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Written Testimony of

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Hearing on H.R. 2289, the "Juvenile Justice Accountability and Improvement Act of 2009"

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Subcommittee on Crime, Terrorism, and Homeland Security

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Chairman Scott, Ranking Member Gohmert, members of the Subcommittee, thank you for inviting me to testify today on behalf of the National District Attorneys Association (NDAA), the oldest and largest organization representing over 39,000 district attorneys, state's attorneys, attorneys general and county and city prosecutors with responsibility for prosecuting criminal violations in every state and territory of the United States.

NDAA has taken the opportunity to review H.R. 2289, the Juvenile Justice Accountability and Improvement Act of 2009 and strongly objects to what we consider to be an overly broad and one-sided attempt to require state legislatures to revise juvenile codes across America to make it more difficult to prosecute juvenile offenders as adults for egregious crimes and to punish juvenile offenders less seriously for their criminal behavior solely because of their perceived immaturity.

The overwhelming majority of state legislatures appropriately adopted sweeping changes to their juvenile codes during the 1990's to properly address what the juvenile justice system had far too

long overlooked, i.e., that protection of the public safety is of paramount concern whether the offender is a juvenile or an adult.

Not only does this legislation fail to recognize the importance of this paramount concern of protecting the public safety, it also ignores other important concerns which should rightfully be part of the decision-making process in reference to crimes committed by juvenile offenders, such as the nature and circumstance of the offense, the impact upon the victim, and the juvenile offender's criminal history. This bill instead focuses solely upon offender-based criteria as being the factors which should control the decision-making process, be it the decision to directly file or transfer a juvenile offender to adult court for prosecution or the decision as to what sanction should ultimately be imposed if a juvenile offender is convicted.

The NDAA supports a balanced approach to juvenile justice which properly takes into consideration all relevant factors in deciding what criminal charge should be filed against a juvenile offender and whether the case should be disposed of in juvenile or adult court, or handled under a "blended sentencing" model[1] in those states incorporating this middle-ground approach of addressing juvenile crime. These factors should include the threat to public safety, the seriousness of the crime, the offender's criminal history, the certainty of appropriate punishment, and the age and maturity of the offender. This proposed legislation considers only the age and maturity of a juvenile offender, which is clearly inappropriate. In fact, while age and maturity is an appropriate consideration in not only the sentencing but the charging of a juvenile offender (a factor, by the way, which is always taken into consideration by America's prosecutors), all of the aforementioned factors should be considered in the decision-making process as to juvenile offenders, with the greatest weight being given to protection of the public safety.

The unwritten, but clear implication of this proposed legislation is that too many juvenile offenders are prosecuted and sentenced as adults in our country. The reality is, in fact, quite the opposite. Very few juveniles are prosecuted and sentenced as adults in America, contrary to the

[1] "Blended sentencing" models currently exist in 15 states in America and represent a combination of both juvenile and adult criminal sanctions for serious, violent or habitual juvenile offenders whose crimes have been determined by either a prosecutor or judge to not warrant immediate prosecution or transfer to adult criminal court.

unwritten implication of this proposed legislation and a public misperception driven in large part by sensationalistic media coverage of certain high profile cases. Few jurisdictions in America prosecute more than 1 to 2% of juvenile criminal offenders as adults, and in some jurisdictions this percentage is even lower. In those cases where adult court prosecution does occur, the simple fact of the matter is that adult court prosecution is clearly warranted in these instances.

In a poll conducted in 1993, 73% of those surveyed across the U.S. said that "violent juveniles should be treated as adults rather than as defendants in lenient juvenile courts."[2] While more information about human brain development is available today than existed in the mid-1990's, there are few juvenile offenders committing murders or crimes of violence who do not realize that their actions are wrong and most fully understand the gravity of the crimes they have committed. As noted above, the age and maturity of these juvenile offenders are factors properly considered both as to where the proper venue of the case should rest and as to the sentence to be handed down upon conviction. These are not, however, the only factors that must be considered in these important decisions.

Another aspect of this bill that needs to be addressed is the aggressive, violent nature of juvenile membership in gangs across America. Gangs actively recruit membership in their early-to-mid teens to carry out violent and heinous crimes as a way to prove themselves to gang leaders and to increase their individual standing within the gang's hierarchy. Because many states mandate lesser penalties for violent juvenile offenders than adults, gang leadership often have juvenile gang members perform violent crimes towards others because there is less of an ability to prosecute them.

While we do believe treatment, rehabilitation, youth gang prevention initiatives and after-school programs are important tools in addressing America's gang problem, the ability to provide swift enforcement of violent juvenile offenders is necessary to keep our nation's communities safe. It is our belief that this bill will not only weaken America's gang enforcement capabilities, but will give many violent offenders who have no desire to be rehabilitated a free pass back onto the streets of our communities to commit more violent crime against the innocent.

[2] Sam Vincent Meddis, Poll: Treat Juveniles the Same as Adult Offenders, USA Today, Oct. 29, 1993, at 1A.

We believe the vast majority of citizens in our country would support the prosecution of these heinous offenders as adults, as well as the appropriate prison terms handed down upon conviction for these egregious crimes. To argue that these violent offenders, after being convicted of crimes warranting a life sentence without the possibility of parole should be considered for parole solely because of the criminal's age is something America's prosecutors will never support and is contrary to the interests of justice and protecting the citizens we proudly serve.

H.R. 2289 also fails to recognize in its findings that 13 states in America have set an age of majority for criminal prosecution of less than 18 years of age. The NDAA does not agree with the ABA that the age of majority for adult criminal prosecution of offenders should be 18 years of age in every state in this country. To the contrary, this is a decision rightfully left to local control and the deliberate and thoughtful decisions of state legislatures on this important issue should be respected.

Even more importantly, this legislation fails to acknowledge the most fundamental aspect of juvenile codes across America, namely that a juvenile offender's age and maturity are always taken into consideration in the disposition of a case. In fact, that is the reason why we have a juvenile court system in the first place — a system, by the way, which is supported by America's prosecutors. It is also important to keep in mind that age and maturity are also considered in cases involving juvenile offenders transferred and convicted as adults for their crimes, with the exception of the imposition upon conviction of certain mandatory sentences required by law (and in those instances, it is once again state legislatures that have properly concluded after thoughtful deliberation that certain crimes are so egregious that society should rightfully demand a mandatory minimum sentence for offenders convicted of them).

The NDAA also supports consideration of blended sentencing options in appropriate cases where serious, violent or habitual offenders are not transferred or waived to adult court. These laws, which are sometimes referred to as a "middle-ground approach" or a "one last chance option" for juvenile offenders, are designed for those youth who have committed a serious offense which

does not initially warrant adult prosecution, but which requires greater sanctions and/or longer supervision by the juvenile court than is provided in the traditional juvenile court system. Blended sentencing laws combine some juvenile and adult sanctions, provide for stayed adult sanctions to be imposed at a later date should the offender not conform to the conditions of the juvenile court disposition, provide incentives for the youth to remain law abiding in the future and lengthen the period of supervision over the youth by the juvenile court. Blended sentencing models are appropriate and necessary in the continuum of sanctions available for more serious, violent or habitual offenders, especially for younger youth committing very serious crimes.

Something that cannot be overlooked is how repeated parole hearings would adversely affect the victims of these heinous crimes. By requiring a parole hearing every three years after 15 years of incarceration, this bill would unintentionally harm the victim and the victim's family by subjecting them to the ordeal of repeated court visits when all they want to do is move on with their lives. Re-victimizing a family with these mandated court proceedings is unfair and unjust.

The manner in which this legislation is to be enforced would penalize all aspects of America's criminal justice system. Consequences outlined in this legislation for states who do not comply would not receive 10 percent of the funds obligated to them through the Byrne Justice Assistance Grant (JAG) program for each fiscal year of noncompliance. The Byrne Justice Assistance Grant program – not to be confused with the Byrne Discretionary program, which is entirely earmarked – is distributed to states and local areas on a formula basis. The formula combines population and crime data, and the funding is used to address the most pressing criminal justice problems in a given area. States and localities have the flexibility to leverage the small amount of funding they get through JAG with their own resources tackle crime challenges in innovative ways, including funding allocations to cold case units, identity theft investigation, school violence prevention, hate crime programs, services for threatened jurors, victims and witnesses, and a variety of other efforts.

Hypothetically speaking, if this bill were signed into law and a state did not comply in a timely manner, this law would not only punish state and local prosecutors, but thousands of public servants in law enforcement, substance abuse prevention and treatment, drug courts, corrections,

state and local government, victim assistance and juvenile justice personnel. In tough economic times, this is the wrong way to enforce legislation when state budgets are currently more strapped than ever.

It appears to us that Juvenile Justice Accountability and Improvement Act of 2009 is both ill-advised and unnecessary, and we strongly urge the United States Congress not to support it. By its terms, it is a wholesale attack upon the juvenile codes of states throughout America and upon the prosecutors and judges who thoughtfully and professionally enforce those codes with fairness and impartiality every day. Not only are mitigating factors, such as a juvenile offender's age and maturity and amenability to treatment and probation properly considered in the decision-making process at every stage of the handling of a juvenile crime, so too must aggravating factors be considered, such as the severity of the crime, the threat to public safety, the impact upon the victims and the offender's criminal history. Only when all these factors are properly weighed in the decision-making process will our system of justice be in proper balance and public confidence exist in the outcomes of the critical decisions made in connection with these cases.

I'd like to thank Chairman Scott, Ranking Member Gohmert and the other members of the Subcommittee for giving me the opportunity to speak on behalf of America's prosecutors. I am happy to answer any questions you may have for me at this time.