



July 16, 2008

The Honorable Patrick Leahy
Chair
Senate Judiciary Committee
Washington, D.C. 20510

The Honorable Arlen Specter
Ranking Member
Senate Judiciary Committee
Washington, D.C. 20510

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**Re: ACLU Applauds Reauthorization of the Juvenile Justice and
Delinquency Prevention Reauthorization Act of 2008**

Caroline Fredrickson
DIRECTOR

Dear Chairman Leahy and Ranking Member Specter:

NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
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On behalf of the American Civil Liberties Union, a non-partisan organization with hundreds of thousands of activists and members and 53 affiliates nationwide, we write to support S. 3155, the Juvenile Justice and Delinquency Prevention Reauthorization Act of 2008, and to urge the Committee to strengthen key elements of this important bill.

OFFICERS AND DIRECTORS
NADINE STROSSEN
PRESIDENT

The ACLU has prioritized juvenile justice issues for many years. We have been actively involved in challenging the “school to prison pipeline,” ensuring the adequacy of counsel for juveniles and, most recently, issued a report on the use of pre-adjudication detention of children in Massachusetts entitled “Locking Up Our Children.” We are pleased that the Senate bill updates and improves many of the federal Juvenile Justice and Delinquency Prevention Act (JJDP A) core requirements, research and training resources and other key areas of the law. Federal leadership in this area is critical and, for more than 30 years, the JJDP A has provided states and localities with standards and support for improving juvenile justice and delinquency prevention practices and putting in place safeguards for youth, families and communities.

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RICHARD ZACKS
TREASURER

In S. 3155, we commend the Senate for strengthening the Disproportionate Minority Contact (DMC) core requirement; improving the jail removal and sight and sound core requirements; allowing states to continue placing youth convicted in adult court in juvenile facilities without jeopardizing federal funding; strengthening the Deinstitutionalization of Status Offenders (DSO) core requirement; improving the conditions of confinement in juvenile facilities; providing comprehensive services and supports for youth; and

providing increased support and resources for states.

We also support the new provision to develop and issue standards of practice for attorneys representing children, and ensure that the standards are adapted for use in states. In our programmatic work, the ACLU has seen that juvenile courts routinely permit children to waive their right to counsel without ensuring that the waiver is knowing and intelligent. For example, in some jurisdictions in Ohio, we have found that children waive their right to counsel in up to 90% of the cases in which they are charged with criminal wrongdoing. The Office of Juvenile Justice and Delinquency Prevention can play a valuable role in ensuring, at the very least, that juvenile courts across the country have the benefit of technical assistance and standards to discourage such practices.

While S. 3155 successfully addresses some of the shortcomings of the current law, we offer the following recommendations for further improvement:

- **Strengthen the Deinstitutionalization of Status Offenders (DSO) core requirement by eliminating the Valid Court Order (VCO) exception.**

The DSO core requirement has existed since the JJDPa was enacted and prohibits the incarceration of status offenders - juveniles whose offenses would not be criminal but for their status as minors (e.g., truants, runaways and youths who violate curfew). This requirement protects juveniles with non-criminal offenses from incarceration, where they are at risk of victimization and exposure to unsafe conditions. Unfortunately, the VCO exception, which permits the secure detention of juveniles with non-criminal offenses for a violation of a valid court order, has significantly undermined the DSO requirement. This exception has swallowed the rule, with the total number of court petitioned juvenile status offense cases doubling between 1985 and 1994.

Throughout the nation, children who are prosecuted through juvenile courts for status offenses are subject to boilerplate conditions of release, such as school attendance or obeying teachers. Unfortunately, the circumstances that lead a particular child to commit his or her first status offense often go unaddressed (e.g., unmet special needs). Not surprisingly, that child often commits the same offense again and, as a result, lands in secure detention.

According to the Office of Juvenile Justice and Delinquency Prevention, between 1995 and 2004 there has been a 69% increase in truancy court cases. Research shows that school-based services such as Positive Behavioral Interventions and Supports (PBIS) are effective in addressing the educational and social needs of juveniles who are chronically truant. Placing children with truant behavior in juvenile facilities is bad practice and greatly reduces their chances of school engagement and academic achievement. Girls are also disproportionately affected by the DSO exceptions, representing 14% of delinquent children in custody, but 40% of status offenders in custody. Girls often run away because of an unstable or even abusive home environment, making incarceration a particularly cruel and illogical response to their situation. For these reasons, we urge the Committee to support the amendment, which we believe will be introduced by Senator Cardin during mark-up, to eliminate the VCO exception.

- **Encourage Greater Accountability for State and Local Grants**

While we support incentive grants to states and localities to provide incentives to use best practices in prevention and intervention programs, we are concerned that these funds may be

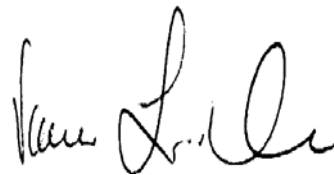
used to support programs that are not evidence-based. Moreover, we are concerned that such programs will be implemented in a manner that actually fails to reduce the number of children referred to the juvenile justice system. Of immediate concern, we question the use of such funds to deploy law enforcement to patrol middle and high school hallways. Far from being proven as an evidence-based practice, the deployment of “school resource officers” has significantly *increased* the number of school-based arrests. The vast majority of these arrests are for minor and entirely predictable juvenile conduct.¹ If the federal government continues to fund such practices, we must require that programs are evaluated for effectiveness both before and after implementation.

Thank you for your consideration and leadership. If you have any questions about the ACLU’s position on S. 3155, please feel free to contact Vania Leveille vleveille@dcaclu.org or (202) 715-0806.

Sincerely,



Caroline Fredrickson
Director, Washington Legislative Office



Vania Leveille
Legislative Counsel

cc: Senate Judiciary Committee

¹ *See, e.g.*, ACLU, *Criminalizing the Classroom: The Over-Policing of New York City Schools* (Mar. 2007) (documenting abuses by school resource officers); Clayton County Public Schools, *Blue Ribbon Commission on School Discipline*, at 47 (Jan. 2007), available at www.clayton.k12.ga.us/departments/student-services/handbooks/BlueRibbonExecutiveReport.pdf (finding that number of school-related charges filed in juvenile court increased from 90 to 1,200 due to presence of police in schools and that most offenses involved “school fights, disorderly conduct [e.g., yelling in the hallway or cursing]; obstruction of an officer [e.g., running away from a police officer when told to stop]; and, disrupting a public school [similar to disorderly conduct]”); Advancement Project, *Education on Lockdown* (Mar. 2005) (finding majority of school-based arrests by school resource officers is for minor offenses).