

110TH CONGRESS
2D SESSION

H. R. 5537

To amend the Juvenile Justice and Delinquency Prevention Act of 1974 with respect to juveniles who have committed offenses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2008

Mr. MURPHY of Connecticut introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Juvenile Justice and Delinquency Prevention Act of 1974 with respect to juveniles who have committed offenses, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Juvenile Justice Im-
5 provement Act of 2008”.

6 **SEC. 2. DEFINITIONS.**

7 Section 103 of the Juvenile Justice and Delinquency
8 Prevention Act of 1974 (42 U.S.C. 5603) is amended—

9 (1) in paragraph (25) by inserting “, including
10 sight or sound,” after “incarceration”,

1 (2) by amending paragraph (26) to read as fol-
2 lows:

3 “(26) the term ‘adult inmate’ means an indi-
4 vidual who—

5 “(A) has reached the age of full criminal
6 responsibility under applicable State law; and

7 “(B) has been arrested and is in custody
8 for or awaiting trial on a criminal charge, or is
9 convicted of a criminal charge offense; exclud-
10 ing individuals who are—

11 “(i) younger than the age of full
12 criminal responsibility under applicable
13 State law at the time of the criminal
14 charge offense; or

15 “(ii) younger than the maximum age
16 of extended juvenile jurisdiction applicable
17 under State law; and

18 “(iii) have been committed to the care
19 and custody of a juvenile correctional facil-
20 ity by a court of competent jurisdiction or
21 by operation of State law.”,

22 (3) in paragraph (28) by striking “; and” at
23 the end,

24 (4) in paragraph (29) by striking the period at
25 the end and inserting a semicolon, and

1 (5) by adding at the end the following:

2 “(30) the term ‘restraint’ means a chemical or
3 medical agent, physical force technique, or mechan-
4 ical device that restricts movement;

5 “(31) the term ‘chemical agent’ means a spray
6 used to temporarily incapacitate a person, such as
7 oleoresin capsicum spray, tear gas, or 2-
8 chlorobenzalmalonitrile gas (CS gas);

9 “(32) the term ‘seclusion’ means any instance
10 in which a youth is confined alone for more than 15
11 minutes, including in an unlocked or locked room,
12 specialized unit or other area of isolation, segrega-
13 tion, or room time;

14 “(33) the term ‘evidence based’ means a pro-
15 gram that is demonstrated with relative evidence,
16 normed and validated for a diverse population, to be
17 either—

18 “(A) exemplary, such that it is imple-
19 mented with a high degree of fidelity and dem-
20 onstrates robust empirical findings using a rep-
21 utable conceptual framework and an experi-
22 mental evaluation design of the highest quality
23 (a random assignment control trial); or

24 “(B) effective, such that it is implemented
25 with sufficient fidelity that it demonstrates ade-

1 quate empirical findings using a sound concep-
2 tual framework and a quasi-experimental eval-
3 uation design of high quality (comparison group
4 without random assignment control group);

5 “(34) the term ‘promising’ means a program
6 that demonstrates effectiveness using reasonable,
7 limited findings, and that has underway a more ap-
8 propriate evaluation that meets the criteria set forth
9 in paragraph (33)(A) for determining evidence-based
10 programs; and

11 “(35) the term ‘dangerous practice’ means an
12 act, procedure, or program that creates an unreason-
13 able risk of physical injury, pain, or psychological
14 harm to a juvenile subjected to the act, and it in-
15 cludes the use of chemical agents; choking; blows to
16 the head; twisting body parts against joints or other
17 techniques that rely on infliction of pain to secure
18 compliance; restraint to fixed objects; restraint in
19 any manner that creates risk of asphyxiation; use of
20 belly belts or chains on pregnant girls; use of four-
21 point or five-point restraints, straightjackets or re-
22 straint chairs, except for medical or mental health
23 purposes specifically related to the safety of the
24 youth, and under the direct supervision of medical or
25 mental health personnel, use of psychotropic medica-

1 tion without adherence to professional standards re-
 2 garding dosage, or for purposes of coercion, punish-
 3 ment, or convenience of staff; and use of physical
 4 force, chemical agents, or mechanical restraints for
 5 purposes of coercion, retaliation, punishment, or
 6 convenience of staff; and prolonged, forced physical
 7 exercise.”.

8 **SEC. 3. STATE PLAN.**

9 Section 223(a) of the Juvenile Justice and Delin-
 10 quency Prevention Act of 1974 (42 U.S.C. 5633(a)) is
 11 amended—

12 (1) in paragraph (8) by striking “existing” and
 13 inserting “proven effective”,

14 (2) in paragraph (9)(L)(i) by striking “re-
 15 straints” and inserting “requirements”,

16 (3) in paragraph (27) by striking “and” at the
 17 end,

18 (4) in paragraph (28) by striking the period at
 19 the end and inserting a semicolon, and

20 (5) by adding at the end the following:

21 “(29) provide that, within 4 years of the date
 22 of enactment of this paragraph, juveniles treated as
 23 adults for purposes of prosecution in criminal court
 24 and juveniles prosecuted as adults in criminal court
 25 may not be held in a jail or lockup for adults while

1 such juveniles are awaiting trial on a criminal
2 charge;

3 “(30) provide that, within 4 years of the date
4 of enactment of this paragraph, juveniles treated as
5 adults for purposes of prosecution in criminal court
6 and juveniles prosecuted as adults in criminal court
7 may not be within sight or sound contact of adult
8 inmates when held in the custody of the criminal
9 court awaiting trial or other legal process; and

10 “(31) provide that the State will—

11 “(A) develop policies and procedures to
12 eliminate the State-supported use of dangerous
13 practices with juveniles in the custody of State
14 or local secure detention and correctional facili-
15 ties and residential treatment centers;

16 “(B) increase the State’s efforts to operate
17 facilities and programs that are safe for youth
18 and staff, through effective behavior manage-
19 ment systems that clearly communicate incen-
20 tives and sanctions to increase appropriate be-
21 havior and decrease inappropriate behavior, and
22 which are implemented through a continuum of
23 responses that begin with verbal de-escalation
24 and that only allow for use of the most punitive
25 responses as a last resort;

“(C) increase the State’s efforts to provide training for facility staff on effective techniques for effective behavior management, de-escalation and crisis intervention, adolescent development, safe physical control techniques, developmental disabilities, mental health disorders, and cultural competence; and

“(D) increase the State’s efforts to develop engaging, effective programming, and establish safe staffing levels in secure detention and correctional facilities.”.

SEC. 4. PROMOTING ALTERNATIVES TO INCARCERATION.

Section 222 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5632) is amended by adding at the end the following:

“(e) INCENTIVE GRANTS.—

“(1) INCENTIVE GRANTS FUNDS.—The Administrator shall make grants totaling at least 5 percent of the funds appropriated for this part in each fiscal year as incentive grants to States. The Administrator shall make such incentive grants consistent with the provisions of subsection (a), and shall condition such grants upon—

“(A) the State’s support for evidence-based or promising programs, prioritizing programs

1 that address the mental health treatment needs
2 of juveniles;

3 “(B) the State’s support of reforms that
4 reduce or eliminate the State-supported use of
5 dangerous practices;

6 “(C) the State’s support for reforms that
7 ensure that seclusion in secure detention or cor-
8 rectional facilities is limited to situations in
9 which seclusion is the least restrictive measure
10 sufficient to address a youth’s danger to self or
11 others, used only for the amount of time nec-
12 essary and is terminated when there is no
13 longer an immediate danger to the youth or
14 others, or imposed only after applicable due
15 process; and

16 “(D) the demonstration by the State of an
17 improvement of public safety and rehabilitation
18 of delinquent and at-risk youths.

19 “(2) The State shall make the demonstration
20 required by paragraph (1)(D) by using accurate and
21 reliable data reported annually showing both—

22 “(A) a reduction in either recidivism or of-
23 fenses by youths under age 18, using arrest
24 data; and

25 “(B) either—

1 “(i) an increase in the use of least re-
 2 strictive placement for juveniles as appro-
 3 priate for community safety;

4 “(ii) an increase in the safety of
 5 youths in the delinquency or criminal jus-
 6 tice system; or

7 “(iii) a decrease in racial and ethnic
 8 disparities in the delinquency system.”.

9 **SEC. 5. REMOVING THE VALID COURT ORDER EXCEPTION**
 10 **FOR STATUS OFFENDERS.**

11 Section 223(a)(11) of the Juvenile Justice and Delin-
 12 quency Prevention Act of 1974 (42 U.S.C. 5633(a)(11))
 13 is amended—

14 (1) by striking “shall”, and

15 (2) by amending subparagraph (A) to read as
 16 follows:

17 “(A) juveniles who are charged with or
 18 who have committed an offense that would not
 19 be criminal if committed by an adult, excluding
 20 juveniles who are charged with or who have
 21 committed a violation of section 922(x)(2) of
 22 title 18, United States Code, or of a similar
 23 State law, shall not be placed in secure deten-

- 1 tion facilities or secure correctional facilities;
- 2 and”.

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