



July 15, 2008

The Honorable Patrick J. Leahy  
Chairman, Senate Committee on the Judiciary  
United States Senate  
433 Russell Senate Office Building  
Washington, D.C. 20510-4502

The Honorable Arlen Specter  
Ranking Member, Committee on the Judiciary  
United States Senate  
711 Hart Senate Office Building  
Washington, D.C. 20510-3802

Dear Chairman Leahy and Senator Specter:

As a national reform organization that supports effective criminal and juvenile justice strategies, The Sentencing Project would like to offer our strong support for S. 3155, the Juvenile Justice and Delinquency Prevention Reauthorization Act of 2008 as introduced. We encourage the Senate Judiciary Committee to continue to strengthen the JJDP core protections for children and youth as this bill moves through the Committee.

The Sentencing Project advocates for fair and equitable treatment of those involved in the criminal and juvenile justice systems. We have produced many publications that demonstrate the extreme and persistent racial disparity which plagues the administration of justice in this country; decades of research reveal that youth of color are overrepresented in the juvenile justice system as well. For instance, while African American youth account for only 16% of adolescents in this country, they comprise 38% of youth in local jails and state correctional facilities. Moreover, racial and ethnic disparities worsen as youth progress through the system. And, research frequently finds that youth of color are treated much more harshly than White youth for committing the same offenses.

The Sentencing Project also strongly advocates for strategies to divert children and youth from secure confinement and toward alternatives to detention. Evidence-based community programs have been demonstrated to effectively lower rates of offending, while incarceration often results in higher rates of recidivism. We are pleased to see a strong emphasis on best practices in this bill; 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 reentry.

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 overrepresented 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.

The bill language vastly improves current law regarding DMC, but we are hopeful that the bill can further be amended to provide stronger language around community engagement. Specifically, we support strengthening amendments that include affected communities as stakeholders and calls on them to participate in efforts to reduce racial and ethnic disparities. Too frequently, community members are not included in discussions or activities to identify causes of DMC and assist with reducing it, yet these community members truly have a “stake” in DMC.

A second area where we see room for improvement in the bill lies in reporting DMC-related findings. We are pleased to see that the bill calls for a requirement to report DMC-reduction efforts annually. However, the bill does not include language requiring that States and localities publicly report on an annual basis their *progress* toward reducing racial and ethnic disparities. By requiring that States report their progress toward reducing racial and ethnic disparities, States are asked to go beyond merely describing their efforts and to report what impact these efforts are having.

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 to protect status offenders from being locked up, where they are vulnerable to victimization and are at risk of developing delinquent behaviors. Unfortunately, the VCO exception has significantly undermined the DSO requirement. This exception has become the rule, with the total number of court petitioned juvenile status offense cases doubling between 1985 and 1994. On average in 2006, 4,700 youth a day were placed in juvenile facilities for a status offense. We are in agreement with other advocates that the “valid court order” clause of this core requirement has weakened this protection for status offenders and should be eliminated.

### **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 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.

In light of these advancements, we support S. 3155 as a significant step toward 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,

Marc Mauer, Executive Director  
The Sentencing Project

CC: Senate Judiciary Committee Members

Senator Edward M. Kennedy

Senator Joseph R. Biden, Jr.

Senator Herb Kohl

Senator Dianne Feinstein

Senator Russell D. Feingold

Senator Charles E. Schumer

Senator Richard J. Durbin

Senator Benjamin L. Cardin

Senator Sheldon Whitehouse

Senator Orrin G. Hatch

Senator Charles Grassley

Senator Jon Kyl

Senator Jeff Sessions

Senator Lindsey Graham

Senator John Cornyn

Senator Sam Brownback

Senator Tom Coburn