

National Juvenile Justice & Delinquency Prevention Coalition

September 25, 2007

Honorable John Conyers, Jr.
Chairman
House Judiciary Committee
2426 Rayburn Building
Washington, DC 20515

Honorable Lamar S. Smith
Ranking Member
House Judiciary Committee
184 Rayburn House Office Building
Washington, DC 20515

**Re: Support for the Youth PROMISE Act and
Opposition to the Gang Prevention, Intervention, and Suppression Act (H.R. 3547)**

Dear Chairman Conyers and Representative Smith:

On behalf of the National Juvenile Justice and Delinquency Prevention Coalition, we write to express our strong endorsement of Chairman Scott's Youth PROMISE Act, and our equally strong opposition to H.R. 3547, the "Gang Prevention, Intervention, and Suppression Act." As a Coalition of 80 national groups dedicated to advocacy for children, youth, and families across this nation, we respect efforts to improve our nation's response to violent gang activity, and to more fully understand gangs, how they function, and how we can prevent individuals, particularly young people, from becoming involved in criminal gang activity. While the Youth PROMISE Act focuses on evidence-based prevention and intervention approaches proven to reduce youth gang involvement and violence, H.R. 3547 is fundamentally flawed in its misguided emphasis on punishment and incarceration over prevention and early intervention, and will lead to an increase in the already troubling racial and ethnic disparity in the juvenile and criminal justice systems. We offer unconditional support for the Youth PROMISE Act, which is premised upon evidence-based programs that are proven to prevent and stop youth gang involvement and delinquency. In contrast, we have three main concerns with H.R. 3547.

I. THE JUVENILE JUSTICE COALITION SUPPORTS THE YOUTH PROMISE ACT

The Youth Prison Reduction through Opportunities, Mentoring, Intervention, Support, and Education Act (Youth PROMISE Act) is based upon evidence-based methods proven to work to reduce youth violence and delinquency: investing resources in youth. Specifically, the Youth PROMISE Act targets resources towards communities encountering increased youth gang and crime risks to enable those communities to begin to address their significant unmet needs for evidenced-based prevention and intervention investments. Under the Youth PROMISE Act, each community facing the greatest youth gang and crime challenges will come together – via a local council that includes law enforcement, community-based organizations, schools, faith organizations, health, social service, and mental health providers – to develop and implement a comprehensive plan for evidence-based prevention and intervention strategies targeted at young people and their families to make our communities safer, reduce victimization, and help at-risk young people to lead law-abiding and healthy lives, free from gang and criminal involvement.

The youth prevention strategies under the Youth PROMISE Act include a broad array of programs proven to reduce the likelihood of a young person joining a gang and/or committing a delinquent act (e.g., early childhood education, home visiting for parent training, youth development including after-school efforts, mentoring, mental health services, substance abuse prevention services, effective approaches to keeping youth in school, etc.). Meanwhile, the youth intervention strategies include strategic funding based upon each community's needs assessment and subsequent strategic youth crime and gang intervention plan – from

a broad array of programs proven to reduce the likelihood of a young offender’s recidivism (e.g., evidence-based risk-analysis-focused assessments, as well as proven-effective individual and family therapeutic interventions, tattoo removal, community re-entry activities, witness protection, youth victim witness assistance, and other services).

The Youth PROMISE Act also provides for training, hiring and support of *Youth Oriented Policing* officers to implement strategic activities to minimize youth crime and victimization and reduce the long-term involvement of juveniles in the juvenile and criminal justice systems. The bill also establishes a *Center for Youth Oriented Policing* which would be responsible for identification, development and dissemination to law enforcement agencies best practices for *Youth Oriented Policing* techniques and technologies. Research shows that youth oriented policing is much more effective in working with youth and reducing recidivism than other, non-youth oriented law enforcement approaches.

Finally, the Youth PROMISE Act provides for thorough evaluation, which will include an evaluation of the cost-savings to society yielded by the investment in prevention and intervention, as opposed to more costly and ineffective prosecution and incarceration. Under the Youth PROMISE Act, the savings sustained from investment in prevention and intervention programs shall be reinvested in the continuing implementation of the prevention and intervention efforts initially funded under the Act.

In short, the approach of the Youth PROMISE Act makes sense, comports with the research on prevention, intervention and adolescent brain development, and will yield overall savings to the community according to both financial and life quality measures.

II. THE JUVENILE JUSTICE COALITION OPPOSES H.R. 3547, FOR THREE MAIN REASONS:

We have three main concerns with the H.R. 3547.

Concern #1: The Definitions of “Gang” and “Gang Crime” Are Overbroad, Vague, and Will Dramatically Increase Unwarranted Federal Prosecution of Children and Youth, Especially Low-Income Youth and Youth of Color

Section 521(1) of the bill defines a “criminal street gang” as “a formal or informal group, organization, or association of five or more individuals, each of whom has committed at least one gang crime; and who collectively commit three or more gang crimes (not less than one of which is a serious violent felony...), in furtherance of the group, organization, or association, in separate criminal episodes (not less than one of which occurs after the date of enactment of the Gang Prevention, Intervention, and Suppression Act ...).” Section 521(2) defines “gang crime” as “an offense under federal law punishable by imprisonment for more than one year, or a felony offense under State law that is punishable by a term of imprisonment of five years or more” within certain enumerated categories. Given the natural tendency of children and youth to associate in peer groups – a tendency child development experts encourage as essential for fostering resilience and social-emotional competence¹ – the breadth and vagueness of these definitions are problematic for several reasons.

These definitions are overbroad, vague, and suffer from failure of fair notice and a high likelihood of discriminatory enforcement problems. The proposed definition eliminates one of the most fundamental tenets of criminal law: intent. As written, there is no “common criminal purpose” requirement in Section 522. Thus, a group of young people who come together for any legal group activity and not for the *purpose* of committing gang crime will still be vulnerable to federal prosecution under this bill.

The gang crime definition is also vague and overbroad because it fails to include a requirement that the crimes be “ongoing” or “continuous and related.” Additionally, the definition fails to require a prior

conviction and *sentence* of one year in the federal system or five years or more in the State system. The current language merely requires the “collective” “commission” of three or more gang crimes that are “punishable” by a given term. It does not, however, require criminal conviction for any offense. Thus, a finding of juvenile delinquency and imposition of probation could suffice under this proposed definition. Moreover, as written, the definition poses *Ex Post Facto* constitutional problems.

Research has shown that the vast majority of adolescent crimes occur in groups and that this “group context” is the most significant trait of offending during the adolescent years.² Adolescents who have not yet learned how to resist peer pressure “lack effective control of the situations that place them most at risk of crime in their teens.”³ While this greater susceptibility to peer pressure does not excuse a crime, it does have implications for defining gang activity simply as that which occurs in groups of five individuals. Given the developmental realities of adolescent behavior, it is likely that youth will be subject to prosecution under this legislation for conduct that does not constitute true gang activity. The fact that attempt and conspiracy liability is included as gang crime predicates intensifies this problem.

These definitions are of particular concern because the lack of directives governing this bill’s enforcement-related measures will invariably lead to an increase in the already troubling racial and ethnic disparity in the juvenile and criminal justice systems, criminalizing the conduct of many more people - particularly young men of color - whose conduct was never contemplated by this legislation. Documented disparity begins with pre-arrest contact with law enforcement. This bill calls for an unspecified “prediction” of levels of gang crime activity. See § 301(b)(4)(A) *Criteria for Designation*. Without explicit, objective standards to guide the “predicted levels of gang activity in an area,” this bill risks increasing the already severely disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system and is likely to increase the level of racial profiling in communities of color.

The proposed bill also provides for a National Gang Activity Database. Sec. 304(b). We are very concerned that this database, in combination with the aforementioned overbroad definitions, will lead to racial profiling. The bill fails to provide any due process requirements governing the process by which an individual is entered into the database or may challenge entry into the database. There are also no specified procedures for expungement from the database. In addition, the legislation does not provide any limit on how the information in the database may be used. Without these specifications, the proposed legislation, as written, raises critical due process, Fourth Amendment, and privacy concerns. Noting that the database shall be “subject to appropriate controls” see Sec. 304(b)(2)(A) lacks the specificity required to ensure due process protection. In addition to triggering constitutional concerns, this database seems duplicative of that which the Department of Justice and the FBI currently employ. The funds necessary to establish this database would be better used to strengthen prevention programs. *See Concern #2, infra*.

In addition to proposing overbroad definitions, this bill’s suggested method to combat gang crime is ineffective as it pertains to juvenile offenders. Extensive research demonstrates that youth benefit much more from prevention, early intervention and intervention than from overly punitive sanctions. The OJJDP Gang Violence Reduction Program underscores the success of prevention and intervention in addressing youth gang violence.⁴ Whereas Section 209 seeks to publicize new criminal penalties and federal enforcement, what is really needed is a media campaign highlighting the prevention and intervention programs available for young people.

Concern #2: H.R. 3547 Emphasizes Reactive Approaches at the Expense of Proactive Approaches

Although we recognize and appreciate that efforts have been made to improve and address prevention in this legislation, the bill continues to encourage misguided penalties that are overly severe for youth, and emphasize incarceration and interdiction at the expense of prevention and intervention. The authorized appropriations in this bill fail to reflect the widely recognized and accepted expertise regarding what works

to reduce recidivism and deter crime. This bill simply does not reflect the importance and success of prevention and intervention programs, which are proven to be much more effective anti-gang strategies, especially for young people. Instead of focusing on meaningful prevention and intervention, drug treatment, job training and employment opportunities for youth, this bill places undue emphasis on the creation of new crimes, expanding culpability for the accused, and enhancing penalties for the convicted.

The authorizations in H.R. 3547 fail to emphasize the importance of prevention; appropriations for law enforcement still dramatically exceed those for prevention. Moreover, the majority of the funds that are authorized for prevention will be available only to communities designated as High Intensity Gang Activity Areas (HIGAAAs).

This bill's overemphasis on criminalization and incarceration is out of step with what research and law enforcement show works to reduce gang violence: more prevention and intervention at the community-based level. When addressing gang violence, it is important to keep things in perspective and let the facts, empirical evidence, and quality research guide our actions. After a nearly continuous 13-year crime drop, crime rates in the U.S. are indeed on the rise. Nationwide, violent crime rose 2.3% between 2004 and 2005.⁵ Based on data in the FBI's *Preliminary Semiannual Uniform Crime Report*, released in December 2006, the upward trend appears to be continuing, as violent crime rose 3.7% between the first six months of 2005 and the same time period in 2006.

But while any rise in crime is cause for concern, this increase needs to be put into proper context. After experiencing a steady drop in violent crimes since a 1992 peak, crime rates remain near a 30-year low. According to surveys conducted by the U.S. Department of Justice, the odds of being a victim of violent crime are approximately 60% lower today than they were in 1994.⁶

In addition, the image of juvenile crime and gang crime have been manipulated by the media, complicating the picture of crime trends and their relation to gangs, and giving us good reason to take a step back. Just as most young people "age out," or desist from delinquency and crime when they reach adulthood, research on gangs published by the Justice Department found that, "gang membership tends to be short lived, even among high-risk youth...with very few youth remaining gang members throughout their adolescent years."⁷ Law enforcement estimates of nationwide juvenile gang membership suggest that no more than 1% of youth ages 10-17 are gang members.⁸

For all of these reasons, it is imperative that we understand what works, and that we approach violent gang activity with effective practices that will produce the desired outcomes, as Chairman Scott's Youth PROMISE Act does. Sound research has revealed the following:

- 1. Incarcerating perceived gang members does not reduce recidivism.** There is a growing body of research that suggests increased imprisonment could negatively impact youth who may otherwise "age out" of delinquent behavior, and consequently aggravate public safety goals.⁹ A 2004 Illinois report on gang recidivism rates tracked 2,500 adults prisoners released in 2000, one quarter of whom were gang members.¹⁰ They found that more than half (55%) of the gang members were readmitted to prisons within a two-year follow-up. A study of youth in the Arkansas juvenile justice system found that prior incarceration was a greater predictor of recidivism than carrying a weapon, gang membership, or poor parental relationship.¹¹
- 2. Education is a protective factor against juvenile delinquency and recidivism.** Providing education and employment services have been shown to correlate with lower crime rates. According to the Office of Juvenile Justice and Delinquency Prevention, "If, as research has found, educational failure leads to unemployment (or underemployment), and if educational failure and unemployment are related to law-violating behavior, then patterns of educational failure over time and within specific groups may help to explain patterns of delinquent behavior."¹² Providing education and employment services for at-risk youth to increase graduation rates, as well as wages and employment

opportunities, could greatly reduce crime, benefiting both young people and society as a whole, especially young men, who are often the most impacted by the availability of well-paying jobs and who commit the majority of crimes.¹³

- 3. There are proven programs that work with seriously violent and at-risk youth.** While the science on preventing gang crime is limited, there are evidence-based practices that work with at-risk and delinquent youth, the same youth who often join gangs. In addition, studies have shown that evidence-based practices that work with violent and seriously delinquent youth are more cost effective and produce more benefits than traditional punitive measures.¹⁴

In short, the focus on interdiction and incarceration is misplaced. The focus should be on intervention and prevention. While H.R. 3547 proposes an interdiction-heavy, prevention-light funding allocation, the President's budget proposal would end the federal government's commitment to improve the quality of juvenile justice. Cutting juvenile justice funding by 25% and jeopardizing the continued existence of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) – which for more than 25 years has led national efforts to reduce youth crime and make communities safer, and provided critical technical assistance, training, research and support for innovative and proven practices – will dismantle local efforts to curb juvenile crime and delinquency. In contrast, Chairman Scott's Youth PROMISE Act invests resources in youth, and will yield greater results, reduced recidivism and cost-savings.

Concern #3: Juveniles Should Not Be Subjected to the Enhanced Penalties Under this Bill

H.R. 3547 calls for significantly enhanced penalties, including life without parole sentences, which are inappropriate for youth, and contraindicated by widely accepted scientific research in the field of adolescent brain development. Research on adolescent brain development reveals, as the Supreme Court has acknowledged, there are fundamental differences between adults and adolescents, and the “culpability or blameworthiness” for an adolescent's crimes are “diminished, to a substantial degree, by reason of youth or immaturity.”¹ The life without parole penalties called for in H.R. 3547 should not apply to juvenile offenders.

Section 310 of H.R. 3547 is a step in the right direction. The call for the United States Sentencing Commission to “conduct a study” regarding the appropriateness of life sentences without possibility of parole for minor offenders in the Federal system, however, does not go far enough. We request the requirement that a defendant prosecuted under this bill must be 21 or older (or at least 18 years of age) for the enhanced penalties to apply in §§ 522(b)(1)(A), 201(a)(1), 205(a)(1)(C)(i) and 205(a)(1)(C)(ii), and anywhere else the “life without possibility of parole” may appear in the legislation.

While we appreciate restricting application of §523(b)(1) *Recruitment of Persons to Participate in a Criminal Street Gang* to persons “over 18 years of age,” we request the exemption of minors from all enhanced penalties under this section, including §§ 523(b)(2), 523(b)(3), 523(b)(4), and 523(b)(5). This request is consistent with that which Congress has already recognized: an increased penalty for a minor using a minor is inappropriate. See Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 140008, 108 Stat. 2003 (1994), directing Sentencing Commission to promulgate enhancement for involving a minor if the defendant was at least 21 years old. Research on adolescent brain development also indicates that group activity and what might be deemed “recruitment” under this provision is in fact a hallmark of teenage behavior and adolescent development. See *Research Network on Adolescent Development and Juvenile Justice*, MacArthur Foundation, Issue Brief 3, *Less Guilty by Reason of Adolescence* 3. It is simply inappropriate to penalize minors for “recruiting minors” under § 523. This entire section should apply to adults only.

¹ *Roper v. Simmons*, 543 U.S. 551, 571 (2005).

We are hopeful that you will take into account the National Juvenile Justice and Delinquency Prevention Coalition's strong opposition to H.R. 3547, and our equally strong support for the Youth PROMISE Act. Please feel free to contact us with any questions: Carol Chodroff at the National Juvenile Defender Center at (202) 452-0010 x 103, Tim Briceland-Betts at the Child Welfare League of America at (703) 412-2407, Sandi Pessin-Boyd at the Center for Children's Law and Policy at (202) 637-0377 x102, Tara Andrews at the Coalition for Juvenile Justice at 202-467-0864, ext. 109, and Angela Arboleda, Associate Director of Criminal Justice Policy, at the National Council of La Raza: (202) 776-1789.

Thank you for your consideration.

Sincerely,

Tim Briceland-Betts
Child Welfare League of America

Sandi Pessin-Boyd
Center for Children's Law and Policy

Carol Chodroff
National Juvenile Defender Center

Angela Arboleda
National Council of La Raza

Tara Andrews
Coalition for Juvenile Justice

cc: Members of the House Judiciary Committee
Speaker of the House Nancy Pelosi
Majority Leader Steny H. Hoyer
Republican Leader John A. Boehner
Majority Whip James E. Clyburne
Republican Whip Roy Blunt
Honorable Xavier Becerra

¹ Longitudinal studies of children and adolescents indicate that the existence of support systems, including relationships in the community and with friends, buffer high-risk youth from a sense of isolation, and foster healthy resiliency. See Weissberg, R.P., K.L. Kumpfer, M.E.P. Seligman. "Prevention that Works for Children and Youth: An Introduction." *American Psychologist*, 58 (6/7) 2003. See also the work of Dr. Gill G. Noam, Executive Director of the Program in Education, Afterschool & Resiliency (PEAR) and an Associate Professor at Harvard Medical School and McLean Hospital.

² Zimring, Franklin E., "Penal Proportionality for the Young Offender: Notes on Immaturity, Capacity, and Diminished Responsibility," eds. Thomas Grisso and Robert G. Schwartz, *Youth on Trial*, pp. 281-82, 2000.

³ Zimring, Franklin E., 2000. *Op cit.*

⁴ Evaluation results from OJJDP's Gang Violence Reduction Program, covering three out of five years of program operations, revealed positive results of prevention and intervention programs in reducing gang arrests and gang violence, as well as a notable improvement in residents' perceptions of gang crime and police effectiveness in dealing with that crime. (Spergel and Grossman, 1997; Spergel and Grossman, 1998; Thornberry and Burch, 1997).

⁵ FBI Uniform Crime Reports, *Crime in the United States*, 2005.

⁶ Butts, Jeffrey A. and Howard N. Snyder. "Too Soon to Tell: Deciphering Recent Trends in Youth Violence." Chicago, IL: Chapin Hall Center for Children, University of Chicago, 2006.

⁷ Snyder, Howard N. and Melissa Sickmund. *Juvenile Offenders and Victims: 2006 National Report*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office Juvenile Justice and Delinquency Prevention, 2006.

⁸ *Ibid.*

⁹ Benda, B.B. and C.L. Tollet. "A Study of Recidivism of Serious and Persistent Offenders Among Adolescents." *Journal of Criminal Justice*, Vol. 27, No. 2 111-126, 1999.

¹⁰ Olson, D.E., B. Dooley, and C.M. Kane. "The Relationship Between Gang Membership and Inmate Recidivism." Research Bulletin, 2(12). Chicago, IL: Illinois Criminal Justice Research Authority, 2004. <http://www.icjia.state.il.us/public/pdf/Bulletins/gangrecidivism.pdf>.

¹¹ Benda, B.B. and Tollet, C.L., 1999. *Op cit.*

¹² Snyder, Howard N., and Sickmund, Melissa. *Op cit.*

¹³ Raphael, S. and R. Winter-Ebmer. "Identifying the Effects of Unemployment and Crime." *Journal of Law and Economics*. Vol. XLIV, 2001; Grogger, J. "Market Wages and Youth Crime." *Journal of Labor Economics*, 16(4), 1998; Lochner, L. and E. Moretti. "The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports." *The American Economic Review*, 2004; Grogger, J. Market. "Wages and Youth Crime." *Journal of Labor Economics*, 16(4), 1998.

¹⁴ Steve Aos, Marna Miller, and Elizabeth Drake. *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates*. Olympia, WA: Washington State Institute for Public Policy, 2006.