

111TH CONGRESS  
1ST SESSION

# H. R. 1873

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

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 2009

Mr. MURPHY of Connecticut (for himself, Ms. LORETTA SANCHEZ of California, Ms. DELAURO, and Mr. HIMES) introduced the following bill; which was referred to the Committee on Education and Labor

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## 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 2009”.

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—

1           (1) in paragraph (25) by striking the words  
2           “means the degree of interaction allowed between ju-  
3           venile offenders in a secure custody status and in-  
4           carcerated adults under section 31303(d)(1)(i) of  
5           title 28, Code of Federal Regulations, as in effect on  
6           December 10, 1996.” and inserting “includes any  
7           sight or sound interaction between a youth under 18  
8           in a secure custody status with an adult inmate.”,

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

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

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

15                   “(B) has been arrested and is in custody  
16                   for or awaiting trial on a criminal charge, or is  
17                   convicted of a criminal charge offense; exclud-  
18                   ing individuals who are—

19                           “(i) at the time of the offense, young-  
20                           er than the maximum age at which a youth  
21                           can be held in a juvenile facility under ap-  
22                           plicable State law; and

23                           “(ii) committed to the care and cus-  
24                           tody of a juvenile correctional facility by a

1 court of competent jurisdiction or by oper-  
2 ation of applicable State law.”,

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

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

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

8 “(30) the term ‘restraint’ means a chemical or  
9 medical agent, physical force technique, or mechan-  
10 ical device that restricts the movement of juveniles  
11 held in the custody of State or local secure detention  
12 or corrections facilities and youth participating in  
13 court-ordered delinquency prevention and juvenile  
14 justice programs;

15 “(31) the term ‘chemical agent’ means a spray  
16 used to temporarily incapacitate a person, such as  
17 oleoresin capsicum spray, tear gas, or 2-chlorobenz-  
18 almalononitrile gas (CS gas);

19 “(32) the term ‘isolation’ means any instance  
20 when a youth is confined alone for more than 15  
21 minutes in a locked or unlocked room and includes  
22 instances when a resident is confined for cause or  
23 punishment in a room or cell in which he or she usu-  
24 ally sleeps, but does not include confinement in a  
25 large dormitory with other youth, protective isolation

1 (for injured youths or youths whose safety is threat-  
2 ened), program separation, routine isolation at the  
3 time of the youth’s admission, or isolation that is re-  
4 quested by the youth or any medical room confine-  
5 ment;

6 “(33) the term ‘room time’ means any instance  
7 in which a youth is confined alone for more than 15  
8 minutes, and includes confinement alone at the time  
9 of the youth’s admission as well as protective isola-  
10 tion and program separation, administrative reasons,  
11 investigation purposes, low staffing and other rea-  
12 sons, but does not include time when a youth asks  
13 to go to his room or confinement for medical rea-  
14 sons;

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

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

1           “(B) effective, such that it is implemented  
2           with sufficient fidelity that it demonstrates ade-  
3           quate empirical findings using a sound concep-  
4           tual framework and a quasi-experimental eval-  
5           uation design of high quality (comparison group  
6           without random assignment control group);

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

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

1 youth, and under the direct supervision of medical or  
2 mental health personnel, use of psychotropic medica-  
3 tion without adherence to professional standards re-  
4 garding dosage, or for purposes of coercion, punish-  
5 ment, or convenience of staff; and use of physical  
6 force, chemical agents, or mechanical restraints for  
7 purposes of coercion, retaliation, punishment, or  
8 convenience of staff; and prolonged, forced physical  
9 exercise.”.

10 **SEC. 3. STATE PLAN.**

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

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

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

18 (3) in paragraph (27) by striking “and” at the  
19 end,

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

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

23 “(29) require that not later than 3 years after  
24 the date of enactment of this paragraph and except  
25 when under the circumstances outlined in paragraph

1 (13), youth under the age of 18 awaiting trial or  
2 other legal process who are treated as adults for  
3 purposes of prosecution in criminal court and housed  
4 in a secure facility—

5 “(A) shall not have contact with adult in-  
6 mates; and

7 “(B) shall not be held in jail or lockup for  
8 adults;

9 “(30) provide that the State will—

10 “(A) develop policies and procedures to  
11 eliminate the State-supported use of dangerous  
12 practices, unnecessary isolation, unnecessary  
13 room time, and unreasonable restraint with ju-  
14 veniles in the custody of State or local secure  
15 detention and correctional facilities and residen-  
16 tial treatment centers and provide for data col-  
17 lection and reporting on the use of restraints,  
18 isolation, and room time in secure detention  
19 and correctional facilities;

20 “(B) increase the State’s efforts to operate  
21 facilities and programs that are safe for youth  
22 and staff, through effective behavior manage-  
23 ment systems that clearly communicate incen-  
24 tives and sanctions to increase appropriate be-  
25 havior and decrease inappropriate behavior, and

1 which are implemented through a continuum of  
2 responses that begin with verbal de-escalation  
3 and that only allow for use of the most punitive  
4 responses as a last resort;

5 “(C) increase the State’s efforts to provide  
6 training for facility staff on effective techniques  
7 for effective behavior management, de-esca-  
8 lation and crisis intervention, adolescent devel-  
9 opment, safe physical control techniques, devel-  
10 opmental disabilities, mental health disorders,  
11 and cultural competence;

12 “(D) increase the State’s efforts to develop  
13 engaging, effective programming, and establish  
14 safe staffing levels in secure detention and cor-  
15 rectional facilities; and

16 “(E) provide for a system of independent  
17 monitoring for all juvenile detention and correc-  
18 tional facilities in the State to identify and ad-  
19 dress dangerous practices, unnecessary uses of  
20 isolation and room time, and unreasonable re-  
21 straint, as well as deficiencies in provision of  
22 education, medical care, mental health care,  
23 and other conditions of confinement; and

24 “(31) provide reasonable assurance the Federal  
25 funds made available under this part for any period



1 will not be used for dangerous practices with juve-  
2 niles in the custody of State or local secure deten-  
3 tion and correctional facilities.”.

4 **SEC. 4. PROMOTING ALTERNATIVES TO INCARCERATION.**

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

8 “(e) INCENTIVE GRANTS.—

9 “(1) INCENTIVE GRANTS FUNDS.—The Admin-  
10 istrator shall make grants totaling at least 5 percent  
11 of the funds appropriated for this part in each fiscal  
12 year as incentive grants to States. The Adminis-  
13 trator shall make such incentive grants consistent  
14 with the provisions of subsection (a), and shall con-  
15 dition such grants upon—

16 “(A) the State’s support for evidence-based  
17 or promising programs, prioritizing programs  
18 that address the mental health treatment needs  
19 of juveniles;

20 “(B) the State’s support of reforms that  
21 reduce or eliminate the State-supported use of  
22 dangerous practices;

23 “(C) the State’s support for reforms that  
24 ensure that seclusion in secure detention or cor-  
25 rectional facilities is limited to situations in

1 which seclusion is the least restrictive measure  
2 sufficient to address a youth's danger to self or  
3 others, used only for the amount of time nec-  
4 essary and is terminated when there is no  
5 longer an immediate danger to the youth or  
6 others, or imposed only after applicable due  
7 process; and

8 “(D) the demonstration by the State of an  
9 improvement of public safety and rehabilitation  
10 of delinquent and at-risk youths.

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

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

17 “(B) either—

18 “(i) an increase in the use of least re-  
19 strictive placement for juveniles as appro-  
20 priate for community safety;

21 “(ii) an increase in the safety of  
22 youths in the delinquency or criminal jus-  
23 tice system; or

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

1 **SEC. 5. REMOVING THE VALID COURT ORDER EXCEPTION**  
2 **FOR STATUS OFFENDERS.**

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

6 (1) by striking “shall”, and

7 (2) by amending subparagraph (A) to read as  
8 follows:

9 “(A) juveniles who are charged with or  
10 who have committed an offense that would not  
11 be criminal if committed by an adult, excluding  
12 juveniles who are charged with or who have  
13 committed a violation of section 922(x)(2) of  
14 title 18, United States Code, or of a similar  
15 State law, shall not be placed in secure deten-  
16 tion facilities or secure correctional facilities;  
17 and”.

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