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LEGISLATIVE REFERRAL MEMORANDUM

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~~SUBJECT: REVISED JUSTICE Proposed Draft Bill: Enhanced Prosecution of Dangerous
Juvenile Offenders Act~~

DEADLINE: 10am Monday, December 18, 1995

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: A copy of this draft bill was originally circulated in September under LRM #2602.

* The transmittal letter will be circulated separately.

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*Crime
Youth Violence*

draft

A BILL

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled,

SEC. 1. This Act may be cited as the "Enhanced Prosecution of Dangerous Juvenile Offenders Act of 1995".

SEC. 2. DELINQUENCY PROCEEDINGS OR CRIMINAL PROSECUTIONS IN DISTRICT COURTS

Section 5032 of title 18, United States Code, is amended to read as follows:

"§ 5032. Delinquency proceedings or criminal prosecutions in district courts

"(a)(1) A juvenile alleged to have committed an act of juvenile delinquency shall not be proceeded against in a court of the United States unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that (A) the juvenile court or other appropriate court of a State does not have jurisdiction or declines to assume jurisdiction over the juvenile with respect to such act of alleged juvenile delinquency, or (B) the offense charged is described in subsection (b)(2)(i)-(vi), and (C) there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction. The requirements of this paragraph do not apply to prosecutions pursuant to subsections (b) or (c) or for offenses committed within the special maritime and territorial jurisdiction of the United

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States for which the maximum authorized term of imprisonment does not exceed six months.

"(2) If the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State. For purposes of this section, the term 'State' includes a State of the United States, the District of Columbia, any commonwealth, territory, or possession of the United States and, with regard to an act of juvenile delinquency that would have been a misdemeanor if committed by an adult, a federally recognized tribe.

"(3) If a juvenile alleged to have committed an act of juvenile delinquency is not surrendered to the authorities of a State pursuant to this section, any proceedings against the juvenile shall be in an appropriate district court of the United States. For such purposes, the court may be convened at any time and place within the district, in chambers or otherwise. The Attorney General shall proceed by information or as authorized by section 3401(g) of this title, and no criminal prosecution shall be instituted except as provided below.

"(b) A juvenile may be prosecuted as an adult under the Federal Rules of Criminal Procedure --

"(1) if the juvenile has requested in writing upon advice of counsel to be proceeded against as an adult; or

"(2) if the juvenile is alleged to have committed an

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act on or after the juvenile's fifteenth birthday which if committed by an adult would be --

"(i) a crime of violence (as defined in section 3156(a)(4)) that is a felony;

"(ii) an offense described in section 844(d), (k), or (l), 922(x), 924(b), (g), (h), (j), (k), or (l) of this title;

"(iii) a violation of section 922(o) that is an offense under section 924(a)(2) of this title;

"(iv) a violation of section 5861 of the Internal Revenue Code of 1986 that is an offense under section 5871 of such Code (26 U.S.C. 5871);

"(v) a conspiracy to violate an offense described in subsections (i), (ii), (iii) or (iv); or

"(vi) an offense (or a conspiracy or attempt to commit an offense) described in section 401 or 408 of the Controlled Substances Act (21 U.S.C. 841, 846, 848), or an offense punishable under section 409 or 419 of the Controlled Substances Act (21 U.S.C. 849, 860), or an offense described in section 1002(a), 1003, 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, or 959).

"(c) A juvenile may also be prosecuted as an adult under the Federal Rules of Criminal Procedure if the juvenile is alleged to have committed an act on or after the juvenile's thirteenth birthday and before the juvenile's

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fifteenth birthday which if committed by an adult would be an offense described in subsection (b)(2)(i)-(vi), upon approval of the Attorney General or the Attorney General's designee. Any such designee shall be at a level not lower than a Deputy Assistant Attorney General. Such approval shall not be granted if, with respect to such a juvenile who is subject to the criminal jurisdiction of an Indian tribal government and who is alleged to have committed an act over which, if committed by an adult, there would be federal jurisdiction based solely on its commission in Indian country (as defined in section 1151), the governing body of the tribe having jurisdiction over the place in which the alleged act was committed has prior to such act not notified the Attorney General in writing of its election that the provisions of this subsection shall apply.

"(d) A determination to approve or not to approve, or to institute or not to institute, a prosecution under subsection (b) or (c) shall not be reviewable in any court.

"(e) In a prosecution under subsection (b) or (c), the juvenile may be prosecuted and convicted as an adult for any other offense which is properly joined under the Federal Rules of Criminal Procedure, and may also be convicted of a lesser included offense."

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SEC. 3. CUSTODY PRIOR TO APPEARANCE BEFORE JUDICIAL OFFICER

Section 5033 of title 18, United States Code, is amended to read as follows:

"§ 5033. Custody prior to appearance before judicial officer

"Whenever a juvenile is taken into custody, the arresting officer shall immediately advise such juvenile of the juvenile's rights, in language comprehensible to a juvenile. The arresting officer shall promptly take reasonable steps to notify the juvenile's parents, guardian, or custodian of such custody, of the rights of the juvenile, and of the nature of the alleged offense.

"The juvenile shall be taken before a judicial officer without unreasonable delay."

SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS TO SECTION 5034

Section 5034 of title 18, United States Code, is amended --

(1) by designating the existing paragraphs as paragraphs (1), (2), and (3), respectively; and

(2) by inserting at the beginning of such section "In a proceeding under section 5032(a)--".

SEC. 5. DETENTION PRIOR TO DISPOSITION OR SENTENCING

Section 5035 of title 18, United States Code, is amended to read as follows:

"§ 5035. Detention Prior To Disposition

"(a)(1) A juvenile 15 years of age or older proceeded against under section 5032(b) or (c), if detained at any

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time prior to sentencing, shall be detained in such suitable place as the Attorney General may designate. Preference shall be given to a place located within, or within a reasonable distance of, the district in which the juvenile is being prosecuted.

"(2) A juvenile less than 15 years of age proceeded against under section 5032(b) or (c), if detained at any time prior to sentencing, shall be detained in a suitable juvenile facility located within, or within a reasonable distance of, the district in which the juvenile is being prosecuted. If such a facility is not available, such a juvenile may be detained in any other suitable facility located within, or within a reasonable distance of, such district. If no such facility is available, such a juvenile may be detained in any other suitable place as the Attorney General may designate.

"(3) To the maximum extent feasible, a juvenile less than 15 years of age proceeded against under section 5032(b) or (c) shall not be detained prior to sentencing in any facility in which the juvenile has regular contact with adult persons convicted of a crime or awaiting trial on criminal charges.

"(b) A juvenile proceeded against under section 5032(a) shall not be detained prior to disposition in any facility in which the person has regular contact with adult persons convicted of a crime or awaiting trial on criminal charges.

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"(c) Every juvenile who is detained prior to disposition or sentencing shall be provided with reasonable safety and security and with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, education, and medical care, including necessary psychiatric, psychological, or other care and treatment."

SEC. 6. SPEEDY TRIAL

Section 5036 of title 18, United States Code, is amended by --

- (1) striking "If an alleged delinquent" and inserting "If a juvenile proceeded against under section 5032(a)";
- (2) striking "thirty" and inserting "forty-five"; and
- (3) striking "the court," and everything that follows and inserting "the court. The periods of exclusion under section 3161(h) of this title shall apply to this section."

SEC. 7. DISPOSITION; AVAILABILITY OF INCREASED DETENTION, FINES AND SUPERVISED RELEASE FOR JUVENILE OFFENDERS

Section 5037 of title 18, United States Code, is amended to read as follows:

"§5037. Disposition

"(a) In a proceeding under 5032(a), if the court finds a juvenile to be a juvenile delinquent, the court shall hold a hearing concerning the appropriate disposition of the juvenile no later than forty court days after the finding of juvenile delinquency unless the court has ordered further study pursuant to subsection (e). A predisposition report

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shall be prepared by the probation officer who shall promptly provide a copy to the juvenile, the juvenile's counsel, and the attorney for the government. Victim impact information shall be included in the report, and victims, or in appropriate cases their official representatives, shall be provided the opportunity to make a statement to the court in person or present any information in relation to the disposition. After the dispositional hearing, and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to 28 U.S.C. 994, the court shall enter an order of restitution pursuant to section 3556, and may suspend the findings of juvenile delinquency, place the juvenile on probation, commit the juvenile to official detention (including the possibility of a term of supervised release), and impose any fine that would be authorized if the juvenile had been tried and convicted as an adult. With respect to release or detention pending an appeal or a petition for a writ of certiorari after disposition, the court shall proceed pursuant to the provisions of chapter 207.

"(b) The term for which probation may be ordered for a juvenile found to be a juvenile delinquent may not extend beyond the maximum term that would be authorized by section 3561(c) if the juvenile had been tried and convicted as an adult. Sections 3563, 3564, and 3565 are applicable to an order placing a juvenile on probation.

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"(c) The term for which official detention may be ordered for a juvenile found to be a juvenile delinquent may not extend beyond the lesser of --

"(1) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult;

"(2) ten years; or

"(3) the date when the juvenile becomes twenty-six years old.

Section 3624 is applicable to an order placing a juvenile in detention.

"(d) The term for which supervised release may be ordered for a juvenile found to be a juvenile delinquent may not extend beyond five years. Sections 3583(c)-(1) are applicable to an order placing a juvenile on supervised release.

"(e) If the court desires more detailed information concerning a juvenile alleged to have committed an act of juvenile delinquency or a juvenile adjudicated delinquent, it may commit the juvenile, after notice and hearing at which the juvenile is represented by counsel, to the custody of the Attorney General for observation and study by an appropriate agency or entity. Such observation and study shall be conducted on an outpatient basis, unless the court determines that inpatient observation and study are necessary to obtain the desired information. In the case of

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an alleged juvenile delinquent, inpatient study may be ordered only with the consent of the juvenile and the juvenile's attorney. The agency or entity shall make a complete study of the alleged or adjudicated delinquent to ascertain the juvenile's personal traits, capabilities, background, previous delinquency or criminal experience, mental or physical defect, and any other relevant factors. The Attorney General shall submit to the court and the attorneys for the juvenile and the government the results of the study within thirty days after the commitment of the juvenile, unless the court grants additional time. Time spent in custody under this subsection shall be excluded for purposes of section 5036."

"(f) With respect to any juvenile prosecuted and convicted as an adult under section 5032(c), the court may, pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28, determine to treat the conviction as an adjudication of delinquency and impose any disposition authorized under this section. The United States Sentencing Commission shall promulgate such guidelines as soon as practicable and not later than one year from the date of enactment of this Act.

SEC. 8. RECORDS OF CRIMES COMMITTED BY JUVENILE DELINQUENTS

(a) Section 5038 of title 18, United States Code, is amended --

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(1) in subsection (a), by amending the introductory language before the colon to read as follows:

"Throughout and upon completion of the juvenile delinquency proceeding pursuant to section 5032(a), the court records of the original proceeding shall be safeguarded from disclosure to unauthorized persons. The records shall be released to the extent necessary to meet the following circumstances";

(2) in subsection (a), by adding in paragraph (3) before the semicolon "or analysis requested by the Attorney General";

(3) in subsection (a), by amending paragraph (6) to read as follows:

"(6) communications with any victim of such juvenile delinquency, or in appropriate cases with the official representative of the victim, in order to apprise such victim or representative of the status or disposition of the proceeding or in order to effectuate any other provision of law or to assist in a victim's, or the victim's official representative's, allocution at disposition."; and

(4) by striking subsections (d) and (f), by redesignating subsection (e) as subsection (d), by inserting "pursuant to section 5032(b) or (c)" after "adult" in subsection (d) as so redesignated, and by adding at the end new subsections (e) and (f) as follows:

"(e) Whenever a juvenile has been adjudicated delinquent for an act that if committed by an adult would be

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a felony or for a violation of section 922(x), the juvenile shall be fingerprinted and photographed, and the fingerprints and photograph shall be sent to the Federal Bureau of Investigation. The court shall also transmit to the Federal Bureau of Investigation the information concerning the adjudication, including name, date of adjudication, court, offenses, and sentence, along with the notation that the matter was a juvenile adjudication. The fingerprints, photograph, and other records and information relating to a juvenile described in this subsection, or to a juvenile who is prosecuted as an adult pursuant to section 5032(b) or (c), shall be made available in the manner applicable to adult defendants.

"(f) In addition to any other authorization under this section for the reporting, retention, disclosure, or availability of records or information, if the law of the State in which a Federal juvenile delinquency proceeding takes place permits or requires the reporting, retention, disclosure, or availability of records or information relating to a juvenile or to a juvenile delinquency proceeding or adjudication in certain circumstances, then such reporting, retention, disclosure, or availability is permitted under this section whenever the same circumstances exist."

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SEC. 9. RESTRICTION ON COMMITMENT

Section 5039 of title 18, United States Code, is amended to read as follows:

"5039. Commitment

"(a) The Attorney General shall not cause any juvenile less than 21 years of age adjudicated delinquent under section 5032(a) to be placed or retained in an adult jail or correctional facility in which the juvenile has regular contact with adults incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges, except for placement in a community-based facility.

"(b) Every juvenile adjudicated delinquent who has been committed shall be provided with reasonable safety and security and with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, counseling, education, training, and medical care including necessary psychiatric, psychological, or other care and treatment."

SEC. 10. TECHNICAL AMENDMENTS OF SECTION 5031 AND 5034

(1) Sections 5031 and 5034 of title 18, United States Code, are each amended by striking "his" each place it appears and inserting "the juvenile's".

(2) Section 5034 of title 18, United States Code, is amended by striking "magistrate" each place it appears and inserting "judicial officer".

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SEC. 11. SERIOUS JUVENILE DELINQUENCY DRUG TRAFFICKING
ADJUDICATIONS AS ARMED CAREER CRIMINAL ACT PREDICATES.

Section 924(e)(2)(A) of title 18, United States Code, is amended --

- (1) by striking "or" at the end of clause (i);
- (2) by inserting "or" at the end of clause (ii); and
- (3) by adding at the end the following:

"(iii) any act of juvenile delinquency that if committed by an adult would be a serious drug offense described in this paragraph;"

SUMMARY OF AMENDMENTS TO THE FEDERAL JUVENILE DELINQUENCY STATUTES

18 U.S.C. § 5031 *et seq.*

Prosecution of Serious Juvenile Offenders as Adults (Section 5032)

- o Prosecutors would have the discretion to prosecute serious juvenile offenders as adults. Judicial juvenile transfer hearings and interlocutory appellate review of those hearings would be eliminated. Judges would no longer approve transfers of juveniles to adult status.
- o For certain serious felonies, prosecutors would have the discretion to charge a juvenile who was 15, 16 or 17 at the time of the offense as an adult or as a juvenile.
- o For certain serious felonies, prosecutors would have the discretion to charge a juvenile who was 13 or 14 at the time of the offense as an adult only with the approval of the Attorney General or designee at a level not lower than Deputy Assistant Attorney General.
- o Indian juveniles, who are either 13 or 14 at the time of an offense, would not be prosecuted as adults if the tribe had not elected to include all such juveniles from adult prosecution. This would apply to prosecutions predicated solely upon Indian country jurisdiction.
- o Prosecutors would retain the discretion to proceed against any juvenile delinquent who was less than 18 years of age at the date of the offense.
- o The list of offenses for which a juvenile may be tried as an adult would be augmented to include drug conspiracies and several additional firearms offenses.
- o A juvenile tried as an adult for one of the designated offenses could also be prosecuted as an adult for any other offenses properly joined under F.R.Cr.P. 8(a).

Detention of Serious Juvenile Offenders Prior to Disposition (Section 5035)

- o In those cases where a judge finds a juvenile who is 15 years or older and charged as an adult to be a danger to the community or a risk of flight, the juvenile can be detained prior to trial in an adult facility. (This is not a change from current statute and is in full compliance with OJJDP standards as applied to the states.)

- o In those cases where a judge finds a juvenile who is 13 or 14 years or older and charged as an adult to be a danger to the community or a risk of flight, the juvenile shall be detained prior to trial in a juvenile facility located close to the place of prosecution if one is available. (This imposes a stricter standard than under current statute and is in full compliance with OJJDP standards as applied to the states.)
- o Until a juvenile is formally charged as an adult they shall not be detained in any facility in which they will have regular contact with adult prisoners.

Detention of Serious Juvenile Offenders Post-Disposition (Section 5039)

- o A juvenile offender convicted as an adult could be confined with adults.
- o A juvenile adjudicated delinquent could not be confined with adults until he was 21, except for placement in a community-based facility.

Time Limits for Delinquency Proceedings (Section 5036)

- o A juvenile delinquency proceeding would begin for a juvenile in custody within 15 days, rather than the current 30 days.
- o Exclusions within the Speedy Trial Act would apply in juvenile delinquency proceedings.
- o The time within which a disposition hearing must be held after an adjudication of delinquency would be increased from 20 days to 40 days. Within the 40 days, the probation office would prepare a predisposition report, which would include victim impact information.

Disposition Hearing for Adjudicated Delinquents (Section 5037)

- o Fines, supervised release and mandatory restitution would apply to adjudicated delinquents.
- o The maximum period of official detention would be increased to 10 years to give judges increased sentencing flexibility for juveniles who are adjudicated delinquent but in no event exceed the age of 25.
- o The maximum period for probation would be increased to the same periods applicable to an adult.

Use of Juvenile Records (Section 5038)

- o The information that could be provided to victims of juvenile offenses would be expanded in a manner consistent with the Victim's Rights and Restitution Act of 1990.
- o Fingerprints and photographs of adjudicated delinquents found to have committed the equivalent of an adult felony offense or a violation of 18 U.S.C. 922(x) (possession of a handgun by a juvenile) would be sent to the FBI and made available in the manner applicable to adult defendants.

In addition to criminal justice users, records are made available to various federal and state/local agencies for purposes of employment and licensing.

- o Disclosure of records relating to a juvenile or a delinquency proceeding would also be authorized if it would be permitted under the law of the state in which the delinquency proceeding took place.

Delinquency Adjudications as Armed Career Criminal Predicates

- o The Armed Career Criminal Act would be amended to permit use of an adjudication of juvenile delinquency based on a serious drug trafficking offense as a predicate offense under that Act.