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## **AN OPEN LETTER FROM AMNESTY INTERNATIONAL TO THE UNITED STATES CONGRESS ON PENDING JUVENILE JUSTICE LEGISLATION**

Dear Members of Congress,

From the end of the 19<sup>th</sup> century, the USA became a world leader in the development of a legal system specifically for children, with a mandate to promote their welfare. It is a sad irony that as we approach the 21<sup>st</sup> century, juvenile justice legislation looming in Congress is a cause for concern rather than celebration. For the bills in question -- S. 254 and H.R. 1501, now before a Congressional Conference Committee -- threaten to tarnish the US record on this issue, weaken the positive steps taken by Congress in the 1970s and 1980s, and further undermine the USA's respect for international standards relating to children who come into contact with the law.<sup>1</sup>

An issue of urgent concern to Amnesty International is the preservation of policies that segregate children from adult prisoners. Incarcerated children are notoriously a common target of sexual and physical assault by adult inmates. This phenomenon is widely acknowledged by governments and correctional authorities throughout the world, including in the USA. In order to protect children from harm, international standards expressly state that children in detention awaiting trial or imprisoned following conviction should be kept apart from adult detainees.

US federal and state governments and correctional authorities have acted inconsistently in their responses to the need to protect incarcerated children from adult inmates. In 1974 Congress legislated to provide a strong financial incentive to the states to separate adult and juvenile offenders. In 1980 Congress reviewed evidence that showed that children who were held in custody in adult facilities committed suicide at a far higher rate than children in juvenile institutions; that they were assaulted physically, mentally and sexually and that they received inadequate care and were stigmatized on release. The evidence further persuaded Congress that children should be kept apart from adult detainees.

Amnesty International is encouraged by the fact that current federal law discourages state authorities from holding children tried as juveniles with adults, and by the fact that, under federal law, children tried as either adults or juveniles cannot be held with adults. Regrettably, H.R. 1501 creates loopholes in these protections - where none currently exist - by opening up the possibility of children as young as 13, tried as adults under federal law, being held before their trial in the same cell with adults. Even if the drafters of H.R. 1501 consider this an unlikely

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<sup>1</sup> Under both international standards and US laws, 18 is the most common age below which special protection is deemed to be necessary and desirable for people accused or convicted of violating criminal laws.

outcome, they lose nothing by closing these loopholes. On the other hand, justice in the USA has everything to gain.

Moreover, the protection provided by current federal legislation does not apply to children tried as adults under state law. As a result of this anomaly, the welfare of thousands of children in the USA is in jeopardy. Amnesty International's November 1998 report, *Betraying the Young: Human Rights Violations against Children in the US Justice System*, found that at least 3,700 under-18-year-olds, prosecuted and convicted as adults under state laws, were being held with adults. The bills pending before the Conference Committee would leave such children at risk. As such, in its current form the proposed legislation would send a powerful message to state authorities that they can continue to engage in this dangerous practice.

Sixteen-year-old Colin Gonzales is just one of the many children whose predicament cries out for proper protection. In May 1999, a District Judge ordered that he be sentenced as an adult for his involvement in the shooting death of Arcenio Lucero in New Mexico in 1997 when Colin was 14 years old. In its recently completed 60-day evaluation of the teenager, the state Corrections Department noted his mental and physical health problems<sup>2</sup> and his potential for rehabilitation. However, despite its recommendation that he be held in an adolescent treatment centre until he is 21, he is still facing possible imminent transfer to adult prison at his sentencing hearing on 13 September.

Since the crime, Colin Gonzales has been living in fear that he will be incarcerated with adults. His mother is terrified of what will happen to him if he is sent to adult prison. His lawyer has said "It's sad that a kid who has some real mental health issues will be put in the prison system to be preyed upon". This risk should not be part of a child's punishment.

Concern for the welfare of children accused or convicted of violent crimes can be lost amidst society's anger and frustration in the aftermath of such crimes. Attention to issues of age and immaturity may fade once the child is labelled as an adult and punished as such. Authorities must be encouraged not to lose sight of the principle that children should be protected from adult inmates, as part of efforts to maximize the potential for their eventual successful reintegration into society. Amnesty International urges Congress to take every step within its power to encourage states to separate all detained and imprisoned children from adult inmates, and to monitor their compliance with this requirement.

Amnesty International is also strongly opposed to provisions in H.R. 1501 which would amend the Prison Litigation Reform Act (PLRA) to make it more difficult to protect children from dangers and abuses in adult jails, prisons, local juvenile detention facilities, or state juvenile corrections institutions, even when dangerous and harmful conditions have been well documented. The House-passed language, sponsored by Rep. DeLay, states that all consent decrees that were in place on the date the PLRA was originally enacted in 1996 "shall cease to be effective". If included as part of the final legislation, this provision would throw into doubt and potentially abolish dozens of consent decrees all over the country that keep children out of adult jails and prohibit abusive practices including beatings, tying children to beds, and locking them in isolation rooms for days and weeks at a time.

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<sup>2</sup> He has been on medication for mental health disorders since he was two years old and has to wear a back brace because of ankylosing spondylitis, a form of arthritis primarily affecting the vertebrae

Finally, Amnesty International is concerned that any reference to minorities has been dropped from the Disproportionate Minority Confinement (DMC) mandate in S. 254, a deletion which the organization believes will seriously hinder efforts to monitor, analyse and reduce DMC as the current law requires of states. Any contention that this deletion is justified because the justice system is “colour blind” directly contradicts evidence that minority children are treated more harshly than their white peers following arrest: that even when minority and white children commit similar offences and have similar records, the minority children are far more likely to be locked up, including being sent to adult prisons. Amnesty International urges Congress to continue to require states to monitor and take measures to reduce DMC.

The USA’s first juvenile court opened in Chicago in 1899, an early demonstration of the country’s world leadership on this issue. The 100<sup>th</sup> anniversary of this achievement would be an appropriate moment for Congress to pass legislation that builds on the USA’s laudable record. If it fails in this regard, it risks betraying the futures of very many children.

Yours sincerely,

Patti Whaley  
for the Secretary General