

July 14, 2008

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

The Honorable Arlen Specter
Ranking Republican
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Dear Chairman Leahy and Senator Specter:

I write on behalf of the American Bar Association (ABA) and its more than 400,000 members nationwide to express our support for S. 3155, the Juvenile Justice and Delinquency Prevention Reauthorization Act of 2008. While we support the legislation as introduced, we urge that the bill be amended to provide for a phase-out of the statutory authority to confine youth status offenders in juvenile facilities.

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 support for improving juvenile justice and delinquency prevention practices and has instituted safeguards for youth, families and communities.

We specifically applaud the progress represented by the following amendments in S. 3155 that strengthen the Act's core requirements:

- Strengthens the Disproportionate Minority Contact (DMC) core requirement: Research has documented that youth of color are disproportionately over-represented 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 report publicly on progress.
- 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 penalizes States that utilize more appropriate and humane placements for youth.
- 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 completely to remove these youth from adult facilities, S. 3155 takes a good step in this direction

- Strengthens the deinstitutionalization of status offenders (DSO) core requirement: While S. 3155 requires judicial findings and establishes a ceiling of 7 days for secure detention, we strongly support an amendment to phase-out the VCO exception (see attached) to protect status offenders from being locked up, where they are vulnerable to victimization and at risk of developing delinquent behaviors.

The DSO core requirement has existed since the original JJDP in 1974. The DSO core requirement prohibits the incarceration of status offenders—youth whose offenses would not be criminal but for their status as minors (e.g., truants, runaways, and youth who violate curfew). This requirement is in place to protect youth with non-criminal offenses from being locked up, where they are vulnerable to unsafe conditions and victimization and at risk of developing delinquent behaviors.

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 (VCO) 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 community and school based interventions.

Unfortunately, the VCO exception, which allows for the secure detention of youth with non-criminal offenses for a violation of a valid court order, 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 1985-1994. On any given day in 2006, 4,700 youth were placed in juvenile facilities for a status offense. In 2004, 400,000 juvenile arrests were made for status offenses, not including truancy.

One out of every three youth with status offense cases before a court are truant. 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 demonstrates that school-based services such as Positive Behavioral Interventions and Supports (PBIS) are effective in addressing the educational and social needs of youth who are chronically truant. Placing children with truant behavior in juvenile facilities has been shown to be bad practice and greatly reduces their chances of school engagement and academic achievement. A Department of Education study showed that 43 percent of incarcerated youth receiving remedial education services in confinement did not return to school after release, while another 16 percent returned to school but dropped out after only 5 months.

Girls representing 14% of delinquent youth in custody, but 40% of status offenders in custody, are also disproportionately affected by the DSO exceptions. Girls often runaway because of an unstable or even abusive home environment, making incarceration a particularly cruel and illogical response. Community-based alternatives that provide family counseling, crisis intervention, and gender-specific programming are more appropriate responses to meeting the needs of girls and their families. Because the proportion of girls in the juvenile justice system has been on the rise over the last few decades, locked juvenile

facilities are still ill-equipped to provide facilities and services to meet their most basic needs and to protect their safety.

In addition to girls and truants, runaway and homeless youth are also criminalized by the VCO exception, often ending up languishing in juvenile facilities as long as youth with offenses involving weapons, auto theft, burglary, and theft. Runaway and homeless youth consistently report family conflict as the main reason for leaving home. Studies of runaway and homeless youth reflect rates of sexual abuse ranging from 17 to 53 percent, and physical abuse from 40 to 60 percent. Community-based alternatives to detention, such as runaway shelters, family reunification programs, family counseling, and respite care have produced positive outcomes for runaways, including family strengthening, school engagement, employment, and delinquency prevention.

For these reasons, the ABA joins with many education, homeless services, youth services, and juvenile justice organizations in urging your support for the attached amendment to eliminate the VCO exception. The amendment would phase out the exception over a period of several years, giving States time to shore up alternatives to confinement for status offenders.

The ABA believes that youth with non-criminal behaviors can most 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. Eliminating the VCO exception will advance best practices in the remaining states, and reduce the public costs associated with the over reliance on incarceration for non-criminal youth.

The ABA applauds the introduction of S. 3155, a strong bill to reauthorize the JJDP. Nonetheless, we also urge the Judiciary Committee to act to further strengthen this reauthorization bill by adopting the attached amendment to eliminate the VCO exception and thereby to fulfill the Act's longstanding DSO requirement.

Sincerely,

Thomas M. Susman

cc: Members of the Committee

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Susman", written in a cursive style.

Thomas M. Susman
Director

Bold text is the additional language that the ABA supports to the JJDPa core requirement on “Deinstitutionalization of Status Offenders” to phase-out use of the Valid Court Order exception:

42 U.S.C. 5633 [Sec. 223.] State plans

(11) in accordance with rules issued by the Administrator, provide that -

(A) juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult, excluding -

(i) juveniles who are charged with or who have committed a violation of section 922(x)(2) of title 18, United States Code, or of a similar State law;

shall not be placed in secure detention facilities or secure correctional facilities; and

...

(B) juveniles --

(i) who are nonoffenders or not charged with any offense; and

(ii) who are -

(I) aliens; or

(II) alleged to be dependent, neglected, or abused;

shall not be placed in secure detention facilities or secure correctional facilities.

(C) within two years of the date of enactment of this subparagraph, or sooner if possible, no exceptions to this paragraph shall be permissible in relation to—

(i) juveniles who are charged with or who have committed a violation of a valid court order; and

(ii) juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the State; and

(D) States and local units of government or combinations thereof shall encourage the use of community-based alternatives to secure detention, including the federal Runaway and Homeless Youth Act (RHYA) programs administered by the Family and Youth Services Bureau of the U.S. Department of Health and Human Services' Administration for Children and Families (42 U.S.C. 5701)

(E) States may apply for a one-year extension to comply with this paragraph. To apply, States must submit an application to the Administrator describing:

(1) The State's measurable progress and good faith effort to reduce the number of status offenders who are placed in secure detention or correctional facilities; and

(2) The State's plan to come into compliance within one year.