

July 11, 2008

The Honorable Senator Diane Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510
VIA FACSIMILE

RE: S. 3155

Dear Senator Feinstein:

The W. Haywood Burns Institute (BI) offers strong support for S. 3155, the Juvenile Justice and Delinquency Prevention Reauthorization Act of 2008. S. 3155 makes meaningful and important improvements to many of the federal Juvenile Justice and Delinquency Prevention Act (JJDP) core requirements, research and training resources and other key areas of the law. In particular, the BI is concerned with strengthening the core requirement to reduce racial and ethnic disparities in the juvenile justice system.

The BI is a national non-profit organization based in San Francisco, California. We work with local juvenile justice systems to reduce racial and ethnic disparities in the juvenile justice system using a data driven, consensus based approach. We have worked with dozens of jurisdictions across the nation, and we have achieved measurable reductions in racial and ethnic disparities.

The BI is encouraged to see such positive movement to reauthorize this critical legislation, 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. While BI is supportive of the bill, we are hopeful the bill can be further amended to provide for stronger language around strengthening the requirement that states make efforts to reduce racial and ethnic disparities in the juvenile justice system as well as several other key provisions enumerated below.

(1) Strengthening the core requirement to reduce racial and ethnic disparities.

Research indicates that youth of color are disproportionately over-represented at every decision making point in juvenile justice system and subject to more punitive sanctions at all

levels of the juvenile justice system. These racial and ethnic disparities are well documented for several decades.

Disproportionality also exists in the State of California. According to 2005 Corrections Standards Authority data, Black and Latino youth in California are overrepresented at all critical decision making points in the juvenile justice system. For example, Black youth are nearly three times more likely than White youth to be arrested, and Black youth are more than four times more likely than White youth to be securely detained pending adjudication.

Throughout the country, jurisdictions have spent significant time and money trying to reduce racial disparities in juvenile justice with limited results. Strengthening the JJDPa will make it possible for more jurisdictions to reduce racial and ethnic disparities in the juvenile justice system. Currently, the JJDPa only requires that states “address” DMC. It does not require oversight of DMC reduction efforts, mapping of critical decision points, accurate collection of relevant data, development of work plans with measurable objectives, or regular monitoring, evaluation, and reporting. This vague requirement that states “address” efforts to reduce DMC has left state and local officials without a clear mandate or guidance for reducing racial and ethnic disparities. Jurisdictions need to approach work to reduce disparities with focused, informed, data-driven strategies. Otherwise, jurisdictions can get stuck studying the problem or endlessly working on projects that do not lead to measurable changes.

The BI is encouraged that S. 3155 recognizes the importance of offering concrete guidance to States and localities in their efforts to reduce racial and ethnic disparities in the system. S. 3155 asks states 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 their efforts.

While the language around reducing racial and ethnic disparities goes far in providing States and localities with direction in their efforts to reduce racial and ethnic disparities, the BI believes there are three key areas where the current bill does not provide adequate direction.

- (i) As introduced, S. 3155 does not include language requiring that States and localities engage the community in efforts to reduce racial and ethnic disparities. S. 3155 should include language that ensures that families and youth of color impacted by the juvenile justice system, community leaders, and service providers are included in the proposed coordinating body of juvenile justice stakeholders that oversee and monitor State efforts to reduce racial and ethnic disparities. Too often these juvenile justice stakeholders with important insight and the greatest personal “stake” in reducing racial and ethnic disparities are excluded from the effort.
- (ii) As introduced, S. 3155 does not include language that ensures that States not only identify and analyze which key juvenile justice system decisions create racial and ethnic disparities but also what the causes of these disparities are. Currently, the vast majority of States engaged in work to reduce racial and ethnic disparities in the juvenile justice system collect data at key decision making points in the

juvenile justice system using a methodology that allows them to identify numerical disparities. In order for States to develop strategic interventions that reduce racial and ethnic disparities at key decision making points, they must know what factors are causing the disparities. Thus, S. 3155 should be amended to include language ensuring that States and localities identify and analyze the causes of disparities.

- (iii) As introduced, S. 3155 does not include language requiring that states and localities publicly report on an annual basis their progress towards this. By requiring that States report on their progress towards reduce racial and ethnic disparities, States are asked to do more than describe the steps they have taken. Rather, States are required to give indication of how those steps are working towards actual reductions in racial and ethnic disparities.

The BI's experiences in jurisdictions around the country tell us that reducing racial and ethnic disparities is possible. Our experience also tells us that success requires a strategy that is guided and intentional. Thus, the BI strongly advocates that the reauthorization of the JJDPa require that states and localities engage in specific approaches to reduce racial and ethnic disparities while maintaining public safety.

(2) Improving the Jail Removal and Sight and Sound core requirements.

Research demonstrates that youth of color are over-represented in adult jails and lock up facilities. Research also 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.

(3) Allowing 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.

(4) Strengthening the deinstitutionalization of status offenders (DSO) core requirement.

Under current law, status offenders, including youth 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 Valid Court Order Exception undermines the core requirement by allowing status offenders, young people who have committed non-criminal acts such as running away from home or skipping school, to be detained for violating court orders to stop these misbehaviors. Incarceration is not an appropriate or effective means to treat the difficult circumstances in the lives of youth that lead to status offenses. Evidence-based alternatives that address the underlying causes of

youth misbehavior are less costly and more effective in treating these behaviors, reintegrating youth into their communities, and ultimately preventing juvenile crime.

While S. 3155 requires judicial findings and establishing a ceiling of seven days for secure detention, we strongly support an amendment to phase-out the VCO exception to protect status offenders from being locked up, where they are vulnerable to victimization and at risk of developing delinquent behaviors.

Senator Cardin supports an amendment to eliminate the valid court order exception. This change in federal law will address the school-to-jail pipeline, prevent overcrowding, and better protect public safety while spending less state money. The BI urges you to follow Senator Cardin's leadership on the elimination the VCO exception to protect young people.

(5) Improving the 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 encourage the adoption of clearer language that would eliminate 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.

The W. Haywood Burns Institute supports S. 3155 as a significant step towards improving the JJDP 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,

James Bell
Executive Director

Laura John
Law and Policy Analyst