



December 9, 2009

Dear Senator:

RE: ACLU Supports S. 678, the Juvenile Justice and Delinquency Prevention Reauthorization Act of 2009

On behalf of the American Civil Liberties Union, a non-partisan organization with more than a half million activists and members and 53 affiliates nationwide, we urge you to co-sponsor and support S. 678, the Juvenile Justice and Delinquency Prevention Reauthorization Act of 2009, which was introduced with bipartisan support by Judiciary Committee Chairman Patrick Leahy (D-VT) earlier this year. For more than 30 years, the federal Juvenile Justice Delinquency Prevention Act 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 updates and improves key elements of this important law.

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The ACLU has prioritized juvenile justice issues for many years. We have been actively involved in challenging the “school-to-prison pipeline” and ensuring adequate representation for juveniles. In February of this year, the ACLU and our Ohio affiliate office, in partnership with the Children’s Law Center and the Office of the Ohio Public Defender, produced a report card on the state of the Ohio juvenile justice system. The investigation and subsequent report card concluded that the system is failing by permitting children to be routinely shackled, mandating that children accused of certain crimes be charged as adults and by failing to provide adequate legal representation.¹

In addition, the ACLU released two reports documenting conditions for girls in the juvenile justice system - one produced in partnership with Human Rights Watch which focuses on New York;² and another produced in partnership with the ACLU of Texas which focuses on Texas.³ These reports found that many girls enter the juvenile justice system with backgrounds of sexual or physical abuse and frequently the girls’ offenses

¹ http://www.aclu.org/pdfs/racialjustice/ohreportcard_20090210.pdf

² American Civil Liberties Union & Human Rights Watch, *Custody and Control: Conditions of Confinement in New York’s Juvenile Prisons for Girls* (2006).

³ American Civil Liberties Union & American Civil Liberties Union of Texas, *A Blueprint for Meeting the Needs of Girls in TYC Custody: Report and Recommendations to the Texas Youth Commission* (2007).

are tied to this abuse. However, state juvenile justice systems are not adequately addressing these issues and often exacerbate abuse through the use of punitive measures such as isolated confinement and excessive use of disciplinary force.

In S. 678, we commend the inclusion of provisions strengthening the disproportionate minority contact (DMC) core requirement; improving the jail removal and sight and sound separation 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 strongly support the inclusion of language to phase out the use of the valid court order (VCO) exception to the deinstitutionalization of status offenders (DSO) core requirement. The DSO requirement has existed as a part of the JJDPA since it was first enacted in 1974 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 is important because it protects children with non-criminal offenses from incarceration, where they would be at a heightened risk of victimization and exposure to unsafe conditions. However, under current law, children who commit a status offense can be held in detention when there is a violation of a valid court order. This exception has undermined the JJDPA core requirement prohibiting the detention of children who commit status offenses.

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), and, predictably, the child often commits the same offense again landing 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 school-based services 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. 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.

S. 678 will require states that still permit the use of the exception to phase out the use of the VCO within three years, and allow states in need to apply for a one-year hardship extension through the OJJDP. Until VCO elimination, this legislation provides extra, important safeguards for status offenders in locked facilities, including limits on how long status offenders may be held in detention. While the ACLU supports this important new language, we would like to see

it further strengthened by including stronger limits on the length of stay in detention, ensuring that the 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.⁴

We also strongly support the provision in Section 209 of the legislation to develop and issue standards of practice for attorneys representing children, and ensure that the standards are adapted for use in the states. In our programmatic work, 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 recently overturned thousands of the convictions that were tainted by this scandal.⁵ 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.

While further improvements could and should be made to the legislation as the process moves forward, S. 678 addresses many of the shortcomings in current law. The ACLU strongly supports S. 678, the Juvenile Justice and Delinquency Prevention Reauthorization Act of 2009, which represents a critical and significant step forward in improving both the JJDP and our nation's juvenile justice system.

If you have any questions, please feel free to contact Jennifer Bellamy, Legislative Counsel at jbellamy@dcaclu.org or (202) 715-0828.

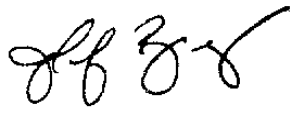
Sincerely,



⁴ See, e.g., Custody & Control, p.63-71 (documenting sexual abuse of girls in the juvenile justice system, particularly those girls who had experienced sexual abuse or exploitation in the past).

⁵ http://www.nytimes.com/2009/10/30/us/30judges.html?_r=1

Michael W. Macleod-Ball
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A handwritten signature in black ink, appearing to read 'J Bellamy', written in a cursive style.

Jennifer Bellamy
Legislative Counsel