May 3, 2010

The Honorable George Miller
Chairman, Committee on Education and Labor
United States House of Representatives
Washington, DC 20515

The Honorable John Kline
Ranking Member, Committee on Education and Labor
United States House of Representatives
Washington, DC 20515

RE: Education and Labor Committee Hearing – “Reforming the Juvenile Justice System to Improve Children’s Lives and Public Safety”

Dear Chairman Miller and Ranking Member Kline:

On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with more than a half million members, countless activists and supporters, and fifty-three affiliates nationwide, we applaud the Committee for its hearing “Reforming the Juvenile Justice System to Improve Children’s Lives and Public Safety.” This important and timely hearing marks the first full committee hearing of the 111th Congress to explore reauthorization of the Juvenile Justice and Delinquency Prevention Act (JJDPA).

For more than 30 years, the JJDPA has provided states and localities with standards and support for improving juvenile justice and delinquency prevention practices – putting in place important safeguards for youth, families and communities. S. 678, currently pending in the Senate, would update and improve key elements of the JJDPA. That bill was favorably reported out of the Senate Judiciary Committee in December and is now awaiting action on the Senate floor.

The ACLU has prioritized juvenile justice issues for many years. We have actively challenged the “school-to-prison pipeline” and sought to ensure adequate representation for children. Additionally, we have had a longstanding commitment to the welfare of incarcerated children, including an often overlooked segment of the juvenile justice system – girls. We have investigated juvenile conditions of confinement across the country, brought civil rights actions where conditions fell below constitutional standards, and conducted other advocacy on behalf of girls and boys in the system.

In the pending reauthorization of the JJDPA, we are most concerned with the need to strengthen the core requirement on deinstitutionalization of status
offenders. Children are still being incarcerated for status offenses – acts like truancy or running away from home that are not crimes if committed by adults – because of a technical loophole in existing law. The legislation adopted by the Senate Judiciary Committee in December would phase-out this loophole (which permits the detention of children for mere violation of a valid court order) (as contained in Section 205). Eliminating this loophole is critical to protecting children with non-criminal offenses from incarceration, where they are at a heightened risk of victimization and exposure to unsafe conditions. As the Committee moves forward with reauthorization of the JJDPA, we strongly urge the inclusion of similar language to close the loophole that allows for the detention of status offenders.

Throughout the country, 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 or problems at home, including physical and/or sexual abuse). Predictably, such a child often commits the same offense again and lands in secure detention as a result.

According to the Department of Justice’s Office of Juvenile Justice and Delinquency Prevention (OJJDP), between 1995 and 2004, there was a 69% increase in truancy court cases. Research shows that evidence-based approaches, such as Positive Behavioral Interventions and Supports (PBIS), are much more effective in addressing the educational and social needs of children who are chronically truant. PBIS is a process proven to reduce school discipline referrals, support improved academic outcomes, and improve perceptions of school safety. Placing children with truant behavior in juvenile facilities is a bad practice that greatly reduces the chances of school engagement and achievement. Girls in particular have been 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 unstable or abusive home environments, making incarceration a particularly cruel and illogical response to their situations.

While we fully support the language contained in S. 678 to phase-out the loophole allowing for the detention of children who commit status offenses, we would like to see it further strengthened by including stronger limits on the length of stay in detention, ensuring that status offenders are not subject to repeat detention orders and that the hardship exceptions for states implementing the phase-out period are limited. Such reforms are particularly important for girls who experience repeat victimization when they are detained for status offenses such as running away from abusive homes and then subjected to coercive conditions in the juvenile justice system or denied adequate mental health and trauma counseling services.

We hope you will be open to including such further protections for vulnerable children and we will be happy to work with you in crafting appropriate language to achieve those protections. We also advocate for other changes to strengthen JJDPA through the reauthorization bill. We urge the Committee to strengthen the disproportionate minority contact core requirement; improve jail removal and sight and sound separation core requirements; allow states to continue placing youth convicted in adult court in juvenile facilities without jeopardizing federal funding; improve the conditions of confinement in juvenile facilities and provide for comprehensive services and supports for youth; and provide increased support and resources for states.
Finally, we strongly support the inclusion of language in the reauthorization to develop and issue standards of practice for attorneys representing children, and to ensure that the standards are adapted for use in the states (e.g. Section 209 of S. 678). The ACLU has seen many instances in which juvenile courts routinely permit children to waive their constitutional 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.

Additionally, two judges in Pennsylvania are currently facing charges for running a kickback scheme in which they are alleged to have sent thousands of teenagers to two privately-run detention centers in return for more than $2.6 million. Many of these children who were wrongly placed in privately-run detention centers did not have a lawyer. The Pennsylvania Supreme Court has overturned thousands of the convictions that were tainted by this scandal. There is a critical and valuable role that the OJJDP can play by ensuring, at the very least, that juvenile courts across the country have the benefit of technical assistance and standards to discourage the types of practices that allowed the shameful scandal in Pennsylvania to happen in the first place.

We thank the Committee for holding this important hearing and beginning the process of reauthorizing the Juvenile Justice and Delinquency Prevention Act. The ACLU looks forward to working with you in addressing our shared areas of concern as this process moves forward. If you have any questions, please feel free to contact Jennifer Bellamy, Legislative Counsel, at jbellamy@dcaclu.org or (202) 715-0828.

Sincerely,

Laura W. Murphy
Director, Washington Legislative Office

Jennifer Bellamy
Legislative Counsel