberty issues raised by S.10, the "Violent and Repeat Juvenile Offender Act of 1997."

Cruel and Unusual Punishment

- **Children will be locked up with adult inmates in jails and prisons (Chapter 403 Section 5039(d)).** For over 20 years, federal law has protected children from adult inmates by requiring that they be separated by "sight and sound." S.10 would dramatically weaken these protections, allowing children to be in contact with adult inmates. While common sense alone tells us that this practice is dangerous for children, the grim statistics confirm this fact: children housed with adults are five times more likely to be sexually assaulted, twice as likely to be beaten and 50% more likely to be attacked with a weapon than those children housed in juvenile

facilities. Nationwide in 1994, 45 children died while they were locked up in state adult prisons or detention centers. S.10 is a radical and dangerous change to a federal law that works.

- Children tried as adults have a higher recidivism rate than comparable children tried as juveniles (children tried as adults re-offend sooner, commit more serious new offenses and re-offend more often).
- The majority of children transferred to adult court were charged with property or drug-related offenses, as opposed to serious, violent offenses or other offenses against persons.
- Deterrence, including tough-sounding laws, is particularly ineffective with regard to adolescents.

Equal Protection

- **S.10 endangers children who have committed no crime (Title II, Section 222(a)(10):** Current law strictly limits the time that status offenders (e.g., truants, runaways, ungovernable children) can be locked in juvenile facilities and does not permit them to be housed in adult jails at all. S.10 amends the Juvenile Justice and Delinquency Protection Act (JJDP) to allow authorities to hold status offenders for up to three days in secure confinement. This changes the current law provision which prohibits states, as a condition of accepting federal funds, from placing status offenders in secure detention or correctional facilities (called the "Deinstitutionalization of Status Offenders" or "DSO"). Under current law, states are encouraged to use the federal funds to establish community-based programs to help these non-criminal youth and their families and to provide effective alternatives to locking up these youth. All but two states are in compliance with the DSO requirement and in the states in compliance, DSO has resulted in a 98% decrease in instances of locking up status offenders (OJJDP, 1995).

Runaways and truants will be treated like criminals rather than children in need. **Instead of the current requirement that they be placed in a community setting, they are going to be locked up.** Children who do not commit crimes do not belong in jail, where they are vulnerable to assault, rape, suicide, and adult inmates. Instead, these children belong in community settings, such as foster homes, group homes, or their own homes, thereby being linked to the services they need so that they have a chance to grow into productive adults. In 1995 there were 249,500 runaway arrests. Of these arrests, 57% were girls, and of these girls it is estimated that 70% ran away from homes where they were sexually abused. Of all the male runaways, it is estimated that 40% ran away due to sexual abuse in their homes. (FBI, 1996). S.10 would put status offenders into adult jails for up to 24 hours, truants into secure confinement for up to 72 hours, plus weekends; and runaways into secure facilities for up to 14 days.

- **S.10 permits adult prosecution at the exclusive discretion of the prosecutor, 14 year old children can be tried in adult federal court:** Under current law, Federal judges have the ultimate decision making authority except in limited cases involving serious, repeat offenders. S.10 eliminates the judicial role by giving Federal prosecutors un-reviewable discretion to prosecute juveniles, 14 years and older, as adults. S. 10 removes Federal judges from any role in deciding whether or not a juvenile should be transferred to adult court. Decisions to prosecute children as adults cannot be reviewed by any court and all federal judicial transfer hearings are abolished.
 - Mandatory transfers are an abandonment of the traditional premise of the juvenile justice system – a unique institution created specifically to provide individualized treatment and services for troubled children.
 - Recidivism rates are much higher for those children transferred to the adult system than those children retained in the juvenile court system.
 - Eliminating judicial review undermines fairness, due process, and reduces individual determinations in transfer decision-making.
- **Disproportionate Minority Confinement:** Minority overrepresentation in the juvenile justice system is a serious problem in most states across the country. S.10 would eliminate current language in the federal JJDPa that requires states to determine whether there is racial disparity in their juvenile justice system; and, if so, to address that disparity in whatever manner the state determines. According to a 1995 Office of Juvenile Justice and Delinquency Prevention study, while African American boys represent only 15% of the youth population, they account for 26% of juvenile arrests, 32% of delinquency referrals to juvenile court, 41% of juveniles detained, 46% of juvenile correctional facility populations and 52% of all the children transferred to adult court.

In 1988, the Juvenile Justice and Delinquency Prevention Act was amended to include a proportionate sum of state funds to address the over representation of minority youth in the juvenile justice system. Since 1992, States participating in JJDPa Formula Grants Program have been required to “address efforts” to reduce the disproportionate incarceration of minority youths. Minority populations were defined as Asians, Pacific Islanders, Blacks, Hispanics, and American Indians. If the proportion of racial/ethnic minority youths detained or confined in secure detention and correctional facilities, jails, and lockups exceeded the proportion that such groups represented in the general population, the Act required those states to provide a strategy to reduce those proportions. **S.10 would eliminate states’ responsibility to identify and address disproportionate rates of minority confinement.** (See “Violent and Repeat Juvenile Offender Act of 1997,” S. Rep., No. 105-108, at 299-301 (1997), as currently codified at 42 U.S.C. 5633(a)(23).)

- **Privacy Rights:** S. 10 requires states to implement a state plan that would require any person convicted of a sexual act or sexual contact involving any person not having attained the age of 18 be tested for the presence of any sexually transmitted

disease. Additionally, the results of such test be provided to the victim or to the family of the victim as well as to any court or other government agency with primary authority for sentencing the person convicted of the sexual act or sexual contact (Title II, Section 222(a)(19)).

The ACLU Objects to the mandatory testing provision because:

1) Medical testing of the offender violates that person's privacy without providing any useful information to the victim. A victim should receive testing and medical treatment for sexually transmitted diseases ("STD") long before receiving any test results from the offender. In fact, the decision to begin prophylactic treatment for HIV (assuming HIV is a covered disease) must begin very soon after the initial exposure. Moreover, the lengthy delay between actual infection with certain STDs and the presence of enough antibodies to cause a positive test result means that a negative test result of the offender may gravely mislead a victim into believing that he or she has not been exposed to any STD.

2) The bill does not provide any medical assistance to the victim of any crime. The bill does not provide any funds for the testing, counseling, or treatment of the victim. Thus, the victim may receive emotionally distressing test results without having access to testing, counseling, or treatment.

3) The courts and the government have absolutely no reason to receive any medical test results. The requirement that the state provide the test result to "any court or other government agency with primary authority for sentencing the person" implies that a positive test result could improperly affect the length of a sentence merely because of the status of the offender. In addition, despite the severe discrimination experienced by many persons with STDs, the bill does not provide any assurance that the court or government agency will treat the test results confidentially.

4) The provision includes far more than non-consensual sex offenses involving a risk of transmission. The broad definitions of "sexual contact" and "sexual offense" in 18 U.S.C.A. § 2246(2) and (3) include such acts as certain touching of another person through that person's clothing. In addition, the broad provision even applies to consensual offenses where one person is below age 18, but older than the state's age of consent. Thus, states may have to test minors older than the age of consent who are convicted of nothing more than having consensual sex with each other. Such testing would occur without any funding for counseling or treatment.

Access to Juvenile Records

- Juvenile Records: S.10 requires state and local juvenile records to be treated in a manner equivalent to adult records, meaning that **juvenile records must be kept open instead of sealed** to be eligible for juvenile justice block grant funds. The consequences of a criminal history can reach far into children's futures. If convicted of a felony, youth can be disqualified later from voting, sitting on a jury, or running

for public office – the basic rights and responsibilities of citizenship. They can also be prohibited from holding many jobs, including lawyer, doctor, police officer and teacher. Additionally, convictions for misdemeanors, like shoplifting, vandalism and alcohol possession, will have to be revealed on job, college and military recruitment applications. Even after being held accountable for their offenses, children will continue to pay for their indiscretions throughout their adult lives. By jeopardizing the future educational and employment options and leaving these young people with little choice other than a life of crime. (Chapter 227, Section 3553).

First Amendment Issues

- **Church/State:** § 206 (5) of S.10 allows State and local governments to contract with religious organizations to accept and provide benefits and services funded under any program authorized by S.10. This section will allow churches to contract for services including counseling, housing, education, social, health and mental health services. This “Charitable Choice” provision violates the separation of church and state by allowing “pervasively sectarian” institutions, including houses of worship, to receive federal funding to administer social services and public health benefits on behalf of the government. Under current law, “religiously affiliated” organizations, such as Catholic Charities, are generally permitted to provide social services with government funds. Although a beneficiary technically retains the right to object to a religious provider, the bill does not provide notice to the beneficiary of his or her right to object. This is particularly disturbing in the context of this bill where juveniles may be ordered by a judge to attend a church of the judge’s choosing. It is ultimately unlikely that children, especially juvenile offenders, would tell a judge to select an alternative provider.

In addition to violating the Establishment Clause of the First Amendment, the “Charitable Choice” provision undercuts state religious liberty rights by preempting state constitutional provisions that would otherwise prohibit public funding of sectarian institutions. In addition to the federal Establishment Clause, many state constitutions contain explicit provisions that protect the autonomy of religion and the rights of taxpayers by prohibiting government funding, and thus oversight, of sectarian religious institutions. S.10 overtly preempts all of these state constitutions that protect religious liberty.

- **Public Policy Issues**

Mandatory Expulsion of Students: S.10 forces children out of school and onto the streets because of possession of tobacco, alcohol or drugs; S.10 will require expulsion of children from school for possession of tobacco, alcohol or drugs without a requirement that any alternative education be provided (Title XIV, Part “F,” Section 14601). This would put large numbers of children out on the streets without any positive alternatives to committing crimes, and would not address the needs of those children for educational services and (if drug or alcohol addiction are involved) for substance abuse treatment. According to the Centers for Disease Control, 4.5

Bill Lan Lee
March 12, 1998

million young people smoke in America. In New York, South Dakota, Kentucky and West Virginia over ½ of the teenagers smoke. (CDC, 1993).

Prevention programs that work will not receive the funds they desperately need. Successful prevention initiatives — including after-school programs and mentoring programs — have been proven to reduce youth delinquency. And interventions for children at-risk — such as parent training and graduation incentives — have been shown to reduce serious crimes more efficiently than incarceration. Prevention programs also cost considerably less than new juvenile detention beds, each of which costs more than \$100,000 to build. Nine out of 10 police chiefs, as well as other community leaders, support prevention as an effective crime-fighting tactic. But S.10 sets aside none of the \$500 million block grant or the \$150 million formula grant for prevention. Instead, S.10 sets aside 60 percent of the money for drug testing, juvenile records, and incarceration. More investments are needed in children and the community at the front end, to prevent the tragedy of crime and reduce the expenses of law enforcement. In addition to reducing the amount of money for prevention programs, because of the “Charitable Choice” provisions, states can funnel what little money there is to churches.

While we understand that the final provisions of the bill may change due to amendments, we ask that you do all within your power to ensure that Americas most vulnerable children are not subjected to such egregious civil liberties violations.

Sincerely,

American Civil Liberties Union
Justice Policy Institute
Juvenile Justice Center
National Association for the Advancement of Colored People
National Association for the Advancement of Colored People, Legal Defense Fund
Union of American Hebrew Congregation

JUVENILE CRIME -- "MUST HAVE" PROVISIONS

1. Guaranteed Funds for Prosecutors/Probation Officers

- The Administration's bill specifically sets aside \$200 million over 2 years for direct grants to local prosecutors and probation officers. Without such a provision there is no guarantee that juvenile crime legislation passed by Congress will replicate successful anti-gang crackdowns like Boston's Operation Cease-fire and Nite Light. **Juvenile crime legislation passed by the Congress must be tough on gangs by "carving out" direct funds for prosecutors and probation officers.**

2. Tighter Gun Restrictions, Tougher Gun Penalties

- The mix of gangs and guns is at the heart of America's youth violence problem, and no juvenile crime bill can ignore this. The Administration's bill keeps guns out of the hands of violent juveniles and protects children from tragic, accidental shootings. It does this by (1) increasing penalties for illegally transferring guns to juveniles; (2) expanding the Brady Law to prohibit violent juveniles from ever owning guns; and (3) requiring federal gun dealers to provide child safety locks with every gun sold. **Juvenile crime legislation passed by Congress must be tough on guns by increasing penalties, prohibiting violent juveniles from owning guns as adults and providing child safety locks with each gun sold.**

3. Guaranteed Funds To Keep Kids In School...And Out of Trouble

- Statistics show that a majority of youth crimes and violence occur after school -- when kids are unsupervised and exposed to the triple threat of gangs, guns and drugs. That's why the Administration's Anti-Gang/Youth Violence Strategy calls for a \$135 million to keep kids in school, off the streets and out of trouble. **Juvenile crime legislation passed by Congress must be smart with our kids by guaranteeing funds for at least 1,000 after school initiatives.**

S. 10 - Best and Worst

Provisions We Strongly Support

- Reforms to federal juvenile justice system, including increased prosecutorial discretion, greater protections for victims and witnesses, and greater ability to provide services for adjudicated delinquents
- Amendments to federal criminal law that make it easier for prosecutors to combat gangs, guns, and drugs -- such as increased penalties for selling guns or drugs to children, provisions to combat state and local witness intimidation, etc.
- Substantial new resources for state and local juvenile justice systems
- Set-aside for Indian tribes
- Felony treatment for failure to pay child support
- Authorization to spend Residential Substance Abuse Treatment (RSAT) funds on non-residential aftercare

Changes We Most Want to See

- *Substantial, guaranteed funding stream for juvenile crime prevention*
- *Preservation of existing "fundamental protections" concerning incarceration of juveniles*
- *Increased authorization for state and local JJ prosecutors and courts (50M -> 150M)*
- Weakening of new, expensive eligibility requirements for block grant that would dictate state policy on: trying juveniles as adults, imposing graduated sanctions, maintaining and sharing juvenile records, juvenile drug testing, etc.
- "Juvenile Brady" (ban on possession of firearms by those who committed serious/violent offenses as juveniles)
- Restoration of the presumption in favor of state prosecution of juveniles
- Reorganization of juvenile justice grant funding to permit greater flexibility for communities
- Elimination/substantial modification of unwieldy executive branch youth violence entity
- Authorization for prison construction funds to be used for drug testing and treatment
- Appropriate expansion of Attorney General's emergency drug scheduling authority

Senate Youth Violence Legislation:
The “Violent and Repeat Juvenile Offender Act of 1997”
(S. 10)

Status: Introduced by Senators Orrin Hatch (R-UT) and Jeff Sessions (R-AL); reported out of Senate Judiciary Committee on July 24, 1997. Floor vote expected in 1998.

Administration Position: S. 10 moves us in the right direction in terms of holding juveniles accountable, but does not go far enough in terms of protecting children and preventing youth crime in the first place.

- Major Objections:**
- failure to *guarantee* funding for juvenile crime prevention
 - inadequate separation of adults from juveniles in state custody
 - insufficient funds for state and local prosecutors and courts
 - onerous, new conditions on block grant funds
 - no substantial effort to break links between youth and guns

Key Provisions (*Italics* means opposed by Administration)

I. Federal Juvenile Justice Reform

- Increased prosecutorial discretion to try juveniles as adults, *but no judicial oversight*
- Expanded list of felonies for which juveniles can be prosecuted as adults
- Greater protections for victims and witnesses
- Greater ability to provide services for adjudicated delinquents
- *Reversal of presumption in favor of state prosecution of juveniles*
- *Elimination of tribal opt-in provision*

II. Juvenile Gangs

- Enhanced penalties for gang leaders
- Expansion of RICO predicates to include certain firearms violations

III. Juvenile Crime Control and Accountability (Block Grant)

- \$500 million block grant (each of 5 years) for a range of purposes
- 60% guaranteed for juvenile facilities, sanctions, drug testing, and record-keeping; *but NONE guaranteed for prevention*
- *Intrusive new conditions on States designed to punish juveniles; dangerous retreat on existing conditions designed to protect juveniles*
- Only \$50M authorization for state and local prosecutors and courts (we sought \$150M)
- Set-asides for Indian Tribes

- *Inadequate set-asides for research and training*
- *Centralized administration of youth violence funds -- modeled on "Drug Czar"*

IV. Boys and Girls Clubs

- Streamlined access to existing funds for Boys and Girls Clubs

V. Miscellaneous

- Various law enforcement reforms proposed by the Administration, including provisions that make it easier for federal prosecutors to combat gangs, guns, and drugs
- Authorization to spend Residential Substance Abuse Treatment (RSAT) funds on non-residential aftercare
- Felony treatment for failure to pay child support
- *Weak child safety locks provision, requiring only that FFLs "make them available"*
- *"Safe Schools" - mandatory expulsion for possession of tobacco, alcohol, or other drugs*
- *Note: no Juvenile Brady, no authorization for prison construction funds to be used for drug testing and treatment, no emergency drug scheduling authority*



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03/09/98 06:39:00 PM

Record Type: Record

To: Leanne A. Shimabukuro, Jose Cerda III

cc:

Subject: GOP SENATORS REVISING JUVENILE RECORDS BILL

Date: 03/09/98 Time: 17:54

JGOP senators revising juvenile records bill

WASHINGTON (AP) Hoping to silence critics, Senate Republicans are changing a controversial bill that would offer federal money to states that make available some juvenile crime records to judges, police and possibly school officials across the country.

The Senate Judiciary Committee approved the bill in October, but Sen. Jeff Sessions of Alabama said he and committee Chairman Orrin Hatch of Utah would have ``technical clarifications'' in place before the full Senate votes on it this spring.

Part of the bill, which seeks to get tougher with teen-age criminals would create a national records system that would keep track of serious crimes committed by offenders under 18. States deciding to participate would be eligible to share \$250 million in federal grants over five years to upgrade their record-keeping systems.

Planned changes include language that would make it obvious that the bill would apply only to felonies, Sessions said. The bill would not be retroactive, but states could include records of past juvenile felonies if they wished, he said.

Court systems that keep juvenile records entirely secret were not designed for many of today's youthful offenders, who are committing violent acts that were rare years ago, supporters have said.

Many states already have opened up their juvenile crime records, though they remain unavailable to the general public, Sessions said during a public hearing Monday.

``While this is a positive development, it is incomplete and it does not and cannot address the situation when a juvenile commits a crime in one state and later commits another crime in a different states,'' Sessions said. ``Many judges whether in adult court or juvenile court do not have access to a criminal defendant's juvenile criminal record.''

The changes come in answer to critics who said the bill goes too far.

``We must ask ourselves whether we really want a host of children marked for life with their records in a national database because of relatively minor infractions, such as trespassing in their high school after hours, improper skinny dipping or spray painting a wall,'' said Sen. Patrick Leahy of Vermont, the judiciary committee's highest ranking Democrat.

Sen. Herb Kohl, D-Wis., said he objects to measures that could send arrest records to ``any school, including college, where a child seeks to enroll even if he was never convicted. If we are going to dictate that juvenile records be disclosed to schools, at least such disclosure should be limited to convictions, not just arrests."

As currently written, the bill would allow some school officials to see the records, but Republicans are considering revisions.

Some opponents also have said the bill's requirements would be too expensive for states to meet.

But Sessions said the changes would make it clear that a state need not create a separate records system for minors. ``States should use the existing adult record system infrastructure," Session said.

He also said that eliminating a requirement that juvenile felony arrest records include photographs of suspects would reduce costs significantly.

The Justice Policy Institute said the bill still doesn't provide enough emphasis on crime prevention programs and includes measures which it said could put juveniles in adult jails for up to 24 hours.

APNP-03-09-98 1806EST

Juvenile Justice Appropriations

Our Original Goals	Final Appropriations Result	Comments
\$100M for state and local prosecutors \$50M for state and local courts for hiring <u>and</u> programmatic initiatives (Discretionary program) No conditions	\$113M (45% of \$250M) for state and local prosecutors <u>and</u> courts for hiring <u>and</u> programmatic initiatives (Formula program) Conditions substantially weakened	This is very good news. We will continue to try to ease the conditions through the guidelines for this block grant and in the authorizing conference. (The Senate conditions are far tamer than the House ones referenced here.)
\$75M for At-Risk Children's Initiative (Discretionary prevention and intervention funding, basically same as existing Title V)	\$20M for existing Title V (same as last year)	While it is disappointing not to get a new, targeted prevention and intervention fund, we did receive, in addition to the current \$20M, about \$16M in new discretionary money (\$5M for drug prevention, \$5M for mentoring, and \$6M pure discretionary), and \$35M in new formula money that states <i>may</i> use for prevention (incl. \$25M for underage drinking).
\$62M for after-school programs (Funded at DoEd, HHS)	\$40M for 21st Century Schools (Funded at DoEd)	This takes pressure off of our Title V money for use on after-school programs.
JJ Office -- Funding Structure Reorganization (more discretion, greater emphasis on research)	Not accomplished. But, pure discretionary money was increased by about \$6M, and greater emphasis was given to research. See below.	Passed overwhelmingly in HR 1818. It still may be possible to accomplish this reorganization in the authorizing conference.
Set-asides of 10% for research, 2% for training and TA, on every new fund	Set-aside of 3% for research, 2% for training and TA, on new Juvenile Accountability Block Grant Fund	Significant win in persuading House authorizers that such set-asides are always appropriate as matter of fiduciary responsibility
\$6M discretionary fund for Indian tribes	No new discretionary fund, but tribes get existing pass-through from formula money. They also got a separate \$5M for facilities.	Lack of new discretionary fund is disappointing because \$5M fund was in Senate report. However, \$5M for facilities is significant.
Preservation of existing "core requirements" in reasonably strict form.	Requirements preserved exactly as in current law.	This will be a continuing authorization battle.
Preservation of President's Crime Prevention Council.	Council's termination expressly referenced.	OJP to take on "remaining activities."

Outstanding Priority	Strategy
Money	
Authorization for prevention/after-schools program to match \$75M authorization	Kohl believes he has Hatch's word on this.
20% of block grant for after-school programs	Biden will offer on the Floor. <i>Prevention Event: AG and Fight Crime - Invest in Kids.</i>
\$100M more for state and local prosecutors and courts	Biden will offer on the Floor. <i>Prosecutor groups have been vocal but may need to do more.</i>
Guns	
Child safety lock provided with every gun	Kohl will re-offer on the Floor. <i>Continued editorials in September.</i>
Gun ban for dangerous juvenile offenders	Biden will offer on the Floor. <i>Hatch's version (ban effective after instant check takes effect -11/98) will probably win.</i>
<u>Bailey fix</u>	DeWine will probably offer (needs encouragement)
Additional firearms provisions (e.g., restoration of rights reform)	Biden/Durbin will offer on the Floor
Juvenile Protections	
Strict separation of juveniles and adult detainees in state custody	Biden will offer on the Floor <i>Continued editorials in September. Having kept current law in the federal system, we are well-situated to bargain for stricter separation of juveniles tried as juveniles in the states.</i>
Safeguards for juveniles charged federally as adults (e.g. juvenile petition option)	Leahy will re-offer on the Floor <i>We'll try to improve the presentation.</i>

Outstanding Priority	Strategy
Drugs	
Emergency Drug Rescheduling Authority	Working to accommodate HHS; Biden will offer on the Floor. <i>Women's groups will lobby once it's clearly tied to Rohypnol</i>
Authority to use prison construction funds for drug testing and treatment in prison	Need Republican support <i>WH developing strategy as well</i>
Elimination of Objectionable Provisions	
Youth Violence Czar	Need WH/OMB help
Restrictions on Receipt of Funds	DeWine assures us of report language to clarify that no State will be denied money on the basis of the conditions
Repeal of President's Crime Prevention Council	Jean Nelson is working through VP's office

**KEY HIGHLIGHTS
OF THE SENATE YOUTH VIOLENCE BILL
AS REPORTED OUT OF COMMITTEE**

provisions we wanted are in bold
provisions we oppose are starred*

I. FEDERAL JUVENILE JUSTICE REFORM

- **Prosecutorial discretion in decisions whether to try juveniles as adults**
- But no judicial oversight, even in least serious cases
- **Fines and supervised release as juvenile court penalties**
- **Expanded access to juvenile court records** (a little further than we like)
- **Expanded access to juvenile court proceedings**
- **Extended juvenile court jurisdiction to age 26**
- **Separation of juveniles from adult detainees in federal custody --back to approximately current law** (better than Chairman's Mark)

Still want: Safeguards for juveniles charged as adults (e.g., juvenile petition option)

II. FEDERAL CRIMINAL REFORM

Gangs

- **Protection against state and local witness intimidation.**
- **Increased RICO penalties for gang and violent crimes.**
- **Elimination of statute of limitations for serious felonies involving murder.**
- **Removal of unusual scienter requirement from carjacking statute.**
- **Enhanced penalties for gang recruitment.**
- ***New gang statute: 5-25 years for pattern of criminal gang activity.**

Guns

- **Increased penalty for firearms conspiracy.**
- **Felony treatment for aiding and abetting unlawful purchases.**
- **Increased penalty for knowingly receiving firearm with obliterated serial #.**
- **Amendment of guidelines for transferring firearms to prohibited persons.**
- **Criminal forfeiture of firearms used in crimes of violence and felonies.**
- **Criminal forfeiture of firearms used in and proceeds from gun trafficking.**
- **Increased penalties for transferring handguns to juveniles and juvenile handgun possession.** (We would not have raised the minimum so high.)

Guns, cont.

- Provision requiring FFLs to “make available” (but not provide) child safety locks with the sale of every firearm.

Still want: **Requirement** that child safety lock be sold with every gun
Gun ban for dangerous juvenile offenders
Bailey fix
Additional provisions, including restoration of rights reform

Drugs

- **Increased penalties for selling drugs to kids, using kids to sell drugs, or selling drugs in or near schools.**
- **Serious juvenile drug trafficking offenses as Armed Career Criminal Act predicates.**

Still want: Emergency drug rescheduling authority
Authority to use prison construction funds for drug testing & treatment

Other

- **Felony treatment for failure to pay child support.**
- Increased penalties for using a minor to commit any felony (doubled for first offense, tripled for subsequent offenses).
- Sentence enhancement for use of body armor during offense.
- Wiretap exception for prison “facilities.”

III. ASSISTANCE TO STATE AND LOCAL PROSECUTORS AND COURTS

- **\$50M authorization for state and local prosecutors and courts for hiring, initiatives, and technology (including 2% for administration, TA)**

Still want: \$100M more for state and local prosecutors and courts

IV. OTHER ASSISTANCE TO STATES

- **“High-Intensity Interstate Gang Activity” -- \$100M authorization for federal/state/local task forces and prevention in troubled areas**

V. THE BLOCK GRANT

\$500M authorized in each of 5 years

A. What States Must Do to Get the Money

- *Make reasonable efforts, as certified by the Governor, to ensure that not later than July 1, 2000 --
 - ▶ 14+ can be tried as adults for serious violent felonies
 - ▶ State has system of graduated sanctions
 - ▶ juveniles charged with what would be felony are fingerprinted and photographed, and those records are sent to the FBI
 - ▶ juvenile records are equivalent to adults'; retained for same time as adults'; and made available to law enf., schools, courts, and FBI
 - ▶ *juveniles are not detained where they have "prohibited physical contact" with adult detainees or, after 72 hours, "sustained oral communication" [Not nearly strict enough]
 - ▶ States have local advisory groups
 - ▶ States conduct drug testing for "appropriate categories" of offenders.
- VT and WV, as 5% of states with lowest juvenile crime rate, are exempt from conditions.
- *Religious nondiscrimination clause (we have constitutional concerns)

B. How States Must Use the Money

- 35% for juvenile facilities and graduated sanctions
- 15% for drug testing of juvenile offenders
- 10% for state juvenile record keeping
- The remaining 40% MAY be used for restitution programs, vocational training, parental responsibility programs, truancy prevention, juvenile crime control and prevention, literacy and job training, substance abuse treatment, training programs, etc.

Still want: 20% of block grant funds for after-school programs
 Strict separation of juveniles and adult detainees in state custody
 Relaxation of conditions on funds

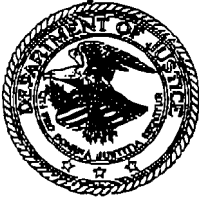
VI. THE JUVENILE JUSTICE OFFICE

- \$150M authorized in each of 5 years for office (we wanted \$170).
- **\$50M authorized in each of 3 years for research, demonstration, and evaluation.**
- 10% of the \$150M authorized for T&TA, demonstration, research & evaluation, and information.
- 0.1% of the \$700M authorized for TA
- *Conditions on the \$150M
 - ▶ 40% for sanctions, expanded probation initiatives, and info sharing
 - ▶ 35% for community-based alternatives to incarceration, programs for families, delinquency prevention, home probation, outreach, etc.
 - ▶ No “prohibited physical contact,” etc.
 - ▶ Status offenders compromise (after 24h, must be in juv. facility and appear before judge; maximum for runaways, 14 days, for all others, 3 days)
 - ▶ STD testing for all sex offenders whose victims were under 18
- *“Youth Violence Czar” to coordinate government-wide youth violence efforts.

Still want: Authorization for prevention/after-school program to match \$75M appropriation
Relaxed conditions on use of funds
Elimination (or more manageable formulation) of Youth Violence Czar

VII. MISCELLANEOUS

- **Permits use of Prison Drug Testing and Treatment funds for nonresidential aftercare.**
- **Creates preference for Byrne discretionary grant applicants who implement gun tracing initiatives.**
- **Leaves GREAT Program intact in face of other program repeals.**
- Authorizes \$20M in each of 5 years for new Boys and Girls Clubs
- Creates pilot program to replicate “Boston model”
- *Repeals several Crime Act programs, incl. President’s Crime Prevention Council
- *Authorizes use of clone pagers (we have constitutional concerns)
- *Extends Gun-Free Schools Act to include dangerous weapons.
- *Extends Gun-Free Schools Act to include illegal drugs ...? (details unknown)



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

January 28, 1998

MEMORANDUM FOR: **Rahm Emanuel**
Elana Kagan

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

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

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

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

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

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

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

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

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

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

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

Each is addressed below.

1. Prosecuting Juveniles as Adults

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

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

Talking Points:

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

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

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

Talking Points:

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

2. **Mandatory Minimum Sentences**

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

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

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

Talking Points:

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

given existing federal tools of prosecution.

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

3. Expanding Access to Juvenile Records

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

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

Talking Points:

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

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

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

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

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

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

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

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

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

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

S. 10 eliminates the jail removal requirement altogether.

Talking Points:

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

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

Background:

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

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

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

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

Talking Points:

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

5. Inadequate Prevention Spending

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

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

Talking Points:

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

6. The "Federalization" of Juvenile Crime

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

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

Talking Points:

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

Administration Priorities for S. 10 on the Senate Floor

Funding

- Authorization of approximately \$100M for after-school programs and other juvenile crime prevention, through either 70% carve-out of block grant or stand-alone program. (In either case, reauthorization of Title V.)
- Maintenance of appropriated level of funds for prosecutors and courts, through either ~~carve-out~~ ^{150 mill} or stand-alone program.
- JJ office authorization increased for all 5 years from \$150M to \$201M, as appropriated in FY 98, -- or "such sums"; with funding reorganization as described in Administration bill and HR 1818.
- Research and training set-asides.
- Preservation of core requirements at least as condition on existing formula money.
- Less restrictive records condition. → 3 length of time and overly broad access

Federal Criminal Law

- Gun ban for juvenile offenders. Brady extension / Biden amendment
- Safeguards for juveniles in federal court ("reverse waiver" provision). Leahy amendment
- Opt-in for tribes.

Other

- Elimination or substantial modification of Youth Violence "Czar."
- Emergency drug scheduling fixes.

Administration Priorities for S. 10 on the Senate Floor

Funding

Dedicated Prevention Money

- The Administration desires a substantial, stand-alone, discretionary program for juvenile crime prevention, requested in the President's FY 99 budget as Title V (The At-Risk Children's Initiative) at \$95M. Unlike block grants distributed on the basis of juvenile population, discretionary programs permit the kind of programmatic and geographic targeting critical to effecting a profound reduction in juvenile crime.
- We recognize, however, that the Majority is hostile to granting the Administration greater discretion, and that Congress generally prefers block grants to categorical programs.
- Moreover, because of the odd context of the "temporary" appropriations in place for FY 98, it seems even less likely that we would win a stand-alone authorization of new prevention money, at least this year. Once States are receiving the \$250M of the Accountability Block Grant, they will certainly oppose a reduction in favor of a discretionary program that may be targeted to fewer communities.
- Consequently, we will enthusiastically support either a substantial stand-alone program (Title V/At-Risk Children's reauthorized at \$95M for 5 years, or at such sums if there's a commitment from the appropriators), or an amendment earmarking 20% or more of the \$500M block grant for prevention. Dedicated prevention funding is our single most important priority for S. 10.
- If the 20% carve-out prevails, our goal in conference (assuming accountability and prevention remain authorized from a single fund) would be to maintain the currently appropriated carve-outs -- 45% for prosecutors and courts and 35% for facilities, sanctions, and information-sharing/recordkeeping -- and to add the 20% carve-out for prevention.
- In any event, the re-authorization of Title V is critical. At the end of mark-up, Senator Hatch promised Senator Kohl he would strike the repeal of Title V and reauthorize it at "such sums." As reported out, the bill struck the repeal but did not include a reauthorization. Kohl's staff is confident, based on assurances from Hatch's staff, that the reauthorization will be in the Manager's Amendment. The reauthorization is critical both

because this program has been consistently funded at \$20M and because it may be the *only* site for pure prevention, if the 20% amendment fails.

Prosecutors and Courts Money

- As reported out, S. 10 authorizes \$50M (out of the \$700M block grant) for state and local prosecutors and courts. The Administration had sought \$150M. Accordingly, Senator Biden is prepared to introduce a Floor amendment increasing the authorization to \$150M, which we support.
- Under the FY 98 appropriations bill, grant recipients are expected to spend 45% of their \$250M block grant on prosecutors and/or courts. After carve-outs for research, this amounts to just over \$110M, nearly the amount we requested.
- Our goal in the authorizing process is to maintain that level of funding -- either in dollars or percentages, whichever is greater. It may be important to make these funds a carve-out, rather than a separate authorization. (Presumably, NDAA will want to be involved in the maintenance of this funding. Evidently, they prefer the administrative structure in S. 10 to the state pass-through in H.R. 3.)

Juvenile Justice Office

- The FY 98 appropriations bill funds the JJ Office at just over \$200M. The authorization in S. 10 is \$150M, which is \$20M less than even FY 97 funding. To be safe, we want the authorization either increased to at least the level in the FY 98 appropriations bill, for all 5 years, or changed to "such sums." ||
- Our main goal for the JJ office is the reorganization proposed in our bill || and adopted in HR 1818. The reorganization has two purposes: ① to consolidate several splintered, categorical programs into one discretionary fund, to give States and communities more flexibility; and ② to emphasize research and demonstration, including an innovative partnership among the DOJ substantive and research bureaus. We would like to amend S. 10 to accomplish this structure, and would like your thoughts on the likelihood of success for the Manager's Amendment. In any event, we want the structure of HR 1818 to prevail in conference. *

Research Set-Asides

- As reported out, S. 10 has a somewhat fragmented approach to research and training. For example, it authorizes \$50M for research, demonstration, and evaluation -- a generous and welcome sum, but one which is unlikely to be funded. Then, it sets aside only 0.1% of the overall \$700M for technical assistance; and 2% of the \$50M allocated to prosecutors and courts for administration and technical assistance. (Elsewhere, it authorizes "such sums" for administration.) Of the funds allocated to the JJ office for formula grants (\$96M in FY 98), it earmarks only 10% for all research, evaluation, demonstration, information, training, technical assistance.
- The Administration believes that as a matter of fiduciary responsibility, the federal government should set aside from every fund it administers 10% for related research and 2% for related training and technical assistance. Otherwise, the government cannot responsibly know what programs are working, and how to help replicate success and avoid failure. This construct was urged upon the House authorizers, who at our request endorsed 3% and 2% set-asides in the Juvenile Accountability Block Grant appropriated for FY 98.
- We propose taking 10% and 2% set- asides from each of the two new funds in S. 10: the \$500M for the block grant and the \$50M (or more) for prosecutors and courts. (While it appears simpler to take the set-asides from the overall authorization of \$700M, that would entail carving out funds from the JJ Office \$150M as well, which would not be appropriate since that \$150M includes funding for research and training.)
- Rather, with regard to the JJ office, we propose striking the 10% set-aside from "amounts appropriated pursuant to Part B" (see Section 206(c)) and either replacing it with a separate authorization for "such sums as may be required for use by the Administrator" or else trying to create the separate funds for research and demonstration reflected in our bill and H.R. 1818. We need to gauge Majority receptiveness to the reorganization here, but our bottom line is that we want substantial discretionary funds for research and demonstration, as discussed above.

Separation Requirements

- The Administration is committed to the preservation, in reasonably strict form, of the rules governing the separation of juveniles from

adults in state custody and disproportionate minority confinement.
At a minimum, we hope to protect these conditions as they apply to the JJ office formula money, if not also the new block grant funds. Consequently, we seek to amend both the new block grant, section 303(4); and the formula grant requirements, section 304, (9)-(11). Obviously, attaching the conditions to the larger fund would be more significant, but preserving them vis-a vis the smaller fund might be just as effective.

Block Grant Conditions

- As we have discussed, conditions #1 and #2 in S. 10, concerning prosecution of juveniles as adults and graduated sanctions, are sufficiently watered down so as not to be of great practical concern. The third condition, by contrast, concerning juvenile recordkeeping, is very demanding with regard to both increased maintenance and expanded access, and could be expensive. We are undertaking to determine which States now comply, and how much it would cost to get the rest in compliance. We are also attempting an assessment of the compliance rate and cost of the condition requiring drug testing of "appropriate categories of juvenile offenders."
- In conference, we would hope that S. 10's first two conditions win out over the House's, which are much stricter (particularly concerning prosecution of juveniles as adults). The records condition in H.R. 3 is actually less demanding than the one in S. 10 and H.R. 1818 - whereas H.R. 3 demands increased maintenance, and availability to the FBI, S. 10 and H.R. 1818 demand those and retention for as long as adult records, as well as expanded access to law enforcement, courts, and school officials. We far prefer the House version of this requirement (and would welcome any such modification to S. 10). At a minimum, we want to ensure that the retention requirement does not require States to modify or eliminate their laws concerning sealing and expungement.

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Federal Criminal Law

Gun Ban for Juvenile Offenders

- We believe Senator Biden intends to introduce the "juvenile Brady" amendment, making it unlawful for juveniles adjudicated delinquent of a Three Strikes offense to purchase or possess guns upon becoming an adult. This is a critical part of the Administration's anti-youth violence effort.

Federal Judicial Safeguards

- The Administration supports the amendment introduced by Senator Leahy in Committee concerning a "reverse waiver" provision for certain juveniles charged as adults. At a recent meeting of the Juvenile Justice Subcommittee of the Attorney General's Advisory Council, several US Attorneys informally expressed the view that they enthusiastically support such oversight of their own decisions concerning prosecutions of juveniles. Perhaps a letter from them about the need for such limited judicial oversight could assist this amendment on the Floor.

Opt-in For Tribes

- In terms of funding, S. 10 is favorable to tribes, setting aside a special discretionary fund for them and making them expressly eligible for other S. 10 funds.
- However, S. 10 eliminates the opt-in provision for juveniles prosecuted as adults, an important symbolic loss. Current law forbids federal prosecution of a 13- or 14-year-old Indian as an adult, where jurisdiction is predicated solely on Indian lands, unless the juvenile's tribe has opted to permit such prosecution. S. 10 raises the minimum age of prosecution of juveniles as adults to age 14, but eliminates the opt-in provision altogether. The Administration bill would have preserved the opt-in provision and, indeed, expanded it to include 15-year-olds. We want S. 10 to preserve the opt-in provision at least for 14-year-olds. We assume Senators Campbell and Inouye could be helpful in this regard.

Other

The Youth Violence "Czar"

- The provision in S. 10 purporting to give the OJJDP Administrator budget review and certification authority over other agencies is very disturbing to us. We have tried to explain to the Youth Violence Subcommittee that the problem concerning federal juvenile justice funds is not lack of coordination so much as lack of discretion – the administrators of the different funds are so constrained by formulas, earmarks, and categorical preferences that they can rarely target funds to programs that work and

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communities that need it. Nonetheless, Sessions appears to remain convinced that some greater centralized authority is needed to make the expenditure of federal juvenile justice funds more effective. We are still trying to find an alternative to the "Czar" that would satisfy his concerns.

Temporary Drug Scheduling Issues

- The Administration is eager to find a solution to the unfortunate constraints on the Attorney General's authority to temporarily schedule drugs that pose an imminent hazard to public safety. The current temporary scheduling statute does not permit her to temporarily schedule such drugs if: 1) they are already on a schedule, or 2) they are subject to an outstanding Investigational New Drug application. See 21 U.S.C. 811(h). We are working with HHS to devise an appropriate legislative solution. As soon as we have one, we will furnish it to Senator Biden, who is currently prepared to offer an amendment dealing with the first problem only (temporary rescheduling).

Note:

- We are curious to know your expectations about new amendments to the bill. For example, Senator Kennedy is planning to introduce a Hate Crimes Amendment that was not raised in Committee. We also expect that if this is the only "crime bill" moving through in 1998, there will be a host of other amendments, germane and otherwise. Please keep us advised of amendments you anticipate being introduced.

Juvenile Justice Appropriations

Our Original Goals	Final Appropriations Result	Comments
\$100M for state and local prosecutors \$50M for state and local courts for hiring <u>and</u> programmatic initiatives (Discretionary program) No conditions	\$113M (45% of \$250M) for state and local prosecutors <u>and</u> courts for hiring <u>and</u> programmatic initiatives (Formula program) Conditions substantially weakened	This is very good news. We will continue to try to ease the conditions through the guidelines for this block grant and in the authorizing conference. (The Senate conditions are far tamer than the House ones referenced here.)
\$75M for At-Risk Children's Initiative (Discretionary prevention and intervention funding, basically same as existing Title V)	\$20M for existing Title V (same as last year)	While it is disappointing not to get a new, targeted prevention and intervention fund, we did receive, in addition to the current \$20M, about \$16M in new discretionary money (\$5M for drug prevention, \$5M for mentoring, and \$6M pure discretionary), and \$35M in new formula money that states <i>may</i> use for prevention (incl. \$25M for underage drinking).
\$62M for after-school programs (Funded at DoEd, HHS)	\$40M for 21st Century Schools (Funded at DoEd)	This takes pressure off of our Title V money for use on after-school programs.
JJ Office -- Funding Structure Reorganization (more discretion, greater emphasis on research)	Not accomplished. But, pure discretionary money was increased by about \$6M, and greater emphasis was given to research. See below.	Passed overwhelmingly in HR 1818. It still may be possible to accomplish this reorganization in the authorizing conference.
Set-asides of 10% for research, 2% for training and TA, on every new fund	Set-aside of 3% for research, 2% for training and TA, on new Juvenile Accountability Block Grant Fund	Significant win in persuading House authorizers that such set-asides are always appropriate as matter of fiduciary responsibility
\$6M discretionary fund for Indian tribes	No new discretionary fund, but tribes get existing pass-through from formula money. They also got a separate \$5M for facilities.	Lack of new discretionary fund is disappointing because \$5M fund was in Senate report. However, \$5M for facilities is significant.
Preservation of existing "core requirements" in reasonably strict form.	Requirements preserved exactly as in current law.	This will be a continuing authorization battle.
Preservation of President's Crime Prevention Council.	Council's termination expressly referenced.	OJP to take on "remaining activities."

The Washington Post

AN INDEPENDENT NEWSPAPER

Kids and Crimes

A STRANGE AND dangerous piece of legislation designed to tackle the problem of juvenile violence is quietly making its way through the Senate. The growing problem of youth crime is a real one that warrants federal interest and lawmaking. The Justice Department has been urging congressional action, and the House passed a bill on the subject last year. These proposals have their problems, but senators of both parties have apparently decided that they will not be outflanked on crime. Their bill—which was reported out by the Judiciary Committee last year and is now awaiting action on the Senate floor—brings a kind of punitive zeal to the subject of juvenile justice that far exceeds the other proposals. The Senate bill would sacrifice the rehabilitative dimensions of the juvenile justice system on the altar of election-year politics. And in the process, it would warp the relationship between the federal government, the states and minors accused of breaking the law.

The first astonishing feature of the bill is the extent to which it federalizes juvenile crimes. Current law presumes that juvenile offenders will be prosecuted by the states, not by the federal government, and it restricts greatly the circumstances under which the feds can get involved in juvenile cases. This arrangement probably could use some tinkering to allow U.S. attorneys greater flexibility. The premise of state primacy, however, is sound, and the Senate proposal goes way too far in the other direction. Under it, a U.S. attorney could try virtually any case involving a teenager's violation of federal law and could treat many of the defendants as adults. In practical terms, of course, federal prosecutors might not choose to try many juvenile cases, but why should they have the option? The idea, which is totally at odds with the stated Republican commitment to federalism, is another step down a long path toward a widespread federal involvement in policing street crime.

The Senate proposal further assaults local juvenile justice systems by imposing new mandates on the states as conditions for receiving federal money. These requirements are heavy-handed, mean-spirited and, in some cases, simply bizarre. A provision inserted by Sen. Charles Grassley, for

example, would have states enact laws requiring the expulsion from school for six months of underage students caught too often with alcohol or tobacco products. To qualify for a block grant created by the proposal, states would also have to comply with new record-keeping requirements that would eviscerate the confidentiality of the current juvenile justice system. Juvenile records—even the records of those arrested for nonviolent offenses—would be made available to schools and colleges to which the kids were applying. It seems like a deliberate effort to convert what have traditionally been regarded as youthful indiscretions that society can forgive and ultimately forget into transgressions that will haunt a person for the rest of his life.

The Senate bill does relax some requirements on the states, but these are precisely the ones that should not be relaxed. Federal law has, since the 1970s, conditioned money to the states on their willingness to segregate juvenile arrestees from adults. This was a response to frequent rapes of younger prisoners—as well as suicides by them. The states are also barred from jailing so-called “status offenders” such as truants and runaways. The Senate bill would erode both of these core protections. It allows arrested minors to be housed in institutions with adults as long as they can have no “prohibited physical contact” with adult inmates, and it allows them to be confined for up to 72 hours where they can talk to incarcerated adults and thereby be subjected to verbal abuse from them. It also permits the detention of most status offenders for up to 24 hours and runaways for up to two weeks. While many states would probably not weaken their laws simply because the federal government decides to permit it, the possibility should not be dangled before them.

The Senate bill is fatally flawed and should be revamped. At the very least, it should be softened so that the core protections for juveniles in jails and the presumption of state primacy in juvenile cases are preserved, and so the ridiculous new requirements on the states are removed.

**Guidelines for the Implementation of
The Juvenile Accountability Incentive Block Grant
As Described in the Commerce, Justice, State Appropriations Bill of 1998**

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**Guidelines for the Implementation of
The Juvenile Accountability Incentive Block Grant
As Described in the Commerce, Justice, State Appropriations Bill of 1998**

I. Introduction

The Commerce, Justice, State Appropriations Bill of 1998 (H.R. 2267) appropriates \$250,000,000 for Juvenile Accountability Incentive Block Grants, as described in Title III of H.R. 3, which was passed by the House of Representatives on May 8, 1997. H.R. 2267 directs the Attorney General to establish guidelines, in consultation with Congress, to assist States and units of local government in determining whether they may certify eligibility for those funds.

The conference report also directs that the guidelines include “accommodations, which provide for a reduction in the local distribution requirement of section 1803 of H.R. 3, with respect to any State which bears the primary financial burden with the State for the administration of juvenile justice and which provide for local distribution consistent with H.R. 728 for the State of Louisiana.”

In combination with regulations addressing the rest of the provisions of the Block Grant, these guidelines are intended to assist States and units of local government in obtaining and expending Juvenile Accountability Incentive Block Grant funds.

II. Certifying Eligibility for Juvenile Accountability Incentive Block Grant Funds: “Active Consideration” of Policies Required in H.R. 3

Under H.R. 2267, in order to be eligible for block grant funds, States and units of local government must certify “active consideration” of the requirements in H.R. 3, the bill on which the Juvenile Accountability Incentive Block Grants are based.

As passed by the House, H.R. 3 requires that to be eligible to receive a Juvenile Accountability Incentive Block Grant, a State must submit to the Attorney General an application including assurances that the State (and any unit of local government to which the State provides funding under the Act) has in effect, or will have in effect not later than one year after the application, policies and programs that: (1) ensure greater prosecution of juveniles as adults, (2) impose graduated sanctions, (3) alter juvenile recordkeeping practices, and (4) permit judicial orders concerning parental supervision. [See Section 1802.]

By contrast, the appropriations bill that incorporates the H.R. 3 block grant by

reference expressly provides that, “notwithstanding the requirements of H.R. 3, a State, or unit of local government within such State, shall be eligible for a grant under this program if the Governor of the State certifies to the Attorney General, consistent with guidelines established by the Attorney General in consultation with Congress, that the State is actively considering, or will consider within one year from the date of such certification, legislation, policies, or practices which if enacted would qualify the State for a grant under Section 1802 of H.R. 3.” [H.R. 2267.]

“Active consideration,” for purposes of this statute, shall mean the deliberation, contemplation, or debate of policies that would effect a State’s or unit of local government’s compliance with H.R. 3. Such consideration may take place in any branch of State or local government, so long as the implementation of such policies or practices, if adopted by that branch, would achieve compliance with the requirements set forth in the statute. For example, “active consideration” by a State legislature would mean, at a minimum, hearings and/or debate within the pertinent subcommittee(s) or committee(s) on legislative proposals that would bring the State into compliance. “Active consideration” by a State judiciary would mean, at a minimum, the deliberation by pertinent judicial or judicially-appointed committees or authorities concerning judicial policies or rules that, if adopted, would bring the State into compliance. “Active consideration” by a State Executive could mean, for example, the appointment of a Juvenile Justice Task Force to review State juvenile justice procedures and make recommendations, the transmission of a package of related reforms to the State legislature, or the issuance of an executive order.

Such “active consideration” by any branch, of course, need not entail the adoption or enactment of any or all policies under consideration.

Concerning units of local government, analogous definitions would apply. For example, hearings or debate in a city council, or in the relevant decision-making body of a municipal court, would constitute “active consideration.”

In addition, for purposes of compliance under the statute, “consideration” shall be deemed “active” if it is occurring at the time of the certification *or if it has occurred within the three years prior to certification*. This interpretation is intended to avoid a loss of funding eligibility for States or units of local government that took an early lead in addressing these issues and have completed their consideration. Indeed, it would be unfair to deem those jurisdictions ineligible for funds, in favor of States and communities that have not yet taken up those issues, or to prompt those jurisdictions to scramble to reconsider legislation, policies, or practices they recently considered and resolved. As the H.R. 2267 report language indicates, “the conferees expect that the Justice Department, in developing the guidelines, will take into consideration the fact that many States are currently in the process of reforming their juvenile justice systems.” It is with that proviso in mind that the Department honors States’ *ongoing* consideration of these

issues, and seeks not to penalize any jurisdiction based on an arbitrary timeline.¹

Consideration “within one year from the date of such certification,” though not by statute required to be “active,” shall be construed under the same definition of “active consideration.” A Governor certifying that his or her State “will consider” such policies within the year may, but is not required to, detail the form that consideration is intended to take.

A. Prosecution of Juveniles as Adults

H.R. 3 requires that States and local units of government “ensure that juveniles who commit an act after attaining 15 years of age that would be a serious violent crime if committed by an adult are treated as adults for purposes of prosecution as a matter of law, or that the prosecutor has the authority to determine whether or not to prosecute such juveniles as adults.” [Sections 1802(a)(1), (b)(1)(A).] “Serious violent crime” is defined as “murder, aggravated sexual assault, and assault with a firearm.” [Section 1808(7).]

Purpose. The purpose of this requirement is to ensure that older juveniles charged with serious violent crimes can be charged, tried, and sentenced in criminal court, rather than treated as juveniles (or made subject to judicial waivers) in delinquency proceedings.

Guidelines. Treatment as an adult for purposes of prosecution “as a matter of law” refers to statutory exclusion of these charges from the jurisdiction of a court exercising delinquency jurisdiction. For example, States that circumscribe the jurisdiction of their juvenile courts to *exclude* charges of murder, aggravated sexual assault, and assault with a firearm, for juveniles 15 and over, would be in compliance with this requirement.

States with *presumptive* jurisdiction of a criminal court for such offenders would also comply with this requirement. In other words, States that have placed jurisdiction of juveniles 15 or older charged with such offenses in criminal court, but permit the prosecutor or the juvenile to move for transfer to juvenile court, in the discretion of the criminal court judge, would be considered in compliance with this requirement.

States in which the prosecutor “has the authority to determine whether or not to prosecute such juveniles as adults” would include any State in which the prosecutor may proceed in criminal court without the necessity of judicial approval. Consequently, States

¹For example, between 1992 and 1995, all but 10 States enacted or expanded provisions for transferring juveniles from juvenile court jurisdiction to criminal court for prosecution. *Office of Juvenile Justice and Delinquency Prevention, Juvenile Offenders and Victims: 1997 Update on Violence*. Ignoring or penalizing such changes would be inappropriate.

that require prosecutors to seek judicial waiver or approval to transfer such juveniles from a juvenile court exercising only delinquency jurisdiction to criminal court, whether or not waiver is presumptive, would not meet this requirement. By contrast, States that permit prosecutors to initiate proceedings in criminal court, even where there exists the possibility that the juvenile defendant may seek transfer to juvenile court, would be deemed in compliance.

Many States are experimenting with innovative disposition and sentencing options known as “blended sentencing.” Blended sentencing statutes allow the imposition of juvenile and/or adult sanctions in cases involving serious and violent juvenile offenders who have been adjudicated in juvenile court or convicted in criminal court. Where state blended sentencing models, as described in “State Responses to Serious and Violent Juvenile Crime” (OJJDP, 1996) (attachment A), apply to all juveniles age 15 and over who have been adjudicated or convicted of a serious violent offense, such states will be considered to meet the mandate.

B. Graduated Sanctions

Second, H.R. 3 requires that States and units of local government “impose sanctions on juvenile offenders for every delinquent or criminal act, or violation of probation, ensuring that such sanctions escalate in severity with each subsequent, more serious delinquent or criminal act, or violation of probation, including such accountability-based sanctions as -- (A) restitution; (B) community service; (C) punishment imposed by community accountability councils comprised [sic] of individuals from the offender’s and victim’s communities; (D) fines; and (E) short-term confinement.” [Sections 1802(a)(2), (b)(1)(B).]

Purpose. The purpose of this requirement is to help teach juveniles that offending has consequences – indeed, increasingly severe consequences with each more serious offense or violation.

Guidelines. This requirement is intended to refer to every *adjudication* of delinquency, *conviction* of a crime, or *judicial finding* of a probation violation. It is not intended to deter States or units of local government from implementing diversion programs or other alternative disposition or treatment options that permit authorities to decline to proceed with a delinquency adjudication or criminal conviction when they deem it appropriate.

The concept of “sanctions” includes a full range of dispositions and sentences, including those traditionally available to juvenile and criminal courts, such as restitution, fines, supervised release, probation, mandatory treatment (e.g., for sex offenders, drug abusers), out-of-home placement, and short- or long-term incarceration. The

“accountability-based” sanctions enumerated in the statute are examples of such options, and are not intended to serve as an exhaustive list.

Sanctions that “escalate in severity” reflect the type of progression suggested in the list of accountability-based sanctions [(A) through (E)] set forth in the statute. Sanctions that require a general period of probation are the least severe sanctions, although the specific terms of probation or assignment to an intensive probation program can increase the severity of a probation sanction. Sanctions that require only commitments of money and/or time, including restitution and community service, are generally considered the next level of sanction severity. Sanctions that limit personal freedom, including intensive probation, placement, commitment, confinement, and incarceration, are generally considered the most severe. The determination of escalating severity within each jurisdiction may be accomplished by legislation, by executive branch policy if applicable, or by court rules or policies, so long as the practice is binding throughout the relevant jurisdiction.

C. Juvenile Recordkeeping

The third requirement of H.R. 3 is that States and units of local government “establish at a minimum a system of records relating to any adjudication of a juvenile who has a prior delinquency adjudication and who is adjudicated delinquent for conduct that if committed by an adult would constitute a felony under Federal or State law which is a system equivalent to that maintained for adults who commit felonies under Federal or State law.” [Section 1802(a)(3), (b)(1)(C).]

H.R. 2267, the appropriations bill that incorporates the Juvenile Accountability Incentive Block Grants of H.R. 3, expands on the above condition by expressly providing that in order to meet this requirement, States and units of local government must “make available to the Federal Bureau of Investigation records of delinquency adjudications which are treated in a manner equivalent to adult records.”

Purpose. These provisions require that the adjudication record of any juvenile offender previously adjudicated delinquent, where a second or subsequent adjudication is for conduct that would be a felony under State or Federal law, be maintained in a system of records that is equivalent to that maintained for criminal felony records and be made available to the FBI in the same manner as criminal records. The intent of these requirements is to ensure the availability, at a minimum, of juvenile record histories of repeat juvenile offenders who have committed a felony offense.

Guidelines. Maintaining delinquency records in a system “equivalent” to the criminal system means, at a minimum, (1) providing a system that captures all adjudications of juveniles for delinquent acts (acts which would be a crime if committed

by an adult); and (2) compiling, at a minimum, the basic identifying information that the state criminal history record system compiles on convicted criminal offenders: e.g., name, alias(es), date of birth, address, charge(s), place of adjudication, offense(s) for which adjudicated, and disposition. The juvenile record may also maintain information specific to juvenile records, such as names of parents or guardians, and name of school attending.* Where a state uniquely identifies its criminal offenders, i.e., by fingerprint, the same system would be required for delinquent offenders subject to this requirement.

The expanded recordkeeping requirement is triggered if the second or subsequent delinquency adjudication is for conduct that, if committed by an adult, would constitute a felony under Federal *or* State law. Accordingly, in order to ensure compliance with this condition, States must identify and include conduct that does not constitute a felony under their own law but *does* constitute a felony under Federal law.

States and units of local government would make the applicable juvenile records available to the FBI in the same way they make adult records available; e.g., by conveying the records to a central repository that then submits them to the FBI database, or by submissions from individual units of local government. (Juvenile records can be maintained by the central State repository that maintains criminal history records or be maintained in a separate central repository). The requirement shall not be interpreted to require transmission of paper or electronic record information to the FBI beyond identification information.

Nothing in the requirement shall be construed to require States to alter their laws or policies concerning sealing or expungement of juvenile records.

D. Parental Supervision

Fourth, H.R. 3 requires States to “ensure that State law does not prevent a juvenile court judge from issuing a court order against a parent, guardian, or custodian of a juvenile offender regarding the supervision of such an offender and from imposing sanctions for a violation of such order.” [Section 1802 (a)(4).] (Note that this requirement applies only to States, not units of local government.)

Purpose. This requirement is intended to minimize obstacles to the accountability of parents or guardians for the supervision of adjudicated juvenile offenders. Clearly, parents, guardians, and custodians should play a key role in ensuring juveniles’ compliance with mandated treatment and sanctions, including restitution, community service, and fines, and with the terms and conditions of probation and supervised release.

Guidelines. As the statute makes clear, States need not take affirmative steps to encourage or require such orders, but rather to ensure their law does not prevent such

orders from being issued and enforced.

III. Accommodations for States that Bear Primary Financial Burden for the Administration of Juvenile Justice

Section 1803(b)(1) of H.R. 3 provides for a 75% distribution (pass through) of funds received by a State under Section 1803(a)(1) for any fiscal year to units of local government. The pass through formula is based on the combination of law enforcement expenditures by each such unit for the three most recent calendar years (2/3 weight) and the average annual number of Part 1 Violent Crimes arrests reported by such unit for the three most recent calendar years (1/3 weight), relative to such expenditures and arrests reported by all units of local government in the State.

Where a State demonstrates in its application for funds under Section 1802(a) that the State bears the primary (more than 50%) financial burden within the State for the administration of juvenile justice; i.e., for the functions authorized to be funded under Sections 1801(b)(1)-(11), the Attorney General may, upon the State's request, and in the Attorney General's discretion, waive the 75% pass through requirement and substitute a lower local pass through requirement in an amount that is no more than a 2/3-of-1% reduction for each percentage point over 50% of the financial burden for the administration of juvenile justice that is borne by the State.

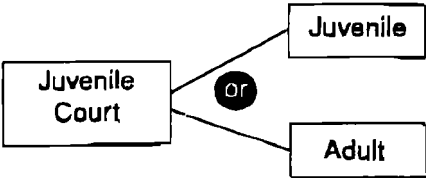
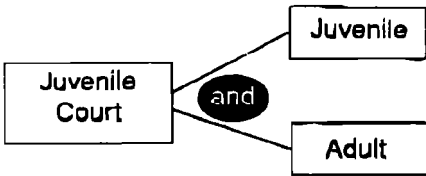
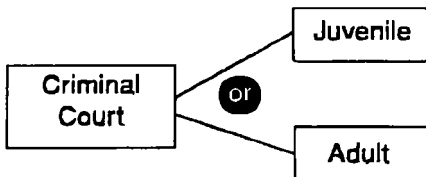
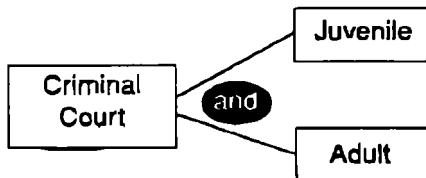
Example: State X demonstrates that it bears 60% of the financial burden within the State for the administration of juvenile justice (compared to the combined burden of units of local government). The State could request a reduction of the required local pass through from 75% to 68.33% ($75\% - \frac{2}{3} \text{ of } (60\% - 50\%) = 68.33\%$).

IV. Accommodations for the State of Louisiana

For the State of Louisiana, parish sheriffs will be considered the "unit of local government" under section 1803(b)(1) of H.R. 3. Parish sheriffs will be required to appoint the juvenile crime enforcement coalition required under H.R. 2267. By regulation, parish sheriffs will be required to follow the recommendations made by such coalitions in the allocation and expenditure of funds.

Figure 6

Models of "Blended Sentencing" Statutes ^{*}

Court	Type of Sanction	Description	Examples
Juvenile Court		<i>Juvenile—Exclusive Blend:</i> The juvenile court has original jurisdiction and responsibility for adjudication of the case. The juvenile court has the authority to impose a sanction involving either the juvenile or adult correctional systems.	New Mexico
Juvenile Court		<i>Juvenile—Inclusive Blend:</i> The juvenile court has original jurisdiction and responsibility for adjudication of the case. The juvenile court has the authority to impose a sanction involving both the juvenile and adult correctional systems. In most instances, the adult sanction is suspended unless there is a violation, at which point it is invoked.	Connecticut Minnesota Montana
Juvenile Court		<i>Juvenile—Contiguous:</i> The juvenile court has original jurisdiction and responsibility for adjudication of the case. The juvenile court has the authority to impose a sanction that would be in force beyond the age of its extended jurisdiction. At that point, various procedures are invoked to determine if the remainder of that sanction should be imposed in the adult correctional system.	Colorado (1) Massachusetts Rhode Island South Carolina Texas
Criminal Court		<i>Criminal—Exclusive Blend:</i> The criminal court tries the case. The criminal court has the authority to impose a sanction involving either the juvenile or adult correctional systems.	California Colorado (2) Florida Idaho Michigan Virginia
Criminal Court		<i>Criminal—Inclusive Blend:</i> The criminal court tries the case. The criminal court has the authority to impose a sanction involving both the juvenile and adult correctional systems. In most instances, the adult sanction is suspended unless there is a violation, at which point it is invoked.	Arkansas Missouri

* Each of the models presented applies to a subset of alleged juvenile offenders specified by State statute. For distinction between Colorado (1) and (2), see Addendum to this chapter.



OFFICE OF THE ATTORNEY GENERAL
FACSIMILE TRANSMITTAL COVER SHEET

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11 / 20 / 97

TO:

Rahm Emanuel

FACSIMILE NO.

456-2530

TELEPHONE NO.

cc: Jose 456-7028

FROM:

Kinney Zalesne

FACSIMILE NO.

202-616-5117

TELEPHONE NO.

202-514-2927

NUMBER OF PAGES INCLUDING COVER SHEET

3

COMMENTS:

Here are the numbers on what the new prosecutor + cts
 money can fund. Sorry for the delay

New Prosecutor and Courts Money for State and Local Crimefighting

Congress appropriated **\$250M** for the Juvenile Accountability Block Grant.

Five percent is earmarked for research and training, leaving **\$247.5M** for the States and other eligible recipients.

Each recipient is expected to use 45% of its grant funding for state and local prosecutors and courts, either for hiring personnel or for implementing programmatic initiatives. Therefore, the total amount expected to be spent on prosecutors and courts and their initiatives is **\$111.4M**. (For purposes of these estimations, that number is rounded to **\$110M**.)

- **If all the available money were spent on hiring additional state and local prosecutors to help target gang activity, communities could hire 4,400 new prosecutors.¹**
- **If all the available money were spent on hiring additional probation officers to help supervise juvenile offenders and get them back on track, communities could hire 3,520 new probation officers.²**
- **If all the available money were spent on new anti-gang task forces, to help prosecutors target, reduce, and punish local gang activity, communities could create 550 new anti-gang task forces.³**

¹Based on an average starting annual salary of \$20,000, plus 25% for benefits. According to the National District Attorney's Association, the salary of an entry level prosecutor varies depending on jurisdiction, location (urban or rural), and whether the prosecutor is full- or part-time (40% of all prosecutors are part-time). Average, full-time, entry-level, assistant DA salary is said to be \$18,000 per year, rounded to \$20,000 for purposes of this estimate.

²Based on an average starting annual salary of \$25,000, plus 25% for benefits. According to the American Probation and Parole Association, the average entry level salary is \$25,082, rounded here to \$25,000 for purposes of this estimate. Specific costs per jurisdiction, of course, vary by location and extent of duties.

³Based on an average cost of \$200,000 for a 12-month period. This figure includes standard operating expenses, confidential funds (e.g., undercover operation, informants), equipment, and limited personnel costs such as overtime and other benefits. It could also include part of a salary for one prosecutor, although it does not include salaries for the entire task force. Source: Office of Juvenile Justice and Delinquency Prevention, Bureau of Justice Assistance, National Youth Gang Center.

- **If *all* the available money were spent on new juvenile drug courts, to provide appropriate punishment, treatment, and rehabilitation for juveniles involved with drugs, communities could create 220 new juvenile drug courts.⁴**

Of course, no community need spend its funds in just one way. Any or all of these initiatives may be right for a particular community, or other court- or prosecutor-based programs may be more appropriate. It is up to communities themselves to assess their own needs and tailor their appropriate solutions. But the overall sum appropriated here can make a tremendous difference to communities seeking to reduce juvenile crime and violence.

⁴Based on an average 18-month cost of \$500,000. Although the figures vary greatly depending on the jurisdiction, size of population served, services offered, and number of personnel, applications to the Drug Courts Program Office suggest a range of projected costs for the first 18 months of drug court operation between \$200,000 and \$720,000.

Several Members of Congress Have Spoken Out Against S.10

Members of Congress and the Congressional Black and Hispanic caucuses have sounded an alarm. In the floor debate about the House companion bill to S.10, H.R.3, several members raised concerns about civil rights.

Rep. Louis Stokes (D-Ohio):

There can be no doubt that the draconian measures mandated by this legislation will have a disproportionately unfair impact on African American young people. As the nation experiences a slight overall decline in the crime rate, 5,300 black men of every 100,000 in the United States are in prison or jail.

This compares to an overall rate of 500 per 100,000 for the general population and is nearly five times the rate at which Black men were imprisoned in the apartheid era of South Africa. America is now the biggest incarcerator in the world and spends billions of dollars each year to incarcerate young people The number of African American males under criminal justice control is over 827,000. This figure exceeds the number of African-American males enrolled in higher education.

The Juvenile Justice Act of 1997 is a step in the wrong direction. We need to do all that we can to promote crime prevention measures to ensure that our children never start a life of crime. Furthermore, we must not give up our nation's most valuable resource, our young people.

I urge my colleagues to protect our youth and vote down this unconscionable measure. We are doing nothing to address this serious issue. Under this legislation, we can expect to see a significant increase in the number of African-American juveniles receiving mandatory minimum sentences.¹

Rep. Maxine Waters (D-Calif.), chair of the Congressional Black Caucus:

H.R.3 would for the first time allow juveniles to be prosecuted for conspiracy and result in another attempt to ensnare our youth into the criminal justice system.²

Rep. Nydia Velazquez (D-N.Y.):

I rise in strong opposition to H.R.3, the so-called Juvenile Crime Control Act, and in support of the Democratic substitute.

We might as well call the Republican version the throw-away-the-key act. Instead of providing education for children, the Republicans offer them prison with adults. Instead of offering programs to inspire and challenge children in poor communities, the Republicans offer them prison with adults. Instead of properly protecting children from firearms and drugs, the Republicans offer them prison with adults.³

¹ 143 Congressional Record. H2389 (May 8, 1997)

² 143 Congressional Record. H2373 (May 8, 1997)

³ 143 Congressional Record. H2365 (May 8, 1997)

S. 10, the Violent and Repeat Juvenile Offender Act of 1997, will hurt children and will not reduce juvenile crime. S.10 will put more children at risk for physical and sexual abuse in jails and prisons, and will not provide funding for prevention programs that communities need. The Senate Judiciary Committee marked-up S. 10 in July. The Senate is scheduled to consider the bill early in October. **If S. 10 becomes law:**

- **Children will be locked up with adult inmates in jails and prisons.**

Since 1974, the Juvenile Justice and Delinquency Prevention Act has provided states with financial incentives to remove children from jails, and, if children are held in jails temporarily (e.g., awaiting transport to a juvenile facility), to keep them separated by "sight and sound" from adult inmates. Forty-five states are in compliance with the "removal" provision, and 48 are in compliance with the "separation" provision. S. 10 would eliminate the "removal" provision and dramatically weaken the "separation" provision: children could be locked up in cells right next to those with adult inmates, allowed to talk with adult inmates, to be right next to them in intake and dining areas, in exercise areas, in the infirmary. The danger is clear: in contrast to children in juvenile facilities, children in adult facilities commit suicide 8 times as often,¹ are 5 times as likely to be sexually assaulted, twice as likely to be beaten by staff, and 50% more likely to be attacked with a weapon². S. 10 is a radical and dangerous change in a federal law that works.

- **Children who run-away or skip school will be jailed.**

Since 1974, children known as "status offenders" -- who commit not crimes, but offenses based on their age, such as running away or truancy -- have been moved out of correctional institutions in favor of community placements, through the incentives of the JJDP. Children who do not commit crimes do not belong in jail, where they are vulnerable to assault, rape, and suicide and, as raised above, could be mixed with adults. Instead, these children belong in a variety of community settings, including foster homes, group homes or their own homes, that can link them to the services they need and help them grow into productive adults. S. 10 would put status offenders in *adult* jails for up to 24 hours; truants in jails for up to 72 hours, plus weekends; and run-aways in jails for up to 14 days.

- **Prevention programs that work will not receive any of the funds they desperately need.**

Successful prevention initiatives -- including after-school programs and mentors -- have been proven to reduce youth delinquency.³ And interventions for children at-risk -- such as parent training and graduation incentives -- have been shown to reduce serious crimes more efficiently than incarceration.⁴ Prevention programs also cost considerably less than new juvenile detention beds, each of which costs more than \$100,000 to build.⁵ Nine out of ten police chiefs, as well as other community leaders, support prevention as an effective crime-fighting tactic.⁶ But S. 10 sets aside none of the \$500 million block grant or the \$150 million formula grant for prevention, and instead sets aside 60% of the money for drug testing, juvenile records, and incarceration. More, set-aside investments are needed in children and the community at the front end, to prevent the tragedy of crime and reduce the expenses of law enforcement.

¹ Flaherty, Michael G. "An assessment of the national incidence of juvenile suicide in adult jails, lockups, and juvenile detention centers." The University of Illinois, Urbana-Champaign, 1980.

² Frost, Martin, Jeffrey Fagan, and T. Scott Virona. "Youths in Prison and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy." *Juvenile and Family Court Journal*, vol. 40, no. 1, 1989.

³ Tierney, Joseph P. and Jean Baldwin Grossman with Nancy L. Resch. "Making A Difference: An Impact Study of Big Brothers/Big Sisters." Public/Private Ventures, 1995.

⁴ Greenwood, Peter W., Karyn E. Mode, C. Peter Rydell, and James Chiesa. "Diverting Children from a Life of Crime: Measuring Costs and Benefits." Rand Corporation, 1996.

⁵ "A Legislator's Guide to Comprehensive Juvenile Justice." National Conference of State Legislators, 1996.

⁶ "Fight Crime: Invest in Kids." Northeastern University's Center for Criminal Justice Policy Research, 1996.

Dear Senator:

In October, the Senate is expected to take up S. 10, the "Violent and Repeat Juvenile Offender Act of 1997". The undersigned organizations, representing a broad array of concerned individuals and agencies, urge you to oppose this bill in its current form, because it would harm children and exacerbate -- rather than reduce -- youth crime in this country. The bill:

- **fails to adequately invest in prevention:** While there are hundreds of millions of dollars authorized in S. 10 for fighting youth crime, including five set-asides for graduated sanctions, corrections, and other purposes, there is no designated funding source for prevention -- despite evaluations showing that prevention programs can be quite effective. Funds designated for prevention -- preferably through a set-aside for prevention -- are needed in order to ensure adequate investments in stopping youth crime before it happens, by giving youth positive alternatives to the streets and helping to keep youth on track.
- **endangers children by putting them in adult jails:** Current law prohibits either sight or sound contact between children and adult inmates in jails (for children tried either in state courts or in federal courts) and limits the time children can be in adult jails. S. 10 would eliminate the time limits and would eviscerate the requirements for separating children from adult inmates, despite the facts that: children in adult jails are at great risk of physical and sexual abuse, murder and suicide; children in adult jails will learn the wrong lessons from adult inmates -- in reality, children don't get cell mates, they get role models; and children in adult jails will not receive services -- especially mental health services, social/family services and special education services -- needed to turn them around.
- **endangers children who have committed no crimes:** Current law strictly limits the time that status offenders (e.g., truants, runaways, ungovernable children) can be in locked juvenile facilities and does not permit them to be housed in adult jails at all. S. 10 would unreasonably extend to 14 days the amount of time certain status offenders can be locked up with delinquent children and would even allow status offenders to be put in adult jails for up to 24 hours. Rather than providing vulnerable, at-risk children with the services they need, this places them in danger and in proximity of those who can teach them to be delinquents.
- **forces children out of school and onto the streets because of possession of drugs, alcohol, or tobacco:** S. 10 would require expulsion of children from school for possession of drugs, alcohol or tobacco, without a requirement that any alternative education be provided. This would put large numbers of children out on the streets without any positive alternatives to committing crimes, and would not address the needs of those children for educational services and (if drug or alcohol addiction are involved) for substance abuse treatment.

In sum, the current version of S. 10 would do much to *increase* youth crime and endanger

children, and little to *prevent* youth crime. We urge you to oppose S. 10 in its current form, and to support amendments to improve the bill, including those addressing the four major concerns described above. One or more amendment(s) may be offered to incorporate into S. 10 parts of H.R. 1818, which the House passed on July 15 with an overwhelming vote of 413 to 14; we urge you to support any such amendments. Thank you for your consideration of our views.

Sincerely,

American Academy of Child and Adolescent Psychiatry
American Academy of Pediatrics
American Association of Children's Residential Centers
American Association of School Administrators
American Counseling Association
American Friends Service Committee
American Humane Association
American Psychiatric Association
Americans for Democratic Action
Camp Fire Boys and Girls
Center for Law and Justice, Inc. (New York)
Center for the Study of Social Policy
Child Welfare League of America
Children and Adults with Attention Deficit Disorders
Children's Defense Fund
Church of the Brethren, Washington Office
Correctional Association of New York
Council for Exceptional Children
Council of Great City Schools
Covenant House, Washington
DC Action for Children
DC Prisoners' Legal Services Project
Family Service America
Federation of Families for Children's Mental Health
Friends Committee on National Legislation
Georgetown Law Center Juvenile Justice Clinic
Girls Incorporated
Justice Policy Institute of the Center on Juvenile and Criminal Justice
Learning Disabilities Association
Legal Action Center
Lutheran Services in America
Lutheran Office for Governmental Affairs, ELCA
National Association of Counsel for Children
National Association of Criminal Defense Lawyers
National Association of Homes and Services for Children
National Association of Private Schools for Exceptional Children
National Association of Secondary School Principals

National Association of Social Workers
National Center on Institutions and Alternatives
National Committee Against Repressive Legislation
National Committee to Prevent Child Abuse
National Council of Jewish Women
National Council of Senior Citizens
National Education Association
National Legal Aid and Defender Association
National Ministries, American Baptist Churches USA
National Therapeutic Recreation Society
National Treatment Consortium, Inc.
Native American Rights Fund
Office for Church in Society / United Church of Christ
Shared Mission Focus on Young People (United Methodist Church)
Spina Bifida Association of America
Unitarian Universalist Service Committee
United Methodist Church, General Board of Church and Society
Youth Law Center

MONDAY, JULY 7, 1997

Abroad at Home

ANTHONY LEWIS

Suffer the Children

Rodney Hulin Jr., a 16-year-old Texas schoolboy, was charged with arson in 1995 in a fire that did \$500 in damage to a fence. When he admitted his guilt, he was sentenced to eight years in prison.

On Nov. 13, 1995, he was sent to an adult prison in Brazoria County, Texas. Two weeks later he wrote his father that he had been raped by another prisoner. "I was examined by Dr. Davis and he found two tears inside my rectum — butt. I will be taking an H.I.V. test in a few days,

separated from adults in prison.

Instead, the Senate bill would impose a weaker rule: that juvenile prisoners not have "regular sustained contact" with adult inmates. That appears to bar keeping them in the same cells but would leave juveniles open to adult intimidation and assault in showers, recreation, on the way to eating and so on.

Juveniles do occasionally commit terrible crimes. But the vast majority of kids who are arrested in this country have got in trouble for minor offenses or adolescent misbehavior.

Putting children of that kind in prison with hardened adult criminals can lead to tragedy. Mark I. Soler, president of the Youth Law Center, gave some examples to a Senate Judiciary subcommittee.

A 15-year-old girl who ran away from home for one night, then returned voluntarily, was put in jail by a judge in southeastern Ohio to "teach her a lesson." She was an A student who had never been in trouble before. On her fourth night in jail a guard sexually assaulted her.

Kathy Robbins, a 15-year-old in northern California, was jailed when she violated the local curfew by being out after 10 P.M. After a week she hanged herself. In Boise, Idaho, Christopher Peterman, 17 years old, was put in jail for failing to pay \$73 in traffic fines. Other prisoners tortured and finally murdered him.

The striking thing about the new Federal legislation is the absence of any need for it. In the last several years 42 states have reformed their juvenile justice systems to make sure of appropriate handling and punishment of serious offenders.

The only reason for Federal intervention is politics. Republicans in Congress are vying with President Clinton to look "tough" on crime. Saddest of all is the case of Attorney General Janet Reno, who came to office saying she cared more than anything about children. Where is her voice now?

The unavoidable truth is that prisons in this country are all too often places of depravity and savagery. Whatever we think of putting adults in them, it is surely wrong to put children where they are likely to be brutalized.

Rodney Hulin's father, Rodney Sr., is a chef at a retirement home in Beaumont, Tex. When I talked with him, he said quietly, "There wasn't a lot of humanity." If there is anything to be learned from his son's death, he said, it is that "children must not be locked up with adult criminals." □

Adult prison is no place for juveniles.

because there are about 2,200 inmates here, ½ are H.I.V. positive."

He asked the warden to be put in a safe place but was turned down. Over the next few months he was repeatedly beaten and sexually assaulted. He asked his father to "pray that I will get out of here alive."

On Jan. 26, 1996, Rodney hanged himself in his cell. He was in a coma for four months until he died.

Abuse of juveniles in adult prisons was so common in this country that in 1974 Congress passed a law requiring states, as a condition of getting certain Federal aid, to house them separately. Virtually all states have complied. But now Congress is moving to eliminate that and other protections for juvenile offenders.

President Clinton, declaring it his "top law-enforcement priority" this year, proposed a bill to toughen the treatment of youthful offenders. The House passed a harsher Republican bill in May. The Senate Judiciary Committee is scheduled to mark up this week its version of the legislation.

The House bill would allow Federal prosecution as adults of children as young as 13, and require adult prosecution for those 14 and older who are charged with certain violent crimes. It would require the states to prosecute children 15 and older as adults for those crimes. And it would ease the rules against mixing children with adult prisoners.

The proposed Senate bill would allow children as young as 14 to be housed in adult Federal prisons. As for the states — which handle the overwhelming proportion of youthful offenders — the bill removes the 1974 requirement that juveniles be

Congress is currently considering legislation that would result in teenagers, as young as age 13, being jailed with adults while awaiting a court hearing or trial.

Proponents of the bill cite this as "getting tough on juvenile crime." As law enforcement officers, district attorneys and corrections officials, we advocate fully prosecuting juveniles who commit violent crimes.

However, we cannot endorse legislation that would allow an unconvicted teenager accused for the first time of a curfew violation, shoplifting, joy riding or some lesser offense to be jailed with adult criminals.

they would have over your child after two days. Two weeks. Two months.

Jailing kids with adults only assures the next generation of criminals. Research has proven juveniles prosecuted as adults are far more likely to commit future crimes. And that puts all of us at risk of becoming future victims.

Statistics Are Just Numbers. People Are Real.

In a recent survey, it was revealed that Americans believe youths are responsible for

adult prisoners. Or the girl, age 15, who shoplifted a bottle of suntan lotion and committed suicide after her first week in confinement.

There Is A Better Answer.

Again, we agree with our legislators that something has to be done about crime. And juvenile crime, specifically.

In a poll conducted in 1996, some 500 police chiefs were asked what would they do to solve this very problem. 92% agreed with the statement "America could sharply reduce crime

LOCK UP A 13-YEAR-OLD WITH MURDERERS, RAPISTS AND ROBBERS, AND GUESS WHAT HE'LL WANT TO BE WHEN HE GROWS UP?

Teenagers Don't Get Cellmates. They Get Role Models.

The truth is most juveniles being held while awaiting trial have not been charged with a violent crime.

But just imagine what it's like to be 13 or 14 years old and jailed with adults arrested for robbery, assault, child abuse, rape or murder. Convicted felons and repeat offenders. You wouldn't want your child spending five minutes with such people. Now imagine the influence

more than 40 percent of all violent crimes in America. In truth, the FBI reports that only 6 percent of all juveniles arrested each year are held for violent crimes. And less than one-half of one percent are arrested for homicides.

It's understandable why the general public has this misconception when that one-half of one percent is played out so dramatically on the evening news.

But what you didn't see on TV was the story of the 17-year-old boy in Idaho who was jailed with adults, tortured and finally murdered. Or the 15-year-old girl sexually assaulted by a deputy jailer on her fourth night in jail. Or the teen in Orlino who, in 1996, was killed by six

If government invested more in programs to help children and youth get a good start."

Their response isn't surprising. In communities across the nation, after-school programs, community policing, mentoring and other prevention programs have been proven effective in leading kids away from temptation.

But the legislation Congress is currently considering will only result in greater injustices being perpetrated in jails, and more severe crimes being committed on the streets.

We guard your neighborhoods. And fight for you in court. All we ask is, please, don't make our jobs more difficult.

THE COALITION TO PREVENT JUVENILE CRIME

Terence Hallinan, D.A., San Francisco • Norm Early, Former D.A., Denver • Carl Wicklund, Director, American Probation & Parole Assoc. • Sheriff Michael Hennessey, City & County of San Francisco • Oliver J. Keller, Former President, American Correctional Assoc. • William E. Sceni, Former U.S. Attorney Western District of Kentucky • Ronald E. Hampton, Exec. Director, National Black Police Assoc. • Frank A. Hall, Former Commissioner/Director of Corrections, Philadelphia, Santa Clara County, Oregon & Massachusetts • John F. Gerczyk, Commissioner, Vermont Dept. of Corrections • James A. Henmi, Exec. Director, New Jersey Assoc. on Correction • Chase Rivelant, Former Secretary, Washington State Dept. of Corrections • Walter J. Dickey, Former Secretary, Wisconsin Dept. of Corrections • Frank W. Wood, Minnesota Corrections Commissioner (Ret.) • Allen F. Breed, Director (Ret.), National Institute of Corrections • Jack Cowley, Former State Prison Warden, Oklahoma • Joseph D. McNamara, Police Chief (Ret.), San Jose • Edward J. Loughran, Former Commissioner, Massachusetts Dept. of Youth Services • Penny Johnson, Former Director, Michigan Dept. of Corrections • Donald A. Cabana, Former Warden, Mississippi State Penitentiary • Darrel W. Stephens, Chief, St. Petersburg Police Dept. • Colonel Douglas Hamilton, Chief, Louisville Division of Police • Anthony V. Boura, Former Chief of Police, Minneapolis • F. Russell Miller, Former U.S. Attorney, Western District of Missouri • Albert A. Riederer, Former Prosecuting Attorney, Jackson County (Kansas City)