

April 21, 2004

The Honorable Orrin Hatch
United States Senate
Washington, DC 20510

The Honorable Dianne Feinstein
United States Senate
Washington, DC 20510

Dear Senators Hatch and Feinstein:

On behalf of the undersigned organizations and the national Juvenile Justice and Delinquency Prevention Coalition, we are writing at this time to express our continued concern about your "Gang Prevention" legislation (S. 1735). While we commend you for deleting language from S. 1735 (as originally introduced) which would have allowed more youth to be prosecuted generally in federal court, we strongly oppose provisions which remain in your legislation that would result in more youth prosecuted as adults in the federal system.

As stated in our previous correspondence on this issue (dated November 14, 2003), we again urge you to eliminate any provisions in S. 1735 that would result in the expanded "transfer" or "waiver" of youth to the adult criminal system and/or the placement of additional youth in adult correctional facilities. Though we acknowledge the addition of language in the substitute allowing for a "reverse waiver" petition on behalf of a juvenile who has been direct-filed into the adult system by a US Attorney, this change unfortunately does not go nearly far enough to address our concerns.

While providing the option of a "reverse waiver" petition allows for some limited court review that was not present in the original version of S. 1735, the proposed alternative still suffers from a number of fatal flaws:

Since the reverse waiver process is likely to be quite lengthy and the juvenile will be in the adult criminal justice system during this time period, youth in this status will be exposed to the dangers of the adult system while also being prevented from receiving any specialized services that would be available in an appropriate juvenile facility.

A juvenile would be forced to meet a very difficult and onerous burden ("clear and convincing" evidence) in order to return to juvenile status, while there is no such burden

or even guidelines that a prosecutor must follow in making the initial decision to charge the juvenile as an adult in the first place.

Under the language in your bill a decision to “reverse waive” a young person back to juvenile status may be immediately appealed by the prosecutor, but there is no ability to file an immediate appeal when the juvenile is ordered to remain in the adult system. Instead, a juvenile must wait until a “final order” has been issued in the case, which in federal cases could take up to a year or more. Thus, the prohibition on a juvenile filing an immediate appeal to a decision to deny a petition for reverse waiver in many ways makes the reverse waiver option moot, or at best the juvenile is significantly disadvantaged in his or her effort to return to juvenile status. For example, if a seventeen year old is forced to wait up to a year before he or she can even file an appeal to return to juvenile court, the reality is that their position has been significantly weakened by the passing of time. Moreover, allowing a prosecutor to file an immediate appeal but denying that right to a youth violates basic notions of fairness and due process.

In addition to these significant concerns the fact remains that transfer of youth to the adult system, simply put, is a failed public policy. Comprehensive national research on the practice of prosecuting youth in the adult system has shown conclusively that transferring youth to the adult criminal justice system does nothing to reduce crime and actually has the opposite effect. In fact, study after study has shown that youth transferred to the adult criminal justice system are more likely to re-offend and to commit more serious crimes upon release than youth who were charged with similar offenses and had similar offense histories but remained in the juvenile justice system.

Moreover, national data show that young people incarcerated with adults are five times as likely to report being a victim of rape, twice as likely to be beaten by staff and 50% more likely to be assaulted with a weapon than youth held in juvenile facilities. A Justice Department report also found that youth confined in adult facilities are nearly 8 times more likely to commit suicide than youth in juvenile facilities.

Further, the policy is likely to be implemented in a racially biased manner, with youth of color typically most impacted by policies to try youth as adults. For example, recent studies by the Department of Justice have shown that more than 7 out of 10 youth admitted to state prisons across the country were youth of color. Youth of color sent to adult court are also over-represented in charges filed, especially for drug offenses, and are more likely to receive a sentence of incarceration than White youth even when charged with the same types of offenses. Finally, most youth currently prosecuted in the federal system are Native American: presently, amongst the 225 juvenile offenders under federal jurisdiction, 167 are Native American, 20 Black, 19 White, 18 Hispanic, and 1 Asian.

While there is no question that violent and dangerous youth need to be securely confined for our safety and theirs, incarcerating youth with more sophisticated adult prisoners renders them vulnerable to attack and more damaged when they return to society. This is tantamount to giving up on them – something we should never do.

The goal of any juvenile justice-related legislation should be to create a fairer and more effective youth justice system, where there is a balance between prevention, treatment and intervention that gives young people a chance to make a better choice. Unfortunately, we believe S. 1735 does not meet this goal in its current form.

We appreciate your consideration of our concerns. If you have questions please feel free to contact Marc Schindler, Co-Chair of the national Juvenile Justice Coalition, at the Youth Law Center at 202/637-0377 x115.

Sincerely,

American Academy of Child and Adolescent Psychiatry
American Correctional Association
American Psychiatric Association
American Psychological Association
American Civil Liberties Union
Bazelon Center for Mental Health Law
Catholic Charities USA
Center for Youth as Resources
Child Welfare League of America
Children's Defense Fund
Coalition for Juvenile Justice
Democracy Project
Human Rights Watch
Justice Policy Institute
National Association for the Advancement of Colored People
National Association of Criminal Defense Lawyers
National Association of School Psychologists
National Network for Youth
National Mental Health Association
Presbyterian Church (USA) Washington Office
School Social Work Association of America
Women of Reform Judaism
Youth Law Center

cc: Members, Senate Judiciary Committee
The Honorable William Frist, Senate Majority Leader
The Honorable Thomas Daschle, Senate Minority Leader