

CAMPAIGN FOR  
YOUTH JUSTICE

BECAUSE THE CONSEQUENCES AREN'T MINOR

July 14, 2008

The Honorable Patrick J. Leahy  
Chairman  
Senate Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Arlen Specter  
Ranking Member  
Senate Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senator Leahy and Senator Specter:

On behalf of the Campaign for Youth Justice, a non-profit organization dedicated to ending the practice of trying, sentencing and incarcerating youth under the age of 18 in the adult criminal justice system, I am writing to thank you for your strong leadership and to strongly support S. 3155, the Juvenile Justice & Delinquency Prevention Act (JJJDA) of 2008. I urge you to vote for S. 3155, but also to vote for strengthening amendments that will eliminate the lock up of status offenders, expand mental health provisions, and improve conditions of confinement. I also urge you to vote against any weakening or unrelated amendments that run counter to the goals of this legislation.

We strongly support S. 3155 for the following reasons:

- (1) The bill adds critical additions to the JJPDA to keep youth out of adult jails and prisons.

As the original intent of the JJDPA was to protect youth from the dangers of adult facilities, S. 3155 updates the federal law in light of extensive research that shows that youth in adult facilities are at a great risk of assault, abuse, and suicide compared to youth in juvenile facilities.

For example, in November, 2007, the Campaign for Youth Justice released "Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America," documenting the negative impact on youth of placing them in adult jails.

Youth placed in adult jails with adults are at risk of physical and sexual assault. According to the U.S. Department of Justice's Bureau of Justice Statistics (BJS), 21% and 13% of all substantiated victims of inmate-on-inmate sexual violence in jails in 2005 and 2006 respectively, were youth under the age of 18. These numbers are surprisingly high given that only 1% of jail inmates are juveniles.

Separating children from adults in adult jails helps reduce some of the physical or emotional harm to children, but children are then often placed in isolation which can also produce harmful consequences. Youth are frequently locked down 23 hours a day in small cells with no natural light. These conditions can cause anxiety, paranoia, and exacerbate existing mental disorders and put youth at risk of suicide. Youth have the highest suicide rates of all inmates in jails. Youth are 36

times more likely to commit suicide in an adult jail than in a juvenile detention facility, and 20 times more likely to commit suicide in an adult jail than youth in the general population.

S. 3155 substantially improves the “Jail Removal” and “Sight and Sound” core requirements by extending federal protections to all youth – whether they are prosecuted in juvenile or adult court – and resolves the “adult inmate” issue by allowing States to continue to place youth convicted in adult court in juvenile facilities without jeopardizing federal funding. In sum, the bill rewards states for placing youth in more appropriate placements in the juvenile justice system rather than adult jails and prisons.

Given the information and data above, the Campaign is hopeful that the Senate can continue to work toward two additional policy goals. First, the Campaign strongly urges the Senate to completely remove youth from adult jails in all circumstances. Second, if youth are placed in adult jails under any circumstances, the Campaign asks that these youth be sight and sound separated from adults while housed in these facilities in all cases. The current bill allows this “sight and sound” separation from adults under certain circumstances, we believe that youth should never be placed in “sight and sound” contact with adults. We look forward to working with the Senate on these important changes.

(2) The bill focuses on reducing racial and ethnic disparities.

Under S. 3155, the bill makes important improvements to the Disproportionate Minority Contact (DMC) core requirement by providing clear guidance to States. Senate bill 3155 outlines specific steps States must take toward reducing racial and ethnic disparities, including identifying and analyzing key decision points to determine where disparities exist, collecting data, developing a work plan, and publicly reporting on progress. This is a critical change because at every level of the juvenile justice system, youth of color are disproportionately represented. This overrepresentation is evidenced at many stages of the juvenile justice system process.

According to the National Council on Crime and Delinquency, data show that throughout the juvenile system, youth of color receive different and harsher treatment for similar offenses and are disproportionately represented in the juvenile system. For example, although African American youth are 16% of the adolescent population in the United States, they are 38% of the almost 100,000 youth confined in local detention and state correctional systems. In addition, African American youth are more likely than White youth to be formally charged in juvenile court, even when referred for the same type of offense. Although just over half of drug cases involving White youth resulted in formal processing, over three-quarters of drug cases involving African American youth result in formal processing.

The overrepresentation of youth of color is also apparent in the incarceration of youth as well. When White youth and African American youth are charged with the same offenses, African American youth with no prior admissions were six times more likely to be incarcerated in public facilities than White youth with the same background. Moreover, Latino youth were three times more likely than White youth to be incarcerated.

(3) This legislation assists States in their capacity to comply with the federal law.

The bill ensures that States will receive technical assistance to comply with the law, and for States not in compliance, JJDPA funds that would otherwise have been withheld can be used by the States as improvement grants to regain compliance in that specific area.

The bill strengthens the role of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) by encouraging OJJDP to provide an expanded role in working with the States through the provision of research, technical assistance, and training in the field. The bill also increases transparency by making state plans and OJJDP decision-making publicly available.

We urge you to support amendments to strengthen the bill in these ways:

(1) The bill should fully eliminate the lock up of status offenders

While the bill takes a first step towards strengthening the deinstitutionalization of status offenders (DSO) by limiting the length of time a youth can be held in secure detention under the Valid Court Order (VCO) exception to a maximum of 7 days, this is inadequate.

Youth with non-criminal behaviors can effectively be served by community-based and school-based interventions which have demonstrated positive outcomes around school engagement, family strengthening, and delinquency prevention. Indeed, a third of States have already eliminated the VCO and other States across the country have severely limited its use beyond what the current language in S. 3155 requires.

We urge you to eliminate the use of the Valid Court Order (VCO) exception in any final bill.

(2) The bill's mental health provisions should be expanded substantially

The bill includes provisions that would encourage States and localities to implement programs and pursue alternatives to detention for youth with mental health needs. We urge you to strengthen these provisions as youth with mental health needs or co-occurring disorders are heavily represented in the population of youth in the juvenile and adult criminal justice system. According to the National Center for Mental Health and Juvenile Justice, nearly 70 percent of the youth placed in the juvenile justice system have a mental health disorder, and up to 60 percent of these youth have a co-occurring abuse disorder. The needs of this population of youth must be met.

We urge you to support inclusion of several provisions that would increase the juvenile justice system's ability to respond to youth with mental health disorders. These changes include providing training for individuals involved in making decisions regarding the disposition of cases involving youth who enter the juvenile justice system and increasing diversion of youth with mental health or substance abuse disorders into home-based or community-based care to receive needed services and treatment, rather than incarceration.

(3) The conditions of confinement provisions should be strengthened

Unfortunately, youth in the juvenile justice system are all too often exposed to dangerous institutional practices. Such practices are present in juvenile facilities throughout the country. In California, authorities failed to provide adequate medical and mental health treatment, and facility

staff regularly used pepper spray on youth. In Mississippi, staff in state facilities hog-tied youth, put them in shackles, and stripped youth and put them in dark rooms for 12 hours a day. In Texas, youth filed hundreds of complaints over physical and sexual abuse and repeated use of pepper spray by staff in juvenile facilities. S. 3155 should be strengthened to prevent these and any other practices from continuing in juvenile facilities.

Furthermore, the language concerning conditions of confinement should also be revised. Currently, S. 3155 requires States to collect data regarding restraints and isolation. According to this bill, the term “isolation” does not apply to the rooms in which youth usually sleep. This exemption could potentially allow states to confine youth to their regular quarters without having to record or report such actions.

Revisions should also be made to the language concerning behavior management. S. 3155 provides only for the development of policies and procedures for effective behavior management techniques; however, the effective behavior management techniques on their own will not lead to elimination of dangerous practices. It is possible that systems that currently use dangerous practices will claim that they already have behavior systems in place. Therefore, S. 3155 should offer other strategies that will help facilities eliminate the use of dangerous practices as well.

We urge you to ensure that states adopt policies and procedures to eliminate the use of dangerous practices in juvenile detention and correctional facilities.

Finally, we urge you to vote against any amendments to weaken the core requirements in the bill and we urge you to strenuously oppose unrelated or punitive amendments, such as mandatory minimums, from being incorporated into the bill. We would urge you to oppose the bill if such punitive and counter-productive amendments are added as they would undermine the overall goals of the bill and run counter to the research on which the provisions currently in S. 3155 are based.

In conclusion, we urge you to support S. 3155, the Juvenile Justice & Delinquency Prevention Act of 2008, and strengthening amendments to the bill and opposed weakening, unrelated punitive or counter-productive amendments. This important legislation and our recommendations to improve the bill are based on the latest scientific research in the field and the public’s strong support for investing in rehabilitation and treatment of youth. Public opinion polls indicate that 72% of Americans feel that incarcerating youth in adult correctional facilities led to subsequent crime after release, and 89% agreed or strongly agreed that rehabilitative serves and treatment would help reduce crime.

Thank you again for your leadership on this bill. Your support is greatly appreciated and please do not hesitate to contact me at (202) 558-3580 if you have questions or need additional information.

Thank you for your efforts on behalf of our nation’s youth.

Sincerely,

Liz Ryan  
President & CEO  
Campaign for Youth Justice