

SENATOR BAYH CONGRATULATES JOHN M. RECTOR ON NOMINATION

AND CONFIRMATION AS ADMINISTRATOR OF THE
OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION



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Senate

Mr. BAYH. Mr. President, I wish to bring to the attention of my colleagues an article written by John M. Rector, entitled "Juvenile Justice: A Congressional Priority"—Judicature, Volume 61, Number 1/June-July 1977.

As my colleagues who have worked with John since 1971 know, before being nominated by President Carter and confirmed by the Senate as the administrator of the Office of Juvenile Justice and Delinquency Prevention in the Department of Justice, he excelled as my staff director and chief counsel of the Subcommittee to Investigate Juvenile Delinquency. As a senior member of our staff, John worked long and hard. He clearly demonstrated his total commitment to the struggle for human rights for America's children. Our immediate loss of John Rector's keen sense of justice and injustice that he brought to his work with us, is offset by the contribution I know he will make in his new assignment on President Carter's team, where he will certainly be an asset to Attorney General Bell and a friend to the youth of our Nation.

The Juvenile Justice Amendments of 1977 guarantee the continuity and stability of the 1974 Act and under the direction of John Rector the Office of Juvenile Justice and Delinquency Prevention will begin a new era.

Mr. President, it is with great pride that I ask you and my colleagues to join me in congratulating John for his significant contribution to our body and to wish him our best in his new responsibilities as administrator of the Office of Juvenile Justice and Delinquency Prevention. I ask unanimous consent that a copy of Mr. Rector's article appear in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

JUVENILE JUSTICE: A CONGRESSIONAL PRIORITY

(By John M. Rector)

When young people confront our juvenile justice system, injustice is a frequent result. The system does not provide the individualized justice promised by reformers at the turn of the century; it does not help the many non-criminal status offenders who fall into its jurisdiction; and it does not protect communities from juvenile crime.

The statistics on juvenile delinquency are alarming and growing worse. Of the 8 million arrests made nationally in 1975, 26 per cent were of persons under 18 years of age. The peak age for arrests for violent crime was 18, followed by 15 and 17. Arrests in this category have tripled since 1963. The peak age for arrests for major property crime was 18, followed by 17, 16 and 19.¹ But juvenile crime statistics tell only part of the juvenile justice story. Nearly half of those in the system are not charged with even minor criminal conduct.²

I will forego reciting the standard litany of horror stories that illustrate the sordid and even brutal manner in which we as a nation indiscriminately respond to children in trouble—from those who are abandoned and homeless to those who threaten public

safety. Rather, it is my purpose to discuss the background and prospects of a Congressional and citizen initiative developed in response to the inconsistencies of our present system.

For years, persons familiar with juvenile procedure have raised basic questions. Why do we subject juveniles to stricter laws than adults? Why do we impose more severe penalties on juveniles who commit non-criminal acts than on many adults who commit felonies? Why is the concept of preventive detention thought to violate basic liberties when proposed for adults but seldom questioned when implemented for juveniles? When more than half the serious crime is committed by juveniles, why is delinquency prevention assigned such low priority by most community leaders and policy makers? There are no satisfactory answers.

In the midst of the Watergate era, Congress sent the Juvenile Justice and Delinquency Prevention Act of 1974 to the White House for signature.³ This Act had been developed and supported by citizen groups throughout the country and by strong bipartisan majorities in Congress.⁴ It was designed to help states, localities and public and private agencies to develop and conduct effective delinquency prevention programs, to divert more juveniles from the juvenile justice process, and to provide urgently needed alternatives to traditional detention and correctional facilities. It was developed during a four-year investigation of the federal response to juvenile crime conducted by the United States Senate Subcommittee to Investigate Juvenile Delinquency under the direction of Senator Birch Bayh.

INCARCERATION POLICIES

The subcommittee found that the existing maze of federal programs lacked leadership, direction and resources. Moreover, existing policy only sustained irrational, costly and counterproductive responses to youthful delinquency. The Act reflected the consensus of most professionals in the delinquency field that too many juveniles are being locked up. Many of the youths we detain and incarcerate—particularly those whose conduct would not be illegal if they were adults—require at most non-secure placement. In fact, they might be better off if the state refrained from intervening in their lives at all.

Indiscriminate secure placement, whether in public or private facilities, masquerading under the questionable disguises of "rehabilitation" or "the best interest of the child," only increases our already critical crime rate. Such policies supply new recruits for the jails, detention centers, state farms, camps and training schools, which are often nothing more than wretched academies of crime.

Furthermore, the economic costs of maintaining secure detention facilities are staggering. The average cost for incarcerating a youth for a year is \$11,657.⁵ This is three times the average cost of a year in a halfway house or group center and fifteen times the cost of a year of probation services. In fiscal 1974, the fifty states spent more than \$300 million operating detention facilities and less than \$30 million on community-based residential programs.⁶ As Milton Rector and David Gilman point out in an article in *Criminal Justice Review*:

The increasing reliance upon detention and institutionalization as a response to deviant behavior is no longer justifiable. The costs are exorbitant. Constructing a new security room runs to about \$40,000. If amortized through a twenty-year bond issue, the cost would rise to \$140,000. Add to this figure the \$12,000 to \$25,000 per year for inmate care and services, and we see a very compelling economic reason to end our reliance upon institutionalization.⁷

The traditional solution to juvenile justice problems has been to upgrade personnel,

improve services or refurbish facilities. This is not enough. We need an uncompromising departure from the current policy of institutionalized overkill which undermines our primary socialization agents—family, school and community. Likewise, we must shift our resources toward developing productive, responsible youths rather than reinforcing delinquent or undesirable behavior.

It is time to accept responsibility for the antiquated and destructive practices which undermine the fabric of our next generation. We must reject the repugnant policy of unnecessary, costly detention and incarceration of scandalous numbers of young Americans.⁸ We must support policies and practices which protect our communities while also assuring justice for our youth. Some youthful offenders must be removed from their homes for society's sake as well as their own. But detention and incarceration should be reserved for youths who cannot be handled by other alternatives—the few violent offenders.

The current overreach of the juvenile system in its reliance on detention and incarceration is particularly shocking as it affects so-called status offenders. These youths are actually more likely to be detained, more likely to be institutionalized, and once incarcerated, more likely to be held in confinement than those who are charged with or convicted of criminal offenses.⁹ Seventy per cent of the young women in the system are status offenders.¹⁰

Many status offenders are arrogant, defiant and rude—and some are sexually promiscuous. Detention or incarceration, however, helps neither them nor us. Some of these children cannot be helped, and others do not need help.¹¹ Real help, for those who need it, might best take the form of diverting them from the vicious cycle of detention, incarceration and crime. A firm but tolerant approach will not compromise public safety and will salvage young lives.

The 1974 Act was intended to stimulate the development of appropriate alternatives to fill the void between essentially ignoring illegal behavior and continuing wholesale incarceration. The Act provides incentives that discourage states and local communities from committing non-offenders to secure facilities and encourage them to develop truly helpful alternatives, including doing nothing when any other available intervention would be more destructive.¹²

CITIZEN INVOLVEMENT

The Act was designed to prevent status offenders from entering our failing juvenile justice system. It is designed to assist communities in developing more sensible and economical approaches for youngsters already in the juvenile justice system. Its cornerstone is the acknowledgment of the vital role that private, nonprofit organizations and citizen groups must play in the fight against crime.¹³ Involvement of the millions of citizens represented by such groups will help assure that we avoid the wasteful duplication inherent in past federal crime policy.

A model of the kind of citizen projects which the Act was designed to support is the Juvenile Justice Coalition, a project of the Juvenile Justice Center of Pennsylvania. The coalition is a group of eighty-three civic and church organizations, and the Juvenile Justice Center trains members to assist the state Department of Welfare in inspecting and monitoring youth facilities.

"Citizen monitoring helps facilities come into compliance with state regulations; it helps the morale of those working with the children; and it helps the children by encouraging a high quality of services," says Barbara Fruchter, executive director of the Center. Her organization hopes to send inspection teams regularly to every state-supported youth facility in Pennsylvania.¹⁴

Coalition members have endorsed a five-

point policy statement, which says (1) children should not be kept in adult jails; (2) status offenders should be removed from the delinquent category; (3) children should be afforded full due process rights; (4) no detention center or juvenile institution should be built until alternatives have been explored and implemented; and (5) the Center will work to implement new legislation that provides incentive-funding for local governments to keep children in the community.

The Juvenile Justice Center also conducts a detention-alternative demonstration project, funded by the city of Philadelphia, which seeks to divert children from detention and keep them out of the juvenile justice system. The project works with status offenders, first offenders and chronic run-aways.

The detention-alternative staff includes twelve professionally trained foster parents in the field and a group home reception center. They match children with temporary foster parents, and provide supportive services for the parents. The project is completely community-oriented; all the children stay in the community, and some go to their own schools.

COORDINATED LEADERSHIP

The Act represents a federal commitment to provide leadership, coordination and a framework for using the nation's resources to deal with all aspects of the delinquency problem. To help meet these lofty goals, the Act created the Office of Juvenile Justice and Delinquency Prevention within the Department of Justice to coordinate all relevant federal programs. Formerly, anyone interested in federal assistance for juvenile justice programs needed a guide to the Washington bureaucracy.

The Office of Juvenile Justice is headed by an administrator, appointed by the President with the advice and consent of the Senate, who administers the new programs and exercises policy control over all delinquency programs of the Law Enforcement Assistance Administration. Thus, Congress clearly identified one place in the federal government where citizens or representatives of states, localities, and public or private agencies can go for help, especially in developing sounder alternative approaches to delinquency prevention.¹⁴

The Act establishes a National Institute within the Office of Juvenile Justice to conduct ongoing research into new techniques of working with youth. The Institute will offer training in those techniques to individuals (including lay persons and volunteers) to work with youth; serve as a national clearinghouse for information; evaluate programs; and develop standards for juvenile justice. Of particular interest to those involved with delinquency programs are the Formula and Special Emphasis grants established by the Act.

GRANTS TO STATES

The federal government will provide formula grants to states that submit comprehensive delinquency plans. A state must spend 75 per cent of its formula grant on prevention, diversion and alternatives to incarceration. Alternatives include foster care and group homes; community-based programs and services to strengthen the family unit; youth service bureaus; programs to provide work and recreation for youth; programs to encourage youth to stay in school and youth-initiated programs to help those who otherwise would not be reached by assistance programs.

Within two years of submitting a plan, a state must prohibit confinement and detention of status offenders and delinquents in institutions in which they have regular contact with adults charged with or convicted of

a crime. The state must establish a monitoring system to ensure compliance.

The Act also requires the state governor to appoint a group to advise the state planning agency about juvenile delinquency, and it requires active participation of private and public agencies in developing and implementing the plan. State and regional planning agencies must be reconstituted to include more specialists in delinquency prevention.

If a state does not submit an acceptable plan, the Office will disburse its formula grant funds through special emphasis grants. The special grants will go to public and private agencies and organizations to develop and implement programs similar to the formula grant ones. The federal government will provide 100 per cent of special emphasis funds, and it will give priority to projects in communities which have high rates of youth unemployment, school dropout and delinquency.¹⁵

For these prevention programs, the Act provided \$75 million in fiscal 1975, \$125 million in 1976 and \$150 million in 1977, and it requires that LEAA maintain its commitment of \$140 million a year to juvenile programs.

The Act also established a council to coordinate all federal juvenile delinquency programs, and to assure broad citizen participation it created a National Advisory Committee appointed by the President to advise the Office on the planning, operations and management of all federal juvenile delinquency programs.¹⁶ It broadened state and regional boards to help assure vital citizen input.

The 1974 Act is permeated with language designed to cultivate participation by young persons. Too often young people are systematically excluded from participation in the planning, operation and evaluation of programs that exist supposedly for them. Thus, they are further alienated and denied the opportunity to learn, to make mistakes, to be held accountable and responsible for their judgment and actions.

The Act represents a commitment by Congress to the prevention of juvenile crime. Juvenile justice will no longer be one of several competing programs within LEAA, but it is the national crime-fighting priority.

The Ford Administration opposed the implementation and funding of the program and worked unsuccessfully to repeal significant provisions of this bipartisan congressional initiative. Over this strong opposition, however, Congress managed to appropriate half of the funds it had authorized in 1974.

Senator Bayh has accurately characterized the failure to implement the Act as the "Achilles heel of the former Administration's approach to crime." It was heartening that the Congress last summer rejected a White House proposal to repeal key maintenance provisions of the 1974 Act.¹⁷ Instead, the Congress reaffirmed its bipartisan commitment to this priority, even though it reduced the LEAA budget.¹⁸

NEW LEGISLATION

In anticipation of the likely reauthorization of the Act and bolstered by strong endorsement from President Jimmy Carter and other Administration officials, Senator Bayh introduced the Juvenile Justice Amendments of 1977 (S. 1021) and, on behalf of the new Administration, a similar bill (S. 1218). These measures were designed to provide the stability and revitalization essential to the implementation of the 1974 Act. It is likely that the predicted three-year reauthorizing legislation will give an even larger role to nonprofit agencies and citizen groups in this landmark federal program.

New categories of youth advocacy, due process and programs to encourage the de-

velopment of neighborhood courts are likely to be emphasized under the new legislation. These changes will help provide what Attorney General Griffin Bell has characterized as "fresh emphasis on alternatives to resolution of conflicts in the traditional court settings."¹⁹ Through the encouragement of arbitration, mediation and conciliation and by the use of paralegals, ombudspersons, advocates, community participants and others, we can develop more rational and economical responses to minor delinquent conduct.

The Congress is also expected to reaffirm its commitment to the deinstitutionalization of non-offenders encouraged by the 1974 Act.²⁰ It is nearly certain, however, that participating states will be given an additional period before they must comply fully with its provisions.

Typical of the enthusiastic support expressed for the Act were the comments of Speaker Roland Luedtke of Nebraska, chairman of the National Conference of State Legislatures' Criminal Justice Committee, when he recently told the Subcommittees.

I feel that the success of this program to a large extent depends on the commitment of funds by Congress and the President. Since the passage of this landmark act in 1974, we in the states have been disappointed by the lack of commitment in the federal executive branch. The Crime Control Act programs of the Law Enforcement Assistance Administration have always been more important to the previous administrations than were the juvenile delinquency efforts. In my opinion, this illustrates the backwards logic which has plagued our criminal justice system for decades. We place more emphasis on dealing with crime after it has been committed by equipping police with fancy equipment and multiplying the capacity of our courts and correctional facilities to deal with individuals who have already made a career out of crime. If we are ever to curb the intolerable rate of crime in the United States, we must engage in efforts to curb juvenile delinquency. It is the juvenile we can help and steer away from a lifetime of crime. If we miss the opportunity to provide assistance to a young person, we have probably foregone the chance to rehabilitate that person later.²¹

The American system of juvenile justice is under fire for its failure to stem the tide of youthful criminal violence. It is vital that the lurid publicity given to a small percentage of violent youth not distract us from the reality of a system whose wide net catches predominately non-offenders and minor delinquents who are subjected to unwarranted detention and incarceration grossly disproportionate to the harm, if any, generated by their conduct. Such indiscriminate angling permits the appropriate punishment of even fewer violent offenders.

For those committed to humane, rational care for children in trouble, it is important to bear in mind that many of those who spawned and nurtured our current bankrupt juvenile justice process were well intentioned. Thus, it is imperative to carefully evaluate programs popularly labeled "youth service bureaus," "community based," or "diversion," so as to ensure that the sterile, destructive authoritarianism often typical of training schools is not unleashed upon our communities under the protective banner of helping children in trouble.

Those who support the policy thrust of the Act have good reason to be encouraged. The Democratic Party's National Platform unequivocally pledged to implement the Act. President Carter's message to the Congress on February 22, 1977, on the revisions to the fiscal 1978 budget requested additional funding for the program and cited its "high potential for reversing crime and delinquency."²²

Footnotes at end of article.

Similarly, Attorney General Bell made a strong commitment to the full implementation of the Act during the course of the Senate Judiciary Committee confirmation hearing. He stated that he plans to establish a national criminal justice policy, the most important part of which will be juvenile justice. "If we are going to do anything about crime in America," he said, "we have to start with juveniles."²³

The Juvenile Justice Act has been a catalyst for a long overdue and healthy assessment of current policy and practices. Additionally, it has stimulated the development of criteria for imposing incarceration²⁴ while stressing certainty of punishment for serious offenders.

The Government Accounting Office has called the Act the most promising and cost-effective federal crime prevention program.²⁵ No one would claim that the Act is a panacea. There are no federal answers to the problems of juvenile crime and delinquency. Its authors did not intend to divert attention from major reforms aimed at ameliorating the poverty, unemployment, sexism and racism so relevant to the quality of life and opportunities for our youth. Nor were they naive about the capacity for resistance to change, especially by those entrenched and sustained by the status quo.

Still, by its enactment of the Juvenile Justice and Delinquency Prevention Act of 1974, Congress has called upon the states, localities, public and private agencies and others to reassess the rationale which has made institutionalization the favored alternative far too often.

FOOTNOTES

¹ JUVENILE DELINQUENCY ANNUAL REPORT, 95th Congress, 1st Session, Report No. 95-17, 25 (1976).

² "Such cases comprise—though firm figures are not available—no less than one third and perhaps close to one half the workload of America's juvenile courts. In one county of better than 500,000 population, a thorough study in connection with a diversion program revealed that non-criminal behavior cases accounted for 40 percent of all minors detained and 72 percent of court-ordered out-of-home placements and commitments." American Bar Association-Institute of Judicial Administration, Juvenile Justice Standards Project, Tentative Draft, Standards Relating to Noncriminal Misbehavior 1-2 (New York: Ballinger Publishing Co, 1977).

³ "Today virtually every state empowers its juvenile courts to exercise authority over children who do not commit crimes but are 'incorrigible,' 'ungovernable,' or 'beyond control' of their parents or custodians. Children who fall into this category are often called 'status' offenders since they harm no one other than themselves and are punished for merely 'being' something. Most status offenses of children are not illegal if committed by adults. Children are therefore subject to possible punishment and loss of liberty for acts which are not prohibited for adults." Alan Sussman, THE RIGHTS OF YOUNG PEOPLE 53-54 (American Civil Liberties Union: March, 1977).

⁴ Juvenile Justice and Delinquency Prevention Act of 1974, 42 USC § 5601.

⁵ The Senate vote was 88-1; the House voted 329-20.

⁶ Rosemary C. Sarri and Robert D. Vintner, *Justice for Whom? Varieties of Juvenile Correctional Approaches in the Juvenile Correctional System* 161-173, M. Klein, ed. (Beverly Hills: Sage Publications, 1976).

⁷ ANNUAL REPORT, *supra* n. 1 at 28-29.

⁸ Milton Rector and David Gilman, *How Did We Get Here and Where are We Going—The Future of the Juvenile Court System*, 1 CRIMINAL JUSTICE REVIEW 77 at 83.

⁹ In fiscal 1974, 543,890 juveniles were admitted to detention centers and training

schools. ANNUAL REPORT, *supra* n. 1, Table VII, 25. At least another 500,000 youths are held in adult jails each year. For every ten youths incarcerated in all types of facilities, nine are in jails or detention units. See Sarri and Vintner, *supra* n. 5 at 172.

¹⁰ See Patricia Wald, "Status Offenders: Saturday's Children," presented September 3, 1976 to the 84th Annual Convention of the American Psychological Association, 1. "... TO FORM A MORE PERFECT UNION..." JUSTICE FOR AMERICAN WOMEN, Report of the National Commission on the Observance of International Women's Year, 158-159 (1976). Birch Bayh, *Girls in Trouble: Second Class Delinquents*, 1 THE WOMEN'S OFFENDER REPORT 6-7 (March/April 1977).

¹¹ Even a cursory review of the handling of young women reveals the grossest application of the double standard. See U.S., LEAA, CHILDREN IN CUSTODY, REPORT ON THE JUVENILE DETENTION AND CORRECTION FACILITIES CENSUS OF 1971, 6 (1974). FEMALE OFFENDERS: PROBLEMS AND PROGRAMS 6, Female Offender Resource Center, National Offender Services Coordination Program, American Bar Association, (1976).

¹² See also ABA-IJA *supra* n. 2 at 13. "The Juvenile Justice Standards Project's New York City Study found that although girls only accounted for 62 percent of the total P.N.S sample, they accounted for 100 percent of the cases involving allegations of prostitution, promiscuity, 'cohabiting' and 'general sex inuendo' (whatever that may mean, if anything)."

¹³ "Same youth policies will have to be based on a greater acceptance of young people on their own terms, a willingness to live with a variety of life styles, and a recognition of the fact that young people of our society are not necessarily confused, troubled, sick or vicious. These attitudes cannot emerge within the context of the present juvenile justice system with its paternalistic, patronizing even hostile philosophy." Edwin M. Schur, RADICAL NONINTERVENTION: RETHINKING THE DELINQUENCY PROBLEM 168 (New York: Prentice Hall, 1973).

¹⁴ "The curse of juvenile courts has always been their lack of appropriate disposition resources for a variety of problem children they handle. The availability of detention facilities for holding juveniles indefinitely in lieu of a proper final placement has thus provided a convenient device for avoiding reform. . . . If a juvenile justice system in fact has no resources to treat or rehabilitate a juvenile, the dilemma ought to be faced in open court and the juvenile released. . . ." Patricia M. Wald, *Pretrial Detention for Juveniles, Pursuing Justice for the Child* 126-127 (1976).

¹⁵ The center has published an introductory pamphlet on monitoring which they used at their Citizen Survey and Visitation Training Seminar on January 24, 1977. It may be obtained from the Juvenile Justice Center of Pennsylvania, 1902 Rittenhouse Square, Philadelphia, Pennsylvania 19103.

¹⁶ "The law provides increased visibility to the problem and a focal point for juvenile delinquency activities in the federal government by creating an Office of Juvenile Justice and Delinquency Prevention. For the first time, there will be an organizational unit that can identify existing and needed resources, identify and set priorities, and develop strategies to implement a comprehensive attack on juvenile delinquency. Also, for the first time, specific efforts to both prevent and control juvenile delinquency will be the responsibility of one agency. This should provide for innovative prevention programs." Testimony of Elmer B. Staats, Comptroller General of the United States, April 29, 1975, in FORD ADMINISTRATION STIFLES JUVENILE JUSTICE PROGRAM, Vol. 1, p. 13. (*Hearings of the Senate Subcommittee to Investigate Juvenile Delinquency*).

¹⁵ Once a program receives formula or special emphasis grants, it is entitled to get continued assistance subject to an annual evaluation.

¹⁶ The committee will consist of 21 members, the majority of them from the private sector, and one-third of them under age 26.

¹⁷ The Senate vote was 61-27 on July 23, 1976.

¹⁸ The LEAA fiscal year 1975 budget was \$895 million; when Congress reauthorized LEAA last fall, it reduced the budget for fiscal year 1977 to \$753 million.

¹⁹ Speech before the Mexican-American Legal Defense Fund in San Francisco, California, February 15, 1977.

²⁰ "No reforms or alternatives can rescue these institutions from their historical excesses," according to William Wayne, a federal district court judge in Tyler, Texas, in Peter Schrag and Diane Divoky, *The New Juvenile Justice At Work*, 2 CIVIL LIBERTIES REVIEW 74.

²¹ Unpublished testimony before the subcommittee on April 27, 1977, chaired by Senator John Culver of Iowa, pp. 4-5.

²² Carter's action fulfilled a campaign promise. When candidate Jimmy Carter was asked last October by the American Bar Association whether he favored an increased share of LEAA and other federal funds for juvenile justice and delinquency prevention, he responded in the affirmative and added, "Both the commentators and the statistical evidence now point to the fact that court reform, corrections and juvenile justice are the critical elements in improving crime control." 62 A.B.A.J. 1275 (October, 1976).

²³ *Hearings on the Prospective Nomination of Griffin B. Bell of Georgia to be Attorney General of the Senate Committee on the Judiciary*, 95th Congress, 1st Session, January 11, 1977, p. 77.

²⁴ Clear criteria limiting admission to detention should help to eliminate the need for expensive consultative services or the development of extraordinarily complicated processing. By providing intake personnel on an around-the-clock basis as the 1974 Act encourages, the savings could be significant.

²⁵ Staats, *supra* n. 14 at 4.