

Acknowledgement

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Coverphoto: Twelve-year-old Nathaniel Abraham appears in court in Oakland County, Michigan State, USA, on a murder charge which could carry a sentence of life imprisonment without parole.

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BETRAYING THE YOUNG: HUMAN RIGHTS VIOLATIONS AGAINST CHILDREN IN THE US JUSTICE SYSTEM

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Judge Zintner, I have an important question to ask you! Would you please move me out of here? Please don't leave me here with all these adults. I can't relate to any of them. They pick on me because I am just a kid. They tease me and taunt me. They talk to me sexually. They make moves on me. I've had people tell me I'm pretty and that they'll rape me...I'm even too scared to go eat...It's too much for anyone my age to handle...Please help me with this."

Letter from 15-year old Paul Jensen, imprisoned in South Dakota State Penitentiary, to his sentencing judge, 1997.¹ In September 1998, his mother told Amnesty International that he had not been moved from the prison.

"The Maine Youth Center is meant to be a rehabilitation facility for youths with serious social problems. The first time I realized there was something wrong with the system was when my son was assaulted by a guard less than two months after his arrival (January 1998). While sleeping, he was physically removed from his bed in only his boxer shorts and taken to a private room in his cottage. There, the guard interrogated him about a rumour of a riot while verbally and physically assaulting him. When my son tried to defend himself, he was taken to another building and put in solitary confinement. When he was not found in his bed the next morning, inquiries were made to his whereabouts. When he was finally located, there were fresh bruises and a hand print found on his back and my son had a story to tell.

I have seen changes in my son but they are not the type of changes brought upon by solid rehabilitation and education programs, but rather fear and hopelessness resulting from verbal and physical abuse from untrained and impatient staff.

Each Sunday I visit my son, but it is not only his pain and helplessness I see. I overhear horrible stories of the past week's violence as the children try to explain fresh cuts and bruises to their parents. I see the tears in the parents' eyes as the little time they have with their child ticks away on the clock. When the visit end, the frustration is apparent to anyone willing to take a look as the last minute hugs and last words of encouragement are given before the children are lined up against the wall to await their strip search."

Letter from mother of a child held at the Maine Youth Center, on file at Amnesty International

"There are only 2.5 psychologists to see the 300 juveniles in general population. This is despite the fact that 40 percent of the juveniles received will be identified...as having mental health or suicide watch needs. Because of the number of juveniles that need to be seen, the supervisor has told his staff that they cannot see a juvenile more than three times a month unless they indicate that the juvenile will die if he is not seen more often."

Official audit of facilities, Virginia 1996²

“...girls as young as twelve years old were subjected to sexual abuse, received no counselling, no vocational treatment, no case treatment plans or inadequate or inappropriate medical care, were placed in a “levels” program in which the length of time of the juveniles detention could be unilaterally changed, lengthened or shortened depending on the whims of Wackenhut’s untrained staff members, and were made to live in an environment in which offensive sexual contact, deviate sexual intercourse and rape were rampant and where residents were physically injured to the point of being hospitalized with broken bones.”

Texas 1998 - extract from a complaint filed in court alleging abuses at a juvenile correctional facility operated by the Wackenhut Corporation, a private for-profit company.³

On a Sunday morning Paul Doramus, recently appointed director of the state agency that is responsible for juvenile justice institutions, visited the Central Arkansas Observation and Assessment Center. He heard a boy sobbing: “Mister, get me out of here, I want my mother.” Doramus discovered a 13-year-old boy in an isolation cell, “sobbing so hard he could hardly speak.” The boy had been caught in a stolen car and was arrested for theft of property. At the institution he had been disruptive, and staff placed him in isolation. “As I attempted to talk with him, his calls for help just grew louder,” Doramus said. The boy’s next words jarred Doramus even more. “Jesus doesn’t love me anymore for what I did.” Doramus held the boy’s hands through the cell bars. “That’s not true, partner,” he assured him. “He does.”

“All I could think of was my two kids who were at home, who got the hugs and got the love and got the support,” Doramus said. “I thought, ‘God forgive us all. How could we allow kids to live in an environment like this?’”⁴

Little Rock, Arkansas, June 1998

“Staff routinely hit, slap, punch, kick, shove, and act out in other violent ways toward children in their care and custody. The following are merely examples and are not an exhaustive recitation of the physical abuse Plaintiffs have endured.

Sergeant Reynolds walked up to a youth standing in line and, while the youth was not looking, hit the youth in his head with a closed fist. The youth dropped to the ground as a result and required medical treatment; the youth’s eye was bloodshot and swollen for over 10 days after the incident....

Lieutenant “Cheetah” struck a youth because the boy was holding the door for a friend and did not move when the Lieutenant told him; the youth crumpled against the door. Lieutenant “Cheetah” lifted the boy by his throat and choked him.”

Louisiana 1998 - extract from complaint filed in court on behalf of children at the Tallulah Correctional Center for Youth.⁵

I INTRODUCTION

In 1996, the most recent year for which complete data is available, law enforcement agencies in the USA made about 2 million arrests of children accused of violating criminal laws.⁶ Once they enter the justice systems of the USA, thousands of children experience violations of their human rights protected by international law.

From the end of the last century, the USA was a world leader in the development of a legal system specifically for children, with a mandate to promote their welfare. However, during the last 10 years, US authorities have increasingly prosecuted and punished children as if they were adults, in the general criminal justice system. As a consequence, children may be held for months in jails before they are tried and are often denied access to education and adequate opportunity to exercise. Over 3,700 convicted children are sentenced to prisons where they are not separated from adult prisoners, putting them at serious risk of physical and sexual abuse. States have passed laws that stop judges from considering each case on its merits, but require them to impose long sentences on offenders regardless of age, including life imprisonment without possibility of release.

US authorities have executed people for offences that they committed when they were children in clear violation of international human rights law. In June 1998, 70 people were on death row for crimes they committed when they were aged under 18.

Even within the juvenile justice system, children's well-being is often placed at risk rather than being protected. Thousands of children are placed in custody when other action could or should have been taken - a 10 year-old boy handcuffed, arrested and locked up for allegedly kicking his mother; a 13 year-old girl detained on suspicion of possessing marijuana, which turned out to be oregano. Many facilities are seriously overcrowded and unable to provide adequate mental health and other important services that children need and to which they are entitled. Staff have subjected children in custody to brutal physical force and cruel punishments, including placing them in isolation for lengthy periods - in one case reported to Amnesty International, a boy was held in isolation for over a year.

At every stage of the justice system, racial and ethnic minority children are present in numbers greatly out of proportion to their numbers in the community. The evidence strongly indicates that one reason for this is discrimination on the part of law enforcement and justice system personnel. Girls are a small proportion of children in custody and as a result, many facilities do not adequately meet their special needs.

Some of the violations of the human rights of children described in this report breach US laws as well as international standards. The report contains recommendations to US authorities to improve the prevention, detection and correction of such violations.

Disturbingly, however, a number of the violations are sanctioned by US laws. The USA has refused to implement fully the protection of the human rights of children provided by international law. Children in the USA should be no less entitled to this protection than children of countries around the world. Amnesty International urges the US federal government to ratify without reservations all international standards for the protection of children and calls upon all US authorities to ensure that their laws, policies and practices are fully consistent with these standards.

This report examines violations of a number of rights about which Amnesty International has received information, and is primarily concerned with children who are detained or imprisoned. It is not a comprehensive report on violations of the human rights of children involved with the US justice system. In the course of its research, Amnesty International received reports of the violation of other rights of children which the organization has not had the opportunity to examine fully.⁷ The report includes a section on the use of the death penalty against people who committed crimes when they were children; Amnesty International has also released a more detailed report on this issue, *On the Wrong Side of History - Children and the Death Penalty in the USA* (AI Index: AMR 51/58/98, October 1998).

Earlier this year Amnesty International also documented violations of the rights of children detained at the border with Mexico and readers are referred to that report.⁸

DEFINITION - WHO IS A “CHILD”?

In this report, “child”, “juvenile” and “youth” are used to describe people under the age of 18. There is no consistent and specific definition of a “child” or “juvenile” in international standards or in US federal and state laws. However, under both international standards and national 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.⁹ In the USA, 18 is the age at which people are entitled to vote in national elections.

II THE HUMAN RIGHTS OF CHILDREN ACCUSED OR CONVICTED OF VIOLATING CRIMINAL LAWS

1. INTERNATIONAL HUMAN RIGHTS STANDARDS

The international community has adopted minimum standards to govern the conduct of states. These are based on the precept that human rights are an international responsibility, not simply internal matters. International human rights standards articulate the criteria against which the conduct of any state - including the USA - should be measured.

The human rights of children, including their rights when they enter a justice system, are specified in a number of international treaties and other instruments. These include the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment, the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. The following paragraphs briefly outline a number of these.

TREATIES RATIFIED BY THE USA

The *International Covenant on Civil and Political Rights* (ICCPR) sets out a range of rights, including those relating to the protection of the human rights of children who are accused or convicted of violating the criminal law. These include

- the death penalty must not be imposed for crimes committed by people when they were under 18 (Article 6(5))
- the right not to be subjected to torture or cruel, inhuman and degrading treatment or punishment (Article 7)
- rights that provide for fair trials (Article 14) and
- the right of children who are incarcerated to be kept separate from adults (Article 10).

The USA ratified the ICCPR in 1992 but as described in this report, it reserved the right not to implement certain provisions that are crucial to the protection of the human rights of children.

The *International Convention on the Elimination of All Forms of Racial Discrimination* obliges states to eradicate racial discrimination, including in the judicial system. The USA ratified this treaty in 1994.

The *Convention Against Torture* requires states to prohibit and punish torture in law and in practice. States must investigate whenever there are reasonable grounds to believe that

torture or cruel, inhuman or degrading treatment or punishment has been committed, and must bring those responsible to justice. The USA ratified this treaty in 1994. It was due to provide a report on compliance with the treaty requirements in 1995, but has not done so.

OTHER INTERNATIONAL STANDARDS

Many human rights requirements are contained in standards which have been adopted by the international community, but which are not in the form of treaties. Although these standards do not technically have the legal power of treaties, they have the moral force of having been negotiated by governments, and of having been adopted by political bodies such as the UN General Assembly, usually by consensus. The USA played a major part in drawing them up, and agreed that they should be adopted. Two apply specifically to children.

The *United National Standard Minimum Rules for the Administration of Juvenile Justice* (commonly called the “*Beijing Rules*”) provide guidelines for “juvenile justice”, that is, systems of law that deal specifically with child offenders. The Rules state that authorities should use the principles on which the Rules are based to guide the treatment of children who are prosecuted in the general criminal justice system that also deals with adults (Rule 3.3).

The *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* specify general standards for the treatment of children deprived of their liberty in any form of detention or imprisonment ordered by a judicial or other public authority. They cover a range of matters including the provision of education and medical care, limitations on the use of force and independent inspections of facilities.

US RESISTANCE TO INTERNATIONAL HUMAN RIGHTS COMMITMENTS

Although the USA has made a significant contribution to the development of the international system of human rights protection during the past 50 years, it has also declined to ratify key human rights treaties, has reserved the right not to implement important provisions of treaties it has ratified and has refused to permit people within the USA to bring complaints of alleged violations to international monitoring bodies.¹⁰

With respect to children, the most striking instance of US resistance to international human rights commitments is its failure to ratify the *Convention on the Rights of the Child*, the

most important treaty for the protection of the human rights of children. One hundred and ninety-two governments have ratified the Convention. The only other member of the United Nations that has not ratified the Convention is Somalia.

The USA has, however, taken a step towards ratification by signing the Convention. Under international law, it has bound itself not to do anything which would defeat the object and purpose of the treaty, pending a decision whether to ratify it.

The Convention is based on four general principles

- the “best interests of the child” should be a primary consideration in all actions concerning children, whether undertaken by courts of law, administrative authorities or legislative bodies (Article 3)
- there should not be discrimination on the basis of race, sex, ethnicity or other status, and governments should take measures to prevent discrimination and prejudiced attitudes (Article 2)
- all children must be guaranteed the right to life, survival and development (article 6)
- the views of children must be respected (Article 12).

The general principles are reflected in a range of rights that apply to all children as well as to children who are accused or convicted of violating the law. For example, the Convention prohibits the use of the death penalty or life without possibility of release against people for offences committed when they were younger than 18 (Article 37(a)) and specifies rights to ensure fair trials, such as the presumption of innocence (Article 40). As is documented in this report, the right of all children to education (Article 28) is of considerable importance to children deprived of their liberty because custodial institutions often fail to provide educational programs.

Although it has not ratified the Convention, the USA has repeatedly blocked international efforts to conclude an agreement linked to the Convention (called an Optional Protocol) that would prohibit the recruitment of people under the age of 18 into armed forces and their participation in hostilities. The US position is ironic given that the protocol could only be ratified by states which are party to the CRC and, moreover, would be optional.

In view of the almost universal acceptance of the Convention on the Rights of the Child and the fact that the USA is a signatory, Amnesty International considers that the treaty provides a proper basis for the examination of the laws, policies and practices of US authorities.

The USA's reluctance to accept international human rights treaties and standards denies US children rights and protections which governments in virtually every other country in the world have agreed to recognise. Amnesty International urges the USA to ratify without reservations all human rights treaties and to withdraw existing reservations that undermine its international commitments and the effectiveness of international human rights law.

RECOMMENDATIONS

The USA should

- *ratify without reservations the Convention on the Rights of the Child*
- *withdraw its reservations to the International Covenant on Civil and Political Rights.*

2. US LAWS AND STANDARDS

The USA is a federal political system with national, state and local governments. Responsibility for law enforcement and correctional matters is divided between them along the following broad lines:

- **states** are primarily responsible for criminal laws and have courts and correctional facilities for both children and adults, including prisons;
- **local governments within states** operate police forces, pre-trial detention facilities for both children and adults, and correctional facilities (such as jails) for convicted people serving short sentences
- **federal** criminal laws cover a much narrower range of matters than state criminal laws. The federal government has law enforcement agencies (such as the Federal Bureau of Investigation) and prisons. It also provides funds to states, local government and other bodies for a wide variety of criminal justice purposes.

Federal and state constitutions and federal and state laws specify a range of rights for children who are accused or convicted of violating the criminal law, such as rights to ensure they are fairly tried and rights about how they should be treated when they are held in custody.

Children in the USA who are accused or convicted of violating criminal laws may be dealt with in either of two legal systems, and sometimes both, if they are transferred from one to another. One is the general criminal justice system that deals primarily with accused and convicted adult offenders. In all US states, the general criminal justice system has the power to deal with some children, generally those who are accused or convicted of committing particularly serious crimes, such as murder.

Each state also has a “juvenile justice system” that deals specifically with children who are accused or convicted of violating the law. The juvenile justice system comprises courts, programs and services such as probation, and residential facilities. The facilities include “secure” or locked in which children are incarcerated and cannot leave without permission. The juvenile justice system is regarded as a quasi-civil legal system and uses different terms to the general criminal justice system to describe its processes. For example, children who are judged to have committed offences are described as “adjudicated delinquent” rather than convicted. But key elements of the juvenile and general criminal justice systems are similar. Children may be arrested by police and detained in custody; if found to have committed the alleged crime, they can be ordered to be held in custody for years. In recognition of the similarities, the US Supreme Court has decided that the juvenile justice system must have similar protections to the criminal justice system. For example, children are entitled to a lawyer; proof of guilt is beyond reasonable doubt; a child adjudicated delinquent can not subsequently be tried in a criminal court for the same offence.

Several national non-governmental bodies have developed standards for the treatment of accused and adjudicated (convicted) children who are deprived of their liberty. These standards are not legally binding though courts occasionally take them into account in determining legal standards. Two of these bodies, the American Correctional Association¹¹ and the National Commission on Correctional Health Care¹², use the standards as the basis for assessing and monitoring facilities that are accredited with them. Facilities can choose whether or not to seek accreditation; some facilities become accredited or adopt standards because they are required to do so by state authorities or as a consequence of legal action. Only a minority of facilities are accredited. The American Bar Association has also developed standards for children in custody but does not accredit facilities or monitor compliance.¹³

III CONCERNS ABOUT CHILDREN PROSECUTED IN THE JUVENILE JUSTICE SYSTEM

Photo: A staff member gives a tongue-lashing to a boy on his first day at a “boot camp” in North Carolina. ©AP

Boot camps have been criticised for imposing inappropriate and sometimes dangerous, harsh treatment on children. On March 2 1998, Nicholaus Contrarez, aged 16, collapsed and died at a paramilitary-style rehabilitation program for juvenile offenders in Arizona, after being forced to do exhausting exercises despite complaining over an extended period that he was ill. An investigation concluded that Nicholaus died because his “medical needs were severely

neglected” and because he had been subjected to “abusive treatment...that was openly conducted and permitted.”¹⁴ For more information on Nicholas’ treatment, see page 28. In October 1998, five former employees were charged with criminal offences in relation to Nicholas’ death.¹⁵

1. BACKGROUND

Until the end of the nineteenth century, children in the USA who were accused of violating the criminal law were generally dealt within the same courts as adults, were subject to the same penalties and were commonly confined in the same prisons and jails. In 1899 Illinois established a court to deal specifically with children and within a few decades what became known as the juvenile justice system was adopted by states throughout the nation.

The juvenile justice system was given a mandate to operate with a different approach to the general criminal justice system. Juvenile courts were to be concerned primarily with the welfare of the children rather than the offences that brought them before the court. In the words of one commentator, the “juvenile court established a tradition of paying much less attention to the criminal act itself, instead looking at general circumstances lying behind the offender’s misconduct. The goal was to identify the cause of the behaviour and then administer the appropriate rehabilitative measures.”¹⁶ During the last 10 years, as a consequence of increasing concern about the amount and nature of crime committed by children, US governments have amended juvenile justice laws to place a lower importance on rehabilitation and a greater importance on public safety, punishment and accountability.¹⁷ As described in part IV of this report, governments have also reacted by reducing the jurisdiction of the juvenile court and expanding the role of the general criminal justice system in dealing with children.

Juvenile courts are responsible for dealing with children who are accused of committing two types of offences, “delinquency offences” and “status offences.” Delinquency offences are acts committed by a child which, if committed by an adult, could result in criminal prosecution, such as theft. Status offences are violations of laws with which only children can be charged, such as running away from home and failing to attend school. The main focus of this part of the report is how the juvenile justice system treats children who are accused or judged to have committed criminal/delinquency offences.

AN OVERVIEW OF CHILDREN IN THE JUVENILE JUSTICE SYSTEM¹⁸

In 1995, the most recent year for which data is available:

- juvenile courts handled more than 1,700,000 delinquency cases;
- more than half of the delinquency cases involved property offences (51 per cent), far exceeding crimes of violence (22 per cent were classified as “person” offences, such as assault) and drug law violations (nine per cent);
- 19 per cent of children referred to juvenile court for delinquency offences were held in secure detention facilities at some point between referral to the court and its disposition (sentence);

- 28 per cent of those adjudicated delinquent (convicted) were ordered to be placed out of their home, for example, in a secure correctional facility;
- on 15 February, more than 84,000 juveniles were in custody as accused or adjudicated delinquent offenders¹⁹ - there is no data on the number detained or committed during the course of the year, which is many times greater than the one-day count.

2. PRESSURES ON JUVENILE JUSTICE SYSTEMS

“If there is a single factor which will ultimately destroy an effective juvenile detention or correctional system, it is the overcrowding of programs.”²⁰

S. Guarino-Ghezzi and E. Loughran

Between 1989 and 1995, the number of children confined in custody before their cases were heard or following adjudication grew by more than 20 per cent.²¹ In many jurisdictions, the increase in the numbers of children who are held in custody has outstripped the increase in resources authorities have provided to house the children and to provide services for them. The most recent survey found that 40 per cent of facilities around the USA housed more children than they were designed to accommodate, and the proportion has been increasing.²²

Overcrowding is generally acknowledged to be a major cause of a variety of problems that adversely affect confined children. These include

- increased likelihood of suicide by residents
- increased likelihood of physical assaults by youth on one another and on staff
- disruption of programs and services
- deterioration in the physical conditions of confinement.²³

The following state cases illustrate the extent of the problem of overcrowding in particular jurisdictions and some of its consequences.

California, February 1998: The California Youth Authority’s correctional institutions housed nearly 25 per cent more youth than their specified capacity.²⁴

Illinois, 1997: A detention centre designed to house 498 children had an average daily population of 629.²⁵ Throughout the state, juvenile facilities run by the Department of Corrections were more than 50 per cent of their designed capacity and an internal document advised that “serious crowding emphasizes operational problems regarding such factors as safety and security and increased demands for program services, medical and mental health needs.”²⁶

Michigan, August 1996: The Chief Judge of Wayne County Probate Court wrote to the director of the authority responsible for a juvenile facility stating that “while a professional, dedicated, hardworking staff has done a miraculous job keeping the lid on this powder keg, I was aghast at how a facility that may be a model for assessment and planning when at its capacity of 68, has become a hovel not fit for any human being.”²⁷ The facility regularly held more than 100 children; one judge refused to commit children to it and others were considering this action. In April 1998 a departmental memorandum described the number of commitments to juvenile justice facilities as approaching “crisis proportions.”²⁸

New York City, mid 1998: Juvenile justice authorities leased a section of a prison barge designed for adult inmates as a “temporary” measure to cope with an increase in the number of children detained and to hold convicted children awaiting transfer to correctional facilities.²⁹

Maine, 1998: Amnesty International received reports that children in the State’s only secure juvenile correctional facility were being held in overcrowded, poor conditions and deprived of educational, mental health and other important services. Some of the problems had been acknowledged by public officials. For example, following a visit to the facility in late 1997, Speaker of the Maine House of Representatives, Representative Elizabeth Mitchell, described what she had seen as “dismaying. Overcrowded conditions, staff shortages and inadequate education have made the Maine Youth Center in South Portland a public disgrace.”³⁰ Maine State Governor King described conditions at the youth correctional facility as “shameful”; the Corrections Commissioner Martin Magnussen warned that the facility was so dilapidated, crowded, underfunded and lacking in services that “we are creating graduates for the adult side of the prison system.”³¹

In response to an inquiry by Amnesty International, Commissioner Magnussen advised that substantial additional funding had been allocated to improve physical conditions and to increase the number of staff. Amnesty International responded seeking further information about the proposed improvements as well as information about reports of ill-treatment of residents (see part III, 5 and 6).

Virginia, 1996: A study found that two units designed to house 24 children at times were forced to accommodate over 60. Sleeping arrangements were handled by placing mattresses on the floor for almost 40 children.³² The study concluded that overcrowding had caused a massive increase in serious incidents involving assaults by juveniles on staff and each other. More staff were resigning because of the stressful and dangerous work environment - one centre had a turnover rate of 60 percent of the security staff during 1996. The study found that the level and quality of treatment were seriously inadequate and as a result many young offenders left the system without receiving the treatment services they needed.

Virginia state authorities have advised Amnesty International that following the study “an unprecedented amount of fiscal support was provided to both community and institutional

juvenile correctional institutions.”³³ The funding will be used for a variety of purposes including an expansion of institutional capacity and an increase in staff.

Colorado, 1996: An official inspection of a facility in 1996 reported that the average daily population was twice or more its official capacity.³⁴ The report found that the ratio of children to staff was “dangerously high” and contributed to both staff and children feeling unsafe. There was a serious lack of educational and recreational programs and assaults by residents on each other and suicide attempts had significantly increased over the preceding few years. The facility was visited by investigators from Human Rights Watch in 1996 and 1997, who were told by children that assaults by other children were unreported or were ignored by staff, and that staff members were verbally and physically abusive.³⁵ Amnesty International wrote to the Colorado authorities inquiring what action had been taken in response to the reports. At the time of the completion of this report, the authorities had not replied.

Overcrowding is also directly linked to some of the other concerns that Amnesty International has about the treatment of children in the US juvenile justice system, which are described in the following sections of this report.

3. EXCESSIVE USE OF INCARCERATION

- Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

- (As a disposition/sentence) deprivation of liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is not other appropriate response.

Rules 13.1 and 17.1 (c), United National Standard Minimum Rules for the Administration of Juvenile Justice

“There is an inherent evil in detaining a child in a secure facility...That evil is, at its essence, the serious deprivation of personal liberty which is inherent in any order of detention.”

Juvenile Court Judge S. McCully³⁶

Florida, April 1998: A 10-year-old boy was handcuffed and arrested by police and held in a juvenile facility for 19 hours after he allegedly kicked his mother at a restaurant. His mother said her son barely brushed her with his foot. The boy was released into his mother’s custody after a judge called a special hearing. The charges against the boy were dropped.³⁷

Dallas, Texas, 1998: “I had a 15-year-old girl who was hallucinating and psychotic and a staff member from Mental Health and Mental Retardation agreed she needed hospitalization. But then she said they were over budget for the year, so couldn’t I find an offense that would get her arrested, like an assault?”³⁸

Tuscaloosa County, Alabama, 1997: A lawyer reported that he recently represented a 13-year-old girl who was detained for 5 weeks in the “juvenile jail” for possessing what a school principal thought was marijuana, but which turned out to be oregano.³⁹ In the county, school principals can request juvenile judges to transfer youths to the custody of the county, which then passes them along to the sheriff to be incarcerated in the regional facility. Under the zero-tolerance policy anyone charged with any drug offence or simple assault (e.g. fighting in the school-yard) may be held in the facility until their case is heard. It can take 6-8 weeks before a juvenile’s case is heard.

California, September 1998: an 8 year old boy and a 12 year old boy were placed in a detention facility for several days after being charged with sexual offences against another child.⁴⁰

“We have seen juveniles locked up for repeated truancy, running away from home, violating curfew, possession of alcohol, possession of marijuana, shoplifting, and missing even a single meeting with a probation officer.”

Mark Soler, lawyer with the Youth Law Center, a national US legal assistance and policy agency for children.⁴¹

“Liberty” is one of the fundamental human rights enshrined in international human rights standards and US law.⁴² As indicated in the box above, the international standards applicable to the USA require authorities to avoid depriving children of their liberty unless there is no appropriate alternative. This is the case in relation to both accused and adjudicated or convicted offenders.

The US Supreme Court has ruled that a child has a substantial liberty interest but that it is narrower than that of an adult because, unlike adults, juveniles are always in some type of custody.⁴³ The Court suggested that pretrial detention was akin to the state acting in a protective parental role, a comparison that some consider dubious: “surely any judge who has actually visited a detention center cannot compare the conditions of detention to those of a home under parental control.”⁴⁴

The inappropriate incarceration of children is a matter of grave concern not only because liberty is a fundamental human right but because incarceration has inherent risks to the physical and mental integrity of children. Incarceration may also result in stigmatization by the justice system and the community at large.⁴⁵ The harm that children suffer as a consequence of incarceration may be permanent.⁴⁶

US legislation also commonly directs courts to avoid incarcerating children who are dealt with in the juvenile justice system, particularly before they are tried. However, a variety of sources of evidence outlined below strongly suggests that many children are detained when they are accused of committing offences and/or incarcerated after adjudication when other options were or should have been available.

In the USA the right of children to liberty, set out in the international standards, appears to be inadequately respected.

EVIDENCE OF THE OVERUSE OF INCARCERATION

There are several types of evidence indicating that many jurisdictions across the USA commonly detain or commit children in secure facilities when alternatives may have been appropriate. The evidence includes disparities between the incarceration rates of jurisdictions and the impact of projects designed to reduce the number of children in custody; analyses of the records of children who are in custody; reports that children are being confined because non-institutional alternatives are not available. The following sections outline the main types of evidence.

(i) Individual accounts

The most graphic evidence is provided by accounts such as those reported in the box at the beginning of this section. They are not uncommon. For example, in Louisiana in January 1998 an 11-year-old boy was arrested and detained for fighting in school, as a result of the school's "zero tolerance" policy on fighting. While in detention, he was raped by a 15-year-old boy in his cell. A senior educational official was reported as saying that the policy was not at fault: "Was he guilty of fighting? Did he deserve the punishment? The reality is he could have been at the mall and had that happen."⁴⁷

In 1996, experts undertaking an investigation of juvenile facilities in Georgia for the US Department of Justice encountered

- an 11-year-old boy detained for threatening his teacher;
- a 12-year old boy detained for making a harassing phone call;
- a 14-year-old girl detained for painting graffiti on a wall;
- many children detained after relatively minor fights at school;
- a 16-year-old girl detained for "failing to abide by her father's rules" - throwing objects in her room and not attending school;
- a 13-year-old girl detained for stealing \$127 from her mother's purse;
- children who had run away from troubled homes;
- children who were held on charges of "terroristic threat," which often involved swearing at a teacher.⁴⁸

In Kentucky, a court hearing a case about the conditions of a detention facility examined the background of children detained there.⁴⁹ It found that in the period under examination more than half of those detained were held for contempt of court and/or status offences. Conduct underlying the contempt of court charges included truancy, dependency, failure to pay restitution and running away from their home or residential placement.

(ii) Lack of correlation between incarceration and crime rates

There is considerable variation between states and often within states in the proportion of children dealt with by the juvenile justice system who are incarcerated. The variations are not readily explicable by differences in crime rates between the jurisdictions: counties and states with similar rates and types of crime differ greatly in the proportion of accused and adjudicated offenders who are locked up.⁵⁰ These data are only indicative of state differences because many children are held in private facilities, for which there is no comparable state breakdown; differences in detention rates may also reflect differences in laws, policies and practices relating to, for example, the length of time children may be held in custody.

The absence of a distinct correlation suggests that incarceration rates reflect choices about the use of incarceration rather than an unavoidable need to protect the community from violent or persistent young offenders.⁵¹

A number of state and local jurisdictions around the USA have made concerted and effective efforts to reduce the number of accused and adjudicated children who are placed in custody, without experiencing an upsurge in crime by children. Large numbers of children who would previously have been locked up have been provided with a range of community-based services, and did not exploit their freedom by engaging in criminal acts.⁵²

(iii) State-wide analyses

State-wide analyses of the offences of detained and committed children strongly suggest that the examples cited above are indicative of a more widespread phenomenon. For example:

- a study that examined the records of more than 50,000 children in 28 state juvenile corrections systems found that over half had been committed for property and drug offences and were experiencing their first confinement in a state institution;⁵³
- a study of juvenile detention in Illinois found that the largest number of youth were being held because they had failed to abide by conditions of probation or supervision - only about one out of five was held for a violent crime.⁵⁴

WHY INCARCERATION IS USED EXCESSIVELY

A number of reasons have been identified as responsible for the excessive incarceration of children. One or more may be relevant in one jurisdiction and not another.

(a) Inertia One reported factor is that some decision-makers use incarceration for accused or adjudicated offenders simply because that has long been the common approach, and the facilities

are in place. In the conclusion of one study, “many states have not ventured beyond the institutional setting to test other alternatives, although there is no research that ties the rehabilitative model to the institution, and there is considerable evidence that institutions have seriously harmful effects.”⁵⁵ Indeed, as indicated earlier, studies of programs that do not involve incarceration have demonstrated that they can be as effective as institutional programs, if not more so, in reducing recidivism, even for serious and violent offenders.⁵⁶

(b) Lack of rigorous screening guidelines to distinguish between children who can be supervised safely in the community and those who need to be held in custody. The development and use of such guidelines has been shown to lower significantly the number of children incarcerated.⁵⁷

(c) Lack of suitable community-based justice programs for both pre-trial detention and adjudicated children. As a consequence, it is reported, judges order children to be held in custody when that option is neither in the child’s best interest or essential to protect the community. In the words of a juvenile judge from Georgia, “I really have only two major choices. I can place these kids in incarceration, where they will learn to become better criminals, or I can send them home on probation, back to where they got in trouble in the first place.”⁵⁸

In New York City, juvenile justice authorities were being sued in mid-1998 for placing children in a maximum secure juvenile detention facility despite court orders that the children should be placed in non-secure facilities. The authorities argue that they cannot comply because there are not enough non-secure places available.⁵⁹

In Virginia, the earlier cited study reported that many children who might have been placed in community programs were confined in a correctional facility because of a reduction in the funding for services that had been used to divert some minimally delinquent offenders to community-based treatment. The reduction in funding occurred in 1993 and the impact was soon marked. In 1995, less than one-fifth of children admitted to correctional facilities were committed for a violent crime.⁶⁰

In Sacramento, California, a recent review of admissions to a detention facility found that 35-40 per cent of its residents were children whose cases had been adjudicated and who had been placed in correctional programs which they had left or been required to leave prematurely. The review suggested that the fact that so many children were “failing” indicated that it was essential to look at the nature and quality of the programs in order to reduce admissions to the facility.⁶¹

(d) A number of the cases cited at the beginning of this section indicate that, in at least some jurisdictions, incarceration is regarded as an appropriate punishment for even minor infringements of the law by very young children, such as fighting in school. The increasingly punitive treatment of young offenders is a related factor. Political and legal decision-makers respond to - and heighten - community fears about what have been described as young “superpredators flooding the nation’s streets” and “teenage time-bombs.”⁶²

When the Human Rights Committee reviewed US compliance with its obligations under the ICCPR in 1995, it expressed concern about the impact of the system of electing judges on the administration of justice. US observers have expressed similar concern about the impact of electing judges and other criminal justice officers on the treatment of children. In the words of one:

“Put simply, judges who want to give the appearance of being “tough” on juvenile law violators will lock up lots of kids. Prosecutors claiming to protect the public by “cracking down” on juvenile crime often advocate for increased and virtually indiscriminate use of detention. This is particularly the case in jurisdictions where judges and prosecutors are elected and where they may have hopes of running for some other political office.”⁶³

(e) Reports received by Amnesty International suggest that there is a **shortage of services for children that might keep them out of the juvenile justice system altogether**, particularly mental health services. In 1975, detention was described as the “hidden closet for the skeletons of the rest of the system.”⁶⁴ All too often today, both detention and correctional institutions seem to perform the same function. For example, in Louisiana, a recent report by state officials acknowledged that secure facilities held many children who had been “discarded” from the mental health, educational, child welfare and other systems of care.⁶⁵

Amnesty International has been informed by Chris Siegfried, Senior Community Mental Health Consultant for the US National Mental Health Association, a national non-governmental organization, that she is aware of social workers in a number of states who instruct desperate parents to have their children arrested in order to get services because community health services are so scarce. Furthermore, the Association has received reports of children denied mental health care by their health maintenance organization, following which their behaviour led to their involvement with the juvenile justice system. Amnesty International received such a report directly from a parent in one state whose son was refused permission to seek mental health treatment by the family’s medical insurers/providers (a “health maintenance organization”) and subsequently began offending. He was committed to a correctional facility where he died after a fight with another resident.

Amnesty International has received information indicating serious inadequacies in mental health services for children from around the USA. Following legal action initiated on behalf of poor children in the state of Tennessee, including those in state custody, the state government recently agreed to a range of measures to improve health screening, diagnosis and treatment services.⁶⁶ Similar legal action has been initiated in Florida.⁶⁷ A recent study of children’s services in Maricopa County, Arizona, found that a significant number of eligible children who require mental health and substance abuse services are not receiving such services on a timely, consistent and adequate basis.⁶⁸ In New York City, there is a two-year waiting list for adolescents in the care of the government to enter a residential treatment centre for psychiatric treatment: “most never make it”, a recent study concluded.⁶⁹ The head of children’s programs

for the Los Angeles County Department of Mental Health has publicly spoken of his distress that many children who are “losing control” have to wait years to obtain treatment and only receive it by posing a clear danger to themselves or others.⁷⁰

CONCLUSION

The evidence compellingly indicates that many children in the US are incarcerated in violation of the right not to be deprived of liberty except as a last resort and of the right to be treated in accordance with their best interests. Incarceration endangers children’s physical and mental integrity and may expose them to negative influences rather than promoting their rehabilitation.

RECOMMENDATIONS

Governments should review their legislation, policies and practices to ensure that children are not deprived of their liberty except as a last resort. In particular, all authorities should

- *undertake periodic reviews to assess whether confinement is being used only when no alternative is appropriate; if the reviews find cases where alternatives were appropriate, authorities should take action to change the policies or practices that cause the inappropriate use of confinement;*
- *provide an adequate range and number of community-based detention and correctional programs so that courts do not have to incarcerate children because there are not appropriate other placements;*
- *provide adequate mental health services in the community so that children whose violation of the law is a reflection of significant mental health problems can be treated in therapeutic rather than correctional environments.*

Juvenile justice authorities should as a matter of course assess children with whom they are dealing to determine whether the children should require specialized care and should not be placed in a detention or correctional facility.

4. THE USE OF FORCE AND RESTRAINTS

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 7, International Covenant on Civil and Political Rights

Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints.

Rule 33, UN Standard Minimum Rules for the Treatment of Prisoners

In recent years, there have been reports from around the USA that staff in juvenile facilities have physically abused children in their care. The reports state that children have been punched, kicked, shackled, sprayed with chemicals and even jolted with electro-shock devices. They include the following instances.

Maine, 1998: Amnesty International has received reports of children at the Maine Youth Center being assaulted by staff and being placed in restraints and a restraint chair for extended periods as punishment. In a letter smuggled to a newspaper in September 1998, several children said that "all of us have seen kids restrained improperly or restrained for improper reasons; some staff actually enjoy and joke around about a restraint after it [has] happened."⁷¹ Several recent former residents told Amnesty International that staff had placed plastic restraints on them that were done up so tightly that their hands became discoloured and numb. They said that staff refused to remove the restraints for an hour or longer, even when the children complained of the pain. An internal memorandum of staff described children being placed in the restraint chair for up to 17 hours, in breach of state regulations.⁷² Amnesty International, state legislators and others have asked the State Governor to initiate an independent investigation into the reports and according to media reports, the American Correctional Association will be asked to review disciplinary procedures. Amnesty International and a number of people in Maine have urged that there should be a comprehensive review of the facility, not restricted to disciplinary practices, because the disciplinary issues appear to be a symptom of other problems as well as a matter of concern in their own right.

Louisiana, 1996-97: "We found a girl in a(n) isolation cell with a bloody eyeball, caused when a guard hit her with keys. Her injury and its cause were confirmed by infirmary records. The child reported that she had been beaten for talking."⁷³ This is an extract from a report of US Department of Justice investigators, who found that staff at four juvenile facilities routinely kicked, hit, slapped, stomped, choked and scratched residents.⁷⁴ The investigation also found that children were sprayed with mace for minor infractions such as cursing at correctional staff, kicking the door to their rooms, refusing to stop using the telephone, and refusing to go into their rooms. In one facility, a child with glaucoma was sprayed with mace despite a medical order indicating that the child had had eye surgery and could be blinded by chemicals or trauma. At another facility, investigators saw a child who had been placed in handcuffs for throwing water on a guard, subdued and standing still when a senior officer arrived on the scene and sprayed him with two cans of mace.⁷⁵ The Justice Department urged the state to review whether chemical restraints should be used at all in juvenile facilities. At a minimum, the Department suggested, the state should permit the use of chemical restraints only in an emergency situation to temporarily incapacitate an actively dangerous person. Reports of abuses in Louisiana facilities continue. In 1998, residents took legal action to be removed from one institution. In one case, "W" states that he was brutally beaten by staff members. "During the beating, a staff member repeatedly kicked W in the groin, causing severe pain and probable long-term damage to his testicles... Two of the 8 guards who beat him have been fired but those who remain harass

and intimidate him because of their colleagues' dismissal." A lawyer representing residents advised Amnesty International that a number of the children succeeded in their request to be moved. A lawsuit filed in July 1998 complains that staff at a facility continue to use and threaten to use force improperly, as well as other forms of force.⁷⁶

Puerto Rico, US territory, 1997: Throughout the jurisdiction's juvenile facilities children faced life-threatening and dangerous conditions every day, according to the affidavit of a court-appointed expert. His report detailed suicides, killings, stabbings and sexual assaults and described violence inflicted on children by staff as well as by other children. In one incident, a staff member reportedly fractured a child's elbow with a broom handle in response to the child cursing. The report stated that there were no written policies or procedures restricting the use of force by staff and as a consequence they used force when other less intrusive means were appropriate.⁷⁷

South Carolina, 1997: The State decided not to renew a contract with the Corrections Corporation of America, a private company operating a juvenile facility, after receiving reports that staff had physically abused children housed at the facility. In 1998 a number of the children initiated legal action against the company alleging among other things that staff had sprayed children with gas to enforce orders; punched, choked and kicked children; and had "hogtied" children. "Hogtying" means that staff handcuffed a child's hands behind his back, shackled his ankles, then chained or tied the handcuffs and shackles together, causing the child's legs to be bent at the knee and stretched towards the wrists. One child reports that he was hogtied on more than more than 30 occasions.⁷⁸

Kentucky, 1998: A US Department of Justice investigation of the juvenile section of the Daviess County Detention Center found that staff regularly used stun guns and pepper spray to control uncooperative youth and break up fights.⁷⁹ Children detained at the facility also reported that they were physically struck by staff.

Georgia, 1997: An investigation of the state's juvenile detention facilities by the Department of Justice found that children with mental illness were often restrained, hit, shackled, put in a restraint chairs for hours, and sprayed with Oleoresin Capsicum (commonly called OC or pepper) spray by staff who lacked the training and resources to respond appropriately to behaviour that was a manifestation of mental illness.⁸⁰ OC spray inflames the mucous membranes, causing closing of the eyes, coughing, gagging, shortness of breath and an acute burning sensation on the skin and inside the nose and mouth. There is considerable concern about its health risks.

Florida, 1997: A court heard evidence that staff at the Pahokee juvenile institution had inappropriately used force and resorted to verbal and physical abuse against children housed at the facility. A 14-year-old child said he was shackled to his bed for three hours after he repeatedly banged on the door of his solitary confinement cell to ask a staff member for toilet paper. The court found that the facility was "a prison in all but name" and ordered the children

who were classified as “moderate risk” should not be held there. A departmental investigation attributed abuses to a lack of staff experience and training.⁸¹

Virginia, 1992-1996: The Beaumont youth facility adopted procedures for the use of two forms of restraint “maximum restraint posture” and “four point restraint.” Maximum restraint posture was described as follows: “the youth shall be placed on his stomach with his feet and hands shackled behind his back. His feet shall be secured to his wrists via a chain. A football helmet shall be fitted on his head... After one hour of non-resistance behavior, the youth shall be given the opportunity to be placed in a sitting position with all of the equipment remaining on him.” Four point restraint involved attaching the youth to a bed, in violation of Departmental procedures that prohibited restraining youth to a fixed object. The practices remained in place until 1996 when an external audit brought them to the attention of the central office management.⁸²

Washington D.C., 1995: A Court heard evidence that staff at a juvenile facility “routinely inflict unnecessary pain on youth by spraying them with pepper spray to punish them for violating institutional rules or to coerce compliance with staff directives.” Reports stated that staff had used pepper spray on juveniles who were restrained in handcuffs and/or leg shackles, who were lying or sitting down, who were locked in their cells or who otherwise posed no threat to the safety of staff or other youth. The Court heard that:

“(m)ental health treatment and intervention prior to or during pepper spray incidents involving behaviourally disabled youth is virtually non-existent at (the school). For example, one disturbed juvenile who was cutting on his arm, spreading faeces all over his body, and squirting catsup out of the vent in his cell door, was sprayed with pepper gas instead of being seen by a mental health professional.”⁸³

The judge ordered that pepper spray be used only if there was a “credible threat of specific serious injury” and that staff be trained in crisis intervention and verbal de-escalation skills. A monitor was appointed to oversee the implementation of the judge’s orders. Amnesty International has been advised by an attorney involved in the case that the use of the spray has declined dramatically and that staff are effectively using less forceful and dangerous means to maintain security.

STANDARDS ON THE USE OF FORCE AND RESTRAINTS

The brutal treatment that many children in custody have suffered violates their right not to be subjected to torture or to cruel, inhuman and degrading treatment, which is specified in the International Covenant on Civil and Political Rights and the Convention Against Torture, treaties to which the USA is a party. The US Constitution also prohibits public officials from inflicting cruel and unusual punishments.

International standards, US laws and the standards imposed on facilities by state agencies accept that there are circumstances when custodial staff may use force and broadly agree about the legitimate purposes and scope of the use of force. Generally, they:

- permit staff to use force and restraints for specific purposes such as self defence and the protection of other people
- restrict the amount of force which can be used to the extent necessary and
- prohibit the use of force and restraints as punishment.⁸⁴

Most facilities have operating standards that are consistent with these principles.⁸⁵

While there is general agreement about the general principles, there are significant differences about to the kind of force and restraints that are permitted in practice. For example, the international standards and the ACA standards do not specifically mention the use of chemical agents; Florida and Kentucky prohibit the use of gas; the California Youth Authority not only permits but encourages the use of chemical agents: “When at all possible, staff should always use chemical restraint prior to physical intervention...”⁸⁶

EVIDENCE ON THE USE AND ABUSE OF FORCE

Facilities vary considerably in the frequency with which they use force and restraints. In the only national survey of the use of force, just over one third of facilities reported that in the preceding month they had not used physical restraints at all; in the same period, one facility used physical restraints at a rate of more than 166 occasions for every 100 children. One third of facilities did not place a limit on the length of time a child could be kept restrained. The study’s advisors and consultants expressed a great deal of concern regarding the frequency and duration of the use of restraints, because of the risk of causing injury.⁸⁷

Amnesty International is very concerned at the many reports, illustrated above, that members of staff have used force in a manner that constitutes torture or cruel, inhuman and degrading treatment or punishment. Some reports of the excessive use of force concern what appear to be isolated incidents in which individuals have behaved in clear violation of institutional policies and the general behaviour of staff. However, a significant number of reports describe acts committed by numbers of staff over an extended period and would seem to reflect major organizational deficiencies as well as personal misconduct. Litigation and research suggest the following as particularly important:

- inadequate staff training in working with children and in particular in defusing tension;
- overcrowding, which increases tension and the likelihood of violence in institutions;
- inadequate number of staff;

- high turnover of staff, resulting in the loss of expertise;
- the use of restraints to control children whose behaviour reflects mental health problems for which they are not receiving adequate treatment or who should more appropriately be housed in mental health facilities;
- the use of mechanical restraints as a punitive measure for youth who breach rules or challenge staff;
- weak systems of accountability and inspection.⁸⁸

THE USE OF RESTRAINT CHAIRS AND CHEMICAL AGENTS

Following its examination of the treatment of inmates in adult jails and prisons, Amnesty International expressed concern about the use of restraint chairs and chemical agents by law enforcement and correctional agencies, and called for inquiries by federal authorities.⁸⁹ The cases cited above indicate that there is also significant grounds for concern about the use of these restraints by detention and correctional facilities for children.

US juvenile justice experts who are preparing new guidelines for juvenile facilities warn that there is a substantial risk that chemical restraints may become a first rather than a last resort to control confined youth. The experts accordingly “urge facilities that do not now use chemical restraints to refrain from introducing them in the future.”⁹⁰

The fact that the great majority of facilities seem to function satisfactorily without the use of chemical restraints suggests that alternative methods can address the needs of facilities effectively without the inherent risks of abuse and injury that chemical restraints present. The experience of these facilities demonstrates that the use of force can be significantly reduced by concertedly addressing the underlying causes of children’s misconduct, which may relate to the children themselves (e.g. emotional disturbance) or the organization (e.g. staff training) or both.

The experience of a number of facilities run by the South Carolina Department of Juvenile Justice is salutary: the use of gas dropped from 150 incidents over a 13 month period in 1992 and 1993 to seven in 1997. This followed a court ruling that gas had been used “indiscriminately” and ordering the department to introduce a new policy restricting and monitoring its use. Furthermore, in response to other serious shortcomings found by the court, the Department of Juvenile Justice reduced overcrowding and increased the number of staff in relation to the number of children, enhanced staff training and increased educational programming and health services.⁹¹

Information received by Amnesty International about the use and monitoring of chemical agents in California is less encouraging. As indicated above, the policy of the California Youth

Authority encourages facilities to use pepper spray rather than physical restraints. The regulations governing Californian county detention facilities (which hold pre-trial children and minor offenders) permit the use of chemical restraints and do not require them to report the use of the restraints to a monitoring agency. Until 1996, the California Department of Justice required law enforcement agencies including juvenile facilities to maintain records of the use of pepper spray and to provide them to the Department, which maintained statistics on injuries and deaths related to the use of the spray. In February 1998 the Department advised Amnesty International that it no longer requires agencies to maintain and provide such records.⁹² In July 1998 an officer from one county told Amnesty International that the county sends reports of the use of chemical agents to the Department but that he did not know what is done with them; he said that although incidents were documented, no-one in the county monitored the use of chemical restraints.

ELECTRO-SHOCK WEAPONS

In its recent report on human rights violations by law enforcement and adult correctional agencies, Amnesty International expressed concern at the apparently increasing use of these weapons and the dangers of abuse and injury to victims.⁹³ It called on authorities to suspend the use of electro-shock weapons pending the outcome of a rigorous, independent and impartial inquiry into the use and effects of the equipment. The use of electro-shock weapons in juvenile facilities appears to be uncommon and while there is no demonstrable need for their introduction, there is the risk that facilities will acquire them. Amnesty International urges authorities to act decisively before that occurs, and prohibit the use of the weapons by juvenile facilities.

RECOMMENDATIONS

Having ratified the International Covenant on Civil and Political Rights and the Convention Against Torture, and in accordance with other international human rights standards, the federal government has a responsibility to ensure that public officials of other levels of government behave in accordance with those standards. Generally, the use of force and restraints that has violated international standards has also violated US laws and professional standards. The fact that such violations have frequently occurred over an extended period indicates that governments and authorities that are responsible for facilities must put in place comprehensive measures to prevent, detect and deal with abuses.

(i) *Preventing the abusive use of force and restraints*

Authorities should

- *provide adequate resources to prevent overcrowding and to allow facilities to employ sufficient numbers of staff;*

- *require staff to be specially trained to work with youth, particularly those with mental health problems; the training must include skills that reduce the necessity for the use of force.*

(ii) *Electro-shock weapons*

Governments should prohibit the use of electro-shock weapons in juvenile detention and correctional facilities.

(iii) *Inquiries*

US federal authorities should conduct inquiries into the use of chemical restraints and restraint chairs in juvenile detention and correctional facilities.

(iv) *International scrutiny*

The US federal government should require state and local governments to establish comprehensive standards for juvenile detention and correctional facilities that are consistent with international human rights standards and monitor the implementation of this requirement. The USA should report on measures to prevent torture and other cruel, inhuman or degrading treatment or punishment in the report it is due to submit to the Committee Against Torture on its implementation of the Convention Against Torture.

Note: The first US report was due in November 1995.

See part VII for recommendations relating to the detection of and response to abuses.

5. SOLITARY CONFINEMENT

All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 67

Florida 1997 - the courtroom testimony of a 14-year old boy

Q. Describe the room of solitary confinement.

A. See the door, the door is like a big iron door. And you got like a little food thing where you pass the trays. It's like a prison confinement. It would be so cold up in the cells, and they just leave you in there, see now they got jumpers. See, before that, they put you in there in blue shorts.

Q. Okay. And at what time is the mattress taken off the bed in the morning?

A. In the morning, right about seven o'clock.

Q. And what time is the mattress put back in the solitary confinement room?

A. Nine o'clock.

Q. So, from seven o'clock to nine o'clock, what are you doing: staring at walls?

A. Yes...Looking through a window, we just stand on the walls.

Q. Can you sleep during the day?

A. No. (If you fall asleep) they throw water on you and they come in there and they start putting their hands on you, you know what I'm saying, real rough...

Q. Okay. And this can go on for up to 14 days?

A. Yes.

Q. Now, do you get education while you're in confinement?

A. No, ma'am.

Q. Do you get any books or any way to read or improve yourself?

A. No, ma'am.

Q. Have you actually been in confinement and knocked on the door to request toilet paper? (What was the response to your request for personal hygiene, what did they tell you?)

A. They didn't tell me nothin. That's when they came in with the shackles and they started to shackle me.

Q. And they started shackling you because you knocked on the door...and you're not supposed to bother anybody ever; right?

A. Yes.

A member of staff testified that in just over a year there had been about 700 hearings at the facility to determine whether a decision to confine a child was justified. Following the testimony of a number of residents and other witnesses, the judge ruled that the Pahokee Youth Development Center, a juvenile correctional facility, was inappropriate for children who had committed relatively minor offences.⁹⁴

As the instance cited above and additional cases below illustrate, solitary confinement is a common punishment in juvenile facilities in the USA. Its use as a punishment violates international standards. Solitary confinement is permitted by US laws but there have been many cases where the circumstances and manner of its application have flagrantly violated US legal standards.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty specifically prohibit punishing children by using "closed or solitary confinement", on the grounds that such confinement is cruel, inhuman or degrading treatment that may compromise children's physical or mental health.

US experts have also expressed concern about the health risks of isolation. Research indicates that isolation can cause anxiety and other negative reactions and is associated with higher rates of suicidal behaviour.⁹⁵ The National Commission on Correctional Health Care advises that:

"(a) nimal and human studies reveal biological, behavioral, and mental status changes under conditions of social isolation and/or sensory deprivation within 24 hours...Although administrators and health personnel may wish to see segregation as an exclusive

administrative measure, judges have consistently declared it a medical procedure on the basis of its medical dangers.”⁹⁶

In the USA, however, most jurisdictions permit the use of solitary confinement to punish children who have breached the rules of custodial facilities, and the punishment is often imposed.

US LEGAL AND OTHER STANDARDS PERMITTING SOLITARY CONFINEMENT

In several cases, courts have decided that children may only be placed in isolation when they pose immediate threats to themselves or to other people and that they must be released as soon as they have gained control of themselves.⁹⁷ A number of states and individual facilities have adopted similar policies. For example, the Department of Juvenile Justice of Maryland permits “locked door isolation” only if:

- it is necessary to prevent imminent physical harm to youth or others or to prevent imminent and substantial destruction of property and
- less restrictive methods of behaviour control have failed or cannot reasonably be implemented.

However, many other states permit facilities to isolate children not only with the purpose of calming them when they are behaving dangerously, but as punishment for misconduct. National data indicates that the majority of facilities permit the use of isolation and some of these allow it to be imposed without time limit. Many of these facilities deny isolated children access to education, exercise and counselling.

The use of isolation as a punishment in juvenile facilities is also permitted by the standards of the American Correctional Association and the American Bar Association. The ACA standards for juvenile facilities recommend a maximum period of isolation of 5 days. The ABA standards for juvenile facilities provide that a facility may impose a sanction of up to 10 days room confinement for “major infractions” (committing an offence that is a felony or serious offence under local criminal law) and up to 5 days for a “minor infraction” (which is defined as conduct that may or may not be a criminal offence - examples in the standards include assault without serious bodily harm; possessing alcohol or marijuana).⁹⁸

THE USE AND ABUSE OF SOLITARY CONFINEMENT

The only national study of the use of isolation calculated that in 1992 there had been 435,000 occasions when facilities had used isolation for a period of one to 24 hours and 88,900 occasions when it had been imposed for more than 24 hours.⁹⁹ The frequency of use varied greatly between facilities. Some reported no incidents at all in the 30 days preceding the survey while one reported using isolation at a rate of 610.6 incidents for every 100 children resident in the facility during the same period.¹⁰⁰

The study found no obvious explanation for the considerable variation in the use of isolation, and other disciplinary practices, and recommended that there should be detailed comparative studies of facilities with low and high rates of isolation and other practices to identify policies and practices that could improve safety and security.¹⁰¹ Inquiries by Amnesty International indicate that no juvenile justice agency has undertaken or commissioned such a study.

In addition to concerns about the risks posed by the use of isolation, reports indicate that in many facilities children have been segregated without access to services and exercise, and some facilities have imposed it without fair processes and as an excessively harsh sanction. The following sections provide evidence of such cases.

STATE EXAMPLES

Maine, 1998: Amnesty International has received reports from children formerly housed at Maine Youth Center, a correctional facility, and other people, advising that isolation has been imposed on children for lengthy and even indefinite periods. In one case it was reported that a boy was in isolation for longer than 12 months. Amnesty International has also been told of children who were so upset by the conditions of confinement that they cut themselves repeatedly. Amnesty International wrote to the Commission of the Department of Corrections in August 1998 seeking information about the Center's standards for the use of solitary confinement, how often it was imposed and for how long.

Arizona, 1998: At the Arizona Boys Ranch, Nicholas Contrarez was subjected to repeated incidents of solitary confinement in addition to other forms of savage treatment that contributed to his death. An investigation of his treatment reported the following episodes:

- 9 February 1998 - he was "isolated" for talking to staff without permission;
- 10 February - he was isolated for "improperly" using a cleaning solution. He had carried the solution to the area he was cleaning instead of placing it on the cloth as instructed;
- 11 February - he was isolated after a guest speaker invited questions, when he raised his hand and asked to go to the restroom;
- 12 February - he was isolated for placing himself with sick residents without having been given permission by the nurse;
- 19 February - he was isolated for "looking disrespectfully at a peer who...told that Nicholas had not cleaned his boots as instructed.";
- 23 February - he was isolated because he moved in a "lethargic manner and put forth no effort.";
- 25 February - he was isolated for telling staff that the nurse had placed him on restriction and said that he needed rest. Staff contacted the nurse who said he was not unwell and "needed to do more physical activity.";

- 27 and 28 February - he was isolated for “lethargic effort” in performing physical exercise;
- 2 March 1998 - he was isolated for failing to listen to staff about his attitude to exercise; later that day Nicholaus died while staff “assisted” him to do pushups.¹⁰²

Louisiana, 1997: A US Justice Department investigation found that children with mental health problems that resulted in disruptive and/or self-destructive behaviours were routinely transferred to restrictive units where they experienced prolonged periods of isolation and were deprived of a number of services without being treated for their underlying mental health problems. For many of these youth, the investigation found, the transfer was counterproductive to their treatment needs.” Many of these youth increased their self-mutilation and disruptive behaviors as a result of increased isolation.”¹⁰³

Georgia, 1996: A US Department of Justice investigation found that staff at many facilities imposed “significant” periods of isolation for very minor offences.¹⁰⁴ In one facility, children commonly received isolation for three days for cursing at staff. In another, children could be locked down for three days for talking during meals and some who had scraped their names in freshly painted walls had been placed in disciplinary confinement indefinitely and had been confined for almost two weeks at the time of the investigators’ tour. Children who were in isolation did not attend school and often were not permitted to leave their cells even for recreation or exercise.

Illinois, 1998: An inquiry into conditions at the juvenile detention facility at Cook County, Chicago, found that at any given time, approximately 10 per cent of the facility’s population were in disciplinary confinement. Many children received two or more days of disciplinary confinement for what the inquiry described as “relatively minor incidents” such as horseplay, being disruptive or disrespectful. The report found that many members of staff almost exclusively used negative sanctions to control minor behavioural problems.¹⁰⁵ Children in disciplinary isolation for more than 24 hours did not get adequate opportunity to exercise and many did not see educational staff. In almost all of these cases, the sanction was imposed without a due process review and despite the fact that most youths regained self-control within a short period of time. Children could be confined for up to three days before they were visited by the one staff person responsible for due process matters, whose responsibility was to review the events which led to confinement and set a date for release.

Kentucky, 1996: A court found that children at a juvenile detention facility were kept in isolation in a cell for at least 16 hours a day, except when they were permitted to attend religious programs. The cell was artificially lit at all times and had no natural light. A mattress was provided but not a bed. The court stated that it had “all the characteristics of a punishment cell” although children were frequently placed in it who had not committed any violations. The facility’s policies permitted staff to confine children in their cells for up to 48 hours, even for minor offences such as “profanity” or “horseplay”. Children testified that they were subject to

long periods in isolation with little or no notice as to what conduct would lead to such punishment or for how long. The court that found that isolation was “overused” and that the conditions were “too stringent.”¹⁰⁶

CONCLUSION

The use of isolation as a punishment violates the right of children deprived of their liberty not to be subjected to cruel, inhuman and degrading treatment. Isolation poses significant risks to children’s well-being. The experience of many facilities demonstrates that the use of isolation as a punishment is not essential for the maintenance of good order.

RECOMMENDATIONS

All legislatures should

- *prohibit the use of isolation as a punishment for children and*
- *require juvenile justice authorities to monitor facilities to ensure that isolation is not used and that appropriate action is taken against staff who breach the prohibition.*

The USA should report on the use of isolation to punish juveniles in the report it is due to submit to the Committee Against Torture on its implementation of the Convention Against Torture.

6. INADEQUATE SERVICES FOR CHILDREN WITH MENTAL HEALTH PROBLEMS

- Every juvenile shall receive adequate medical care, both preventive and remedial, including mental health care.

- The medical services provided to juveniles should seek to detect and treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society.

- A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management.

Rules 49, 51 and 53, United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

“We frequently encountered severely troubled youths in the RYDCs (detention facilities) who had long histories of self-mutilation, psychotic episodes, or suicide attempts followed by hospitalization, medication, and return to the RYDC where the cycle repeated. For example, one youth at the Griffin RYDC was hospitalized and returned multiple times for head-banging behavior that resulted in severe bloody ulcers on his forehead.”

US Justice Department investigation of facilities in Georgia, 1997¹⁰⁷

“Anyone who closely studies juvenile detention programs across the country would discover a system that is woefully lacking in mental health and medical services that can effectively respond to the needs of these juveniles...As is the case in the entire juvenile justice system, staff are often inadequately trained in even the most routine aspects of child care and counselling skills.”

*John Treaty, President, Juvenile Detention Association of New York State*¹⁰⁸

Earlier sections of this report described two issues of concern relating to children with mental health problems:

- the lack of services outside the juvenile justice system has resulted in children coming into the system who should have received help in the community
- the lack of services within the system and inadequate staff training and numbers has resulted in children with mental health problems being subjected to excessive force and restraints and punished by the use of solitary confinement.

The first of these concerns - the failure of facilities to respond adequately and appropriately to the needs of children with mental health problems - is further explored in this section.

International standards, US laws and national correctional standards explicitly provide that children deprived of their liberty are entitled to physical and mental health care services. The importance of mental health screening and services is particularly great because surveys of children confined in juvenile justice institutions have found that a far greater proportion suffer from mental health problems than children in the general population. A study of youth in Ohio’s juvenile correctional institutions found their mental health status was similar to that of people receiving services in community-based mental health facilities rather than to youth in general. The major difference was that the youth in the correctional facilities appeared to act out their conflicts in a manner which caused them to enter into the juvenile justice system rather than, or in addition to, the mental health system.¹⁰⁹

A 1996 university study for the Georgia Department of Juvenile Justice found that 61 per cent of youth in correctional facilities had psychiatric disorders and 30 per cent had substance abuse problems. The study also found that despite the youths’ substantial need for treatment, only 16 per cent of those with substance abuse disorders reported having spoken to a professional about those problems.¹¹⁰

An earlier national study estimated that in the period under review more than 11,000 incarcerated youth committed over 17,600 acts of suicidal behaviour in the course of the year, including attempted suicide, suicidal gestures and self-mutilation.¹¹¹ The study found that while the great majority of facilities conformed with standards for mental health treatment services,

such as the ratio of counselling staff and residents, there was no foundation for assessing the quality of services provided and it called for research.¹¹²

As the evidence cited previously and below shows, many facilities have not provided adequate mental health services and some have responded brutally to the behavioural problems posed by troubled children.

Georgia, 1997: In the box at the beginning of this section is an extract from a US Department of Justice investigation of 22 detention centres which found that children were being systematically denied access to adequate mental health care.¹¹³ Both the quality and quantity of mental health services were found to be seriously deficient. As a consequence of the shortage of long-term treatment beds, hospitalization was limited to a short period of evaluation, medication and stabilization, after which youths were returned to the facility. Release papers from the hospital often recommended treatment that the facilities did not provide when children returned. The investigation reported that in certain facilities, staff responded to mental illness almost solely through “correctional” measures, including isolation and the use of mechanical and chemical restraints. The restraints included medication that was not part of an integrated mental health treatment strategy. In 1998 the State of Georgia agreed that it would provide additional resources for mental health services and undertake a range of other reforms to address the deficiencies identified by the investigation.¹¹⁴

Virginia, 1996: An audit of juvenile corrections services reported that there was both an inadequate number of mental health service providers, and a growing mismatch between the needs of the children in the system and the skill levels of the counselors who are hired to train them.¹¹⁵ As an example, it cited the fact that at one facility more than half of the girls had been victims of abuse, but the facility had no therapeutic groups for victims of abuse. Amnesty International has asked the facility whether such a group exists and awaits a response.

Louisiana, 1997: A US Department of Justice investigation of the state’s secure correctional facilities for juveniles reported that there were serious inadequacies in mental health care, including:

- at one facility, children with extensive psychiatric histories who self-mutilated and/or threatened suicide had never been referred to a psychiatrist;
- staff were not adequately trained to recognize and meet the need of youths with mental retardation and/or mental illness, and lacked adequate training in behavioural management techniques;
- facilities had many suicide hazards - on one investigative tour, a psychiatrist saw blood on the rails of a raised tier in a housing unit, from an attempted suicide the previous day; during another tour, investigators saw two youths climb the rails, tie nooses around their necks, and threaten suicide;
- psychotropic medicines were managed inadequately.

In September 1998, the State and the US Justice Department were discussing a possible agreement to address the concerns. Under US law, if an agreement is not reached the Justice Department may bring legal action asking a court to order the state to undertake remedial action.

Puerto Rico (a US territory), 1997: A court-appointed expert reported that juvenile justice facilities had insufficient mental health professionals to address the mental health needs of the children in custody. As a consequence, the need for services was not detected and children with mental illness were not being treated even when they were suicidal. Puerto Rico and the US Justice Department have agreed on measures to address these and other serious deficiencies in the treatment of incarcerated children.

FEDERAL INITIATIVES

Several federal agencies are undertaking projects to enhance the delivery of mental health services to children in the juvenile justice system.¹¹⁶ Furthermore, a new census of juvenile residential facilities will seek to include information about mental health and substance abuse treatment and health services. The census will provide some of the information that is lacking about the adequacy of mental health services for children in correctional facilities. However it falls well short of implementing the recommendation of the national study referred to above, that federal, state and local agencies should support the systematic review of the treatment needs of confined juveniles and of the effectiveness of treatment programs in juvenile facilities.¹¹⁷

Federal funding is being provided for the development of standards for juvenile detention and correction facilities that include standards for the detection and treatment of health problems, including mental health and substance abuse problems. However the standards will be voluntary - facilities will not be required to adopt them.

In mid-1998, the US Senate adopted a legislative proposal that would allow states to use federal prison construction funds to assess and treat the mental health needs of incarcerated children and adults. The proposed law would also require states that use the funds to develop mental health treatment programs for offenders with mental illnesses and to conduct a study of mental illness in correctional facilities.¹¹⁸

CONCLUSION

Amnesty International welcomes the various initiatives that are underway to improve the provision of mental health services to children who are being dealt with in the juvenile justice system. However, the recent record of appalling inadequacies in so many facilities suggests that more concerted measures are required to ensure that all children in need receive such critically important assistance. International standards and the laws of the USA require governments and the public and private facilities for which they are responsible to provide adequate services. Standards have been and are being developed to guide facilities in delivering the services.

Governments must require facilities to deliver the services and provide adequate funds for them to do so; in turn, facilities must be rigorously accountable for the manner in which they discharge their responsibility.

RECOMMENDATIONS

All state and local governments that have juvenile detention and correctional facilities within their jurisdiction should

- *require facilities to provide comprehensive physical and mental health care services by qualified personnel*
- *provide adequate funds to enable facilities to provide the required services*
- *impose specific standards to allow effective monitoring of the adequacy and quality of services and*
- *routinely monitor the compliance of facilities with the standards.*

**IV CONCERNS ABOUT CHILDREN PROSECUTED IN THE GENERAL
 CRIMINAL JUSTICE SYSTEM OF THE USA**

“On 11 December 1995, I was sentenced to 25 years in prison. The judge strongly recommended that I be placed at Crossroad, a private juvenile treatment facility where I could receive counselling. On 18 December 1995, I was taken to the Indiana Women’s Prison Indianapolis.

By March 1996, I was told by the DOC (Department of Corrections) commissioner that I would not be moved to Crossroad at Fort Wayne, but I would remain at the Women’s Prison. This was a shock to me.

Larry Hayes, an editorial writer for the *Journal Gazette* in Fort Wayne contacted people on my behalf. In June 1996, Larry met (lawyers) JauNae Hanger and Richard Maples. They reviewed my case and decided to take my case pro-bono [without fee]. I then filed a lawsuit against the DOC.

By September 1996, a judge decided that I would remain at the Women’s Prison. I appealed the decision.

The Appeals Court overturned the decision on 13 May, 1997. They said my rights had been violated by being housed with adult offenders. The decision to move me to Crossroad was made by the Governor and the State Attorney General.

On 9 June 1997, I was finally moved to Crossroad in Fort Wayne, Indiana. Crossroad is the best place for me.”

Letter to Amnesty International from Donna Ratliff, August 1998.

Donna Ratliff was aged 14 when she was imprisoned. Her legal action to be moved to a juvenile facility stated that she had been sexually propositioned and harassed by older inmates and she feared for her safety. In March 1998 the Supreme Court of Indiana decided that neither the law of Indiana nor federal law requires correctional authorities to house children separately from adults, although separation may be required to protect particularly vulnerable individuals.

The Indiana Department of Corrections has indicated that it will not seek to move Donna from Crossroad until she is an adult. However, 92 other children continue to be housed in adult prisons in Indiana, some in the general population, some with other young offenders. Throughout the USA, more than 3,700 children are housed in the general population of adult prisons.

1. OVERVIEW

Efforts should be made to establish, in each national jurisdiction, a set of laws rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice...

United Nations Minimum Standard Rules for the Administration of Juvenile Justice, Rule 2(3)

States shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law.

Convention on the Rights of the Child, Article 40(3)

“Most juvenile offenders are not guilty of repeated or random acts of serious violence. Most kids who get into serious trouble with the law need adult guidance. And they won’t find suitable role models in prison. Jailing youths with adult felons under Spartan conditions will merely produce more street gladiators.”

Professor John J. DiIulio, US criminal justice commentator, 1997.¹¹⁹

Until the end of the 19th century, children in the USA who were accused of violating criminal laws were generally dealt with in the same courts as adults, were subject to the same penalties and were commonly confined in the same prisons and jails. During the course of this century, the juvenile justice system became the system responsible for dealing with the vast majority of children accused of violating the criminal law.

However during the last two decades, in response to public concern about the extent and nature of crime committed by young people, federal and state governments have significantly expanded the role of the general criminal justice system with respect to children and increased the severity of sanctions that courts may impose on children. One commentator has characterized the changes to the treatment of young offenders as “a War on Juveniles.”¹²⁰

In the period 1992-95 alone, 47 state legislatures and the District of Columbia introduced laws that increased the eligibility of children to be prosecuted in general criminal courts, to be sentenced as adults and even to be imprisoned in adult correctional facilities.¹²¹ The laws have extended the range of offences committed by a child that can be tried by a general criminal court and lowered the age at which a child accused of an offence may be tried in a general criminal court.

The US federal government has supported the extension of adult criminal sanctions to children. For example, in 1998 it established a program to provide funds to states to strengthen juvenile justice systems. In order to be eligible for the funding states must be willing to prosecute as adults those aged 15 or over who are accused of committing a violent crime.¹²²

There is no national data on the number of children who are being prosecuted and punished as adults though the evidence clearly indicates that the number is increasing. The

following statistics, based on the most recent years for which the data is available, provide an overview of the scale of the process:

- more than 200,000 children a year were prosecuted in general criminal courts;¹²³
- at June 1997, over 7,000 children who were being dealt with in the general criminal justice system were held in adult jails. This is more than double the number in 1993.¹²⁴ Because jails hold people for relatively short periods of time pre-trial or following conviction, the number of people who are in custody in the course of a year is many times the number on any one day;
- In 1995 more than 11,000 children were in prisons and other long-term adult correctional facilities; more than 2,600 of them were aged under 16.¹²⁵

The growing tendency in the USA to prosecute and punish children as if they were adults is inconsistent with the approach encouraged by international standards that have been adopted by almost every country in the world, that governments should establish laws, procedures, authorities and institutions specifically for children. The Committee on the Rights of the Child, the group of international experts who monitor compliance with the Convention on the Rights of the Child, has consistently proposed that all those who under 18 years of age should be dealt with by a distinct system of justice.¹²⁶

Many US commentators have also strongly questioned whether some of the changes constitute a desirable and effective response to youth crime. Several studies have found that children who were prosecuted and punished as adults were more likely to reoffend and more quickly, than children who were dealt with by the juvenile justice system.¹²⁷ Further, the evidence does not indicate that the prosecution of children as adults rather than as juveniles is a more effective deterrent to other children not to offend.¹²⁸

Comparing international human rights standards with US policies and practice, Amnesty International's main concerns about the prosecution and punishment of children in the US general criminal justice system include:

- an increasing number of children are imprisoned with adult inmates and are vulnerable to abuse by them;
- the severe penalties including life imprisonment without possibility of release and the death penalty;
- the majority of jurisdictions do not specify a minimum age of criminal responsibility;
- the length of time between arrest and trial in the adult system may be very long;
- adult correctional systems are not able to provide the educational and other services that children need.

The following sections provide evidence relating to each of these concerns.

2. FAILURE TO SEPARATE CHILDREN FROM ADULTS

Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

International Covenant on Civil and Political Rights, Article 10 (3)

Every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so.

Convention on the Rights of the Child, Article 37(c)

Inmates of prisons in Nebraska were asked to suggest ways of reducing sexual assault in prison. The most frequently mentioned solution was to segregate vulnerable inmates, for example, those who are young.

Survey of prisoners, 1997.¹²⁹

Texas, February 1997: A group of youth toured a prison as part of a program intended to deter children from crime by showing them the frightening nature of punishment. Five of the youths later reported that they were sexually molested by prisoners during the tour. A spokesman for the Texas Department of Criminal Justice told journalists, "this could have been a case of overly zealous inmates wanting to demonstrate to juveniles what could happen to them in prison."¹³⁰

Youth in prison 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 the USA. In order to protect children from harm, international standards expressly state that children who are detained when they are awaiting trial or imprisoned following conviction should be kept apart from adult inmates. The only exception is if it is considered in the child's best interest not to segregate them.

Within the USA, however, the majority of states do not separate children from adult inmates, placing them at risk of attack by adults, and exposed to the corrupting influence of people with extensive criminal records.

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 the US 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 detention facilities; that they were assaulted physically, mentally and sexually and that they received inadequate care and programming and were stigmatized when released. The evidence persuaded Congress to legislate requiring the complete removal of juveniles from adult jails and police lockups. However the protection offered by the federal legislation applies only to some children. These are:

- children who are dealt with either as juveniles or who are prosecuted as adults in relation to the violation of a federal criminal law and
- children who are dealt with as alleged or adjudicated juvenile delinquents in relation to the violation of state laws.

States are not required to separate children from adults if the children are prosecuted as adults for violating a state criminal law.

In October 1998, the time of the completion of this report by Amnesty International, the US Congress was considering legislation that would significantly weaken the requirement that children being dealt with as accused juvenile offenders should be kept completely apart from adult inmates.¹³¹ The measure was opposed by a wide range of child welfare, legal and other organizations and it was uncertain whether the Bill would pass.

When the US ratified the International Covenant on Civil and Political Rights in 1992, it stated that while US policy and practice generally complied with the Covenant's provisions regarding the treatment of juveniles in the criminal justice system, it reserved the right to treat juveniles as adults "in exceptional circumstances."¹³² This US reservation includes the right to imprison children with adults.

In its 1994 submission to the Human Rights Committee, the international body of experts who monitor compliance with the International Covenant on Civil and Political Rights, the US Government defended the reservation by stating that the only exception to segregation occurred when "older" juveniles were prosecuted and imprisoned as adults. The government suggested that,

"...it would be prudent to retain a measure of flexibility to address exceptional circumstances in which trial or incarceration of juveniles as adults might be appropriate, for example, prosecution of juveniles as adults based on their criminal histories or the especially serious nature of their offenses, and incarceration of particularly dangerous juveniles as adults in order to protect other juveniles in custody."

The Committee did not respond directly to this argument.

Contrary to the assurance that the USA provided to the Human Rights Committee that the exceptional cases are "older" juveniles, Amnesty International has learned of cases of children as young as 13 and 14 being housed with adults. Paul Jensen, whose plight was graphically described in his letter to Judge Zintner reproduced at the beginning of this report, was 14 when he was imprisoned.

Nor is the practice of putting children in with adults restricted to violent offenders. In some jurisdictions, a child who has committed even relatively minor, non-violent offences may be imprisoned in the general population. In 1997, at age 16, Native American Yazi Plentywounds

was convicted for shoplifting two bottles of beer. He was sentenced to two years at the adult state prison in Cottonwood, Idaho because he had a prior conviction for “grand theft”: breaking a shop window worth \$300 in order to steal some cases of beer.¹³³

US correctional professionals have also indicated strong support for the principle of separation but failed to apply it rigorously in practice. The American Correctional Association (ACA) has adopted a statement of public policy that children have distinct personal and developmental needs and must be kept apart from adult offenders. However, the Association has not incorporated this policy into the standards that it prescribes for jails and prisons. These facilities can therefore be accredited by the ACA although they do not segregate children from adults in custody.

In a 1997-98 survey of state adult correctional systems undertaken by Amnesty International, 40 states reported that they house children in the general population and had more than 3,700 children in custody (see Appendix, table 1). Twelve states (including some in the previous group) reported that they house children with inmates aged up to 21 and there were nearly 2000 children in this situation. Most of the states that house children with adults reported that they do not provide special programs for young prisoners. Detailed results of the survey are presented at the end of this report.

The situation may be particularly acute for girls and young women. In 1998 there were 262 females aged under 18 in adult prisons, four per cent of the total of children in prison. In eight states contacted by Amnesty International, there was only one female under 18 in the prison population. Because there are so few young female offenders, states are more reluctant to provide separate facilities and programs for them than for male offenders.

RECOMMENDATIONS

International standards do not permit countries to jeopardise the safety and welfare of any children, no matter what offences they have committed, by placing them with adults. The US should extend to all children the protection it currently provides to children dealt with in the juvenile justice system.

The Federal, state and local governments should legislate to keep detained and imprisoned children completely apart from adult inmates unless separation is considered not to be in the child's best interest.

The US Congress should require states to separate all detained and imprisoned children from adult inmates, and monitor their compliance with this requirement.

3. HARSH, INFLEXIBLE SENTENCES

The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.

Article 10, 3, International Covenant on Civil and Political Rights.

The disposition of the competent authority shall be guided by the following principles:

- (a) The reaction taken shall always be in proportion not only to the circumstances and gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;
- (b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;
- (c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;
- (d) The well-being of the juvenile shall be the guiding factor in the consideration of his or her case.

Rule 17, UN Minimum Standard Rules for the Administration of Juvenile Justice.

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.

Articles 3(1) and 37(a), Convention on the Rights of the Child.

“Automatic transfer rules and new laws providing long-term punitive sanctions based solely on violent offending punish many adolescents who are not likely to offend again, many who themselves have been victims or otherwise are vulnerable, and many whose choices were the consequence of immature judgment rather than antisocial character.”

Dr Thomas Grisso, Professor of Psychiatry¹³⁴

International standards for juvenile justice call on governments to place a high priority upon the best interests of the child in all aspects of justice systems and to seek to avoid imprisoning children. However, the laws of some US states do not permit courts to consider actively the welfare and circumstances of individual children because they specify that children accused of specific crimes *must* be prosecuted as adults rather than as juveniles or they impose mandatory minimum sentences for certain offences, or both.

From 1992-95, 15 states and the District of Columbia added or modified statutes that provide for a mandatory minimum period of incarceration of juveniles who commit certain crimes. For example, in Massachusetts a child aged 14 years or older must receive a sentence of at least 15 years if he or she is convicted of the offence of first-degree murder; in Oregon, a child aged 15-17 years who is convicted of murder must receive a sentence of at least 300 months for murder.¹³⁵

In some states, the penalties which courts may impose on children include life imprisonment without possibility of release and in some circumstances the penalty may be mandatory.¹³⁶ The states include Missouri, Oklahoma, Pennsylvania, Michigan, and California. In Oklahoma in 1997, Adriel Simpson was sentenced to life without parole for a crime he committed when he was 15. In California, there are currently 14 prisoners who were sentenced to life without parole at ages 16 or 17.

A sentence of life imprisonment without possibility of release does not provide any scope for rehabilitation, which the International Convention on Civil and Political Rights states should be the essential aim of imprisonment generally (Article 10, 3) and of criminal justice proceedings in the case of juveniles specifically (Article 14, 4). The US accepted an obligation to comply with these provisions when it ratified the International Convention on Civil and Political Rights.¹³⁷ The international community does not accept that children should be subjected to such a penalty: Article 37(a) of the Convention on the Rights of the Child prohibits it as a sentence for an offence that a person committed when they were younger than 18.

US politicians and commentators have asserted that laws to prosecute children as adults are required to deal effectively with children who commit serious violent crimes or are habitual offenders. However, it is common for these laws to have a much wider reach. They include non-violent offences and can apply to children who do not have a lengthy history of offending. In 15 states, children accused of committing specified non-violent offences such as burglary, offences involving weapons and drug offences must be prosecuted in general criminal courts.¹³⁸ For example, Illinois has seven categories of offences under which 13- to 15-year-olds must be transferred to criminal court. As well, the law in Illinois requires courts to impose a specified penalty on any person convicted of a particular crime, without regard to factors such as age, degree of culpability and potential for rehabilitation.¹³⁹

Disturbingly, a substantial proportion of the children who are prosecuted in general criminal courts are not charged with violent offences. In 1995, the most recent year for which data is available, fewer than half the cases that were transferred by judges involved personal violence.¹⁴⁰ A study of transfers in Cook County, Illinois, found that 40 per cent were for drug or weapon possession offences.¹⁴¹ Members of a committee reviewing juvenile justice in the state recommended removing non-violent drug and weapons possession provisions from automatic transfer laws. One of their number, Juvenile Court Judge Hibbler, said that drug possession cases were particularly inappropriate for criminal court because the juvenile system is better able to provide better treatment and rehabilitative programs: "I think as a basic action to correct the behavior of kids, to send them to the adult court is going in exactly the wrong direction."¹⁴² The Illinois legislature has not accepted this advice.

In many states, prosecutors have the power to decide whether a child should be tried in adult or juvenile courts and many are likely to give greater weight to factors other than the interests of accused children. A nationally representative group of prosecutors was asked what they considered the three most important factors when considering whether to send a juvenile

to criminal court rather than juvenile court: 85 per cent indicated “seriousness of alleged offense” (e.g. whether it involved drugs or guns); 44 per cent said they took account of whether the child was determined to be unamenable to rehabilitation.¹⁴³

Florida gives prosecutors considerable discretion to prosecute children in the general criminal courts and they use this power often. A lawyer working with a national organization representing children reports that his office has seen children who were adjudicated in juvenile court for minor offences, sent by the court to non-secure juvenile community placements from which they ran away, and then prosecuted as adults for leaving a court-ordered placement. Because they were prosecuted as adults, they were held in adult jails.¹⁴⁴

RECOMMENDATION

Federal and state governments should legislate to ensure that children are not mandatorily prosecuted and punished as adults. In particular

- *children should not be subjected to long, fixed periods of incarceration, particularly life imprisonment without possibility of release.*
- *courts should be required to consider the well-being and circumstances of individual children when imposing sentences.*

4. FAILURE TO SPECIFY A MINIMUM AGE OF CRIMINAL RESPONSIBILITY

In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

Commentary The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless.

Rule 4.1, UN Standard Minimum Rules for the Administration of Juvenile Justice

States parties shall establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law

Article 40(3)(a), Convention on the Rights of the Child

International standards for the protection of the human rights of children require governments to ensure that all elements of their justice systems take account of childrens’ physical and mental immaturity and need for special care. One of these elements is the determination of when

children will be treated as responsible for their conduct under the criminal law, and subject to criminal prosecution and punishment. As reflected in the Convention on the Rights of the Child, there is now strong international support for the principle that there should be a legally established minimum age of criminal responsibility. The establishment of a minimum age of criminal responsibility is therefore an important safeguard to ensure that children in conflict with the law are not subject to cruel, inhuman or degrading punishment, but are treated in a manner which respects their well-being and dignity and promotes their reintegration into society. The Committee on the Rights of the Child has not prescribed a particular age, but members have expressed concern at ages set as low as seven and even fourteen.¹⁴⁵

Over half of the US states have at least one offence for which a child *of any age* can be prosecuted in the general criminal court. They are Alaska, Arizona, Delaware, District of Columbia, Florida, Georgia, Indiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Hampshire, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Washington, West Virginia and Wyoming. The minimum age in New York is seven and in Vermont thirteen.¹⁴⁶

A similar situation prevails with respect to the juvenile justice system. Only fifteen states specify a minimum age below which children cannot be charged with being delinquent in a juvenile court. In North Carolina the minimum age is six; the minimum age is seven in Maryland, Massachusetts and New York.¹⁴⁷

RECOMMENDATION

All governments should fix a minimum age of criminal responsibility which takes account of children's emotional, mental and intellectual maturity.

5. LENGTH OF TIME BEFORE TRIAL

Accused juvenile persons shall be brought as speedily as possible for adjudication.

Article 10, 2(b), International Covenant on Civil and Political Rights

“When we place children in institutions where they often sit for months, accused but not convicted, we lose a window of opportunity to turn their lives around. We do nothing more than create better criminals. These children inevitably reenter society no better equipped to be productive citizens than when they were first detained. Automatically trying children as adults gives up on them before we have made any real effort to show them a better way.”

Georgia Juvenile Court Judge Glenda Hatchett, 1998¹⁴⁸

International standards require the prompt adjudication of charges for both adults and children, particularly where the accused person is held in detention. Studies indicate that it is common for

people to be held in jail for six to nine months between the time they are arrested and their trial in general criminal courts. Cases in the juvenile justice system are *usually* dealt with more quickly though there are reports of unacceptably considerable delays in some jurisdictions.¹⁴⁹ The adverse impact of extended periods in detention must be considerable, particularly because many jails are not equipped to provide services to children, as the following section describes.

RECOMMENDATION

Governments should legislate to ensure that children accused of violating the law are tried as speedily as possible.

6. LACK OF ACCESS TO EDUCATION AND OTHER SERVICES

Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society.

Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.

Rules 38 and 39, UN Rules for the Protection of Juveniles Deprived of their Liberty

Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities.

Rule 47, UN Rules for the Protection of Juveniles Deprived of their Liberty

Pueblo, Colorado, January 1998: The District Court heard evidence from correctional officer Patricia Hill about the conditions for youth held at the jail. She was asked “At this point, is the jail capable of handling the juveniles?” and responded “Not really....they are just warehoused.” Ms Hill told the court that there was no money to hire a teacher for the children and that they were given recreation time “when somebody can kind of squeeze them in...I know there have been times that the juvies (juveniles) have been taken at one o’clock in the morning and two o’clock in the morning.”¹⁵⁰

Georgia, 1997: ‘At 14, Truoris Fair was one of the youngest kids in Georgia to be held in adult jail. Though under constant threat, Truoris says his biggest concern is not being able to get an education as he awaits the final determination of his case. It took a year of pleading with court officials to finally get a high school teacher into the jail. “Now, there are no science textbooks, English or History,” he says. “There are no proper school supplies.” He wonders what kind of future he can reach when he is finally exonerated if he can’t “get smart” on the inside.’¹⁵¹

Truoris persisted and obtained an educational qualification. In August 1998 Truoris was scheduled to face his fourth trial on the offence for which he was in jail. Dreading the ordeal, he decided to plead guilty rather than seek the vindication of a not guilty verdict. Amnesty International has been informed that children in Georgia jails are now given access to education.

International standards specify that children deprived of their liberty are entitled to education and the opportunity to have exercise and recreation. In the USA, according to reports received by Amnesty International, many children who are prosecuted as adults are incarcerated in adult facilities which are unable or unwilling to provide education or other services appropriate to the needs of children.

The failure of many prisons to provide special programs for children was notable in responses to the survey by Amnesty International reported above. Jails, which hold people who are pre-trial or who have received relatively short sentences, may be even poorer providers. Many jails do not have separate sections for children and as a consequence there have been reports of children kept in their cells for extended periods or confined to very small areas. The result can be the equivalent of solitary confinement.

In May 1998, an Amnesty International delegate visited a jail in Washington DC, where a staff member noted with considerable regret the lack of any educational programs for the children. He said some youth only reluctantly left their cells when the doors were open because there was little to do, and said that though he was not a teacher he would gladly run classes if he could obtain the materials. At the time, the jail held just one girl. She was allowed out of her cell only for short periods when the female inmates were locked in their cells because there was only one area available. Amnesty International's delegate was advised that although the girl was entitled to spend only three hours a week outside her cell, in the interests of her welfare staff allowed her to spend some time out of her cell every day and in aggregate more than the three hours.

Amnesty International delegates who visited jails in Maricopa County, Arizona, in 1997 were concerned about the conditions in which young people were held. The delegates were told that 13 juveniles in "close custody" were allowed out of their cells for only one hour a day, and others for four hours a day. The situation of the four female children, aged 16 and 17, was particularly disturbing and Amnesty International wrote to the authorities describing its concerns in the following terms:

"They were the only females in that facility and each was confined to a small cell containing just a bunk, toilet and sink, which afforded no privacy and were open to view through the barred cell doors. We were told that a roof recreation area in the First Avenue Jail had been closed off and that there were currently no outdoor exercise facilities available to any inmate in that jail. It appeared that the female juveniles spent virtually all day in their cells, without any recreational facilities. It was unclear what access, if any, they had to educational programs. The "day room" to which they had access for between one and two hours a day to make phone calls, was just another sparsely equipped small cell in the same narrow and enclosed corridor."¹⁵²

Some juvenile facilities have also failed to provide adequate services for children being dealt with in the juvenile justice system. However, courts have held that juvenile facilities must provide adequate services because US law generally recognizes that one of the purposes of the juvenile justice system is rehabilitation, which is not the case with the general criminal justice system.¹⁵³ This purpose is expressly stated in legislation or has been held to be required by courts. As a consequence, courts have been able to order juvenile facilities to introduce or to improve educational programs. Adult jails and prisons are not generally under a similar obligation, except in relation to children with disabilities who have a legal right to education under federal law and some state laws. On occasion, states have provided education programs only following legal action.¹⁵⁴

RECOMMENDATIONS

Governments should require detention and correctional authorities to ensure that children deprived of their liberty are provided with appropriate educational opportunities and with adequate time, space and facilities for exercise and recreation. The implementation of these requirements should be monitored.

V THE DEATH PENALTY

Note: The following is a summary of Amnesty International's *On the Wrong Side of History - Children and the Death Penalty in the USA* (AI Index: AMR 51/58/98, October 1998).

1. BREAKING INTERNATIONAL LAW

"Retribution or vengeance seems difficult enough for a government to justify where adult offenders are involved and vengeance against children for their misdeeds seems quite beyond justification... The spectacle of our society seeking legal vengeance through the execution of children should not be countenanced." American Bar Association, 1983

In 1997 the American Bar Association, which takes no position on the death penalty *per se*, reiterated its outright opposition to the use of the death penalty against those who commit crimes when under 18 years old. In doing so, the organization echoed one of the longest-standing international restrictions on the death penalty, namely that children should be exempted from it. This principle recognizes that children are not yet fully mature and hence not fully responsible for their actions, and that the possibilities for rehabilitation of young people are greater than for adults.

Principal among the human rights standards in question is Article 6(5) of the ICCPR, which states that "sentence of death shall not be imposed for crimes committed by persons below eighteen years of age...". International standards deem this to be such a fundamental safeguard that it may never be suspended, even in times of war or internal conflict¹⁵⁵. The USA signed the ICCPR in October 1977 - thereby binding itself not to do anything which would defeat the object and purpose of the treaty, pending a decision whether to ratify it¹⁵⁶. In the time between signature and eventual ratification in June 1992, the US authorities executed five prisoners for crimes committed when they were under 18, and sentenced more than 70 other such prisoners to death. When it ratified the ICCPR, the US government reserved the right to impose the death penalty for crimes committed by those under 18.¹⁵⁷ Since then, the US authorities have executed a further six such prisoners, including two in 1998. In mid-1998, some 70 more were awaiting the same fate.

Eleven countries have voiced their objection to the USA's reservation to Article 6(5) on the grounds that it is incompatible with the article's purpose and intent.¹⁵⁸ In 1995 the UN Human Rights Committee, the body of experts set up to monitor compliance with the ICCPR, said that the US reservation to Article 6(5) was incompatible with the object and purpose of the ICCPR and should be withdrawn. In 1998, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, whose mandate includes countries' use of the death penalty, reiterated that the US reservation should be considered void. In the report of his 1997 mission to the USA, the Special Rapporteur wrote that "the current practice of imposing death sentences

and executions of juveniles in the United States violates international law" and called for the practice to be discontinued.

In 1998, 24 US states permit the use of the death penalty against those under 18 at the time of the crime.¹⁵⁹ Fourteen states have legislation enforcing 18 as the minimum age.¹⁶⁰ The federal government has set 18 as the minimum age of eligibility with respect to violations of federal criminal law, but this does not absolve it from its responsibility to ensure that state governments do the same. Under international law, the federal government is the authority ultimately responsible for ensuring that all US officials comply with their international obligations. There is a long-standing principle of international jurisprudence that the nation state is the subject of international law, regardless of whether its system is unitary, decentralized or federal, and is responsible for ensuring that all government authorities in the country abide by international law. The US Constitution expressly establishes that powers to sign and ratify treaties reside with the federal state and not with the individual states.

The US authorities are also choosing to ignore a more recent international standard which protects juvenile offenders from the death penalty. Article 37(a) of the Convention on the Rights of the Child (CRC) states that "neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age". As already noted, the USA is one of only two countries in the world which have not ratified the CRC. Of the 192 countries which have ratified the Convention, all have done so unreservedly with respect to Article 37(a), demonstrating the almost global consensus against the use of the death penalty against those under 18 at the time of the crime.

2. LEGAL POSITION WITHIN THE USA AND POLITICAL PRESSURE ON IT

Rather than recognize the primacy of international law, as they should, the US authorities continue to look to the US Supreme Court, as interpreter of the Constitution, to set the minimum age at which people in the USA can become eligible for the death penalty. The Court has done this via the Constitution's Eighth Amendment, which bans "cruel and unusual punishments". In 1958 the US Supreme Court said that the definition of "cruel and unusual punishments" was not permanently fixed, but instead must draw its meaning from "the evolving standards of decency that mark the progress of a maturing society."

In 1989 the Supreme Court ruled by 5-4 that the execution of offenders aged 16 or 17 at the time of their crimes did not violate the Eighth Amendment.¹⁶¹ Justice Scalia wrote for the majority opinion that US society had not formed a consensus that the execution of such offenders constituted cruel and unusual punishment. He emphasized that the five justices reached their decision after looking to US conceptions of decency - not the practice of other countries - in determining what constituted "evolving standards of decency". The five determined that the death penalty against 16 and 17-year-olds was acceptable to US society because not only did the laws of various states allow for its use against such offenders, but juries and prosecutors applied those laws.

A year earlier in *Thompson v. Oklahoma*, the Supreme Court had voted 5-4 that the execution of the appellant, who was 15 at the time of the crime, was unconstitutional. However, only four of the judges found that the execution of such an offender would be cruel and unusual in **all** cases. A fifth judge, Justice O'Connor, agreed with their decision to overturn William Wayne Thompson's death sentence, but only because Oklahoma's death penalty statute set no minimum age limit at which the death penalty could be imposed. She found that the sentencing of a 15-year-old to death under this type of statute failed to meet the standard for special care and deliberation required in all capital cases.

The result of this marginal ruling is that it is currently unconstitutional for someone who commits a crime when aged 15 or younger to be executed in a state whose death penalty statute does not specify a minimum age. Since 1988, courts in Alabama, Louisiana and Indiana have ruled that such an execution would violate the *Thompson* ruling. It is conceivable, however, that a state could introduce legislation specifying a minimum age of less than 16 for capital defendants. If that state's appeals courts subsequently upheld a death sentence imposed on a defendant who was under 16 at the time of the crime, the question of whether it is constitutional to execute such an offender could once again come before the US Supreme Court. This scenario is considered to be unlikely. However this is not stopping some politicians from calling the the age of eligibility for the death penalty to be lowered in the USA.

For example, in 1996 New Mexico's governor said that he favoured the death penalty for juveniles as young as 13. The Governor of California has indicated personal support for the death penalty against 14-year-old children. In mid-1998 a member of the Texas House of Representatives planned to introduce legislation under which 11-year-olds who commit murder could be sentenced to death.

Other politicians have sought to lower the age for death penalty eligibility, but within the 16 to 18 age band allowed by the US Supreme Court. In 1997 members of US Congress in Washington DC put forward a proposal to reduce from 18 to 16 the minimum age under federal capital statutes, as part of a broader legislative package on juvenile justice. The proposal was later shelved after opposition from human rights organizations, but it could be reinitiated. In July 1998 the Mayor of New York city called for tougher laws for juvenile offenders. He said it would be "appropriate" in some cases to make 17-year-old murderers eligible for the death penalty. The minimum age in New York state is currently 18.

Even abolitionist jurisdictions have seen some of their political leaders supporting the death penalty against people under 18 at the time of the crime. At a press conference outside a juvenile detention centre in Rhode Island in August 1998, for example, one of the candidates for state Attorney General said that the case of two boys in Arkansas, recently convicted of murder committed when they were 11 and 13, was the type in which he might recommend the death penalty. After this drew criticism from his campaign opponents, he issued a news release to "clarify" his position saying that he in fact did not "support" capital punishment for juveniles,

but believes that a case of a 17-year-old who commits a heinous crime would "merit consideration of capital punishment".

The attempts of politicians and prosecutors to appeal to the more punitive side of the US electorate show the extent to which the death penalty has become a political tool in the USA, and illustrate the lack of informed debate about the reality of the death penalty and alternatives to it. While politicians are busy competing with each other over who can be toughest on crime, including juvenile crime, they are failing society's need to find constructive solutions to the problem.

3. WHY PROTECT CHILDREN WHO COMMIT VIOLENT "ADULT" CRIMES?

The obligation to consider the "best interests of the child", as provided by Article 3 of the Convention on the Rights of the Child, can never be fulfilled by sending juvenile offenders to death row or killing them.

Within the USA, as elsewhere, there has been long-standing and widespread recognition that children are different in the eyes of the law. In the early 1980s, the Section on Criminal Justice of the American Bar Association (ABA) conducted a two-year study which concluded that the death penalty was an inappropriate punishment for juvenile offenders.

In *Thompson v. Oklahoma* in 1988, the US Supreme Court said that "Youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage." In 1993 the Court pointed to the greater scope for the rehabilitation of a young offender. It said that "the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside"¹⁶². The Court said that "a sentencer in a capital case must be allowed to consider the mitigating qualities of youth in the course of its deliberations over the appropriate sentence." However, capital juries have not always been in a position to fully consider the defendant's youth as a mitigating factor, due to improper or ineffective guidance from prosecutors or defence lawyers.

The principle that the defendant's background, as well as age, should be taken into account as potential mitigation, has also not been universally followed in capital trials. Amnesty International's research continues to indicate that many juvenile offenders on death row suffered violence or deprivation during childhood.

It is commonly agreed that the death penalty's would-be goals of either retribution or deterrence are especially inapplicable in the case of young people. In 1989, citing the findings of the report by its Section on Criminal Justice, the ABA said "...in light of the characteristics associated with childhood - impulsiveness, lack of self control, poor judgement, feelings of invincibility - the deterrent value of the juvenile death penalty is likely of little consequence..."¹⁶³

Likewise, the goal of retribution, which presupposes exact like-for-like punishment, cannot be achieved by killing someone who may not have been fully responsible for their actions.

4. A STEP TOWARDS ABOLITION

There is an international legal and moral consensus against any nation executing people for crimes committed when they were under 18. However heinous the crime, the sentencing to death and execution of a young person denies the possibility of rehabilitation, cannot be justified on grounds of retribution or deterrence, and is contrary to contemporary standards of justice and humane treatment in every corner of the world. As such, ending the death penalty against prisoners for crimes committed when they were under 18 is a particularly appropriate first step towards total abolition of the death penalty.

RECOMMENDATIONS

US federal authorities should

- *withdraw the US reservation to article 6(5) of the International Covenant on Civil and Political Rights;*
- *ratify the Convention on the Rights of the Child, without reservation;*
- *take all necessary steps to ensure that state authorities comply with these international standards as they affect people who commit capital crimes when under 18, including by ensuring that life without possibility of parole is not instituted as an alternative to the death penalty for crimes committed by such defendants.*

Authorities in the 24 states which currently allow for the use of the death penalty for defendants who were under 18 at the time of crime, should

- *establish an immediate moratorium on the execution of those convicted of crimes when they were under 18, pending the adoption of legislation imposing a minimum age of 18 at the time of the crime in capital trials.*

VI DISCRIMINATION

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 2, Universal Declaration of Human Rights

No State shall...deny to any person within its jurisdiction the equal protection of the laws.

Amendment XIV, Constitution of the United States

1. INTRODUCTION

The Universal Declaration of Human Rights and the international treaties and standards which it has inspired, including the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child, all provide that every person is entitled to the rights that they enshrine without discrimination. As well as the prohibited grounds of discrimination cited in the Universal Declaration, the Convention on the Elimination of All Forms of Racial Discrimination includes national and ethnic origin and the Convention on the Rights of the Child specifies ethnic origin and disability. The US Constitution and federal and state laws also prohibit discrimination on the basis of race, sex, disability and other grounds.

This section of the report examines evidence that parts of the justice system treat children in a manner that violates the right against discrimination.

DISCRIMINATION AT HOME AND IN THE GENERAL COMMUNITY

Although various grounds of discrimination are unlawful with respect to matters such as employment and the provision of commercial services, discrimination against people because of their gender, race, ethnicity, sexuality and other characteristics is common in the USA. Gay males and lesbians are subject to lawful discriminatory treatment such as criminal laws against homosexuality and generally, do not have legal protection against discriminatory treatment which is provided to people on other grounds such as race and gender.

Discrimination in the general community, including the home, may create the circumstances which promote offending by children. For example, when children indicate that they are gay or lesbian this frequently creates conflict with their parents which may result in the children leaving home. Children who cannot readily find alternative accommodation or financial support may break the law to survive, for example by prostitution or theft, and may seek comfort in drug use.¹⁶⁴

Many girls suffering sexual and physical abuse at home respond by fighting back or running away. Both responses may result in them becoming involved with the juvenile justice system. The links between abuse and violation may be both direct (e.g. running away is a status offence) and indirect (e.g. drug use).

As indicated below, there is a distinct link between the over-representation of black children in the justice system and the social and economic environment in which they live. In turn, that environment is shaped by historical and contemporary racism in the USA.

To what extent is discrimination in the general community also present within the juvenile justice system itself?

2. GENDER

The reality is that juvenile detention and corrections do have gender-specific services; they are gender specific to males.

Desktop Guide to Good Juvenile Detention Practice, 1996 ¹⁶⁵

In 1996, females accounted for just one quarter of arrests of people aged under 18 throughout the USA. Over the past decade the number of females arrested has increased at a relatively faster rate than the increase in the number of males arrested, but the male-female proportions have not changed dramatically - in 1988 females accounted for 22 per cent of arrests of people under age 18, only three per cent less than now.

The pattern of female offending is quite different to males. A very large proportion of their arrests are for so-called "status offences" (such as running away from home), offences which only children can commit, rather than general criminal offences. Of children arrested throughout the USA in 1996, females accounted for:

- 15 per cent of arrests for serious violent crimes
- 27 per cent of arrests for serious property crimes
- 52 per cent of arrests for prostitution
- 29 per cent of arrests for breaching curfews and
- 57 per cent of arrests for running away from home.¹⁶⁶

Females are also a minority of children in custody. This reflects both their lower rate of arrests and that they are less likely than males to be taken into custody either before or after juvenile court adjudication.¹⁶⁷

Information received by Amnesty International raises concerns that females may be less well treated than males in two respects - that they are brought before the courts for conduct that is more tolerated in boys and that they receive poorer treatment in custodial facilities.

(i) FEMALES MAY BE PUNISHED MORE SEVERELY FOR SIMILAR CONDUCT

The first area of concern relates particularly to two status offences - "ungovernability" (refusing to obey parents) and running away from home. These are both offences for which the proportion of female offenders exceeds or is similar to the proportion of males. The concern is that parents may be more likely to bring girls than boys to court for such offences, particularly when the conduct involves children who are sexually active, and that courts may also make gender-biased decisions.¹⁶⁸

Researchers have documented such differential treatment but the studies are not recent.¹⁶⁹ Amnesty International was not able to identify current research. Lawyers and others working in juvenile justice told the organization that parents continue to treat girls more severely than boys for similar conduct, including referring them to court and placing them in psychiatric or other behaviour "treatment" facilities. Research is required to establish whether and to what extent there is also differential treatment within the justice system.

(ii) CUSTODIAL FACILITIES DO NOT PROVIDE APPROPRIATE SERVICES FOR FEMALES

The second area of concern is that custodial facilities do not provide females with the range and type of services that they may require. One reason for this is that justice systems are geared to dealing with the great majority, males. A second reason is that institutions do not understand what is required to meet females' needs effectively.

As reported above, Amnesty International found facilities where females are less well treated than males when they are prosecuted as adults, because there are so few females that facilities do not have or do not set aside the resources to make special provision for them.

There is very little recent information on the availability of services to females and males in juvenile justice facilities. A recent national study of the treatment of status offenders surveyed the opinions of juvenile justice officials. The largest proportion (44 per cent) believed that treatment facilities and services for status offenders were about equally available.¹⁷⁰ Those who believed there was a difference generally considered that more services were available for males; very few believed that there were more services for females. Many indicated that the most accurate description of the situation was that facilities were equally unavailable or inadequate for both females and males. The researchers also visited a small number of facilities for status offenders and found that the availability of counselling, educational and medical services was similar.

It is important to note that there is an important difference between equality in the availability of services and equity, or fairness. Fairness requires that the level of services that is provided is related to the extent of need - there is evidence which indicates that females in the juvenile justice system have a far higher level of need for mental health assistance.¹⁷¹

Most of the juvenile justice officials and service providers interviewed for the study cited above said that status offenders did not need gender-specific treatment or services, except for gynecological services and prenatal care for females. [Note: the study did not consider delinquent offenders.] Representatives from facilities that housed only females or only males said that their programs could be replicated to provide the same counselling and mental health services to status offenders of the opposite sex. The views reported in this study are inconsistent with the growing acknowledgement that females might require quite different types of programs and treatment, because their backgrounds and needs are significantly different to that of males.¹⁷²

In 1992, Congress legislated to require states participating in a juvenile justice grants program to analyse gender-specific services for the prevention and treatment of juvenile delinquency, including the types of services available, the need for such services, and to prepare plans for providing needed gender-specific services for the prevention and treatment of juvenile delinquency. Many states have participated in the programs and a variety of innovative programs have been established.¹⁷³ States have also commissioned research and funded the establishment of various programs.¹⁷⁴ The new voluntary standards for facilities that have been commissioned by the Office of Juvenile Justice and Delinquency prevention will specify the need for gender-specific services.

Despite the increased pace of activity, the Office of Juvenile Justice and Delinquency Prevention considers that “programs to address the unique needs of female delinquents have been and remain inadequate in many jurisdictions.”¹⁷⁵ Nanette Schandt of the New York City Legal Aid Society has told Amnesty International that in her area there are fewer services available for females and that programs such as vocational training tend to cater to traditional male areas of interest, such as automechanics. Girls with babies are particularly poorly served and as a consequence may be separated from their children.¹⁷⁶ Providing incentives is not enough. All facilities should be required to provide services that take account of gender-related needs and should be monitored for their performance in this regard.

RECOMMENDATION

Authorities responsible for juvenile detention and correctional facilities should require those facilities to ensure that males and females receive equitable and appropriate treatment, and should monitor the compliance of facilities with this requirement.

3. RACE

“I was walking from the block with my friends, cut through back woods. We saw the police. The cops asked what we were doing and where we were coming from. We answered Park Street. The cops said “OK” but kept following us. All of a sudden they jumped out of the car, drew their guns and yelled “freeze.” Cops said “Don’t run little nigger.” Threw him up against a fence and then down on the ground. He was put in jail. The cops thought we stole a car.”

*Account by a young black male interviewed in Greater Hartford, Connecticut, 1995-96 for a research project on relations between police and youth; other respondents also reported racial abuse by police.*¹⁷⁷

When asked why they initiated contact with a juvenile, patrol officers in Michigan frequently replied that they investigated youths who look “suspicious”; one officer defined suspicious as a “black kid in a white neighbourhood.”

*Report of research on police and youth.*¹⁷⁸

Police officers have increasingly come to rely on race as the primary indicator of both suspicious conduct and dangerousness. There can be no other explanation for why a police officer would consider shooting a sixteen-year-old on a bicycle. One cannot even fathom the same thing happening to a white youth. A black teenager pedalling rapidly is fleeing crime. A white teenager pedalling at the same speed is feeling the freedom of youth.

National Association for the Advancement of Colored People, commenting on the case of a black teenager shot by police after falling off his bicycle in Indianapolis, Indiana.

March 1998, Trenton, New Jersey: Jenni Hightower, aged 14, was killed after police fired 20 shots into the stolen car in which she was a passenger. The driver, 16-year-old Hubert Moore, was critically injured. The case is one of more than a dozen police shootings of unarmed teenagers, most of them black, in New Jersey in disputed circumstances since 1990.¹⁷⁹

“If a large segment of people are made to survive under conditions so vastly different to those encountered by the mainstream of US citizens, it would not be unreasonable to expect differences in behavior and outcome...The structural and economic realities of the urban ghettos are driving forces for entry into both the adult and juvenile justice systems. Thus policy initiatives must not only address problems in the case processing of juvenile offenders but also preexisting social conditions. Only by such a two-pronged attack can we have any chance of reducing crime among our youths and the disproportionate over representation of minorities within the juvenile justice system.”

*C. Pope, researcher reviewing studies on race and juvenile justice*¹⁸⁰

There is a massive over-representation of children of racial and ethnic minority background at all stages of the general and juvenile justice systems. The disproportion is most marked for black youth. They are only 15 per cent of the population aged 10-17, but account for approximately

- 30 per cent of youth arrested
- 30 per cent of youth referred to juvenile court

- 40 per cent of youth detained before trial in juvenile court
- 40 per cent of youth held in custody in juvenile facilities and
- 50 per cent of cases transferred by juvenile courts for trial in adult criminal court.

Racial and ethnic minority youth comprise more than 60 per cent of all youth held in custody in juvenile facilities, double their representation in the national population.¹⁸¹

Research suggests various reasons for the over-representation of minority children in the criminal justice system. Three are examined here: differences in rates of offending, patterns of policing, and racial bias in the justice system, including law enforcement. There is evidence that each is significant.

RATES OF OFFENDING

Official crime data shows that a greatly disproportionate number of youth arrested, prosecuted and convicted for all major types of crime are of minority racial and ethnic origin.¹⁸² While this data is not necessarily an accurate reflection of actual rates of offending, as the following section describes, there do appear to be significant differences along racial and ethnic lines with respect to what are described as serious violent crimes, both lethal and non-lethal. This is particularly the case for older juveniles.

A number of theories have been put forward to explain such disparity in offending, most commonly linking it to the considerable economic and social deprivation of urban black communities. In the words of one researcher, “as long as African American youths have higher rates of poverty, single parent families, high school drop-outs, and higher unemployment rates, these same factors should be counted in the calculus of possible causes for minority youths’ over-representation in crime and thus incarceration.”¹⁸³

POLICING AND THE “WAR ON DRUGS”

For a number of reasons, official data for arrests and prosecution may not necessarily be an accurate indicator of rates of offending by youth of different racial and ethnic backgrounds. The racial or ethnic identity of many offenders is not known, for example because victims have not reported crimes or did not see the offenders and because many offenders are never detected.

Other sources of information about offending suggest that the official data may greatly overstate the extent of involvement of minority youth in certain crimes, particularly drug offences, in comparison with other youth. As one study noted, “in the middle 1980s, black youth were being arrested at nearly 5 times the rate of white youth, even though their levels of substance abuse were identical.”¹⁸⁴ Studies of participation in violent crime, particularly minor

assaults, also suggest that the racial differences are far smaller than the differences in rates of arrest.

One of the reasons that has been attributed for the difference between rates of criminal behaviour and arrest data is that police are far more active in inner urban areas where there are proportionately greater numbers of minority youth, than in suburban areas where a greater proportion of white people live. In particular, the so-called “war on drugs” has focused heavily on the inner city and therefore had a strongly disparate racial effect. For example, criminologist Michael Tonry suggests that although the racial impact of aggressive law enforcement against drugs was unintended, it was inevitable:

“any experienced police official could have predicted that policies of wholesale arrests of dealers would sweep up mostly young minority user-dealers in the cities. This is not necessarily because more members of minorities use or sell drugs, but because arrests are easier to make in disorganized inner-city areas where many minority dealers operate than they are in middle- and working-class neighbourhoods where white dealers operate.”¹⁸⁵

In the decade 1986-1995, the number of drug cases involving black males dealt with by juvenile courts more than doubled and the proportion of drug cases involving black males grew from 22 per cent to 31 per cent. The growth in the number and proportion of black male cases was most dramatic in the first half of the period. Since then, the rate of increase in drug offence cases has been far greater for white males and males of other races than for black males.¹⁸⁶

Wealth also reportedly has a racially disparate effect in the criminal justice system, because white people are relatively more wealthy than black. Some commentators with whom Amnesty International has spoken report that authorities such as school principals (who often report alleged violations), and police themselves, treat children from wealthier families differently to children from poorer ones, at least with respect to minor matters. For example, they report that schools are more likely to call a parent than the police when dealing with a wealthy child; police are also more likely to call a wealthy parent, and less likely to detain and formally charge their child than the child of a poor parent. Class-based discrimination at this point of the criminal justice process is exacerbated at later stages because richer parents are better able to retain lawyers and to buy therapeutic services for their children in order to persuade courts to treat them more leniently than they might otherwise do.

RACIAL BIAS

Evidence of discriminatory treatment and bias in police contacts with racial and ethnic minorities has been widely documented by commissions of inquiry, in court cases, citizen complaints and numerous individual testimonies.

Amnesty International has received reports from many communities that police unjustly target black, Latino or Asian males, especially in inner cities, and automatically see them as potential criminal suspects. These include reports of the harassment of minority youth on suspicion of gang membership in Chicago, San Antonio, Philadelphia and Los Angeles. In 1997, an Amnesty International delegate attended a national conference organized by a coalition of organizations who monitor police issues, at which representatives cited similar examples in other areas.¹⁸⁷

A substantial number of research studies “suggest that race/ethnicity does make a difference in juvenile justice systems in some jurisdictions at least some of the time.”¹⁸⁸ The studies have found evidence that minority youth have been treated more severely than similarly situated white youth at different stages of the justice system, from the point of arrest to sentencing. As well, surveys of people working in juvenile justice systems report that many believe that bias occurs and state that they have seen instances. Several examples are summarized below:

- **Florida:** a study for the Florida Supreme Court’s Commission on Race and Ethnic Bias reported that non-white juveniles received more severe dispositions (sentences) than their white counterparts, taking into account, age, gender, seriousness of offence and serious or prior records. This “objective” evidence was supported by a belief on the part of many professionally involved in the juvenile system that racial bias was a significant force. Some saw bias as prejudice, others as result of ignorance or class based. Nearly one half of respondents said they had personally seen instances of discrimination within the juvenile justice system.¹⁸⁹
- **Michigan:** a study of policing concluded that race and ethnicity seemed to be a significant factor in police officers’ decisions about whether to refer youth to court or to drop cases, and whether to detain or release youth who were charged. In general, the study found that, “Whites were more likely to receive less intervention for similar offenses and similar offense behavior.”¹⁹⁰
- **Colorado:** Human Rights Watch (a non-governmental human rights organization) undertook research on the state’s juvenile justice facilities in 1996 and reported that race discrimination is widely viewed as pervasive among courts and law enforcement officials. One state official told the organization, “it begins with the discretion a police officer has to lecture and release a kid or to arrest him. It is exacerbated at each level by prosecutors and judges.”¹⁹¹

Many members of the public, particularly black people, believe that black people are unlikely to receive equal treatment from the police and the criminal justice more generally. In a 1995 national survey, 42 per cent of blacks and 11 per cent of whites said that in their community police mostly treated blacks worse than whites. In a 1997 survey, only 19 per cent

of blacks and 61 per cent of whites said that racial and other minorities receive equal treatment in the criminal justice system.¹⁹²

FEDERAL ACTION

In 1992, in response to the increasing disproportion of minority youth in custody within the juvenile justice system, Congress legislated to require states and US territories to take measures to reduce the number of minority youth in secure facilities where their proportion exceeded the proportion of the groups in the general population. As of late 1997, 38 states and territories were undertaking steps to reduce disproportionate minority confinement, such as “improved detention decision-making” and “cultural competency training.”¹⁹³

Pilot program studies found strong disagreement about the causes of disproportionate minority confinement and consequently about what measures should be taken to address it. In particular, those who considered that racial and ethnic disparity accurately reflected differences in the nature and extent of crime among groups regarded programs designed to reduce racial bias as irrelevant or offensive, or both.¹⁹⁴

In 1997, members of a Senate Committee reviewing the legislation disagreed as to whether the mandate to reduce disproportionate minority confinement should continue. The majority recommended that it be replaced by programs targeted to geographic areas with the highest rates of crime.¹⁹⁵ At the time of writing it appeared that the amendment was unlikely to be passed.

The federal government provides funds to most police agencies to support aspects of their work. The Civil Rights Act, 1964, prohibits discrimination on grounds including race and colour, and allows the Justice Department to withhold grants or make them conditional on compliance. This law has been used most often in relation to hiring and training policies. In its general review of human rights violations in the USA, Amnesty International recommended that the federal government should increase its use of this law to seek to eliminate racially discriminatory treatment by law enforcement agencies.¹⁹⁶

CONCLUSION

The evidence of racial bias in the administration of law enforcement and criminal justice systems demonstrates that special measures to address discriminatory attitudes and conduct within the juvenile and adult justice systems, including the police, must continue to be used.

It is also abundantly clear that such measures can only partially reduce racial disparities. The major causes of minority over-representation lie outside the justice systems and must be dealt with by economic, social and legal programs to counter massive inequality and discrimination in the community at large. These fall outside the scope of this report.

RECOMMENDATION

Congress should continue to require states to monitor and take measures to reduce disproportionate minority confinement.

VII MECHANISMS TO REMEDY ABUSES

Qualified inspectors not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative.

Rule 72, UN Rules for the Protection of Juveniles Deprived of their Liberty

Many factors are relevant to reducing the risk of abuse occurring, such as the provision of adequate resources and the training of staff, but risks always remain. Recognizing the vulnerability of all people deprived of their liberty to abuse and ill-treatment, international standards require authorities to appoint independent experts to inspect facilities on a regular basis and to draw the attention of competent authorities to lack of compliance with standards and violations of the law. This section of the report looks at key elements of US arrangements to monitor conditions and to provide redress for violations.

Before looking at officially established arrangements, Amnesty International pays tribute to non-governmental organizations, journalists and other individuals who have exposed serious violations and have pressed authorities to take remedial action. A number of these have been cited throughout the report.

THE COURTS

As described in earlier sections, children have legal rights under federal and state constitutions and legislation, and there has been considerable litigation to provide redress when rights have been violated. The courts have been an important mechanism to define the rights of children and to end appalling conditions and treatment.

However, litigation provides a very slow, expensive and difficult remedy that is particularly inaccessible to children. Many are not aware of their legal rights and they may lack skills such as literacy that are required to take legal action. Recent federal legislation has established even greater barriers to people in custody, both adults and children, to use legal action to stop abuse and to improve poor conditions. Amnesty International has called on the federal government to review the impact of the legislation and has urged Congress to amend provisions that unduly restrict the ability of incarcerated people to use the courts to end ill-treatment.¹⁹⁷

STATE AND LOCAL INSPECTION SYSTEMS

It is essential to the protection of the welfare of incarcerated children that there be effective systems to periodically monitor conditions in all facilities and to investigate complaints. In the course of preparing this report, Amnesty International identified a wide range of local and state systems established to inspect conditions and to handle complaints. They differ in

- **functions** - some actively monitor conditions; some act only in response to complaints or specific incidents, such as the death of a child; some do all of these;
- **independence** - some are located within the department that is also responsible for the facilities; some are completely separate;
- **powers** - some are authorised to inquire and make recommendations; some have the power to require facilities to take remedial action or cease operating;
- **openness** - some report publicly, others confidentially.

In the course of its research for this report, Amnesty International received information about many state-operated juvenile justice systems and all of these had some form of monitoring by a body that was not under the direction of the management of the facility they were monitoring. It was beyond the scope of this project to conduct a comprehensive survey of states or to survey the hundreds of local authorities that have detention facilities.

While Amnesty International has not formally sought to assess the effectiveness of the different monitoring arrangements that it came across, it considers that the following factors are noteworthy and should be considered by authorities.

(a) In order to detect the possibility of widespread ill-treatment, independent, skilled inspectors must periodically speak with random groups of children in confidence. For a variety of reasons, no authority should assume that the absence of formal complaints reflects a satisfactory state of affairs. Children may not complain because - rightly or wrongly - they think they will not be believed or because they fear that staff will retaliate; they may not be aware of their rights or may lack the skill or self-confidence to complain. Amnesty International has made this observation to the correctional department of Maine, which had suggested to Amnesty International that a small and declining number of complaints indicated that staff violence against children in the state's juvenile correctional facility is not a significant problem.

(b) Inspectors must be and be seen to be completely independent of the management of the facilities that they are inspecting. In Maine, the investigation of complaints of ill-treatment by children at the Maine Youth Center have been undertaken by an employee of the facility. Amnesty International received reports that children do not feel that the investigations are impartially conducted and it suggested to the authorities that investigations should be conducted by an independent person. According to newspaper reports, the Governor of Maine has decided that investigations should be conducted by another department.

(c) Detention and correctional facilities must keep thorough records about matters that should be the subject of inspections, such as the use of force and restraints and these records must be independently scrutinized. Unless facilities keep such records, it is not possible for inspectors to perform their responsibilities thoroughly. As indicated above, California has stopped collecting information about the use of chemical restraints. In the event, this has not mattered because the information was not being assessed.

(d) There should be periodic audits of the effectiveness of inspection systems. The establishment of inspections systems is a necessary but not adequate measure to detect and stop abuses. Grave violations of children's rights have occurred both where external monitoring arrangements were in place and where they were not. Governments should undertake periodic review of their inspection systems to ensure that they are functioning effectively. This recently occurred in Virginia where deficiencies were identified by an official audit and action has been taken to address them.¹⁹⁸

Amnesty International welcomes the provision by the federal government of financial assistance to states to establish ombudsman programs to oversee juvenile detention and correctional facilities.¹⁹⁹

FEDERAL SYSTEMS

As the evidence cited in this report shows, the US Justice Department plays a role in investigating violations and securing remedial action. At September 1998, the Department was investigating facilities in at least six states, negotiating with another, and was monitoring conditions in several other states where it had reached agreement to settle lawsuits. Amnesty International has acknowledged the critical importance of the Justice Department in relation to adult facilities and called on the federal government to ensure that it receives adequate funding to undertake its responsibilities effectively.²⁰⁰

The federal Office of Juvenile Justice and Delinquency Prevention is responsible for monitoring states' compliance with four conditions under which they receive funding for juvenile justice programs - keeping status offenders out of secure detention and confinement; separating juvenile and adult offenders; keeping juveniles out of jails and law enforcement lockups in which adults may be detained or confined; and implementing measures to reduce disproportionate minority confinement.

RECOMMENDATION

Authorities that are responsible for detention and correctional systems should establish independent systems to monitor compliance and investigate complaints. These systems should have adequate resources and authority to undertake their functions effectively, and their effectiveness should be periodically reviewed.

VIII SUMMARY OF RECOMMENDATIONS

This report describes two distinct types of violations of the rights of children. The first type is the violation of rights that are enshrined in international standards but are not recognized in US law, for example, the use of the death penalty, housing children in prisons with adult inmates, and the use of solitary confinement as a disciplinary measure. These violations can readily be ended by legislators and other decision-makers changing the laws and rules that are currently in place. Amnesty International hopes that this report will contribute to persuading the responsible authorities to amend their laws and practices so that they are completely consistent with international standards.

The other type of violations is those that breach not only international standards but also the laws of the USA, for example the brutal use of force and restraints; the denial of adequate health care and other services. The examples of such violations that are cited throughout the report show that conduct and practices that are harmful to children are common and persistent, and rarely end until they are exposed and dealt with decisively.

Amnesty International urges the federal, state and local governments to ensure that the legislation, policies and practices for which they are responsible are in complete accordance with the rights of children that are set out in international human rights treaties and other instruments. In particular, Amnesty International recommends that relevant governmental, law enforcement and justice authorities act promptly to implement the following measures:

1. Comprehensive adoption of international commitments on the rights of children, including:
 - withdrawal of the US reservations to the International Covenant on Civil and Political Rights and;
 - ratification without reservations of the Convention on the Rights of the Child.

2. State and local authorities should review their legislation, policies and practices to ensure that children who are accused or convicted of violating the law are not deprived of their liberty except as a last resort. In particular, all authorities should:
 - undertake periodic reviews to assess whether children are being placed in custody only when no alternative is appropriate; if the reviews find cases where alternatives are appropriate, authorities should take action to change the policies or practices that cause the excessive use of incarceration;
 - provide an adequate range and number of community-based detention and correctional programs;
 - provide adequate mental health services in the community so that children whose violation of the law is a reflection of significant mental health problems can be treated in therapeutic rather than correctional environments.

Juvenile justice systems should as a matter of course assess children to determine whether they should receive specialized care and should not be placed in a detention or correctional facility.

3. The US federal government should require state and local governments to establish comprehensive standards for juvenile detention and correctional facilities that are consistent with international standards and monitor the implementation of this requirement. The US government should inform the Committee Against Torture about measures to prevent torture and other cruel, inhuman or degrading treatment or punishment, including solitary confinement, against children in the report it is due to submit on its implementation of the Convention Against Torture.

State and local governments should end the cruel use of force and restraints by:

- providing adequate resources to prevent overcrowding and allowing facilities to employ sufficient staff;
- requiring staff to be specially trained to work with children, particularly those with mental health problems. The training must include skills that reduce the necessity for the use of force;
- prohibiting the use of electro-shock weapons in juvenile detention and correctional facilities;
- strengthening inspection systems (see recommendation 13).

US federal authorities should conduct inquiries into the use of chemical restraints and restraint chairs in juvenile detention and correctional facilities.

4. State and local governments should prohibit the use of solitary confinement as a punishment for children in confinement.

5. State and local governments should provide adequate services for children with mental health problems. They should:

- require juvenile and detention and correctional facilities to provide comprehensive physical and mental health care services by qualified personnel;
- provide adequate funds to enable facilities to provide the required services;
- impose specific standards to allow effective monitoring of the adequacy and quality of services and;
- routinely monitor performance.

6. State and local governments should legislate to keep children in custody completely separate from adult inmates unless it is considered in the child's best interest not to do so.

The US Congress should legislate to require states to segregate detained and imprisoned children from adult inmates.

7. Federal and state governments should legislate to ensure that children are not mandatorily prosecuted and punished as adults. In particular:

- children should not be subjected to harsh, fixed periods of incarceration, notably life imprisonment without possibility of release.
- courts should be required to consider the well-being and circumstances of individual children when imposing sentences.

8. Federal and state governments should fix a minimum age of criminal responsibility that takes account of children's emotional, mental and intellectual maturity.

9. All authorities should require detention and correctional authorities for which they are responsible to ensure that children in custody have access to appropriate educational programs, and are provided with adequate time, space and facilities for exercise and recreation.

10. US federal authorities should withdraw the reservation to Article 6 (5) of the International Covenant on Civil and Political Rights and take all necessary steps to ensure that state authorities comply with the international standards prohibiting the imposition of the death penalty on people for crimes they committed when they were children.

Authorities in the 24 states which currently allow for the use of the death penalty for people who were under 18 at the time of the crime should establish an immediate moratorium on their execution pending the adoption of legislation imposing a minimum age of 18 at the time of the crime in capital trials.

11. State and local authorities should require juvenile detention and correctional facilities for which they are responsible to ensure that males and females receive equitable and appropriate treatment, and should monitor the compliance of facilities with this requirement.

12. The US Congress should continue to require states to monitor and take measures to reduce disproportionate confinement of children.

13. Authorities responsible for detention and correctional systems should establish independent systems to monitor compliance and investigate complaints. These systems should have adequate resources and authority to undertake their functions effectively, and their performance should be periodically reviewed.

APPENDIX : Survey of treatment of children in adult correctional systems

Table 1 State policies on imprisonment of children convicted in general criminal justice system

Information was provided by state departments of corrections between November 1997 and September 1998.

Explanation of headings and terms:

“Under 18’s are housed in General Population” : this column shows under 18’s housed (a) in facilities/units where there is no upper age limit; or (b) in facilities/units which have an upper age limit above 21. In both types of facilities under 18’s are generally not segregated from older inmates.

“Total Inmates under 18” : this column shows the number of inmates at the time of the survey for most states. Some states could only provide statistics for the situation prior to November 1997. Figures in brackets are the number of inmates under 18 at 1995, reported by LIS, “Offenders under age 18 in state adult correctional systems : a national picture”, US Department of Justice,1995.

“Youthful Offender” is a term that applies in some states to certain offenders who are below a certain age. A person may be designated a "youthful offender" by the trial judge or automatically by law if they fall within particular criteria.

(DP) indicates that a person may be executed for an offence committed when they were under 18.

“N/A”: the department of corrections was unable to provide the information at the time of the survey.

STATE	Min. Age for Adult Prison	Total Inmates under 18	Male Inmates under 18	Female Inmates under 18	Under 18's are housed in General Population	Under 18's are housed with inmates aged 18-21	Under 18's are housed separately from inmates aged 18 and over	Programs designed specifically for under 18's	Notes
US Total (1995 figure in brackets)	-	6039 (4868)	5569*	262*	3768 40 States	1950 12 States	321 14 States		*these are not comprehensive because California and Montana were unable to provide this data in full.

Alabama (DP)	14	123 (94)	121	2	•	•	•	•	•	No special provision.	At classification age is considered, but only as a minor criterion.
Alaska	no min.	29 (3)	29	-	•	•	•	•	•	No special provision.	
STATE	Min. Age for Adult Prison	Total Inmates under 18	Male Inmates under 18	Female Inmates under 18	Under 18's are housed in General Population	Under 18's are housed with inmates aged 18-21	Under 18's are housed separately from inmates aged 18 and over	Programs designed specifically for under 18's	Notes		
Arizona (DP)	14	140 (55)	136	4			•	Education is mandatory. Psychiatric counselling is available to all under 18's. Family Contact program rebuilds relationships between inmate and his/ her family.	Males are housed in either the Rincon Minors Unit at Arizona State Prison Complex, Tucson or the Special Management Unit II Minors at Arizona State Prison Complex, Eymam. Females are housed in the Santa Maria Minors Unit at Arizona State Prison Complex, Perryville.		
Arkansas (DP)	14	93 (151)	90	3	• Approx. 3**	• Approx. 90*		Vocational Technical Training available but only at the Varner Unit where under 18's are unsegregated from adults.	Most males are sent to Grimes Youthful Offenders Unit (max age 21), unless they are receiving Vocational Technical Training when they will be housed in the general population of the Varner Unit. Females are housed in the general population at the McPherson Unit. * Department of Correction states that it is rare for under 18 males to be sent for vocational training to the Varner unit, therefore those males are not represented in this breakdown.		

California	16	172 (25)	140*	3*	•	Under 18's are housed in General Population	Under 18's are housed with inmates aged 18-21	Under 18's are housed separately from inmates aged 18 and over	No special provision.	Under 18's are housed throughout the state's facilities depending on classification. The Department of Corrections is currently revising the system to cater for increasing numbers of under 18's charged with violent felonies to be tried as adults. * statistics on number of males and females not available for whole under 18 population.
STATE	Min. Age for Adult Prison	Total Inmates under 18	Male Inmates under 18	Female Inmates under 18		Under 18's are housed in General Population	Under 18's are housed with inmates aged 18-21	Under 18's are housed separately from inmates aged 18 and over	Programs designed specifically for under 18's	Notes
Colorado	14	91 (44)	89	2	•				Education is mandatory for all under 18's.	Males are generally sent to Buena Vista Correctional Facility which has better educational programs.
Connecticut	14	485 (334)	462	23					No special provision.	All males are housed either in the John Manson Youth Institution (max age 21) or in the Intake Facility. Females are housed in York Correctional Institution and segregated from adults except for programs.
Delaware (DP)	13	32 (2)	32	-	• 4				General Education Diploma and Behaviour Modification Programs.	Under 18's sentenced under the Young Offenders Program are housed separately in the Multi-purpose Criminal Justice Institution in Woolmington (max. age 19). Those not sentenced under the Young Offenders Program are housed in the general population.
District of Columbia	N/A	17 (93)	15	2	•				No special provision.	Figure includes under 18 pre-trial inmates who are housed in an under 18 unit of the Detention Facility (DC-Jail) and segregated from adults. Under 18's convicted as adults are housed in the general population. Age is considered on classification of inmate.

Florida (DP)	14	663 (779)	623	40	•	Under 18's are housed with inmates aged 18-21	Under 18's are housed separately from inmates aged 18 and over	No special provision.	Judge has discretion to house under 24-year-olds and first time offenders in "youthful offender units". Otherwise under 18's will be housed in general population.
STATE	Min. Age for Adult Prison	Total Inmates under 18	Male Inmates under 18	Female Inmates under 18	Under 18's are housed in General Population	Under 18's are housed with inmates aged 18-21	Under 18's are housed separately from inmates aged 18 and over	Programs designed specifically for under 18's	Notes
Georgia (DP)	13	194 (171)	185	9	• 162*		• 32*	At Lee Arrendale there is compulsory education for seven hours per day. Weekly meetings with psychologists.	13 to 16-year-old males are housed in Lee Arrendale Correctional Institution where they are separated from inmates aged 17 and over. 13 to 16-year-old females are housed in Pulaski Correctional Institution where they are separated from inmates aged 17 and over. All 17-year-olds are housed in the general population. *Numbers estimated by Amnesty International based on age distribution (see Table 2)
Hawaii	16	4 (1)	4	-	•				All males are currently housed at the Oahu Community Correctional Center.
Idaho (DP)	14	11 (9)	10	1	•			No special provision.	Classification involves "Reception Diagnosis Test" in which all under 18's are tested for emotional ability to be housed in an adult facility.
Illinois	17	161 (168)	155	6	•			No special provision.	
Indiana (DP)	14	92 (95)	89	3	•			Education programs.	All males are housed in the general population of adult facilities. Indiana Women's Prison has a youthful offender dormitory for under 23-year-olds, however, this is only optional to under 18's.

Iowa	9	41 (17)	34	7	•	Under 18's are housed with inmates aged 18-21	Under 18's are housed separately from inmates aged 18 and over	Education programs.	New facility opened at "Fort Dodge" will eventually house all under 18's, however there is no upper age limit on the facility.
STATE	Min. Age for Adult Prison	Total Inmates under 18	Male Inmates under 18	Female Inmates under 18	Under 18's are housed in General Population	Under 18's are housed with inmates aged 18-21	Under 18's are housed separately from inmates aged 18 and over	Programs designed specifically for under 18's	Notes
Kansas	14	32 (19)	30	2	•			No special provision.	There are sixteen 14 and 15 -year-olds (not included in "Total Inmates Under 18" column) convicted as adults but housed by the Department of Social and Rehabilitation Services in juvenile facilities, however, state law does allow for under 16's to be housed in five of the seven state adult facilities.
Kentucky (DP)	18	- (-)	-	-			•		All under 18's convicted as adults are housed by the Department of Juvenile Justice and transferred to the jurisdiction of the Department of Corrections when turning 18.
Louisiana (DP)	14	30 (21)	29	1	•			No special provision.	Under 18's are housed throughout the state's 10 facilities.
Maine	no. min	1 (-)	1	-	•			Education is mandatory.	
Maryland	16	79 (N/A)	76	3	•			Those housed in Maryland Correctional Training Centre have access to special education and counselling.	Inmates are housed throughout the general population. Those aged under 18 can be housed in the Youthful Offenders Program at the Maryland Correctional Training Center (max. age 18) if the inmate has less than 10 years of sentence to serve and is medium security. However those in Youthful Offenders Program are only segregated for dormitories and not at other times i.e recreation, meals etc.

STATE	Min. Age for Adult Prison	Total Inmates under 18	Male Inmates under 18	Female Inmates under 18	Under 18's are housed in General Population	Under 18's are housed with inmates aged 18-21	Under 18's are housed separately from inmates aged 18 and over	Programs designed specifically for under 18's	Notes
Massachusetts	14	12 (9)	11	1	• 11 approx.*		• 1 approx.*	No special provision.	Under 17-year-olds convicted as youthful offenders are housed separate from inmates aged 17 and over, in adult facilities. Those aged 17 or not convicted as youthful offenders are housed in the general population of adult facilities. *Breakdown based on age statistics (see Table 2)
Michigan	no min.	212 (89)	208	4	• 137 approx.	• 75 approx.		Special educational and rehabilitation programs for all. Vocational programs available for females only.	Most males are housed in a unit of the Thumb Regional Correctional Facility (max. age 19) or the Michigan Reformatory (17 to 26-year-olds). Some may be housed in general population of a low security facility. Females are unsegregated in the Scott Correctional Facility or the Crane Women's Facility; the Department of Corrections states that it considers under-18 females to be at low risk of harm from adults.
Minnesota	14	28 (15)	24	4	• 4	• 24		Special education, rehabilitation and self-esteem programs.	Males are housed in a young offenders unit (max. age 21) at the Minnesota Correctional Facility and segregated from the over 21 population except for programs. Females are unsegregated in general population of the Shakopee Facility where inmates are housed in single cells.
Mississippi (DP)	13	152 (103)	149	3	•			No special provision.	New male youthful offenders unit (13 to 19-year-olds) to be constructed at Walnut Grove - capacity 500 - completion expected 1999.

STATE	Min. Age for Adult Prison	Total Inmates under 18	Male Inmates under 18	Female Inmates under 18	Under 18's are housed in General Population	Under 18's are housed with inmates aged 18-21	Under 18's are housed separately from inmates aged 18 and over	Programs designed specifically for under 18's	Notes
Missouri (DP)	<i>no min.</i>	105 (22)	102	3	• 55*	• 50*		<i>Regimented Discipline Program at Farmington Correctional Unit.</i>	<i>North East Missouri Correctional Institution has recently opened a 50-bed unit (max age 18). Under 18, non-violent, first time offenders can also be housed at the Regimented Discipline Unit at Farmington Treatment Center; however, there is no maximum age limit. Otherwise under 18's are housed in general population. *Breakdown based on capacity of unit for 18-year-olds and under at North East Missouri Correctional Institution.</i>
Montana (DP)	12	281* (0)	86**	16**	• -	• 281		<i>Aspen Youth Alternatives Program (wilderness program); Threshold Sex Offender Program; Life skills.</i>	<i>16 to 18-year-old males can be housed in general population of the Montana State Prison. 16 to 18 year old females can be housed in general population of the Montana Women's Prison. Under 18 males can be housed at the Pinehills Youth Correctional Facility (max. Age 18). Under 18 females can be housed at the Riverside Youth Correctional Facility (max. age 18). * Total under 18 population is a projected figure for fiscal year 1998. ** Statistics for males and females are not available for total under 18 inmate population.</i>
Nebraska	14	16 (16)	15	1	•			<i>Special Educational programs.</i>	<i>All under 18's are housed in the Nebraska Correctional Youth Facility which opened on 15 July 1998. However no upper age limit has been set yet - it is anticipated it will be 22.</i>

STATE	Min. Age for Adult Prison	Total Inmates under 18	Male Inmates under 18	Female Inmates under 18	Under 18's are housed in General Population	Under 18's are housed with inmates aged 18-21	Under 18's are housed separately from inmates aged 18 and over	Programs designed specifically for under 18's	Notes
Nevada (DP)	8	57 (26)	54	3	•			Educational programs.	Males are housed at Warm Springs Correctional Facility. Females are housed at Southern Nevada Women's Correctional Facility.
New Hampshire (DP)	12	-	-	-	•		•	No special provision.	All under 18's are currently housed by arrangement, in Pennsylvania juvenile facilities. However state law does allow for under 18's to be housed in general population of a New Hampshire adult facility.
New Jersey	14	34 (55)	30	4	•			No special provision.	Males are either housed in the general population or in one of three Youth Correctional Institution Complexes (max. age 26). Females may be housed in a "young adult offender" unit at the Correctional Institute for Women (max. age 26) or in the general population. Young Adult Offender status does not apply to under 26-year-olds sentenced to a mandatory minimum term without the possibility of parole.
New Mexico	14	5 (19)	5	-	•			No special provision.	Age is not considered in classification of inmates.
New York	16	312 (487)	300	12	•			Special programs available only at Greene and Washington Facilities.	Under 18's are housed throughout the state's 69 facilities. They can elect to go to Lakeview or Monterey Shock Incarceration Correctional Facilities, which conduct military style rehabilitation and offer shorter sentences.

STATE	Min. Age for Adult Prison	Total Inmates under 18	Male Inmates under 18	Female Inmates under 18	Under 18's are housed in General Population	Under 18's are housed with inmates aged 18-21	Under 18's are housed separately from inmates aged 18 and over	Programs designed specifically for under 18's	Notes
North Carolina (DP)	13	1097 (469)	1054	43	• 743	• 354		Under 16's receive regular counselling.	Under 18 males may be housed at the Western Youth Facility in Morganton (max. age 19) or at one of seven youth facilities for males aged up to 23. Females are housed either at the North Carolina Institution for Women or at the Fountain Correctional Center for Women, the Department of Corrections states that due to their low numbers females are unsegregated from the general population.
North Dakota	14	3 (2)	3	-	•			No special provision.	
Ohio	no min.	121 (85)	118	3		• 118	• 3	Education and life skills programs.	Males are held at the Madison Correctional Institution (max age 21). Females are housed in an adult facility and segregated except for programs.
Oklahoma (DP)	no min.	56 (115)	54	2	•			No special provision.	
Oregon	16	138 (10)	116	22	•			No special provision.	Under 18's are mainly housed in the Oregon State Correctional Institution or in any of the other facilities depending on program needs.
Pennsylvania (DP)	no min.	114 (53)	113	1		• 113	• 1	Education, Group Therapy and mental health treatment.	Males are housed in the Young Adult Offender Unit at the State Correctional Institution at Houtzdale (15 to 21-year-olds). Females are segregated in adult facilities.

STATE	Min. Age for Adult Prison	Total Inmates under 18	Male Inmates under 18	Female Inmates under 18	Under 18's are housed in General Population	Under 18's are housed with inmates aged 18-21	Under 18's are housed separately from inmates aged 18 and over	Programs designed specifically for under 18's	Notes
Rhode Island	<i>no min</i>	11 (9)	8	3	•			Education is mandatory.	Statistic includes pre-trial detainees. Males are either housed at the Intake Service Centre or MD2. Females are housed at the Jonathan Arnold Building or Dorothy Bix Building.
South Carolina (DP)	17	182 (870)	177	5	•			Only in Youthful Offenders Institution.	Males sentenced under Youthful Offenders Act are housed at the Givens Correctional Center (max. age 24) or the Manning Correctional Institution (max. age 24). Other under 18 males are housed in the general population. Females are housed in the Columbia Women's Correctional Institution where only "youthful offenders" are separated from the general population.
South Dakota (DP)	10	10 (4)	9	1	•			No special provision.	
Tennessee	<i>no min.</i>	33 (15)	32	1			•	Education to General Education Diploma.	Males are housed at the North West Correctional Complex. Female is housed at the Tennessee Prison for Women. All are kept separate until turning 18.
Texas (DP)	16	212 (64)	208	4	• 82	• 130		Educational, Vocational, Mentor and Faith-based programs at Clemens Unit only.	Males convicted as youthful offenders are housed at the Clemens Unit in Brazoria (max. age 18). Female youthful offenders are housed at the Gatesville Reception Center (max. age 18). Those not convicted as youthful offenders are housed in the general population throughout the state.
Utah (DP)	14	19 (11)	18	1	•			No special provision.	Approximately 70 percent of under 18's are classified as violent offenders and housed with adult violent offenders.

Vermont	16	10 (9)	10	-	• Under 18's are housed in General Population	Under 18's are housed with inmates aged 18-21	Under 18's are housed separately from inmates aged 18 and over	Education is mandatory. Programs designed specifically for under 18's	Notes
STATE	Min. Age for Adult Prison	Total Inmates under 18	Male Inmates under 18	Female Inmates under 18					
Virginia (DP)	14	81 (71)	81	-	•	•	Education and drug rehabilitation.	Under 18's are housed in youthful offender units of adult facilities such as the James River Correctional Facility (max age 21). Youthful offenders are segregated from general population except for programs.	
Washington	12	88 (83)	80	8	• approx. 0*	• Approx. 88*	All Youthful Offenders receive : High School education, Anger and Stress management. Males have access to janitorial training, chemical dependency, and computer skills. Females have access to weekly therapy with psychologist, vocational training.	Under 18 males convicted as youthful offenders are housed at the Clallam Bay Correctional Center. Those adjudicated as adults are housed in the general population of the Washington State Penitentiary and not segregated. All under 18 females are housed at the Washington Correctional Center for Women; those convicted as youthful offenders are segregated whereas those convicted as adults are housed in the general population. *Breakdown based on capacity of Clallam Bay under 18 unit.	
Wisconsin	15	144 (52)	138	6		•	Education and rehabilitation.	All under 18's are housed at Prairie du Chien Facility for 15 to 21-year-olds. Another facility for the same age range has opened in the summer 1998 in Riscine.	

STATE	Min. Age for Adult Prison	Total Inmates under 18	Male Inmates under 18	Female Inmates under 18	Under 18's are housed in General Population	Under 18's are housed with inmates aged 18-21	Under 18's are housed separately from inmates aged 18 and over	Programs designed specifically for under 18's	Notes
West Virginia	18	- (7)	-	-			•		<i>All under 18's convicted as adults are housed by the West Virginia Division of Juvenile Services. On turning 18, inmates are returned to court for sentencing to an adult facility.</i>
Wyoming (DP)	13	16 (17)	16	-	•			No special provision.	

TABLE 2: Age distribution of children in state adult correctional institutions

	<i>13 year olds</i>	<i>14 year olds</i>	<i>15 year olds</i>	<i>16 year olds</i>	<i>17 year olds</i>	<i>Not available</i>
<i>USA</i>	<i>1</i>	<i>29</i>	<i>182</i>	<i>1052</i>	<i>3940</i>	
<i>Alabama</i>			<i>1</i>	<i>21</i>	<i>101</i>	
<i>Alaska</i>				<i>4</i>	<i>25</i>	
<i>Arizona</i>		<i>2</i>	<i>10</i>	<i>31</i>	<i>97</i>	
<i>Arkansas</i>			<i>1</i>	<i>20</i>	<i>72</i>	
<i>California</i>						<i>172</i>
<i>Colorado</i>		<i>1</i>	<i>13</i>	<i>32</i>	<i>45</i>	
<i>Connecticut</i>		<i>3</i>	<i>7</i>	<i>145</i>	<i>330</i>	
<i>Delaware</i>		<i>2</i>	<i>6</i>	<i>8</i>	<i>16</i>	
<i>District of Columbia</i>				<i>2</i>	<i>15</i>	
<i>Florida</i>		<i>5</i>	<i>42</i>	<i>163</i>	<i>453</i>	
<i>Georgia</i>			<i>8</i>	<i>24</i>	<i>162</i>	
<i>Hawaii</i>					<i>4</i>	
<i>Idaho</i>			<i>2</i>	<i>3</i>	<i>6</i>	
<i>Illinois</i>					<i>161</i>	
<i>Indiana</i>			<i>2</i>	<i>9</i>	<i>81</i>	
<i>Iowa*</i>				<i>5</i>	<i>38</i>	
<i>Kansas</i>				<i>4</i>	<i>28</i>	
<i>Kentucky</i>						<i>0</i>
<i>Louisiana</i>		<i>1</i>	<i>3</i>	<i>20</i>	<i>6</i>	
<i>Maine</i>					<i>1</i>	
<i>Maryland</i>				<i>17</i>	<i>62</i>	
<i>Massachusetts</i>				<i>1</i>	<i>11</i>	
<i>Michigan</i>			<i>5</i>	<i>43</i>	<i>164</i>	
<i>Minnesota</i>				<i>7</i>	<i>21</i>	
<i>Mississippi</i>		<i>3</i>	<i>11</i>	<i>42</i>	<i>96</i>	

<i>Missouri</i>			3	13	89	
<i>Montana</i>						281
STATE	13 year olds	14 year olds	15 year olds	16 year olds	17 year olds	Not available
<i>Nebraska*</i>			2	3	19	
<i>Nevada</i>		1	6	15	35	
<i>New Hampshire</i>						0
<i>New Jersey</i>				8	26	
<i>New Mexico</i>				2	3	
<i>New York State</i>				27	285	
<i>North Carolina</i>	1	10	36	245	805	
<i>North Dakota</i>					3	
<i>Ohio*</i>			4	27	114	
<i>Oklahoma*</i>				9	39	
<i>Oregon</i>			7	40	91	
<i>Pennsylvania</i>		1	3	22	88	
<i>Rhode Island</i>			1	1	9	
<i>South Carolina</i>					182	
<i>South Dakota</i>				2	8	
<i>Tennessee</i>				3	30	
<i>Texas</i>				39	173	
<i>Utah</i>				4	15	
<i>Vermont</i>				2	8	
<i>Virginia</i>			6	14	61	
<i>Washington</i>		1	2	21	64	
<i>Wisconsin</i>			5	25	114	
<i>West Virginia</i>						0
<i>Wyoming*</i>			3	12	1	

* Data on age was collected at a different time to the data in Table 1, so the number of children shown in the two tables differs.

1. J Zeidenberg, V Schiraldi and M Schindler, "Children spending Christmas in Adult Jails", Justice Policy Institute, Washington DC, 1997.
2. Description of conditions at a facility in Virginia given by the psychologist supervisor, Joint Legislative Audit and Review Commission, *The operation and Impact of Juvenile Corrections Services in Virginia*, Commonwealth of Virginia, Richmond, Virginia, 1997, 70-71.
3. *Amy Barton et al v Wackenhut Corrections Corp et al*, Case number 3:97 CV 2677-H in the US District Court for the Northern District of Texas, Dallas Division, 1998.
4. M Hargrove, "Tangles, troubles: time for change," *Arkansas Democrat-Gazette*, June 28, 1998. On June 19 State Governor Huckabee announced that he was closing the facility within 60 days, 1998.
5. *Barry A et al v Richard Stalder et al*, US District Court for the Western District of Louisiana Monroe Division, 1998.
6. H Snyder, "Juvenile arrests 1996," *Juvenile Justice Bulletin*, Office of Juvenile Justice and Delinquency Prevention, 1997 - the data indicates only the number of arrests, not the number of children arrested. There are likely to be many more arrests that children arrested because some children are arrested more than once in a year. Children were arrested both for alleged violations of the criminal law and for violations of laws that apply only to children, for example running away from home.
7. For example, international standards specify that accused or convicted children should not be identified publicly. (ICCPR Article 14,1; UN Standard Minimum Rules for the Administration of Juvenile Justice, Rule 8.) US States are increasingly eroding confidentiality restrictions on the public reporting of cases involving children. See P. Torbet et al, *State Responses to Serious and Violent Juvenile Crime*, Office of Juvenile Justice and Delinquency Prevention, Washington D.C., 1996.
8. United States of America: Human Rights Concerns in the Border Region with Mexico, AI Index AMR 51/03/98.
9. For example, the Convention on the Rights of the Child applies to people under 18 "unless under the law applicable to the child, majority is attained earlier." (Article 1) and prohibits the death penalty for people under 18 (Article 37(a)); the UN Rules for the Protection of Juveniles Deprived of their Liberty apply to every person under 18. Thirty seven of the 50 states and Washington DC specify 18 as the age up to which accused offenders can be tried in courts and under laws specifically applicable to young people.
10. See Amnesty International, "*United States of America: Rights for All*", AI Index AMR 51/35/98, pp. 131.
11. See, for example, *ACA Standards for Small Juvenile Detention Facilities*, American Correctional Association, Maryland, 1991.
12. National Commission on Correctional Health Care, *Standards for Health Services in Juvenile Confinement Facilities*, Chicago, Illinois, 1984.
13. R Shepherd ed., *The ABA Juvenile Justice Standards - annotated*, American Bar Association, Chicago, Illinois, 1996.
14. California Investigative Team, *Investigation of the death of a child at an out-of-state facility and the safety and well-being of children remaining in that placement*, California Department of Social Services, unpublished report, July 1, 1998.
- 15 *Los Angeles Times*, 2 October 1998, A3.
16. J C Howell, *Juvenile justice and youth violence*, Sage, California, 1997, 12-13.
17. B. Feld, "The punitive juvenile court and the quality of procedural justice: disjunctions between rhetoric and reality", *Crime and Delinquency*, Vol 36, No 4, October 1990.
18. Sources of data: M. Sickmund, "Offenders in juvenile court, 1995", *Juvenile Justice Bulletin*, Office of Juvenile Justice and Delinquency Prevention, 1997; M Sickmund et al, *Juvenile Court Statistics 1995*, Office of Juvenile Justice and Delinquency Prevention, 1998.

19. M. Sickmund, H. Snyder and E. Poe-Yamagata, *Juvenile Offenders and Victims: 1997 Update on Violence*, Office of Juvenile Justice and Delinquency Prevention, Department of Justice, Washington DC 1997, 38.
20. S Guarino-Ghezzi and E Loughran, *Balancing juvenile justice*, Transaction Publishers, New Brunswick, New Jersey, 1996, 2.
21. Office of Juvenile Justice and Delinquency Prevention, *An Assessment of Space Needs in Juvenile Detention and Correctional Facilities, Report to Congress*, 1998.
22. M. Sickmund, H. Snyder and E. Poe-Yamagata, *Juvenile Offenders and Victims: 1997 Update on Violence*, Office of Juvenile Justice and Delinquency Prevention, Department of Justice, Washington DC 1997, 41.
23. For example see National Juvenile Detention Association, "Position Statement". Parent et al, *Conditions of Confinement: juvenile detention and corrections facilities*, Office of Juvenile Justice and Delinquency Prevention, Washington DC, 1994, 67, (hereafter referred to as the Conditions of Confinement Study), studied more than 900 public and private detention and correctional facilities throughout the USA, in which more than 60,000 children were in custody. It found "a positive relationship between crowded conditions and injuries inflicted by juveniles on staff... In detention centers, facilities that were over their design capacity had higher rates of suicidal behavior and short-term confinement." See also ACA public correctional policy on crowding and excessive workloads in corrections - "overpopulation of correctional programs and facilities can negate the effectiveness of management, programs, security and physical plant operations and can endanger offenders, staff and the public at large." "High population density within correctional facilities may be associated with increased physical and mental problems, more frequent disciplinary incidents, higher rates of assault and suicide, and decreased effectiveness in programs and services."
24. California Youth Authority, "CYA Facts", February 1998. In 1994, the institutions were at 146% of their capacity: California Youth Authority News, May 1995.
25. John Howard Association, *Assessment of conditions at the Cook County Juvenile Temporary Detention Center*, Chicago, Ill, 1998, 21.
26. Illinois Department of Corrections, Statistical Summary of the Juvenile Division FY93-FY96, Chicago, Illinois, no date.
27. Letter from Judge F.G. Burton to Dr. H. Miller, Director, Family Independence Agency, August 15, 1996.
28. Internal memorandum of Family Independence Agency, April 17, 1998.
29. D Halbfinger, "City detaining more juveniles before trial," *New York Times*, July 2, 1998.
30. *Portland Press Herald*, November 18, 1997.
31. *Portland Press Herald*, December 10 and 13, 1997.
32. Joint Legislative Audit and Review Commission, *The Operation and Impact of Juvenile Corrections in Virginia*, Commonwealth of Virginia, Richmond, 1997.
33. Letter from Nancy Ross, Executive Director, Commonwealth of Virginia Commission in Youth, to Amnesty International, February 19, 1998.
34. Report of Division of Youth Services Inspection, January-February 1996, cited in Human Rights Watch, *High Country Lockup - Children in Confinement in Colorado*, Human Rights Watch, New York, 1997, 40-41.
35. Ibid 39.
36. S. McCully, "Detention reform from a judge's viewpoint", in I. Schwartz and W. Barton, *Reforming juvenile detention - no more hidden closets*, Ohio State University Press, Columbus, 1994, 162.
37. *Miami Herald*, 22 April 1998 and *The New York Times*, 23 April 1998.

38. Cathy Brock, supervisor of a facility for runaway children in Dallas, Texas, cited in F Butterfield, "Prisons replace hospitals for the nation's mentally ill," *The New York Times*, 5 March 1998.
39. V. Schiraldi and J. Zeidenberg, "The pods of Elmore County: a glimpse into the rhetoric behind The Juvenile Crime Bill", The Justice Policy Institute, Washington DC, 1997, 5-6.
- 40 *The Oakland Tribune*, 26 September 1998.
41. "The treatment of juveniles in the United States," paper presented to the Penal Reform International Conference, Puerto Rico, December 6, 1996, Youth Law Center, San Francisco.
42. "Everyone has the right to life, liberty and security of person" - Article 3, Universal Declaration of Human Rights; "Everyone has the right to liberty and security of person" - Article 9, International Covenant on Civil and Political Rights. The US Declaration of Independence identifies "liberty" as one of the "unalienable rights"; Article V of the US Constitution provides that no person may be "deprived of life, liberty, or property, without due process of law..."
43. *Schall v Martin*, 467 US 253, (1984).
44. S. McCully, "Detention reform from a judge's viewpoint", in I. Schwartz and W. Barton, *Reforming juvenile detention - no more hidden closets*, Ohio State University Press, Columbus, 1994, 164.
45. Research indicates that a prior record of being in custody may significantly increase the likelihood of a child being transferred to adult court or incarcerated if they are subsequently accused or adjudicated - see studies cited in I. Schwartz and Barton, *ibid.* 17.
46. "Research has clearly indicated that delinquency is least likely to progress to adult criminality when one or both two key life transitions are experienced by at-risk youth: (1) the forming of long-term relationships (i.e. marriage); and (2) gainful employment. Traditional justice system responses to juvenile crime do little to facilitate these transitions. In fact, persistent reliance on incarceration appears to lower the odds that delinquent youth will form permanent bonds or find employment." M. Jones and B. Krisberg, *Images and reality: Juvenile Crime, Youth Violence and Public Policy*, National Council on Crime and Delinquency, San Francisco, 1994, 42.
47. *Lake Charles American Press*, January 21, 1998.
48. US Department of Justice, "Findings of Investigation of State Juvenile Justice Facilities", Georgia, February 13, 1998.
49. *Doe v Younger*, Civil Action No. 91-187, US District Court Eastern District of Kentucky at Covington. The court examined the records of children admitted in the period October 1994-July 1995. The court concluded: "It is clear, then, that many juveniles can be and are held in (the facility) for many days who are not charged with a crime and who have not been afforded the rights of those who are charged." It found that the conditions and treatment of the children were so bad as to violate US laws.
- 50 An indication of the lack of correlation between crime and detention rates is provided by comparing states' crime arrest rates with rates of juveniles detained in custody in public facilities. For the former see H. Snyder, "Juvenile Arrests 1996," Office of Juvenile Justice and Delinquency Prevention, Washington DC, 1997. For the latter see M. Sickmund et al, *Juvenile Offenders and Victims: 1997 Update on Violence*, Office of Juvenile Justice and Delinquency Prevention, Washington DC, 1997. A similar comparison is not possible for committed (ie. sentenced) offenders, because the data for private facilities is not disaggregated by state of origin of offenders.
51. M. Jones and B. Krisberg, *Images and reality: Juvenile Crime, Youth Violence and Public Policy*, National Council on Crime and Delinquency, San Francisco, 1994, 43. Another study similarly concluded: "these data suggest that juvenile detention is driven primarily by policy (i.e. legislative and administrative concerns), rather than by demographic issues or any demonstrable and objective "need" to detain children", B. Lubow and J. Tulman, "The unnecessary detention of children in the District of Columbia," *The District of Columbia Law Review*, vol. 3, No. 2, Fall 1995, Introduction, no page cited. Support for this conclusion is evident in a 1993 survey of state reforms in juvenile corrections, which found that "states' interests in deinstitutionalization seemed not to be impeded by serious crime rates. In fact, in 1993, states that were planning or implementing deinstitutionalization were most likely to be ranked in the top twenty for index (relatively serious) crime arrests", S. Guarino-

Ghezzi

and E. J. Loughran, *Balancing juvenile justice*, Transaction Publishers, New Brunswick, New Jersey, 1996, 37.

52. For example Broward County, Florida - in response to a lawsuit concerning overcrowding and associated bad conditions, the county developed screening guidelines that reduced the average daily population by more than half within a few years: G. Weibush, C. Baird, B. Krisberg, D. Onek, "Risk Assessment and Classification for Serious, Violent, and Chronic Juvenile Offenders" in J. Howell, B. Krisberg, J. Hawkins and J. Wilson, *Serious, Violent, and Chronic Juvenile Offenders - A Sourcebook*, Sage, California, 1995, 192; see examples cited in M. Jones and B. Krisberg, *Images and reality: Juvenile Crime, Youth Violence and Public Policy*, National Council on Crime and Delinquency, San Francisco, 1994 who conclude: "Incarceration rates reflect policy choices and are not driven by public safety needs." (at p43); R. Sheldon, "An assessment of the detention diversion advocacy project," unpublished, 1997, available from Center on Juvenile and Criminal Justice, Washington DC.

53. R. DeComo, S. Tunis, B. Krisberg and N. Herrera, *Juveniles Taken into Custody Research Program: FY 1992 Annual Report* (Washington DC, Office of Juvenile Justice and Delinquency Prevention US Department of Justice, 1993), cited in M. Jones and B. Krisberg, *Images and reality: Juvenile Crime, Youth Violence and Public Policy*, National Council on Crime and Delinquency, San Francisco, 1994, 27. This report also cites a study of youth confined in 14 States which found that only between 11 per cent and 44 per cent had committed "violent and serious offenses", and that "an average of 31 per cent of juveniles housed in these state facilities could be placed in less secure settings and at much less cost to taxpayers based on objective public safety risk factors." B. Krisberg et al cited at page 28.

54. D. Olson & N. Smith, "Juvenile detention admissions up sharply; largest increase in rural areas", *The Compiler*, Summer 1996, 16.

55. S. Guarino-Ghezzi and E. J. Loughran, *Balancing juvenile justice*, Transaction Publishers, New Brunswick, New Jersey, 1996, 10.

56. For example, see B. Krisberg et al, "Graduated sanctions for serious, violent and chronic juvenile offenders," in J. J. Howell et al, *Serious, violent and chronic juvenile offenders, a sourcebook*, Sage, California, 1995; *Home-based services for serious and violent juvenile offenders*, Center for the Study of Youth Policy, University of Pennsylvania, Philadelphia, Pennsylvania, 1994.

57. E.g. A study in Sacramento County in 1992 reported that if detention admission and risk screening criteria had been used the County would have required 45 per cent fewer detention beds - The Annie E Casey Foundation, *The Juvenile Detention Alternatives Initiative - A Progress Report*, author, Baltimore, Maryland, 1997.

58. Judge Glenda Hatchett, presiding judge of Fulton County Juvenile Court, Atlanta, Georgia, reported in the New York Times, July 21, 1997.

59. *Jamie B et al v Tino Hernández and John Johnson*

60. Joint Legislative Audit and Review Commission, *The Operation and Impact of Juvenile Corrections Services in Virginia*, Senate Document No. 19, Commonwealth of Virginia, Richmond, Va, 1997, 22. The Commission concluded: "As a tool to relieve overcrowding in the short term, and prevent unnecessary overcrowding in the long term, the department should conduct an audit of the existing population in the JCCs and identify all juveniles with non-violent criminal records and short-term sentences who could benefit from supervision or treatment in the community. Efforts should be made to develop community supervision or placements for these offenders so that they can be removed from the JCCs.", 66. The state has informed Amnesty International that since the report, Virginia has provided an "unprecedented amount of fiscal support" to both community and institutional correctional services, letter to Amnesty International from Nancy Ross, Executive Director, Commission on Youth, 19 February 1998.

61. Annie E. Casey Foundation, *The juvenile detention alternatives initiative - a progress report*, author, Baltimore, 1997, 29.

62. The phrases are from commentators in major news publications, cited in J. Howell, *Juvenile Justice and Youth Violence*, Sage, California, 1997, 47 and 195.

63. I. Schwartz and W. Barton, *Reforming juvenile detention: no more hidden closets*, Ohio State University Press, Columbus, Ohio, 1994, 178.
64. P. Wald, cited in I. Schwartz and W. Barton, *Reforming juvenile detention: no more hidden closets*, Ohio State University press, Columbus, Ohio, 1.
65. Cited in US Department of Justice “Findings of investigations of secure correctional facilities for juveniles in Louisiana,” June 18, 1997.
66. *John B. et al v Nancy Menke et al*, Civil Action 3-98 0168 in US District Court, Middle District of Tennessee, Nashville.
67. *ME et al v Lawton Chiles et al*, Case No. 90-1008-CIV-Kehoe, in US District Court, Southern District of Florida, Miami Division.
68. Independent Expert Panel, *Report of the Independent Study of Behavioral Health Services for Title XIX Eligible Children in Maricopa County, Arizona*, 1998.
69. M. Armstrong, *Adolescent Pathways*, Vera Institute of Justice, New York, 1998, 21.
70. J. Rainey and J. Meyer, “Mounting criticism about conditions in a locked juvenile ward at a Norwalk hospital, soon to be the last state facility of its kind, has intensified the debate about how to treat mentally ill children,” *Los Angeles Times*, November 9, 1997.
- 71 *Maine Sunday Telegram*, 20 September 1998
- 72 Memorandum from E. Richardson, Advocate to L. Olsen, Acting Superintendent, March 31 1998, re “Use of Restraint Chairs”, on file at Amnesty International.
73. US Department of Justice investigation of secure correctional facilities for children in Louisiana, letter to Governor Mike Foster, July 15, 1996.
74. “Findings of Investigation of Secure Correctional Facilities for Juveniles in Louisiana ”, letter to Honorable Mike Foster, Governor of Louisiana, June 18, 1997 from I.K. Pinzler, Acting Assistant Attorney General, Civil Rights Division, US Department of Justice.
75. US Department of Justice Investigation of secure correctional facilities for children in Louisiana, letter to Governor Mike Foster October 3, 1996.
76. *Amy Barton et al v Wackenhut Corrections Corp et al*, Case Number 3:97 CV 2677-H in the US District Court for the Northern District of Texas, Dallas Division, 1998.
77. Affidavit of Orlando Martinez, August 1997.
78. William P. v Corrections Corporation of America, CA number 3:98-0290-17, US District Court for the District of South Carolina.
79. US Department of Justice Findings of Investigation of Conditions, 1998.
80. US Department of Justice, Findings of Investigation of State Juvenile Facilities, 1998.
81. Decision of Judge S Robinson, 11th Judicial Circuit, Dade County, Florida, 20 November 1997; see also *Miami Herald*, November 15, 1997.
82. Joint Legislative Audit and Review Commission, *The operation and impact of juvenile corrections services in Virginia*, Senate Document No.19, Richmond, Virginia 1997.
83. “Memorandum in support of motion for preliminary injunction re: pepper spray, *James Horton et al v Bob Williams et al*”, US District Court, Western District at Tacoma, No. C94-5428 RJB.
84. For example, Rule 54(1) of the Standard Minimum Rules for the Treatment of Prisoners permit staff to use force for self defence, to prevent escape, and in cases of active or passive physical resistance to an order based on law or regulations. Rule 64 of the UN Rules for the Protection of Juveniles Deprived of their Liberty permits the use of instruments of restraint and force to “exceptional cases, where all other control methods have been exhausted and failed...in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property.”

85. This assessment is based on the fact that in the Conditions of Confinement study 92 per cent of facilities reported that they had written policies on the use of force and restraints that conformed with American Correctional Association standards - these standards are generally consistent with the international standards, 173.
86. California Youth Authority, "Restraint policies and procedures", 2080.
87. Conditions of Confinement, 173, 176 and 252.
88. S. Burrell, "Legal issues relating to conditions of confinement for detained children", Youth Law Center, San Francisco, 1997.
89. Amnesty International, *United States of America: Rights for All*, AI Index AMR 51/35/98, 1998.
90. "Performance-based standards in juvenile correction and detention facilities," unpublished, document dated July 23, 1998. The project is being undertaken by a group of juvenile justice experts and is funded by the Office of Juvenile Justice and Delinquency Prevention.
91. Letter from F Boyd, Director, Department of Juvenile Justice, South Carolina, to Judge Joseph Anderson, February 17, 1998. The judge is monitoring the implementation of remedial measures ordered as a consequence of the legal action, *Alexander v Boyd*.
92. Letter to Amnesty International from Department of Justice, 26 February, 1998.
93. Amnesty International, *United States of America: Rights for All*, AI Index, AMR 51/35/98.
94. The case is identified as *In the interest of: ET, a child, et al*, Case number 95-5493 in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida; the judge's order is dated 20 November, 1997.
95. *Conditions of Confinement*, 172.
96. National Commission on Correctional Health Care, *Standards for Youth Services in Juvenile Confinement Facilities*, Chicago, Illinois, 1984, 38.
97. S. Burrell, "Legal issues relating to conditions of confinement for detained children", Youth Law Center, San Francisco, 1997.
98. Standards 8.7B and 8.7C. US juvenile justice conditions expert Dale Parent informed Amnesty International that many facilities use "room confinement." This may not be solitary because many children are not in single sleeping rooms; it is less onerous than confinement in a room used only for isolation because children have access to whatever property they are allowed under facility rules; room confinement is often in unlocked rooms. Mr Parent also advises that in most systems ABA examples of "minor" misconduct such as assault and drug possession would be treated as major misconduct. Communication to AI, 16 June 1998.
99. *Conditions of Confinement*, 7.
100. *Ibid.*, 181.
101. *Ibid.*, 225.
102. California Investigative Team, "Investigation of the death of a child at an out-of-state facility and the safety and well-being of children remaining in that placement," Department of Social Services, California, July 1998, pages 12-17.
103. Findings of Investigation of Secure Correctional Facilities for Juveniles in Louisiana, letter to Honorable Mike Foster, Governor of Louisiana, June 18, 1997 from I.K. Pinzler Acting Assistant Attorney General, Civil Rights Division, US Department of Justice.
104. Findings of investigation of State Juvenile Justice Facilities, letter to Honorable Zell Miller, Governor of Georgia, February 13 1998, from Bill Lann Lee, Assistant Attorney General, Civil Rights Division, US Department of Justice.
105. John Howard Association, *Assessment of conditions at the Cook County Juvenile Temporary Detention Center*, Chicago, Illinois, 1998.

106. *John Doe v Don Younger*, Civil Action No. 91-187, US District Court, Eastern District of Kentucky at Covington.
107. Findings of investigation of State Juvenile Justice Facilities, letter to Honorable Zell Miller, Governor of Georgia, February 13 1998, from Bill Lann Lee, Assistant Attorney General, Civil Rights Division, US Department of Justice.
108. J P Treaty, "Detention Services for Juveniles", in B Glick and A Goldstein, eds., *Managing Delinquency Programs that Work*, American Correctional Association, Maryland, 1995, 86.
109. D L Davis et al, "Prevalence of emotional disorders in a juvenile justice institutional population", *American Journal of Forensic Psychology*, Volume 9, Number 1, 1991, 5-17 at 5.
110. F Marteller et al, "The prevalence of substance abuse disorders among juveniles admitted to regional youth detention centers operated by the Georgia Department of Children and Youth Services", 1998.
111. *Conditions of Confinement*, 10.
112. *Ibid*, 157.
113. Findings of investigation of State Juvenile Justice Facilities, letter to Honorable Zell Miller, Governor of Georgia, February 13 1998, from Bill Lann Lee, Assistant Attorney General, Civil Rights Division, US Department of Justice.
114. "Memorandum of Agreement between the United States and the State of Georgia concerning Georgia Juvenile Justice Facilities", 1998.
115. Joint Legislative Audit and Review Commission, *The operation and impact of juvenile corrections services in Virginia*, Commonwealth of Virginia, Richmond, Virginia, 1997, 66.
116. E.g., see Office of Juvenile Justice and Delinquency Prevention Proposed Comprehensive Plan for Fiscal Year 1998. One of the projects mentioned is the National Institute of Mental Health, which is studying treatment modalities for attention deficit hyperactive disorder in children, including children who come into contact with the justice system.
117. *Conditions of confinement*, 157.
118. *The Bell*, National Mental Health Association, August 1998.
119. J Diulio Jr, "Stop crime where it starts", *New York Times*, July 31, 1996.
120. J C Howell, *Juvenile Justice and Youth Violence*, Sage, California, 1997, 196.
121. P Torbet et al, *State responses to serious and violent juvenile crime*, Office of Juvenile Justice and Delinquency Prevention, Washington DC, 1996.
122. Office of Juvenile Justice and Delinquency Prevention press release, June 11, 1998; at the time of writing (September 1998) a Bill being considered by the Senate proposes to provide funds to states on condition that they prosecute children aged 14 or older for a serious crime - "Violent and Repeat Juvenile Offender Act of 1997".
123. This figure has been calculated from data relating to the various avenues through which children can be prosecuted in the general criminal court:
- (a) "transfer" by a juvenile court judge because the circumstances are such that a juvenile court might not be able to impose a sufficiently severe penalty e.g. because the child has prior convictions - in 1995, juvenile court judges ordered some 9,700 cases involving juveniles to be transferred for trial in adult courts, 33 per cent more than in 1986 - M Sickmund, *Offenders in Juvenile Court*, 1995, Office of Juvenile Justice and Delinquency Prevention, Washington DC, 1997.
- (b) the law provides that the particular crime with which the child is charged can only be tried in an adult court - there is no national data on the number of children prosecuted under such provisions;
- (c) the law specifies that people under 18 are adults for the purposes of the criminal law "an estimated 180,000 cases involving 16- or 17-year-olds were tried in criminal court in 1994 because they were legally defined as adults under State law" - M Sickmund, H Snyder, E Poe-Yamagata, *Juvenile offenders and victims: 1997 update on violence*, Office of Juvenile Justice and Delinquency Prevention, Washington DC, 1997, 30;

(d) the law provides that the prosecutor can decide that a case should be tried in a criminal rather than juvenile court: there is no national data on the number of these cases - the national figure was estimated to be in 2,000 in 1978; "in 1993 Florida prosecutors alone filed criminal charges in 7,000 cases involving offenders under the age of 18." J C Howell, *Juvenile Justice and Youth Violence*, Sage, California, 1997.

124. D. Gilliard and A. Beck, Prison and jail inmates at midyear 1997, Bureau of Justice Statistics Bulletin, January 1998.

125. American Correctional Association, *1997 Directory, Juvenile and adult correctional departments, institutions, agencies, and paroling authorities*, American Correctional Association, Maryland, 1997, xxxi.

126. R. Hodgkin and P. Newell, *Implementation handbook for the Convention on the Rights of the Child*, UNICEF, New York, 1998, 550.

127. For example, see D Bishop et al, "The transfer of juveniles to criminal court: does it make a difference?" 42 *Crime and Delinquency*, 1996, 171; a number of studies are described in J Howell, *Juvenile justice and youth violence*, Thousand Oaks, 1997, chapter 5. The Office of Juvenile Justice and Delinquency Prevention is currently funding further research on this issue.

128E. Lotke and V. Schiraldi, "An analysis of juvenile homicides: where they occur and the effectiveness of adult court intervention," National Center on Institutions and Alternatives, Alexandria, Virginia, 1996, 2.

129. C. Struckman-Johnson et al, "Sexual Coercion reported by Men and Women in Prison," *The Journal of Sexual Research*, vol.33, No.1, 1996, 74.

130. Source, *Dallas Morning News*, cited in *Prison Legal News*, Volume 8, Number 6, June 1997, 22.

131. Violent and Juvenile Offender Act of 1997; see *Report of the Committee on the Judiciary, United States Senate, Report 105-108*, 9 October 1997.

132. US submission to Human Rights Committee examining compliance with ICCPR.

133. J. Zeidenberg, V. Schiraldi and M. Schindler, "Children spending Christmas in Adult Jails, Justice Policy Institute, Washington DC, 1997.

134. T. Grisso, "Society's retributive response to juvenile violence: a developmental perspective", *Law and Human Behaviour*, vol. 20, No 3, 1996, 240.

135. P. Torbet et al, *State responses to serious and violent juvenile crime*, Office of Juvenile Justice and Delinquency Prevention, Washington DC, 1996.

136. These states may not be the only ones where this penalty applies. Amnesty International did not undertake a comprehensive survey of states.

137. When it ratified the ICCPR, the US Government stated that it understood that Article 10, 3 "does not diminish the goals of punishment, deterrence and incapacitation as additional legitimate purposes for a penitentiary system." However, it did not reject rehabilitation as "the essential aim" of imprisonment, as the ICCPR requires.

138. US General Accounting Office, *Juvenile justice - juveniles processed in criminal court and case dispositions*, US General Accounting Office, Washington DC, 1995.

139. D. Dighton, "Transferring juveniles to criminal court is getting another look", *The Compiler*, Illinois Criminal Justice Information Authority, Summer 1996, 8, 10. See also Torbet et al, *State responses to serious and violent juvenile crime*, Office of Juvenile Justice and Delinquency Prevention, Washington DC, 1996: between 1992-1995 North Dakota and West Virginia legislated to make it mandatory that certain offences by youth above a specified age be tried in an adult rather than juvenile court.

140. Of the 9,700 cases judicially waived, 4,600 were for "person" offences, 3,300 related to property, 1200 to drug violations and 700 were "public order" matters, such as obstruction of justice. M. Sickmund, "Offenders in juvenile court", 1995, Office of Juvenile Justice and Delinquency Prevention, Washington DC, 1997, 6.

141. Study by E. Clarke, reported in D. Dighton, "Transferring juveniles to criminal court is getting another look", *The Compiler*, Illinois, Criminal Justice Information Authority, 1996, 8, 10.
142. Ibid. 9.
143. General Accounting Office, *Juvenile justice: juveniles processed in criminal court and case disposition*, General Accounting Office, Washington DC, 1995.
144. M Soler, "The treatment of juveniles in the United States", paper presented to Penal Reform International Conference, Puerto Rico, December, 1996, 8.
145. R. Hodgkin and P. Newell, *Implementation handbook for the Convention on the Rights of the Child*, UNICEF, New York, 1998, 550.
146. H. Snyder and M. Sickmund, *Juvenile offenders and victims: a national report*, Office of Juvenile Justice and Delinquency Prevention, Washington DC, 1995, 88.
147. L. Szymanski, "Lower age of juvenile court delinquency jurisdiction," *NCJJ Snapshot*, National Center for Juvenile Justice, Pittsburgh, 1997.
148. Judge Glenda Hatchett, "Why we can't wait: the juvenile court in the new millennium", *Crime and Delinquency*, vol 44, No 1, January 1998, 85.
149. The most recent national survey found that the mean elapsed time from date of arrest to conviction for a felony in general criminal courts was about 6 months and that it took 9 months from the time of arrest to sentencing in cases involving a jury trial - J. Brown and P. Langan, "State court sentencing of convicted felons, 1994," Bureau of Justice Statistics, US Department of Justice, Washington DC, 1998. In their study of juvenile courts, J. Butts and G. Halemba found that juvenile court case processing times were "most likely" shorter, but that "the magnitude of the difference may be less than commonly believed." - "Delays in juvenile justice: findings from a national survey," 45 *Juvenile and Family Court Journal*, 1994, 33. J. Butts reports that while processing in juvenile courts is "in general" speedier, a "considerable proportion of the nation's delinquency caseload takes far longer to reach disposition than any of the time frames recommended by nationally known juvenile justice standards." - "Speedy trial in the juvenile court," *American Journal of Criminal Law*, volume 23, number 3, Spring 1996. Juvenile court delays of 8 months have been reported in Louisiana - Fox Butterfield, "Justice besieged", *New York Times*, July 22, 1997.
150. From transcript, *The People of the State of Colorado v John Dannel*, District Court, County of Pueblo, State of Colorado, Case Number 97CR1335.
151. J. Zeidenberg, V. Schiraldi and M. Schindler, "Children spending Christmas in Adult Jails, Justice Policy Institute, Washington DC, 1997.
152. AI letter to Don Stapley, Chairman, Maricopa County Board of Supervisors, Phoenix Arizona, 27 July 1997.
153. S. Burrell, "Legal issues relating to conditions of confinement for detained children," Youth Law Center, San Francisco, 1997.
154. For example, in late 1996 the Pennsylvania Department of Education was sued for denying education services to school-aged youth detained in county prisons and jails. In late 1997, a substantial element of the suit was settled when the Department agreed to provide programs for children with special education needs.
- 155 Additional Protocols I and II to the Geneva Conventions of 12 August 1949 relating to the protection of victims of armed conflict not of an international character, articles 77.5 and 6.4 respectively.
- 156 Article 18 of the United Nations Convention of the Law of Treaties (Vienna, 1969)
- 157 The reservation reads: "The United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age."

158 The countries are: Belgium, Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain, Sweden.

159 The 24 states are (minimum age, either by statute or (US or state Supreme) court ruling, in brackets): **Alabama** (16), **Arizona** (16), **Arkansas** (16), Delaware (16), **Florida** (16), **Georgia** (17), Idaho (16), Indiana (16), **Kentucky** (16), Louisiana (16), **Mississippi** (16), **Missouri** (16), Montana (16), **Nevada** (16), New Hampshire (17), **North Carolina** (17), **Oklahoma** (16), **Pennsylvania** (16), **South Carolina** (16), South Dakota (16), **Texas** (17), Utah (16), **Virginia** (16), Wyoming (16). States in bold had juvenile offenders on death row in June 1998.

160 California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee and Washington have a minimum age of 18.

161 *Stanford v. Kentucky*. This ruling actually covers two cases, that of Kevin Stanford (17 at time of crime, still on death row) and Heath Wilkins (16 at crime). The latter case was *Wilkins v. Missouri*.

162 *Dorsie Lee Johnson v. Texas*

163 Presented in the ABA's *amicus curiae* brief in *Stanford v. Kentucky*.

164. See M. Goishi, "Legal and social responses to the problems of queer youth", 48 *Hastings Law Journal*, 1137 and C. Sullivan, "Kids, Courts and Queers: lesbian and gay youth in the juvenile justice and foster care systems", 6, *Law and Sexuality*, 31.

165. Office of Juvenile Justice and Delinquency Prevention, Washington DC, 1996.

166. H. Snyder, "Juvenile arrests 1996", *Juvenile Justice Bulletin*, Office of Juvenile Justice and Delinquency Prevention, Washington DC, 1997. The arrest data may underestimate the actual number of offences committed by females. J. Belknap, *The invisible woman - gender, crime and justice*, Wadsworth, California, 1996.

167. E. Poe-Yamagata and J. Butts, *Female offenders in the juvenile justice system - statistics summary*, Office of Juvenile Justice and Delinquency Prevention, Washington DC, 1996. In 1993, pre-trial detention was used in 16 per cent of delinquency cases involving females compared with 22 per cent of cases involving males. Following adjudication, courts ordered an out-of-home placement (including custody in a secure institution) in 23 per cent of cases involving females compared with 29 per cent involving males.

168. A study commissioned by Congress found little evidence of gender bias in the processing of cases of status offenders by state juvenile justice systems. Female and male offenders charged with the same offence generally had the same probability of being detained, adjudicated and ordered to an out-of-home placement, when they had similar characteristics such as age and prior offence history. However the study focused on the outcomes in relation to specific offences and did not examine whether courts dealt differently with female and male offenders who engaged in similar conduct e.g. is a defiant or sexually active girl more likely to be adjudicated a status offender than a boy? United States General Accounting Office, *Juvenile Justice - Minimal Gender Bias Occurred in Processing Non-criminal Juveniles*, Author, Washington DC, 1995.

169. E.g., see sources in M. Chesney-Lind, *The Female Offender*, Sage, California, 1997, chapter 4.

170. *Ibid.*, 15-16.

171. See studies cited in L Prescott, "Adolescent girls with co-occurring disorders in the juvenile justice system", The GAINS Center, Delmar, NY, 1997.

172. E.g., see girls inc., *Prevention and Parity: Girls in Juvenile Justice*, Office of Juvenile Justice and Delinquency Prevention, Washington DC, 1996.

173. Office of Juvenile Justice and Delinquency Prevention Proposed Comprehensive Plan for Fiscal Year 1998.

174. E.g., see girls inc., *Prevention and Parity: Girls in Juvenile Justice*, Office of Juvenile Justice and Delinquency Prevention, Washington DC, 1996.

175. Office of Juvenile Justice and Delinquency Prevention Proposed Plan for Fiscal Year 1998.

- 176 Ms Schrandt is Director, Juvenile Services Unit of the Juvenile Rights Division, Legal Aid Society.
177. M. Borrero, "The widening mistrust between youth and police," Institute for Violence Reduction, University of Connecticut, unpublished manuscript, 1998.
178. M. Wordes and T. Bynum, "Policing juveniles - is there bias against youths of color?" in K. Leonard, C. Pope, W. Feyerherm eds, *Minorities in juvenile justice*, Sage, California, 1995, 62.
179. See Amnesty International, "USA: concern about police shootings of minority suspects in New Jersey," AI Index AMR 51/112/95, August 1995.
180. C. Pope, "Equity within the Juvenile Justice System," in K. Leonard, C. Pope, W. Feyerherm eds, *Minorities in juvenile justice*, Sage, California, 1995, 215-216.
181. Data is from H. Snyder and M. Sickmund, *Juvenile offenders and victims: a national report*, Office of Juvenile Justice and Delinquency Prevention, Washington DC, 1995 and M Sickmund, H Snyder and E Poe-Yamagata, *Juvenile Offenders and Victims: 1997 Update on Violence*, Office of Juvenile Justice and Delinquency Prevention, Department of Justice, Washington DC 1997, M Sickmund et al, "Juvenile Court Statistics 1995", Office of Juvenile Justice and Delinquency Prevention, Washington DC, 1998.
182. The disproportion varies considerably between offences. For example, in 1996 minority youth were 61 per cent of juveniles arrested for murder, 38 per cent of those arrested for drug offences and 26 per cent of those arrested for burglary. Source: H. Snyder, *Juvenile arrests 1996*, Office of Juvenile Justice and Delinquency Prevention, Washington DC, 1997, 3.
183. J. Austin, "The over representation of minority youths in the California juvenile justice system - perceptions and realities," in K. Leonard, C. Pope, W. Feyerherm eds, *Minorities in juvenile justice*, Sage, California, 1995, 178. For a review of different approaches, see R Sampson and J Lauritsen, "Racial and ethnic disparities in crime and criminal justice in the United States", in M. Tonry ed, *Ethnicity, crime and immigration*, University of Chicago Press, Chicago, 1997.
184. V. Schiraldi, S. Kuyper, and S. Hewitt, "Young African Americans and the Criminal Justice System in California: Five years later," Center on Juvenile and Criminal Justice, California, 1996, 2; see also studies cited by J. Howell, *Juvenile justice and youth violence*, Sage, California, 1997, 78.
185. M. Tonry, *Malign neglect - race, crime, and punishment in America*, Oxford University Press, New York, 1995, 42.
186. A. Stahl, "Drug offenses in juvenile court 1986-1995," OJJDP Fact Sheet #81, Office of Juvenile Justice and Delinquency Prevention, Washington DC, 1998. Stahl does not provide information about the racial composition of the females.
187. National Coalition on Police Accountability, 7th Annual Conference, August 1997.
188. H. Snyder and M. Sickmund, *Juvenile Offenders and Victims: A National Report*, Office of Juvenile Justice and Delinquency Prevention, Washington DC, 1995, 92; also C. Pope: "Taken together, the research...strongly suggests that concerns regarding fairness within juvenile justice systems are not unwarranted. Indeed, much of the data underscores the point that minority youths, especially those of color, are often disadvantaged compared to majority youths.", "Equity within the juvenile justice system - directions for the future", in K. Leonard, C. Pope, W. Feyerherm eds, *Minorities in juvenile justice*, Sage, California, 1995, 202
189. C. Frazier and D. Bishop, "Reflections on race effects in juvenile justice", in K. Leonard, C. Pope, W. Feyerherm eds, *Minorities in juvenile justice*, Sage, California, 1995.
190. M. Wordes and T. Bynum, "Policing juveniles - is there bias against youths of color?" in K. Leonard, C. Pope, W. Feyerherm eds, *Minorities in juvenile justice*, Sage, California, 1995, 62.
191. Human Rights Watch, *High Country Lock-up*, Human Rights Watch, New York, 1997, 10.
192. J. Johnson, "Americans' views on crime and law enforcement: survey findings", *National Institute of Justice Journal*, September 1997.
193. Eight had completed studies that found disproportionate minority confinement but not yet assessed what measures to take; nine found no evidence of disproportionate minority confinement, 101

- and 166. See also S. Bilchik, "Making a Difference: On the front lines with OJJDP Administrator Shay Bilchik", *Juvenile Justice*, Volume IV, Number 2.
194. Committee on the Judiciary, *Report of the Committee on the Judiciary to Accompany 510*, Report 510-108, October 1997, 104.
195. *Ibid.*, 104.
196. Amnesty International, *United States of America: Rights for All*, AI Index: AMR 51/35/98.
197. Amnesty International, *United States of America: Rights for All*, AI Index: AMR 51/35/98, chapter 4.
198. The audit was conducted by the Joint Legislative Audit and Review Commission, *The Operation and Impact of Corrections Services in Virginia*, Commonwealth of Virginia, Richmond, Virginia, 1997. Amnesty International was informed of remedial action in a letter from G. Aronhalt, Office of the Governor, 26 February 1998.
199. This is described in P Puritz and M A Scali, *Beyond the walls: improving conditions of confinement for youth in custody*, Office of Juvenile Justice and Delinquency Prevention, Washington DC, 1998, 11.
200. Amnesty International, *United States of America: Rights for All*, AI Index: AMR 51/35/98, pages 83-86.