

THE W. HAYWOOD BURNS INSTITUTE  
FOR JUVENILE JUSTICE FAIRNESS AND EQUITY

April 7, 2009

The Honorable Senator Diane Feinstein  
United States Senate  
331 Hart Senate Office Building  
Washington, D.C. 20510

**RE: S. 678**

Dear Senator Feinstein:

The W. Haywood Burns Institute (BI) offers strong support for S. 678, the Juvenile Justice and Delinquency Prevention Reauthorization Act of 2008. S. 678 makes meaningful and important improvements to many of the federal Juvenile Justice and Delinquency Prevention Act (JJDPA) core requirements, research and training resources and other key areas of the law. In particular, the BI is concerned with strengthening the core requirement to reduce racial and ethnic disparities in the juvenile justice system.

The BI is a national non-profit organization based in San Francisco, California. We work with local juvenile justice systems to reduce racial and ethnic disparities in the juvenile justice system using a data-driven, consensus based approach. We have worked with dozens of jurisdictions across the nation, and we have achieved measurable reductions in racial and ethnic disparities.

The BI is encouraged to see such positive movement to reauthorize this critical legislation, 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 put in place safeguards for youth, families and communities. While BI is supportive of the bill, we are hopeful the bill can be further amended to provide for stronger language around strengthening the requirement that states make efforts to reduce racial and ethnic disparities in the juvenile justice system. Key provisions of S. 678 are enumerated below.

**(1) S. 678 strengthens the core requirement to reduce racial and ethnic disparities.**

Research indicates that youth of color are disproportionately overrepresented at every decision making point in juvenile justice system and subject to more punitive sanctions at all levels of the juvenile justice system. These racial and ethnic disparities are well-documented for several decades.

Disproportionality also exists in the State of California. According to 2007 California Department of Justice data, Black and Latino youth in California are overrepresented at all critical decision making points in the juvenile justice system. For example, Black youth are nearly three times more likely than White youth to be arrested, and Black youth are more than four times more likely than White youth to be securely detained pending adjudication.

Throughout the country, jurisdictions have spent significant time and money trying to reduce racial disparities in juvenile justice with limited results. Strengthening the JJDPa will make it possible for more jurisdictions to reduce racial and ethnic disparities in the juvenile justice system. Currently, the JJDPa only requires that states “address” DMC. It does not require oversight of DMC reduction efforts, mapping of critical decision points, accurate collection of relevant data, development of work plans with measurable objectives, or regular monitoring, evaluation, and reporting. This vague requirement that states “address” efforts to reduce DMC has left state and local officials without a clear mandate or guidance for reducing racial and ethnic disparities. Jurisdictions need to approach work to reduce disparities with focused, informed, data-driven strategies. Otherwise, jurisdictions can get stuck studying the problem or endlessly working on projects that do not lead to measurable changes.

The BI believes it is critical that with its reauthorization the JJDPa offer concrete guidance to States and localities in their efforts to reduce racial and ethnic disparities in the system. The requirement should ask States 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 publicly report on their efforts.

While the language around reducing racial and ethnic disparities in S. 678 goes far in providing States and localities with direction in their efforts to reduce racial and ethnic disparities, the BI believes there are three key areas where the bill does not provide adequate direction.

- (i) S. 678 does not include language requiring that States and localities engage the community in efforts to reduce racial and ethnic disparities. The requirement should include language that ensures that families and youth of color impacted by the juvenile justice system, community leaders, and service providers are included in the proposed coordinating body of juvenile justice stakeholders that oversee and monitor State efforts to reduce racial and ethnic disparities. Too often these juvenile justice stakeholders with important insight and the greatest personal “stake” in reducing racial and ethnic disparities are excluded from the effort.
- (ii) S. 678 does not include language that ensures that States not only identify and analyze which key juvenile justice system decisions create racial and ethnic disparities, but also what the causes of these disparities are. Currently, the vast majority of States engaged in work to reduce racial and ethnic disparities in the juvenile justice system collect data at key decision making points in the juvenile justice system using a methodology that allows them to identify numerical disparities. In order for States to develop strategic interventions that reduce racial and ethnic disparities at key decision making points, they must know what factors

are causing the disparities. Thus, the reauthorization should include language ensuring that States and localities identify and analyze the causes of disparities.

- (iii) S. 678 does not include language requiring that states and localities publicly report their progress towards reducing disparities on an annual basis. By requiring that States report on their progress towards reduce racial and ethnic disparities, States are asked to do more than describe the steps they have taken. Rather, States are required to give indication of how those steps are working towards actual reductions in racial and ethnic disparities.

The BI's experiences in jurisdictions around the country tell us that reducing racial and ethnic disparities is possible. Our experience also tells us that success requires a strategy that is guided and intentional. Thus, the BI strongly advocates that the reauthorization of the JJDPa require that states and localities engage in specific approaches to reduce racial and ethnic disparities while maintaining public safety.

**(2) S. 678 improves the Jail Removal and Sight and Sound core requirements.**

Research demonstrates that youth of color are over-represented in adult jails and lock up facilities. Research also shows youth confined in adult jails and lock-ups face increased recidivism and high risks of assault and suicide. For the first time, S. 678 expands the jail removal and sight and sound core protections to youth who are charged with adult crimes. Currently, any youth charged with adult crimes would be sent to an adult jail or lock-up while awaiting trial. By allowing youth charged with adult crimes to be held in juvenile facilities, S. 678 takes a significant step towards recent research, which shows that youth in adult facilities are at a great risk of assault, abuse, and suicide and that youth in the adult criminal justice system are at an increased risk re-offending. While our ultimate goal is to completely remove these youth from adult facilities, S. 678 takes an important step in this direction, and we look forward to further strengthening this section of the bill.

**(3) S. 678 allows States to continue to place youth convicted in adult court in juvenile facilities without jeopardizing federal funding.**

S. 678 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 would penalize States that utilize more appropriate and humane placements for youth.

**(4) S. 678 strengthens the Deinstitutionalization of Status Offenders (DSO) core requirement.**

Under current law, status offenders, including youth 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 VCO Exception undermines the core requirement by allowing status offenders, young people who have committed non-criminal acts such as running away from home or skipping school, to be detained for violating court orders to stop these misbehaviors. Incarceration is not an appropriate or effective means to treat the difficult circumstances in the lives of youth that

lead to status offenses. Evidence-based alternatives that address the underlying causes of youth misbehavior are less costly and more effective in treating these behaviors, reintegrating youth into their communities, and ultimately preventing juvenile crime.

S. 678 requires that States eliminate the use of the VCO within three years, but allows States to apply for one-year hardship extensions through the Office of Juvenile Justice and Delinquency Prevention (OJJDP). In the three-year window before elimination, S. 678 provides extra safeguards for status offenders in locked facilities, including a 7-day limit on how long youth can be held in a facility under a VCO and requiring judges to make certain procedural findings before a youth is held under the VCO. Although we support the inclusion of additional safeguards and a definitive end date to hardship extensions for which a State can apply, we recognize that the elimination of the VCO is a major step forward in the protection of status offenders.

The BI strongly supports a phase-out the VCO exception to protect status offenders from being locked up, where they are vulnerable to victimization and at risk of developing delinquent behaviors.

**(5) S. 678 makes additional important improvements for juvenile justice.**

In addition to those provisions highlighted above, S. 678 makes important juvenile justice improvements that BI supports. S. 678 makes important improvements to conditions in juvenile facilities, including having States report annually on the use of isolation and restraints and providing training to facility staff to reduce dangerous practices. As well, S. 678 promotes alternatives to detention, improves assessments and treatments for mental health and substance abuse, enhances child welfare and juvenile justice integration, supports effective assistance of counsel, and improves case management and transitional care for youth upon re-entry.

S. 678 offers important improvements in assisting State's comply with the core requirements, including ensuring States will get technical assistance to comply. In addition, for States not in compliance, S. 678 would allow JJDP funds that would have been withheld to be used by the States as improvement grants to regain compliance in that specific area. As well, S. 678 provides States with additional funds in certain areas of the juvenile justice field, including intervention and prevention programs and contains language that will encourage OJJDP to provide an expanded role in working with the States by providing research, technical assistance, and training in the field.

**(6) S. 678 does not include a provision that would allow for the expansion of the transfer of juveniles to adults courts in the federal justice system.**

The BI strongly opposes any amendment to S. 678 that would expand the transfer of juveniles to adult court in the federal justice system. During the consideration of JJDP last session, Senator Kyl (R-AZ) announced that he would introduce such an amendment. The current federal transfer law provides that - in all but one narrow circumstance - a judge must determine whether a youth can be prosecuted as an adult. The Kyl amendment would take the decision of whether to try a youth as an adult away from neutral federal judges and instead place the decision with prosecutors for certain offenses. The Kyl amendment also

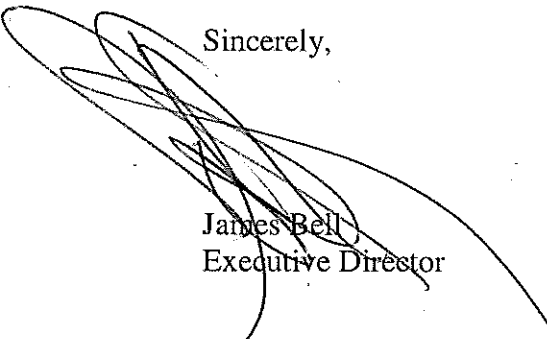
would affect a hugely expanded group of youth by expanding discretion not only to youth who are charged as adults with certain crimes, but also youth charged as adults for attempting to commit or conspiracy to commit these crimes or for crimes that are joined or lesser included offenses.

In closing, we hope that you agree with us in recognizing that a fair and equitable justice system improves public safety. For too long juvenile justice policy has been informed by anecdote and headlines. The result has been an unconscionable rise in youth of color that cannot be explained by crime alone. A significant step in improving public safety and the outcomes for America's youth is the passage of S. 678.

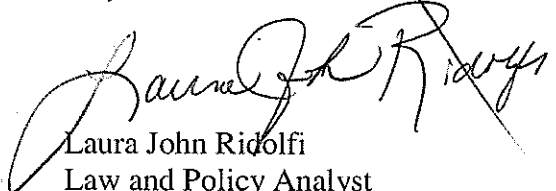
The W. Haywood Burns Institute is a national leader in working to ensure fair, equitable and rationale justice policies that improve public safety. We offer ourselves as a resource to you and your staff at any time.

Thank you for your efforts on behalf of youth, families and communities across the country.

Sincerely,



James Bell  
Executive Director



Laura John Ridolfi  
Law and Policy Analyst