



July 30, 2008

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

The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
U.S. Senate
Washington, DC 20510

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ACLU Opposes Senator Kyl's Amendment to S. 3155, the Juvenile Justice and Delinquency Prevention Reauthorization Act of 2008

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the American Civil Liberties Union, we urge you to oppose Senator Kyl's proposed amendment to S. 3155, the Juvenile Justice and Delinquency Prevention Reauthorization Act, at tomorrow's scheduled mark-up. The amendment would allow youth who commit certain crimes to be prosecuted as adults.

Senator Kyl's amendment would empower prosecutors to try juveniles as adults for an enumerated list of crimes and would bar judicial review of that decision. It also would cast a wide net by applying this prosecutorial authority to youth who are charged with attempt or conspiracy to commit these crimes or for joined or lesser included offenses.

This amendment, if adopted, would undermine the original intent of the Juvenile Justice and Delinquency Prevention Act (JJDP), where Congress recognized that youth in the criminal justice system – even those accused of serious offenses – have unique and special needs that simply cannot be met by the adult system. Moreover, by removing the measured and neutral intervention of federal judges from the process, this amendment would improperly politicize the prosecution of juveniles. This is inconsistent with the intent and desire of the law to rehabilitate young offenders.

In the 1990s, many states expanded the circumstances under which youth could be tried as adults and incarcerated in adult jails and prisons. Subsequent research, however, has revealed that transferring youth from juvenile to adult courts increases recidivism; subjects youth to conditions

that jeopardize their physical and emotional safety, results in unnecessarily harsh sentences; and strains the resources of adult correctional facilities and criminal courts. As a result, the American Bar Association recommends that a judge should be the one to make the decision to transfer a youth to adult court – and only after finding probable cause to believe the juvenile has committed the offense and after determining that the child is beyond the rehabilitative capabilities of the juvenile justice system.

Research shows that youth who are transferred to the adult criminal justice system are more likely to commit crimes in the future and such placement makes subsequent rehabilitation almost impossible. A 2007 report released by the Department of Justice