

GOVERNMENTAL AFFAIRS
OFFICE

AMERICAN BAR ASSOCIATION

Governmental Affairs Office

740 Fifteenth Street, NW
Washington, DC 20005-1022
(202) 662-1760
FAX: (202) 662-1762DIRECTOR
Robert D. Evans
(202) 662-1765

rdevans@staff.abanet.org

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SENIOR LEGISLATIVE COUNSEL
Denise A. Cardman
(202) 662-1761
cardmand@staff.abanet.orgKevin J. Driscoll
(202) 662-1766
driscollk@staff.abanet.orgLillian B. Gaskin
(202) 662-1768
gaskinl@staff.abanet.orgLEGISLATIVE COUNSEL
R. Larson Frisby
(202) 662-1098
frisbyr@staff.abanet.orgKristi Gaines
(202) 662-1763
gainesk@staff.abanet.orgKenneth J. Goldsmith
(202) 662-1789
goldsmithk@staff.abanet.orgEllen McBarnette
(202) 662-1767
mcbarnee@staff.abanet.orgE. Bruce Nicholson
(202) 662-1769
nicholsonb@staff.abanet.org

Dear Representative:

We understand the House may soon consider H.R. 1279, the “Gang Deterrence and Community Protection Act of 2005.” While the ABA supports the bill’s underlying goal to reduce the amount of violent crime committed by gangs, we are concerned with several aspects of this legislation, including Title I, Sec. 115, Transfer of Juveniles, and the provisions of the bill creating new or increased mandatory minimum sentences.

Transfer of Juveniles

In addressing juvenile crime, we must take into consideration the important psychological, neurological, and physical differences between adults and youth. Legally, our laws respond to these differences in many ways. Persons under the age of 18 cannot vote, serve on juries, make medical decisions for themselves, or enter into contracts. We do not permit juveniles to conduct these activities because we believe that they lack the capacity to fully appreciate the consequences of their actions.

It is because of the differences between adults and youth that we, as a country, have created separate juvenile courts to adjudicate crimes alleged to have been committed by young people. This separate system allows the use of responses tailored to youth that increase our ability to turn youth away from crime and better protect all of our safety. Unfortunately, Section 115 of H.R. 1279 adopts an approach of federalizing juvenile crime that conflicts directly with these goals.

It is the long held view of the ABA that only a small minority of juveniles should be transferred to adult court, and that the juvenile court judge is best situated to determine if a particular juvenile should be treated as an adult. Specifically, the *Institute of Judicial Administration/American Bar Association Standards Relating to Transfer Between Courts* recommend one consistent method for transferring a youth to adult court. A transfer may only occur if the juvenile court judge finds that the *prosecution has proved* by clear and convincing evidence that the youth “is not a proper person to be handled by juvenile court,” (*Transfer* § 2.2(A)(2)), based on the seriousness of the alleged act, the youth’s juvenile record, and the fit between the dispositions offered by juvenile and adult courts. (*Transfer* § 2.2(C)). Also, the decision of the juvenile court judge may be appealed to a higher court by either the youth or the prosecutor. (*Transfer* § 2.4). A concise summary of the ABA position on this issue is presented in the official commentary to the *Standards*: “The juvenile court should waive jurisdiction only over extraordinary juveniles in extraordinary factual circumstances.” (*Transfer* § 2.2(C) comm.) However, Section 115 of H.R.

DIRECTOR GRASSROOTS
OPERATIONS/LEGISLATIVE COUNSEL
Julie M. Strandlie
(202) 662-1764
strandlj@staff.abanet.orgINTELLECTUAL PROPERTY
LAW CONSULTANT
Hayden Gregory
(202) 662-1772
gregoryh@staff.abanet.orgSTATE LEGISLATIVE COUNSEL
Rita C. Aguilar
(202) 662-1780
aguilarr@staff.abanet.orgEXECUTIVE ASSISTANT
Julie Pasatiempo
(202) 662-1776
jpasatiempo@staff.abanet.orgSTAFF DIRECTOR FOR
INFORMATION SERVICES
Sharon Greene
(202) 662-1014
greenes@staff.abanet.orgEDITOR WASHINGTON LETTER
Rhonda J. McMillion
(202) 662-1017
mcmillionr@staff.abanet.org

1279 lays out a much different plan for 16- and 17-year-olds accused of a serious violent felony. Under Section 115, a prosecutor would make the decision to bring charges against such a juvenile directly in adult court and that decision “is not subject to judicial review in any court.”

These areas of divergence between H.R. 1279 and ABA Juvenile Justice Standards are critical. While we share your concern over gang crime, the ABA is committed to establishing a stable and enduring juvenile justice system for our youth and our society. Youth are qualitatively different from adults, and a juvenile court that understands those differences is the best venue to address juvenile crime in most circumstances.

Mandatory Minimum Sentences

H.R. 1279 adds several new mandatory minimum sentences to the criminal street-gang statute and increases the minimum penalties for several firearm offenses. The ABA remains opposed in principle to all mandatory minimums, as it has been since 1968. Mandatory minimum sentences thwart justice. Such sentences, in many cases, do not create the uniformity of punishment they were designed to achieve. Some criminal defendants whose conduct falls within a mandatory minimum statute receive sentences less than the statutorily mandated penalty because many prosecutors are unwilling to participate in the imposition of unjust sentences and, therefore, take steps to skirt the effects of mandatory minimums. For example, prosecutors can charge particular defendants under statutes that do not carry mandatory minimum sentences or they can use plea agreements to avoid mandatory minimum penalties for some defendants.

Moreover, under the federal guidelines system, judges who impose a sentence departing from the guidelines must still state their reasons for doing so “with specificity” and in writing. Appellate review under a “reasonableness” standard would then ensue. By contrast, prosecutorial and other decisions designed to avoid the effects of mandatory minimum sentences are insulated from public view and are not generally subject to appellate review. These judgments can lead to the dissimilar punishment of similar offenders, which is contrary to the mandatory minimum statutes and the federal sentencing guidelines. For example, according to the United States Sentencing Commission and the Federal Judicial Center, African-American and Hispanic defendants are more likely to be subjected to mandatory minimum sentences than white defendants.

The American Bar Association is committed to the goal of reducing juvenile crime and gang violence. We are confident that you and your colleagues will give this legislation the careful scrutiny it deserves. We are hopeful that such scrutiny will lead you to oppose H.R. 1279.

Thank you for your consideration of our views.

Sincerely,

A handwritten signature in cursive script that reads "Robert D. Evans".

Robert Evans