

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1245

To amend the Juvenile Justice and Delinquency Prevention Act of 1974 to identify violent and hard-core juvenile offenders and treat them as adults, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15 (legislative day, SEPTEMBER 5), 1995

Mr. ASHCROFT (for himself, Mr. ABRAHAM, Mr. BOND, Mr. COCHRAN, Mr. DEWINE, Mr. HATCH, Mr. INHOFE, Mr. KYL, Mr. MCCAIN, Mr. SIMPSON, Mr. THURMOND, and Mr. GRAMM) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend the Juvenile Justice and Delinquency Prevention Act of 1974 to identify violent and hard-core juvenile offenders and treat them as adults, 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 “Violent and Hard-Core  
5 Juvenile Offender Reform Act of 1995”.

1 **SEC. 2. FINDINGS.**

2 Section 101(a)(11) of the Juvenile Justice and Delin-  
3 quency Prevention Act of 1974 (42 U.S.C. 5601(a)(11))  
4 is amended by inserting before the semicolon the following:  
5 “and on identifying violent and hard-core juvenile offend-  
6 ers who should be prosecuted in the adult criminal justice  
7 system as adults and not as juveniles”.

8 **SEC. 3. AMENDMENTS TO JUVENILE JUSTICE AND DELIN-**  
9 **QUENCY PREVENTION ACT OF 1974.**

10 (a) PURPOSE.—Section 102(a) of the Juvenile Jus-  
11 tice and Delinquency Prevention Act of 1974 (42 U.S.C.  
12 5602(a)) is amended—

13 (1) by striking “and” at the end of paragraph  
14 (10);

15 (2) by striking the period at the end of para-  
16 graph (11) and inserting “; and”; and

17 (3) by adding at the end the following new  
18 paragraph:

19 “(12) to assist State and local governments in  
20 protecting public safety by identifying violent and  
21 hard-core juvenile offenders and transferring such  
22 offenders out of the jurisdiction of the juvenile jus-  
23 tice system and into the jurisdiction of adult crimi-  
24 nal court.”.

25 (b) SERIOUS HABITUAL OFFENDER DEFINED.—Sec-  
26 tion 103 of such Act (42 U.S.C. 5603) is amended—

1 (1) in paragraph (22), by striking “and” at the  
2 end of clause (iii);

3 (2) by striking the period at the end of para-  
4 graph (23) and inserting “; and”; and

5 (3) by adding at the end the following new  
6 paragraph:

7 “(24) the term ‘serious habitual offender’  
8 means a juvenile who meets one or more of the fol-  
9 lowing criteria:

10 “(A) Arrest for a capital, life, or first de-  
11 gree aggravated sexual offense.

12 “(B) Not less than 5 arrests, with 3 ar-  
13 rests chargeable as felonies and at least 3 ar-  
14 rests occurring within the preceding 12 months.

15 “(C) Not less than 10 arrests, with 2 ar-  
16 rests chargeable as felonies and at least 3 ar-  
17 rests occurring within the preceding 12 months.

18 “(D) At least 1 arrest for conduct involv-  
19 ing 3 or more burglaries, robberies, or sexual  
20 assaults within the preceding 12 months.

21 “(E) Not less than 10 arrests, with 8 or  
22 more arrests for misdemeanor crimes involving  
23 theft, assault, battery, narcotics, controlled sub-  
24 stance abuse, or possession of weapons, and at

1           least 3 arrests occurring within the preceding  
2           12 months.”.

3           (c) REQUIREMENTS FOR STATE PLAN.—Section 223  
4 of such Act (42 U.S.C. 5633) is amended—

5           (1) in subsection (a)—

6           (A) in paragraph (10)—

7           (i) by redesignating subparagraphs  
8           (D) through (O) as subparagraphs (E)  
9           through (P), respectively; and

10           (ii) by inserting after subparagraph  
11           (C) the following new subparagraph:

12           “(D) the establishment of serious habitual  
13           offender comprehensive action programs con-  
14           sistent with subsection (b);”;

15           (B) by redesignating paragraphs (24) and  
16           (25) as paragraphs (28) and (29), respectively;  
17           and

18           (C) by inserting after paragraph (23) the  
19           following new paragraphs:

20           “(24) provide for the establishment and mainte-  
21           nance of an effective juvenile justice system that re-  
22           quires the prosecution of juveniles 14 years of age  
23           and older as adults in criminal court, rather than in  
24           juvenile delinquency proceedings, for conduct con-  
25           stituting—

1           “(A) murder or attempted murder;

2           “(B) robbery while armed with a dan-  
3           gerous or deadly weapon;

4           “(C) battery or assault while armed with a  
5           dangerous or deadly weapon;

6           “(D) forcible rape;

7           “(E) any serious drug offense which, if  
8           committed by an adult subject to Federal juris-  
9           diction, would be punishable under section  
10          401(b)(1)(A) or 408 of the Controlled Sub-  
11          stances Act (21 U.S.C. 841(b)(1)(A), 848) or  
12          section 1010(b)(1)(A) of the Controlled Sub-  
13          stances Import and Export Act (21 U.S.C.  
14          960(b)(1)(A));

15          “(F) any other crime the State determines  
16          appropriate; and

17          “(G) the third or subsequent occasion, un-  
18          related to any previous occasion, on which such  
19          juveniles engage in conduct for which adults  
20          could be imprisoned for a term exceeding 1  
21          year; unless, on a case-by-case basis—

22                  “(i) a court determines that trying  
23                  such a juvenile as an adult is not in the in-  
24                  terest of justice under State law;

1           “(ii) such court records its reasons for  
2           making such a determination in writing  
3           and makes such record available for in-  
4           spection by the public at large; and

5           “(iii) the court makes a record in  
6           writing of the disposition of the juvenile in  
7           the juvenile justice system available to the  
8           public to the same extent that records of  
9           adult criminal proceedings are open to the  
10          public, notwithstanding any other law re-  
11          quiring such information to be withheld or  
12          limited in any way from access by the pub-  
13          lic;

14          “(25) provide that a State will ensure that  
15          whenever a juvenile, under 14 years of age, is adju-  
16          dicated in a juvenile proceeding to have engaged in  
17          conduct constituting an offense described in para-  
18          graph (24)—

19                 “(A) a record is kept relating to the adju-  
20                 dication that is—

21                         “(i) equivalent to the record that  
22                         would be kept of an adult conviction for  
23                         that offense;

1           “(ii) retained for a period of time that  
2 is equal to the period of time records are  
3 kept for adult convictions;

4           “(iii) made available to law enforce-  
5 ment agencies of any jurisdiction;

6           “(iv) made available to officials of a  
7 school, school district, or postsecondary  
8 school where the individual who is the sub-  
9 ject of the juvenile record seeks, intends,  
10 or is instructed to enroll, and that such of-  
11 ficials are held liable to the same stand-  
12 ards and penalties that law enforcement  
13 and juvenile justice system employees are  
14 held liable to, under Federal and State law  
15 for handling and disclosing such informa-  
16 tion; and

17           “(v) made available, once the juvenile  
18 becomes an adult or is tried as an adult,  
19 to any court having criminal jurisdiction  
20 over such an individual for the purpose of  
21 allowing such court to consider the individ-  
22 ual’s prior juvenile history as a relevant  
23 factor in determining appropriate punish-  
24 ment for the individual at sentencing;

1           “(B) the juvenile is fingerprinted and pho-  
2           tographed, and the fingerprints and photograph  
3           are sent to the Federal Bureau of Investigation,  
4           Identification Division for collection pursuant to  
5           section 534 of title 28, United States Code; and

6           “(C) the court in which the adjudication  
7           takes place will transmit to the Federal Bureau  
8           of Investigation, Identification Division for col-  
9           lection pursuant to section 534 of title 28,  
10          United States Code, the information concerning  
11          the adjudication, including the name, date of  
12          adjudication, court, offenses, and disposition,  
13          along with a prominent notation that the mat-  
14          ter concerns a juvenile adjudication;

15          “(26) provide that whenever a juvenile, age 14  
16          and older, is adjudicated delinquent, as defined by  
17          Federal or State law in a juvenile delinquency pro-  
18          ceeding for conduct which if committed by an adult  
19          would constitute a felony under Federal or State  
20          law, the State will ensure that—

21                  “(A) a record is kept relating to the adju-  
22                  dication that is—

23                          “(i) equivalent to the record that  
24                          would be kept of an adult conviction for  
25                          such an offense;



1           “(ii) retained for a period of time that  
2 is equal to the period of time records are  
3 kept for adult convictions;

4           “(iii) made available to law enforce-  
5 ment agencies of any jurisdiction;

6           “(iv) made available to officials of a  
7 school, school district, or postsecondary  
8 school where the individual who is the sub-  
9 ject of the juvenile record seeks, intends,  
10 or is instructed to enroll, and that such of-  
11 ficials are held liable to the same stand-  
12 ards and penalties that law enforcement  
13 and juvenile justice system employees are  
14 held liable to, under Federal and State law  
15 for handling and disclosing such informa-  
16 tion; and

17           “(v) made available, once the juvenile  
18 becomes an adult or is tried as an adult,  
19 to any circuit court having criminal juris-  
20 diction over such an individual for the pur-  
21 pose of allowing such court to consider the  
22 individual’s prior juvenile history as a rel-  
23 evant factor in determining appropriate  
24 punishment for the individual at the sen-  
25 tencing hearing;

1           “(B) the juvenile is fingerprinted and pho-  
2           tographed, and the fingerprints and photograph  
3           are sent to the Federal Bureau of Investigation,  
4           Identification Division and are otherwise made  
5           available to the same extent that fingerprints  
6           and photographs of adults are made available;  
7           and

8           “(C) the court in which the adjudication  
9           takes place transmits to the Federal Bureau of  
10          Investigation, Identification Division, informa-  
11          tion concerning the adjudication, including the  
12          name, date of adjudication, court, offenses, and  
13          disposition, along with a prominent notation  
14          that the matter concerns a juvenile adjudica-  
15          tion;

16          “(27) provide that the State will ensure that if  
17          any juvenile has been adjudicated to be delinquent  
18          on 2 or more separate occasions based on conduct  
19          that would be a felony if committed by an adult the  
20          record of the second and all subsequent adjudica-  
21          tions is kept as described in paragraph (26) and  
22          made available to the public to the same extent that  
23          a record of an adult conviction is open to the pub-  
24          lic;”;

1           (2) in subsection (c)(3), by striking “the re-  
2           requirements of subsection (a) (12)(A), (13), (14), or  
3           (23) in any fiscal year beginning after January 1,  
4           1993” and inserting “any requirement of paragraph  
5           (12)(A), (13), (14), (23), (24), (25), (26), or (27)  
6           of subsection (a) in any fiscal year beginning after  
7           January 1, 1997”; and

8           (3) by redesignating subsections (b), (c), and  
9           (d) as subsections (c), (d), and (e); and

10          (4) by adding the following new subsection:

11          “(b) SERIOUS HABITUAL OFFENDER COMPREHEN-  
12          SIVE ACTION PROGRAM.—

13                 “(1) IN GENERAL.—Serious habitual offender  
14                 comprehensive action programs referred to in sub-  
15                 section (a)(10)(D) (referred to in this subsection as  
16                 ‘programs’) shall be multidisciplinary interagency  
17                 case management and information sharing systems,  
18                 meeting the requirements of this subsection, that en-  
19                 able the juvenile and criminal justice system,  
20                 schools, and social service agencies to make more in-  
21                 formed decisions regarding early identification, con-  
22                 trol, supervision, and treatment of juveniles who re-  
23                 peatedly commit serious delinquent or criminal acts.

24                 “(2) MULTIDISCIPLINARY AGENCIES.—Under  
25                 such programs, units of local government in a State

1 shall establish a multidisciplinary agency comprised  
2 of representatives from—

3 “(A) law enforcement organizations;

4 “(B) school districts;

5 “(C) State’s attorneys offices;

6 “(D) court services;

7 “(E) State and county children and family  
8 services; and

9 “(F) any additional organizations, groups,  
10 or agencies deemed appropriate to accomplish  
11 the purposes described in paragraph (1), includ-  
12 ing—

13 “(i) juvenile detention centers;

14 “(ii) mental and medical health agen-  
15 cies; and

16 “(iii) the community at large.

17 “(3) IDENTIFICATION OF SERIOUS HABITUAL  
18 OFFENDERS.—Each multidisciplinary agency estab-  
19 lished under paragraph (2) shall adopt, by a major-  
20 ity of its members, criteria to identify individuals  
21 who are serious habitual offenders as defined in sec-  
22 tion 103(24).

23 “(4) INTERAGENCY INFORMATION SHARING  
24 AGREEMENT.—

1           “(A) IN GENERAL.—Each multidisciplinary  
2 agency established under paragraph (2) shall  
3 adopt, by a majority of its members, an inter-  
4 agency information sharing agreement to be  
5 signed by the chief executive officer of each or-  
6 ganization and agency represented in the multi-  
7 disciplinary agency.

8           “(B) DISCLOSURE OF INFORMATION.—The  
9 interagency information sharing agreement  
10 shall require that—

11           “(i) all records pertaining to serious  
12 habitual offenders shall be kept confiden-  
13 tial to the extent required by State law;

14           “(ii) information in the records may  
15 be made available to other staff from mem-  
16 ber organizations and agencies as author-  
17 ized by the multidisciplinary agency for the  
18 purposes of promoting case management,  
19 community supervision, conduct control,  
20 and tracking of the serious habitual of-  
21 fender for the application and coordination  
22 of appropriate services; and

23           “(iii) access to the information in the  
24 records shall be limited to individuals who  
25 provide direct services to the serious habit-

1           ual offender or who provide community  
2           conduct control and supervision to the seri-  
3           ous habitual offender.”.

4 **SEC. 4. JUVENILE ADJUDICATIONS CONSIDERED IN SEN-**  
5 **TENCING.**

6           Pursuant to section 994 of title 28, United States  
7 Code, the United States Sentencing Commission shall pro-  
8 mulgate guidelines or amend existing guidelines to provide  
9 that offenses contained in the juvenile record of an adult  
10 defendant shall be considered as adult offenses in sentenc-  
11 ing determinations if such juvenile offenses would have  
12 constituted a felony had they been committed by the de-  
13 fendant as an adult.

14 **SEC. 5. ACCESS TO JUVENILE RECORDS.**

15           Section 5038(a) of title 18, United States Code, is  
16 amended—

17           (1) in paragraph (5), by striking “and” at the  
18 end;

19           (2) in paragraph (6), by striking the period and  
20 inserting “; and”; and

21           (3) by adding at the end the following new  
22 paragraph:

23           “(7) inquiries from officials of a school, school  
24 district, or any postsecondary school where the indi-

1       vidual who is the subject of the juvenile record  
2       seeks, intends, or is instructed or ordered to enroll.”.

3 **SEC. 6. INDIVIDUALS WITH DISABILITIES EDUCATION ACT.**

4       Paragraph (3) of section 615(e) of the Individuals  
5 with Disabilities Education Act (20 U.S.C. 1415(e)(3)) is  
6 amended—

7           (1) by striking “(A) Except as provided in sub-  
8 paragraph (B)” and inserting “(A) Except as pro-  
9 vided in subparagraphs (B) and (C)”; and

10          (2) by adding at the end the following new sub-  
11 paragraph:

12           “(C) This paragraph shall not apply to a  
13 child with a disability who commits a criminal  
14 act, on the property of a school under the jurisdic-  
15 tion of the State or local educational agency,  
16 which would be considered a crime if committed  
17 by an adult and such act subsequently becomes  
18 the basis for a juvenile adjudication or criminal  
19 proceeding involving the child.”.

20 **SEC. 7. LIMITED DISCLOSURE OF FEDERAL BUREAU OF IN-**  
21 **VESTIGATION RECORDS.**

22       Section 534(e) of title 28, United States Code, is  
23 amended—

24           (1) by redesignating paragraph (3) as para-  
25 graph (4); and

1           (2) by inserting after paragraph (2) the follow-  
2           ing new paragraph:

3           “(3) The Director of the Federal Bureau of Inves-  
4           tigation, Identification Division shall provide, upon re-  
5           quest, the information received under the provisions of  
6           paragraph (25) of section 223(a) of the Juvenile Justice  
7           Delinquency and Prevention Act of 1974, to officials of  
8           a school, school district, or postsecondary school where the  
9           individual who is the subject of such information seeks,  
10          intends, or is instructed or ordered to enroll.”.

11 **SEC. 8. AMENDMENTS TO FEDERAL JUVENILE DELIN-**  
12 **QUENCY ACT.**

13          (a) PROSECUTION OF JUVENILES AS ADULTS.—Sec-  
14          tion 5032 of title 18, United States Code, is amended by  
15          inserting before the first undesignated paragraph the fol-  
16          lowing:

17                 “Notwithstanding any other provision of law,  
18          juvenile defendants 14 years of age or older shall be  
19          prosecuted as adults, and this chapter shall not  
20          apply, if such juveniles are charged with an offense  
21          that constitutes—

22                         “(A) murder or attempted murder;

23                         “(B) robbery while armed with a dan-  
24                         gerous or deadly weapon;



1           “(C) battery or assault while armed with a  
2 dangerous or deadly weapon;

3           “(D) forcible rape;

4           “(E) any serious drug offense which, if  
5 committed by an adult, would be punishable  
6 under section 401(b)(1)(A) or 408 of the Con-  
7 trolled Substances Act (21 U.S.C.  
8 841(b)(1)(A), 848) or section 1010(b)(1)(A) of  
9 the Controlled Substances Import and Export  
10 Act (21 U.S.C. 960(b)(1)(A));

11           “(F) the third or subsequent occasion, un-  
12 related to any previous occasion, on which such  
13 juveniles engage in conduct for which adults  
14 could be imprisoned for a term exceeding 1  
15 year, unless, on a case-by-case basis—

16           “(i) a court determines that trying  
17 such a juvenile as an adult is not in the in-  
18 terest of justice;

19           “(ii) such court records its reasons for  
20 making such a determination in writing  
21 and makes such record available for in-  
22 spection by the public at large; and

23           “(iii) the court makes a record in  
24 writing of the disposition of the juvenile in  
25 the juvenile justice system available to the

1 public, notwithstanding any other law re-  
2 quiring such information to be withheld or  
3 limited in any way from access by the pub-  
4 lic.”.

5 (b) AMENDMENTS CONCERNING RECORDS.—Section  
6 5038 of title 18, United States Code, is amended—

7 (1) by striking subsections (d) and (f);

8 (2) by redesignating subsection (e) as sub-  
9 section (d); and

10 (3) by adding at the end the following new sub-  
11 section:

12 “(e)(1) Whenever—

13 (A) a juvenile under 14 years of age has been  
14 found guilty of committing an act which if commit-  
15 ted by an adult would be an offense described in the  
16 first undesignated paragraph of section 5032; or

17 (B) a juvenile, age 14 and older, is adjudicated  
18 delinquent in a juvenile delinquency proceeding for  
19 conduct which if committed by an adult would con-  
20 stitute a felony,

21 the court shall comply with the requirements of paragraph

22 (2).

23 “(2) The requirements referred to in paragraph (1)  
24 are that—

1           “(A) a record shall be kept relating to the adju-  
2           dication that is—

3                   “(i) equivalent to the record that would be  
4                   kept of an adult conviction for such an offense;

5                   “(ii) retained for a period of time that is  
6                   equal to the period of time records are kept for  
7                   adult convictions;

8                   “(iii) made available to law enforcement  
9                   agencies of any jurisdiction;

10                   “(iv) made available to officials of a school,  
11                   school district, or postsecondary school where  
12                   the individual who is the subject of the juvenile  
13                   record seeks, intends, or is instructed to enroll,  
14                   and that such officials are held liable to the  
15                   same standards and penalties that law enforce-  
16                   ment and juvenile justice system employees are  
17                   held liable to, under Federal and State law for  
18                   handling and disclosing such information; and

19                   “(v) made available, once the juvenile be-  
20                   comes an adult or is tried as an adult, to any  
21                   court having criminal jurisdiction over such an  
22                   individual for the purpose of allowing such  
23                   court to consider the individual’s prior juvenile  
24                   history as a relevant factor in determining ap-

1           appropriate punishment for the individual at the  
2           sentencing hearing;

3           “(B) the juvenile shall be fingerprinted and  
4           photographed, and the fingerprints and photograph  
5           shall be sent to the Federal Bureau of Investigation,  
6           Identification Division and shall otherwise be made  
7           available to the same extent that fingerprints and  
8           photographs of adults are made available; and

9           “(C) the court in which the adjudication takes  
10          place shall transmit to the Federal Bureau of Inves-  
11          tigation, Identification Division, information con-  
12          cerning the adjudication, including the name, date of  
13          adjudication, court, offenses, and disposition, along  
14          with a prominent notation that the matter concerns  
15          a juvenile adjudication;

16          “(3) If a juvenile has been adjudicated to be delin-  
17          quent on 2 or more separate occasions based on conduct  
18          that would be a felony if committed by an adult, the record  
19          of the second and all subsequent adjudications shall be  
20          kept and made available to the public to the same extent  
21          that a record of an adult conviction is open to the public.”.

22   **SEC. 9. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

23          (a) IN GENERAL.—Except as provided in subsection  
24          (b), this Act and the amendments made by this Act shall  
25          take effect on the date of the enactment of this Act.

1       (b) EXCEPTIONS.—The amendments made by sub-  
2 sections (b) and (c) of section 3 shall not apply with re-  
3 spect to a State before the first fiscal year that begins  
4 after the end of the first regular session of the State legis-  
5 lature following the date of the enactment of this Act.

○

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