

STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT

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July 11, 2008

The Honorable Senator Jeff Bingaman
United States Senate
703 Hart Senate Office Building
Washington, DC 20510

Dear Senator Bingaman:

On behalf of the Las Cruces Juvenile Division of the New Mexico Public Defender Department, we are writing to express our strong support for S. 3155, the Juvenile Justice and Delinquency Prevention Reauthorization Act of 2008 as introduced. While we are supportive of the bill, we are hopeful the bill can be further amended to provide for stronger conditions of confinement language, improved incentive grants language, and a phase-out of the statutory authority to confine youth status offenders in juveniles facilities.

S. 3155 meaningfully updates and improves many of the federal Juvenile Justice and Delinquency Prevention Act (JJDP) core requirements, research and training resources and other key areas of the law. We are pleased to see such positive movement to reauthorize the JJDP, which, for more than 30 years, has provided states and localities with federal standards and supports for improving juvenile justice and delinquency prevention practices and put in place safeguards for youth, families and communities.

We specifically applaud the progress represented by the following amendments in S. 3155:

Core Requirements:

- Strengthens the Disproportionate Minority Contact (DMC) core requirement: Research has documented that youth of color are disproportionately over-represented and subject to more punitive sanctions at all levels of the juvenile justice system. S. 3155 provides clear direction to States and localities, asking them to plan and implement data-driven approaches to ensure fairness and to reduce racial and ethnic disparities, to set measurable objectives for DMC reduction and to publicly report on progress.
- Improves the Jail Removal and Sight and Sound core requirements: Research shows youth confined in adult jails and lock-ups face increased recidivism and high risks of assault and suicide. S. 3155 extends the jail removal and sight and sound core requirements to keep youth awaiting trial in criminal court out of adult lock-ups under certain circumstances.

While our ultimate goal is to completely remove these youth from adult facilities, S. 3155 takes a good step in this direction.

- Allows States to continue to place youth convicted in adult court in juvenile facilities without jeopardizing federal funding: S. 3155 would permit many States to continue allowing youth convicted in adult court to serve their sentence in juvenile facilities until they reach the extended juvenile jurisdiction age. This reverses current law, which would penalize States that utilize more appropriate and humane placements for youth.
- Strengthens the deinstitutionalization of status offenders (DSO) core requirement: Under current law, non-delinquent status offenders, such as children who are truant, runaway or violate curfew, alcohol and tobacco laws, may be held in juvenile lock-ups under the Valid Court Order exception, which allows judges to issue detention orders. The practice persists despite evidence that securely detaining status offenders is harmful to prosocial development and costly, especially compared to more effective responses including shelter care, crisis counseling, family support, and/or community and school based interventions. While S. 3155 requires judicial findings and establishing a ceiling of 7 days for secure detention, we strongly support an amendment to phase-out altogether the VCO exception (see attached) to protect status offenders from being locked up, where they are vulnerable to victimization and at risk of developing delinquent behaviors.

Overall juvenile justice system improvements:

- Improves conditions of confinement in juvenile facilities: S. 3155 calls for the Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to report annually on state data regarding the uses of isolation and restraints in juvenile detention and corrections facilities, and encourages training of facility staff to eliminate dangerous practices. S. 3155 also requires states to develop policies, procedures and training on effective behavior management designed to eliminate use of dangerous practices, unreasonable restraints and isolation. We would encourage adoption of clearer language that would require elimination of dangerous practices, unreasonable restraints and isolation, and require states to ensure that facilities establish safe staffing levels and effective programming in addition to effective behavior management, since these are all essential elements in ensuring safety of youth and reducing use of harmful practices.
- Provides comprehensive services and supports for youth: S. 3155 promotes alternatives to detention, improves assessments and treatments for mental health and substance abuse, enhances child welfare and juvenile justice integration, supports effective assistance of counsel, and improves case management and transitional care for youth upon re-entry.

Support for states:

- Increases states' ability to comply with the core requirements: S. 3155 offers technical assistance and authorizes re-investment of any funds previously withheld due to non-compliance with one or more of the core requirements as an "improvement grant" aimed at assisting States to regain compliance.

- Creates incentive grants: S. 3155 expands evidence based and promising intervention and prevention programs by creating incentive grants. We would strongly support consideration of an amendment to ensure that programs funded by these grants show evidence-based or promising outcomes of effectiveness.
- Expands the role of OJJDP: S. 3155 provides guidance about specific research, technical assistance and training efforts to be conducted in a manner that benefits States and communities, nationwide.

Funding levels:

- Sets more appropriate authorization levels for Title II and Title V: S. 3155 provides States with the resources to achieve and sustain compliance with the core requirements of the JJDPA and take meaningful steps to improve juvenile justice systems and prevent delinquency and violence.

In light of these advancements, we support S. 3155 as a significant step towards improving the JJDPA and offer ourselves as a resource as the bill moves through the legislative process. Thank you for your efforts on behalf of youth, families and communities across the country.

Sincerely,

Rory Rank
Attorney

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Attorney

New Mexico Public Defender Department
Las Cruces Juvenile Division

Bold text is the amendment we support to the JJDPa core requirement on “Deinstitutionalization of Status Offenders” to phase-out use of the Valid Court Order exception:

42 U.S.C. 5633 [Sec. 223.] State plans

(11) in accordance with rules issued by the Administrator, provide that -

(A) juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult, excluding -

(i) juveniles who are charged with or who have committed a violation of section 922(x)(2) of title 18, United States Code, or of a similar State law;

shall not be placed in secure detention facilities or secure correctional facilities; and

(B) juveniles --

(i) who are nonoffenders or not charged with any offense; and

(ii) who are -

(I) aliens; or

(II) alleged to be dependent, neglected, or abused;

shall not be placed in secure detention facilities or secure correctional facilities.

(C) within two years of the date of enactment of this subparagraph, or sooner if possible, no exceptions to this paragraph shall be permissible in relation to—

(i) juveniles who are charged with or who have committed a violation of a valid court order; and

(ii) juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the State; and

(D) States and local units government or combination thereof shall encourage the use of community-based alternatives to secure detention, including the federal Runaway and Homeless Youth Act (RHYA) programs administered by the Family and Youth Services Bureau of the U.S. Department of Health and Human Services’ Administration for Children and Families (42 U.S.C. 5701)

(E) Hardship extension. States may apply for a one-year extension to comply with this paragraph. To apply, States must submit an application to the Administrator describing:

(1) The State’s measurable progress and good faith effort to reduce the number of status offenders who are placed in secure detention or correctional facilities; and

(2) The State’s plan to come into compliance within one year.