

Jailing Juveniles:

The Dangers of Incarcerating Youth in Adult Jails in America

A Campaign for Youth Justice Report: November 2007

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CAMPAIGN FOR

YOUTH  JUSTICE

BECAUSE THE CONSEQUENCES AREN'T MINOR

The Campaign for Youth Justice would like to dedicate this report to the thousands of young people and their families across the country who have been affected negatively by laws and policies allowing youth to be incarcerated in adult jails.

Letter From A Youth Held Pre-trial in an Adult Jail to the Local District Attorney

Mr. [REDACTED]

This may be unusual as I doubt you get many letters from inmates. However, I would greatly appreciate your consideration on the following.

Correct me if I'm wrong, but isn't the purpose of punishing someone not only about them paying for their actions, but also to rehabilitate them so they don't make the same mistake again. Shouldn't it be the goal of the state for convicted felons to be able to re-enter society as law-abiding citizens and lead productive lives. Therefore, is it in the best interest of every inmate to go to prison?

I understand that your in a tough situation and that your main responsibility is for the best interest of the community. However, if I truly am a reckless, dangerous person with no care for the law, then what difference would it make if I were to be released next week opposed to twenty years from now. I would still possess those same characteristics only with the education of a criminal who has been through the system.

I'm not in any way trying to degrade the situation. I do fully understand the seriousness of what happened that night. I thank God everyday that my dad and brother are alright. If they weren't, I don't think I could find the courage to live with myself.

If I were to be sent to prison, it would be difficult for me to mature into a "normal" adult. Still being in my teenage years I am still developing. I do not want to be influenced by the type of people

THE CAMPAIGN FOR YOUTH JUSTICE

The Campaign for Youth Justice (CFYJ) is dedicated to ending the practice of trying, sentencing, and incarcerating youth under the age of 18 in the adult criminal justice system. The goals of the campaign are:

- to raise awareness about the negative impact of prosecuting youth in the adult criminal justice system and of incarcerating young people in adult jails and prisons;
- to reduce the number of youth who are tried, sentenced, and incarcerated in the adult criminal justice system;
- to decrease the harmful impact of trying youth in adult court; and
- to promote research-based, developmentally appropriate rehabilitative programs and services for youth.

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TABLE OF CONTENTS

Overview	4
An Adult Jail Is No Place for a Child	6
The Danger of Adolescent Development Taken Off Track	6
The Danger of Suicide	10
The Danger of Rape and Sexual Assault	13
The Danger of Isolation	14
Thousands of Youth in Jails Across America Are in Danger	16
How a Youth Ends Up in the Adult Criminal Justice System	16
Number of Youth in Adult Jails	17
Conviction Rates of Youth in Adult Criminal Justice System	19
Time Spent in Adult Jails	20
Limited Legal Protections for Youth in Jails	22
Federal Loophole Allows Youth to Be Held in Jails	22
State Laws Fail to Protect Youth in Jails	24
Table of State Pre-Trial Detention Laws	26
The Limits of Litigation to Remove Youth from Jails	38
Professional Standards Highlight Need to Separate Youth and Adults	40
Recommendations for Change	43
Letter from a Youth Held Pre-trial in an Adult Jail	45

OVERVIEW

“Jailing Juveniles: Children should not be held in adult jails.”

– (Washington Post, August 10, 2007)

Every day in America, an average of 7,500 youth are incarcerated in adult jails.¹ The annual number of youth who are placed in adult jails is even higher – ten or twenty times the daily average according to some researchers – to account for the “turnover rate” of youth entering and exiting adult jails.² Despite the life-altering consequences of incarceration in an adult jail, relatively little attention has been given to these youth. This report presents the latest research about the risks youth face in jail, the number and characteristics of youth incarcerated in jails across the country, the lack of state and federal laws protecting youth in jails, and concludes with recommendations for federal, state, and county policymakers.

It is extremely difficult to keep youth safe in adult jails. When youth are placed with adults in jails, youth are at great risk of physical and sexual assault. For example, according to U.S. Department of Justice Bureau of Justice Statistics (BJS) in 2005 and 2006, 21% and 13% respectively, of the victims of inmate-on-inmate sexual violence in jails were youth under the age of 18³ – a surprisingly high percentage of victims considering that only 1% of all jail inmates are juveniles.⁴

Recognizing the risks to youth in jails, some jailers separate youth from adult inmates. However, this is not an adequate solution either. Separating youth from adults in jail can reduce the physical or emotional harm that may result from contact with adult offenders, but unfortunately these youth are then often placed in isolation, a dangerous setting for youth. Youth in isolation are frequently locked down 23 hours a day in small cells with no natural light. Even limited exposure to such an environment can cause anxiety, paranoia, exacerbate existing mental disorders, and increase risk of suicide. In fact, youth have the highest suicide rates of all inmates in jails.⁵ Youth are 19 times more likely to commit suicide in jail than youth in the general population⁶ and 36 times more likely to commit suicide in an adult jail than in a juvenile detention facility.⁷ Jail staff are simply not equipped to protect youth from the dangers of adult jails.

Jails do not have the capacity to provide the necessary education and other programs crucial for the healthy development of adolescents. Even though legally required to, few jails provide appropriate education to youth. A BJS survey found that 40% of jails provided no educational services at all, only 11% of jails provided special education services, and only 7% provided vocational training.⁸ As many as one-half of all youth transferred to the adult system do not receive adult convictions, and are returned to the juvenile justice system or are not convicted at all.⁹ Many of these youth will have spent *at least one month* in an adult jail¹⁰ and one in five of these youth will have spent *over six months* in an adult jail.¹¹ Without adequate education and other services, jails take youth off course.

Research conducted nationally by the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, and other organizations, has also found that placing youth in the adult criminal justice system increases their likelihood of re-offending. Physicians and criminologists agree that children who are prosecuted in adult court are more likely to be re-arrested more often and more quickly for serious

offenses. The Centers for Disease Control and Prevention Task Force on Community Preventive Services released findings that show that transferring youth to the adult criminal system increases violence and concluded that policies that send youth to the adult criminal justice system, including placement of youth in adult jails, are “counterproductive for the purpose of reducing violence and enhancing public safety.”¹²

Finally, the federal Juvenile Justice & Delinquency Prevention Act (JJDPA) enacted over three decades ago was designed to keep youth out of jails. However, there is a loophole – the law does not protect youth prosecuted in the adult criminal system even though the original intent of the federal law was to remove youth from adult jails altogether. Congress should fix this problem by amending the JJDPA to protect all youth, no matter what court (juvenile or criminal) they are in, from being placed in an adult jail. Similarly, states and counties should update their state statutes and policies to prohibit the placement of youth in adult jails.

It is extremely difficult to keep youth safe in adult jails.

Notes

- ¹ Calculations by the primary author using a ten-year average (1997 to 2006) of one-day counts taken on June 30th of each year as reported by the Bureau of Justice Statistics (BJS) in annual editions of the BJS publication, *Prison and Jail Inmates at Midyear*, available from <http://www.ojp.usdoj.gov/bjs/jails.htm>. Youth in jails can be held as “juveniles” or “adults.” Youth under the jurisdiction of juvenile court are protected by the federal Juvenile Justice and Delinquency Prevention Act (JJDPA) and can be held in adult jails in limited circumstances, most commonly because the jurisdiction lacks a juvenile detention facility. Of the 7,594 youth held in jails as “adults,” 81% are youth prosecuted in the adult criminal system and are not protected by the JJDPA.
- ² Juskiewicz, J. (2007, October). *To Punish A Few: Too Many Youth Caught in the Net of Adult Prosecution*. Washington, D.C.: Forthcoming study from the Campaign For Youth Justice.
- ³ Beck, A.J., Harrison, P.M., Adams, D.B. (2007, August). *Sexual Violence Reported by Correctional Authorities, 2006*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.
Beck, A.J., Harrison, P.M. (2006, July). *Sexual Violence Reported by Correctional Authorities, 2005*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.
- ⁴ Snyder, H.N., Sickmund, M. (2006). *Juvenile Offenders and Victims: 2006 National Report*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
- ⁵ Mumola, C.J. (2005, August). *Suicide and Homicide in State Prisons and Local Jails*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.
- ⁶ Calculations by the primary author comparing suicide rates published by the Bureau of Justice Statistics and the Centers for Disease Control. Mumola, C.J. (2005, August). *Suicide and Homicide in State Prisons and Local Jails*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.
Office of Statistics and Programming, National Center for Injury Prevention and Control, CDC Web-based Injury Statistics Query and Reporting System (2007, July). *2000 – 2002, United States Suicide Injury Deaths and Rates per 100,000 All Races, Both Sexes, Ages 14 to 17*. Atlanta, GA: US Department of Health and Human Services, CDC. Available at: <http://www.cdc.gov/ncipc/wisqars/default.htm>.
- ⁷ Calculations by the primary author. McGowan, A., Hahn, R., Liberman, A., Crosby, A., Fullilove, M., Johnson R., Moscicki, E., Price, L., Snyder, S., Tuma, F., Lowy, J., Briss, P., Cory, S., Stone, G., Task Force on Community Preventive Services (2007). Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System: A Systematic Review. *American Journal of Preventative Medicine*, 32(4S), S7-S28. Estimates of suicide rates in the report were attributed to Memory, J. (1989). Juvenile suicides in secure detention facilities: correction of published rates. *Death Stud* 13:455-63. The specific rates included in the report are: 2041 per 100,000 for youth held in adult detention facilities; 57 per 100,000 for youth held in juvenile detention centers; and 12.4 per 100,000 for all those aged 12 to 24 in the U.S. population.
- ⁸ Harlow, C.W. (2003, January). *Education and Correctional Populations*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.
- ⁹ Juskiewicz, J. (2007, October). *To Punish A Few: Too Many Youth Caught in the Net of Adult Prosecution*. Washington, D.C.: Forthcoming study from the Campaign For Youth Justice.
- ¹⁰ *Ibid.* Overall, 52.9% of all juvenile defendants prosecuted in criminal courts were detained. The statistics here are for detained youth.
- ¹¹ *Ibid.*
- ¹² McGowan, A., Hahn, R., Liberman, A., Crosby, A., Fullilove, M., Johnson R., Moscicki, E., Price, L., Snyder, S., Tuma, F., Lowy, J., Briss, P., Cory, S., Stone, G., Task Force on Community Preventive Services (2007). Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System: A Systematic Review. *American Journal of Preventative Medicine*, 32(4S), S7-S28.

AN ADULT JAIL IS NO PLACE FOR A CHILD

“Barbaric.”

– DC Superior Court Judge Wendell Gardner in reference to the practice of placing a girl in the DC jail (*Washington Post*, September 14, 2006)

The Danger of Adolescent Development Taken Off Track

American adolescents live in a precarious middle ground between the innocence and immaturity of childhood and the responsibility and accountability of adulthood.¹ On the one hand, our laws shield adolescents from their inability to make sound judgments and their natural propensity to be impulsive.² In 29 states, the legal alcohol consumption age is 21 years of age.³ In 48 states, the marriageable age is set at age 18, unless a minor obtains parental or judicial consent.⁴ Nationwide, youth cannot vote or join the military until age 18. The intent of such laws is clear: to protect the young from their own immaturity while providing opportunities for them to learn and mature. On the other hand, some laws—specifically criminal laws—ignore the immaturity of adolescents. Fifteen states regard youth as young as 10 years of age as competent and responsible enough to be put on trial in juvenile court.⁵ In 44 states and the District of Columbia, youth as young as 14 years of age can be tried in the adult criminal justice system.⁶

Brain and developmental research conducted over the past 15 years has uncovered new developmental differences between adolescents and fully mature adults. We now know that the prefrontal cortex, which governs the “executive functions” of reasoning, advanced thought, and impulse control, is the final area of the human brain to mature, which explains why adolescents have trouble making decisions.⁷ This new research creates new questions for the adult criminal system. How do we hold young offenders accountable for their actions when we know they have not finished developing (i.e., are youth less culpable or blameworthy)? How do we ensure that punishments within the criminal system don’t compromise the very process of adolescent development itself?

The 2005 U.S. Supreme Court’s ruling in *Roper v. Simmons* abolishing the death penalty for youth under age 18 began to answer some of those questions. Justice Anthony Kennedy wrote, “juveniles are more vulnerable or susceptible [than adults] to negative influences and outside pressures, including peer pressure... This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment.” The opinion also cites scientific and sociological studies on the “underdeveloped sense of responsibility found in youth.”⁸ Just as the U.S. Supreme Court has recognized the unique stage of adolescence, it is time for states across the country to update the laws and policies of the criminal justice system to reflect this new research.

State and federal laws should acknowledge the developmental stage of adolescence by banning the incarceration of youth in adult jails. Adult jails are designed to house adults, whereas juvenile detention facilities are designed for youth. The result is that juvenile and adult detention facilities provide radically different services for the people in their facilities. From intake processes to meals to health care, adolescents have specific needs that jails are often ill-equipped to handle. For example, youth have different nutritional requirements because they

are growing so rapidly. Vision and dental health are two additional areas that change during adolescence and require special attention.⁹ If youth do not receive appropriate physical and mental health care, their development can be compromised forever.

One main reason why juvenile detention facilities are better suited for adolescents is staffing. Jail staff who supervise youth are often put in awkward and dangerous positions because the “right way” to handle 99% of the inmates in their facilities (the adults) is usually the “wrong way” for the remaining 1% (developing youth who happen to be inmates).¹⁰ Juvenile detention facilities generally operate with higher levels of staffing (one staff person to eight youth) compared to jails (ratios can be as high as one staff person to 64 inmates). Youth themselves report important differences between staff at juvenile facilities and those at adult facilities. Researchers have found that youth in juvenile facilities rated staff as being more helpful in assisting them with meeting their personal goals, teaching them skills, and improving their interpersonal relations, compared with youth in adult facilities.¹¹ Additional staffing is critical for engaging youth in exercise, education, and pro-social activities necessary for proper development. Juvenile detention facilities also find it easier to offer these activities because they usually have access to dayrooms, classroom space, or gyms, and are not as constrained by the physical limitations of many jails. Many jails are unable to offer these programs because youth need to be kept safe from the other adult inmates, and as a result are kept within cells or sections of jails.

The lack of education programs in jails has particularly serious consequences for youth who can be detained for several months pre-trial. Because of their age, most youth in jails have not completed their high school education and need classes to graduate or obtain a GED, or to acquire vocational skills to get a job. Without adequate schooling, too many youth are at risk of falling further and further behind academically even though they are legally entitled to an education. Most states have mandatory attendance laws requiring that children attend school unless they have obtained a diploma or a GED. The federal special education law, Individuals with Disabilities Education Act (IDEA), also requires jails to provide special education services for qualifying youth; however, jails frequently have difficulty meeting their legal obligations. For example, at the Madison Street Maricopa County Jail in Arizona, education programs were limited to three hours per day and did not provide an option for obtaining a diploma.¹² The Orange County Grand Jury in California, a citizen oversight commission, found that “the opportunity for rehabilitation and education of juveniles is extremely difficult because there is neither adequate classroom space nor opportunity for minimum classroom instruction time at Central Men’s Jail.”¹³ While juvenile detention centers often have full-time education staff, adult jails have weak educational programs and it is rare for jails to have classrooms for education. Although nearly 30% of jail inmates under age 24 reported having a learning disability,¹⁴ the most recent survey of educational programs in adult jails found that 40% of jails provided no educational services at all, only 11% provided special education services, and just 7% provided vocational training.¹⁵

The educational neglect of youth in adult jails is not only harmful to youth, but it also has consequences for public safety. In a recent comparison of educational attainment and crime trends and public safety, the Justice Policy Institute found that graduation rates were associated with positive public safety outcomes.¹⁶ Researchers have found that a 5% increase in male high school graduation rates would produce an annual savings of almost \$5 billion in crime-related expenses. In fact, a study in the *American Economic Review* on the effects of education on crime found that a one-year increase in the average years of schooling completed reduces violent crime by almost 30%.¹⁷ Making sure that youth do not fall further behind in school is important. Educational attainment, particularly high school graduation, serves as an important benchmark in the process of transitioning to adulthood. Achieving this benchmark has a key “normalizing effect” on the individual.¹⁸

Another danger caused by housing youth within adult jails is that jails expose youth to “role models.” By exposing juveniles to a criminal culture where inmates commit crimes against each other, adult institutions may socialize juveniles into becoming chronic offenders

State and federal laws should acknowledge the developmental stage of adolescence by banning the incarceration of youth in adult jails.

when they otherwise would not have. Researchers have found that young inmates try to find ways to fit into the inmate culture, which often involves adopting an identity that hides their youthful status and forces them to accept violence as a routine part of institutional life.¹⁹ Shay Bilchik, a former prosecutor and director of Georgetown University's Center for Juvenile Justice Reform questions, "How do we maintain public safety without robbing a young person of their future? There is great potential for rehabilitation if we have the right tools."²⁰ An adult jail is simply not the right tool to get youth back on track.



Will, formerly incarcerated in an adult jail awaiting trial

In a letter, Will tells us about his experience awaiting trial in an adult jail for a year. Here are excerpts from Will's letter:

The sound of a door made of bars opening was the first thing I heard when I approached my cell in the jail. The toilet was dirty and covered with fruit flies and the floor stained red from what I later learned was the juice given to us at meals. I had never seen living conditions like this before and now they were mine. "Was I made for this lifestyle?" I asked myself. Looking into the eyes of a 30 year old man whose weight was triple mine I thought, "Do not show emotions like fear and power" and I questioned, "How am I going to defend myself?" This man, like every man around me, could easily do damage to my small body. Being surrounded with men triple my age I could only expect the worst. The stories I had heard about adult prison and the truth of "survival of the fittest" was my reality now. I spent a year as a sixteen year old in the jail. My struggle was hard, my life scarred, and my mindset crippled. Here, it was me against the world and out of necessity I was transformed into a rough creature. There was no where to run and no where to hide and deep down inside I knew I was walking in hell.

.....

Sam, youth awaiting trial in an adult jail

In a letter, Sam describes his experience awaiting trial in an adult jail. Here are excerpts from Sam's letter:

During the 72 days I spent in jail as a 17-year-old I was treated like a criminal even though I hadn't been convicted of anything. In jail I was called names and laughed at by the guards and inmates. I was bored everyday because we only had an hour in the exercise room twice per week... "School," if I went, which most of the time I didn't because the guards forgot about me, wasn't school at all. I was afraid I would be assaulted by the guards and inmates and at night I couldn't sleep because I was so scared. I didn't get the medications I needed so my paranoia grew worse and I got panic attacks when errors in visitation scheduling prevented me from seeing my family. My time in jail has left me depressed and ashamed of myself. I no longer have any friends because they are ashamed of me too. I feel like I don't belong in public anymore and big, open places scare me because jail was so small. My future and my family will never be the same because of my time in jail. We are mistreated in jail and taken advantage of by the inmates and the system.

Lisa, Sam's mother

In a letter, Lisa, Sam's mother describes her son's experience in an adult jail. Here are excerpts from Lisa's letter:

As a 17-year-old, Sam was the youngest in all of his cell blocks in jail. He would cry on the phone to me and I lost many nights of sleep worrying that he might harm himself. I never cried so much in my life. I could not hug Sam for 72 days. All I could do was visit him through a glass window each week. Even now that Sam is out, my family, the most important thing in my life, is still broken... I used to believe our children are our future but now I realize that this, sadly, isn't the reality. Through laws that treat kids like adults, the government is throwing away the future of children in this country.

Notes

- ¹ Coalition for Juvenile Justice (2007). *Adolescent Brain Development and Juvenile Justice Fact Sheet*. Washington, DC.: Coalition for Juvenile Justice. Available from: http://www.act4jj.org/media/factsheets/factsheet_12.pdf.
- ² Ibid.
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- ⁴ Cornell Law School Legal Information Institute (2006). *Marriage Laws of the Fifty States, District of Columbia and Puerto Rico*. Available from: http://www.law.cornell.edu/topics/Table_Marriage.htm.
- ⁵ Griffin, P., Torbet, P., Szymanski, L. (1998). *Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. Available from: <http://ojjdp.ncjrs.org/pubs/tryingjuvasadult/toc.html>.
- ⁶ Griffin, P. (2003, October). *Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws*. Washington, D.C.: Office of Juvenile Delinquency and Prevention, National Center for Juvenile Justice. Available from: <http://ncjj.servehttp.com/NCJJWebsite/pdf/transferbulletin.pdf>.
- ⁷ Thompson, P. (2004, May). *Time-Lapse Imaging Tracks Brain Maturation from Ages 5 to 20*. National Institute of Mental Health and the University of California Los Angeles.
- ⁸ *Roper v. Simmons*, 543 U.S. 551 (2005).
- ⁹ Woolard, J.L., Odgers, C., Lanza-Kaduce, L., Daglis, H. (2005). Juveniles within Adult Correctional Settings: Legal Pathways and Developmental Considerations. *International Journal of Forensic Mental Health*, 4(2), 1-18.
- ¹⁰ Snyder, H.N., Sickmund, M. (2006). *Juvenile Offenders and Victims: 2006 National Report*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
- ¹¹ Woolard, J.L., Odgers, C., Lanza-Kaduce, L., Daglis, H. (2005). Juveniles within Adult Correctional Settings: Legal Pathways and Developmental Considerations. *International Journal of Forensic Mental Health*, 4(2), 1-18.
- ¹² Garcia, J. (2007, October). *Letter to Committee on Education and Labor*. Phoenix, AZ: State of Arizona, Governor's Office for Children, Youth, and Families. Available from: http://www.act4jj.org/media/documents/document_22.pdf.
- ¹³ Orange County Grand Jury (2001, May). *Kids in Adult Lockup: Bad Boys in a Bad Place!* Available from: <http://www.ocgrandjury.org/pdfs/GJKidsLockup.pdf>.
- ¹⁴ Maruschak, L.M. (2006, November). *Medical Problems of Jail Inmates*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.
- ¹⁵ Harlow, C.W. (2003, January). *Education and Correctional Populations*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.
- ¹⁶ Justice Policy Institute (2007, August). *Education and Public Safety*. Washington, D.C.: Justice Policy Institute. Available from: http://www.justicepolicy.org/images/upload/07-08_REP_EducationAndPublicSafety_PS-AC.pdf.
- ¹⁷ Ibid.
- ¹⁸ Ibid.
- ¹⁹ Woolard, J.L., Odgers, C., Lanza-Kaduce, L., Daglis, H. (2005). Juveniles within Adult Correctional Settings: Legal Pathways and Developmental Considerations. *International Journal of Forensic Mental Health*, 4(2), 1-18. Available from: <http://www.iafmhs.org/files/Woolardspr05.pdf>.
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The Danger of Suicide

According to the Surgeon General of the United States, youth suicide is a major public health problem: suicide is the third leading cause of death among 15- to 24-year-olds.¹ Unfortunately, our knowledge of youth suicide in adult jails is severely limited. After an extensive review of published scientific evidence, the Centers for Disease Control and Prevention's (CDC) Task Force on Community Preventive Services found few good estimates comparing suicide rates of youth held in adult jails versus youth held in juvenile detention facilities. The best estimates reported by the CDC are from a 1978 study, which found that youth in adult jails were 36 times more likely to commit suicide in an adult jail than in a juvenile detention facility.²

More recent estimates of youth suicide rates are available from the U.S. Department of Justice's Bureau of Justice Statistics. The findings are just as grim – jail inmates under 18 had the highest suicide rate of all inmates (101 per 100,000 during 2000-2002).³ By comparison, the suicide rate for 14- to 17-year-olds not in jail during that same time period was just 5.32 per 100,000.⁴ Youth in adult jails are 19 times more likely to commit suicide than are their counterparts in the general population.⁵ It is also important to keep in mind the number of non-lethal suicide attempts that may seriously compromise a young person's health and well-being. The CDC estimates that for every suicide among young adults ages 15 to 24, there are 100 to 200 attempts.⁶

Youth held in jails for short periods of time are at great risk of suicide too. The Bureau of Justice Statistics found that suicides in jails were heavily concentrated in the first week spent in custody (48%), with almost a quarter of suicides taking place on the day of admission to jail (14%) or on the following day (9%).⁷ It appears that youth held in all jails, large and small, are at risk. Rates of inmate suicide were closely related to jail size, with the smallest facilities recording the highest suicide rates.⁸

There are several reasons why suicide rates for incarcerated juveniles are so high. Experts have identified mental disorders, substance abuse, impulsive aggression, parental depression and substance abuse, family discord and abuse, and poor family support as risk factors for adolescent suicide in the general population.⁹ Many of these same risk factors are prevalent for youth held in jails. Experts surmise that juveniles in the adult system experience similar, if not greater, rates of mental disorder and related problems compared with youth in the juvenile justice system. Recent estimates from studies of youth detained in the juvenile system indicate that as many as two-thirds of males and three-quarters of females meet criteria for one or more psychiatric disorders.¹⁰ Anecdotal evidence suggests that youth in the adult system have similarly high rates. The Arizona Pima County Adult Probation Department estimated that at least 80% of juveniles had diagnosed mental disorders.¹¹ Lindsay Hayes, national expert in the field of suicide prevention, suggests that "if all youth are to some degree at risk for suicide, it could be argued that juveniles in confinement are at greater risk because they have life histories that predispose them to suicide (e.g., mental disorders and substance abuse, physical, sexual and emotional abuse, and perhaps most importantly, current and prior self-injurious behavior)."¹²

Tragically, many adult jails are not equipped to identify and respond to the mental health needs of youth. Many jails lack appropriate screening and assessment tools to identify mental health problems in youth. For example, according to a letter from the organization Human Rights Watch to Los Angeles County Sheriff Baca:

We heard accounts of the mental health screening at intake that lead us to question its effectiveness. "They ask you, like, do you have any mental health problems. That's your chance to say no or yes. But they tell you, 'If you want a bed, just say no,'" one youth told us. "So I said 'no, no,' just so I would get a bed that night."¹³

Even when properly identified, youth have trouble getting appropriate treatment in jails. According to the U.S. Department of Justice (DOJ) investigation in Baltimore, a 15-year-old inmate was suicidal during his intake screening, was placed in protective custody without his medications, did not see a doctor for 25 days, and did not get his medications after the doctor's visit despite his attorney's attempted intervention.¹⁴

The mental health crisis for youth will not be solved by shifting more mentally ill youth from adult jails to juvenile detention facilities. As noted in a Congressional Oversight Report prepared for Representative Harry Waxman and Senator Susan Collins, *Incarceration of Youth Who Are Waiting for Community Mental Health Services in the United States*, juvenile detention facilities are already warehousing mentally ill youth.¹⁵ The solution for these youth is more appropriate treatment (e.g., community-based alternatives to incarceration or hospitalization). However, as already mentioned, youth are 36 times more likely to commit suicide in an adult jail than if housed in a juvenile detention facility. While incarceration is never desirable for mentally ill youth, youth are much safer when held in juvenile facilities than in adult jails.

Jail inmates under 18 had the highest suicide rate of all inmates.

Vicky, mother of Kirk who committed suicide in an adult jail

In an interview with Vicky, she tells us about her son Kirk, a teenager who committed suicide while awaiting trial in an adult jail. Here are excerpts from the interview with Vicky:

Kirk was accused by older men of being 'immature;' each day he had to teach himself during the one hour of 'school' because the teacher was frequently unavailable; the noise level in his block gave him headaches; a convicted sex offender exposed himself to Kirk; he was involved in a couple physical confrontations, his depression increased; and he was so bored that his thoughts consumed him....Our family, extended and immediate, and a community of supportive friends and neighbors, did our best to support Kirk while he was in jail. Together we never missed a phone call or a visit... Two days after Christmas in 2005, Kirk was placed in confinement, known as 'the hole'... Kirk requested not to be alone because he was having anxiety. Despite his request for help and regulations requiring one-hour checks on inmates in confinement, Kirk was left alone for approximately two and a-half hours. When jail staff finally checked on Kirk, my son was found dead hanging by a blanket from the smoke detector in the cell.

Cecile, mother of Andrew, a teen who attempted suicide while awaiting trial in an adult jail

In a letter from Cecile she tells us about her son Andrew, a teenager who attempted suicide while awaiting trial in an adult jail. Here are excerpts from Cecile's letter:

Upon incarceration at the jail, officers asked if Andrew might try and hurt himself. We explained the severity of that possibility and they responded by taking away his belt and assuring us that they would alert the jail staff. However, the jail staff 'didn't see the need for concern' so he was placed in the general population. The following day I took Andrew's medications to the jail but two days later, after not receiving the medication, Andrew cut his arms and neck...While in jail, Andrew called me 'to say good-bye. I'm going to do it right this time. I tried it. I can hang myself with the sheet.' After being forced off the phone with Andrew, I immediately called the jail and warned them to watch him but the jail staff insisted that he seemed fine. I begged them to "at least take away the sheet" and I asked that they have Andrew and/or the nurse call me. However, no one called me. When I called back I was informed that Andrew had tried to hang himself but there were no details. The next day at my visit I saw that Andrew's neck was badly bruised and the blood vessels on his face and eyes were burst.



"I begged them to at least take away the sheet"

~ Cecile, mother of Andrew

Notes

- ¹ National Center for Injury Prevention and Control, Division of Violence Prevention (2007, Summer). *Suicide*. Atlanta, GA: US Department of Health and Human Services, CDC. Available from: <http://www.cdc.gov/ncipc/dvp/Suicide/SuicideDataSheet.pdf>. The first two leading causes of death are unintentional injury (e.g., accidents) and homicide. CDC's web-based Injury Statistics Query and Reporting System (WISQUARS). Atlanta, GA: US Department of Health and Human Services, CDC; 2007. Available at <http://www.cdc.gov/ncipc/wisqars/default.htm>.
- ² Calculations by the primary author. McGowan, A., Hahn, R., Liberman, A., Crosby, A., Fullilove, M., Johnson R., Moscicki, E., Price, L., Snyder, S., Tuma, F., Lowy, J., Briss, P., Cory, S., Stone, G., Task Force on Community Preventive Services (2007). Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System: A Systematic Review. *American Journal of Preventative Medicine*, 32(4S), S7-S28. Estimates of suicide rates in the report were attributed to Memory, J. (1989). Juvenile suicides in secure detention facilities: correction of published rates. *Death Stud* 13:455-63. The specific rates included in the report are: 2041 per 100,000 for youth held in adult detention facilities; 57 per 100,000 for youth held in juvenile detention centers; and 12.4 per 100,000 for all those aged 12 to 24 in the U.S. population.
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- ⁴ Office of Statistics and Programming, National Center for Injury Prevention and Control, CDC Web-based Injury Statistics Query and Reporting System (2007, July). *2000 – 2002, United States Suicide Injury Deaths and Rates per 100,000 All Races, Both Sexes, Ages 14 to 17*. Atlanta, GA: US Department of Health and Human Services, CDC. Available at: <http://www.cdc.gov/ncipc/wisqars/default.htm>.
- ⁵ Calculations by the primary author comparing suicide rates published by the Bureau of Justice Statistics and the Centers for Disease Control. Mumola, C.J. (2005, August). *Suicide and Homicide in State Prisons and Local Jails*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Office of Statistics and Programming, National Center for Injury Prevention and Control, CDC Web-based Injury Statistics Query and Reporting System (2007, July). *2000 – 2002, United States Suicide Injury Deaths and Rates per 100,000 All Races, Both Sexes, Ages 14 to 17*. Atlanta, GA: US Department of Health and Human Services, CDC. Available at: <http://www.cdc.gov/ncipc/wisqars/default.htm>.
- ⁶ National Center for Injury Prevention and Control, Division of Violence Prevention (2007, Summer). *Suicide*. Atlanta, GA: US Department of Health and Human Services, CDC. Available from: <http://www.cdc.gov/ncipc/dvp/Suicide/SuicideDataSheet.pdf>.
- ⁷ Mumola, C.J. (2005, August). *Suicide and Homicide in State Prisons and Local Jails*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.
- ⁸ Ibid.
- ⁹ Hayes, L.M. (2004, February). *Juvenile Suicide in Confinement: A National Survey*. Alexandria, VA: National Center on Institutions and Alternatives. Available from: <http://www.ncjrs.gov/pdffiles1/ojjdp/grants/206354.pdf>.
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- ¹¹ Garcia, J. (2007, October). *Letter to Committee on Education and Labor*. Phoenix, AZ: State of Arizona, Governor's Office for Children, Youth, and Families. Available from: http://www.act4ij.org/media/documents/document_22.pdf.
- ¹² Hayes, L.M. (2004, February). *Juvenile Suicide in Confinement: A National Survey*. Alexandria, VA: National Center on Institutions and Alternatives. Available from: <http://www.ncjrs.gov/pdffiles1/ojjdp/grants/206354.pdf>.
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The Danger of Rape and Sexual Assault

Almost every jail and prison across America experiences problems with sexual violence. In response, Congress passed the Prison Rape Elimination Act of 2003 calling for the development of national standards to address prisoner rape, the gathering of nationwide statistics about the problem, the provision of grants to states to combat it, and the creation of a review panel to hold annual public hearings with the best and the worst performing cor—rectional facilities.¹ The Bureau of Justice Statistics now collects information about sexual violence from all detention facilities, including federal and state prisons, jails, police lock-ups, private facilities, juvenile facilities, and immigration detention centers.

These new data are helping us understand the problem of sexual violence, but the data collection efforts are not without their problems. Victimization, particularly sexual assault by a same-sex perpetrator is a very sensitive event that complicates the self-report data. There are ethical concerns, a need to ensure respondent confidentiality to ease fear of reprisal, and a general reluctance to fully report past incidents. Earl Dunlap, Chief Executive Officer of the National Partnership for Juvenile Services testified before the National Prison Rape Elimination Commission: “Let us be mindful of the undeniable reluctance on the part of children and youth to tell their story, particularly as a victim of physical and sexual abuse. They enter our environments not trusting, they are given reasons while in our environments not to trust, and ultimately it begs the question, if they are to trust, who is it that they do trust?”² Data collection from juveniles is further complicated in that it requires consent from parents or legal guardians (even for youth who are “adults” in the criminal justice system).³ The result is that the available data are likely to underestimate the true level of sexual violence currently occurring in adult jails.

The data do confirm that youth are at high risk for being sexually assaulted in jails. In 2005 and 2006, 21% and 13%, respectively, of all victims of substantiated incidents of inmate-on-inmate sexual violence in jails were juveniles under the age of 18 – an extremely high proportion of victims given their relatively low numbers in jail populations (typically only 1% of all inmates are juveniles).⁴

Even for youth not directly assaulted, the psychological effects of being in constant and legitimate fear of sexual assault, or of witnessing the sexual assault of others, can be devastating. Dr. Barry Krisberg, President of the National Council on Crime and Delinquency testified before the National Prison Rape Elimination Commission that many youth become disciplinary problems as a self-protective mechanism: “What youth tended to do to protect themselves, particularly when the lights were out in the dormitory, was often to assault staff to get locked up, and they didn’t mind being locked up 23 hours a day if that meant, as they would often say, not having to watch your back. So, you’d see staff, and, in fact, correctional officers and superintendents would routinely tell me that the lockup units were populated with essentially what they called protective custody cases. These were not gang-bangers, these were not violent youths, these were youth trying to escape the victimization that was going on in the dormitories. Another way out was to engage in abnormal behavior, like suicidal gestures, smearing feces on yourself or your bed, claiming that you were hearing voices, so that the psychologist and psychiatrist would, again, get you out of these terrible dormitories and into some single room where you’d feel some modicum of safety.”⁵

Notes

- ¹ Stop Prisoner Rape (2007, October). *SPR Fact Sheet: The Prison Rape Elimination Act*. Los Angeles, CA: Stop Prisoner Rape. Available from: <http://www.spr.org/en/factsheets/Prison%20Rape%20Elimination%20Act.pdf>.
- ² Dunlap, E. (2006, June). *Testimony by Earl Dunlap*. Boston, MA: National Prison Rape Elimination Commission Available from: http://www.nprec.us/docs/boston_detainedjuveniles_dunlap.pdf.
- ³ Bureau of Justice Statistics (2004, June). *Data Collections for the Prison Rape Elimination Act of 2003*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Available from: <http://www.ojp.usdoj.gov/bjs/pub/pdf/dcprea03.pdf>.
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- Beck, A.J., Harrison, P.M. (2006, July). *Sexual Violence Reported by Correctional Authorities, 2005*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.
- ⁵ Krisberg, B. (2006, June) *Testimony by Barry Krisberg*. Boston, MA: National Prison Rape Elimination Commission Available from: http://www.nprec.us/docs/boston_natureofproblem_krisberg.pdf.

“Let us be mindful of the undeniable reluctance on the part of children and youth to tell their story, particularly as a victim of physical and sexual abuse.”

~ Earl Dunlap, CEO of the National Partnership for Juvenile Services

The Danger of Isolation

Federal law requires states to keep youth who are under the jurisdiction of the juvenile court out of adult jail, but there is a loophole: the law does not apply to youth charged as adults. Most states permit the pre-trial detention of youth in jails, and only 20 states require that youth must be segregated from adult inmates. Regardless of the specific legal requirements, jail officials face a Catch-22: separating youth from adult inmates is beneficial in that it minimizes contact with people who can pose grave physical and emotional threats to youth, but when a youth is separated, he or she is often placed in isolation, which can exacerbate mental health issues and suicidal impulses.

When youth are segregated in jails, they often are placed in conditions that mimic the isolation or solitary confinement conditions in “super-max” facilities reserved for the most hardened adult offenders. Youth can be locked down 23 or 24 hours a day in small cells that may measure 48 to 80 square feet with no natural light, no control over the electric light in their cell, and no view outside of their cell. They have no contact with other prisoners, even verbal contact, and no meaningful contact with staff. For example, according to a letter from Human Rights Watch to Los Angeles County Sheriff Baca:

We are concerned that the living conditions in the [jail] have serious emotional consequences for all youths and are likely to exacerbate preexisting mental disorders. Youths in the [jail] are generally locked in single cells for twenty-three-and-a-half hours each day. There are no windows giving access to natural light in the cells nor, as far as we could see, anywhere else in the [jail.] Youths are not able to control the lighting in their cells. Dim even when they are on, the lights in the cells were off for much of the time we spent in the juvenile module on the morning of our visit. According to your staff, one youth at a time is allowed out of his cell for thirty minutes each day to shower, place telephone calls, and walk along the corridor outside the cells. Youths also have recreation on the roof once each week for three hours; during this time, they are locked in individual cages that contain a pull-up bar and a telephone. Otherwise, with the exception of family and attorney visits and trips to the nurse, they remain in their cells with little or nothing to do.¹

Research shows that these periods of segregation are harmful to individuals and makes it more difficult to treat them successfully.² According to findings from the U.S. Department of Justice investigation in Baltimore, youth experience symptoms of paranoia, anxiety, and depression even after very short periods of isolation.³

According to University of California–Santa Cruz psychology professor Craig Haney, the effects of isolation are profound and disabling because people lose their ability to test social reality. For youth, the stress can have everlasting consequences:

The political stereotype is that a fourteen- or sixteen-year-old who commits an adult crime must be as sophisticated as an adult when paradoxically these kids are most often younger than their age emotionally. Regardless of what they have done, they are in an uncertain, unformed state of social identity. These are kids who are the least appropriate to place in solitary confinement. Not only are you putting them in a situation where they have nothing to rely on but their own, underdeveloped internal mechanisms, but you are making it impossible for them to develop a healthy functioning adult social identity. You're basically taking someone who's in the process of finding out who they are and twisting their psyche in a way that will make it very, very difficult for them to ever recover.⁴

Beth, mother of Paul, a youth sentenced to an adult jail

In an interview with Beth, she tells us about her son Paul, a teenager who is serving time in an adult jail. Here are excerpts from the interview with Beth:

While in jail, Paul has felt unsafe, shared a cell with violent offenders, including an accused murderer, and been picked on, harassed, and physically attacked by adult inmates. Any kind of self-defense to physical attacks results in confinement for 30 days during which he is locked down for 23 hours per day...I'm scared I will get a call that my son has died in jail...He needs role models, mentors, and programs to help him find his way both in jail and out...With an adult criminal record and the inability to complete his education, who will hire Paul? His identity is gone and friends are gone. What will he do with the rest of his life?



Notes

- ¹ Bochenek, M. (2003, June). *Letter to Sheriff Baca from Michael Bochenek*. New York: Human Rights Watch, Children's Rights Division. Available from: <http://hrw.org/press/2003/06/us061003-ltr.htm>.
- ² Haney, C. (2003). Mental Health Issues in Long-Term Solitary and 'Super-max' Confinement. *Crime & Delinquency* 49 (1) 124-156.
- ³ Boyd, R. (2002, August). *Letter to Governor Parris Glendening from Assistant Attorney General Ralph F. Boyd, Jr.*. Washington, D.C.: United States Department of Justice. Available from: http://www.usdoj.gov/crt/split/documents/baltimore_findings_let.htm.
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THOUSANDS OF YOUTH ACROSS THE COUNTRY ARE IN DANGER

On Average, 7,500 Youth Are Incarcerated in Adult Jails Every Day in America.

The last national study of youth in adult jails was conducted nearly 10 years ago in 1998.¹ Current information about the number of youth in adult jails comes from the U.S. Department of Justice Bureau of Justice Statistics' Annual Survey of Jails that takes a snapshot of the jail population on June 30 each year. According to that survey, an average of 7,500 youth are incarcerated in adult jails each day in America.² No estimates of the annual number of youth exposed to the dangers in jails are available but researchers estimate the yearly number of youth who are placed in adult jails is ten or twenty times the daily average to account for the "turnover rate" of youth entering and exiting adult jails.³ As many as 200,000 youth are prosecuted as adults each year, and many of these youth are expected to be exposed to the risks in jail.⁴

HOW A YOUTH ENDS UP IN THE ADULT CRIMINAL JUSTICE SYSTEM

Age of Juvenile Court Jurisdiction	These laws determine the age of adulthood for criminal justice purposes. They effectively remove certain age groups from the juvenile court control for all infractions, whether violent or non-violent, and place them within the adult court jurisdiction. Thirteen states have defined the age of juvenile court jurisdiction as below the generally accepted age of 18 years old.
Transfer and Waiver Provisions	These laws allow young people to be prosecuted in adult courts if they are accused of committing certain crimes. A variety of mechanisms exist by which a youth can be transferred to adult court. Most states have transfer provisions, but they vary in how much authority they allow judges and prosecutors to exercise.
Judicial Waiver	This is the most traditional and common transfer and waiver provision. Under judicial waiver laws, the case originates in juvenile court. Under certain circumstances, the juvenile court judge has the authority to waive juvenile court jurisdiction and transfer the case to criminal court. Some states call the process "certification," "remand," or "bind over for criminal prosecution." Others "transfer" or "decline jurisdiction" rather than waiver. At the end of the 2004 legislative session, almost all states had judicial waiver provisions. State statutes vary in how much guidance they provide judges on the criteria used in determining if a youth's case should be transferred.
Prosecutorial Waiver	These laws grant prosecutors discretion to file cases against young people in either juvenile or adult court. Such provisions are also known as "concurrent jurisdiction," "prosecutorial discretion," or "direct file." At the end of the 2004 legislative session, 15 states had concurrent jurisdiction provisions.
Reverse Waiver	This is a mechanism to allow youth whose cases are being prosecuted in adult court to be transferred back down to the juvenile court system under certain circumstances. At the end of the 2004 legislative session, 25 states had reverse waiver provisions.
Statutory or Legislative Exclusion	These laws exclude certain youth from juvenile court jurisdiction entirely by requiring particular types of cases to originate in criminal rather than juvenile court. At the end of the 2004 legislative session, 29 states had statutory exclusion laws on the books.
"Once an Adult, Always an Adult"	These laws require youth who have been tried as adults to be prosecuted automatically in adult courts for any subsequent offenses. At the end of the 2004 legislative session, 34 states had such provisions, but most require the youth to have been convicted in the initial criminal prosecution.
Blended Sentencing	These laws allow juvenile or adult courts to choose between juvenile and adult correctional sanctions in sentencing certain youth. Courts often will combine a juvenile sentence with a suspended adult sentence, which allows the youth to remain in the juvenile justice system as long as he or she is well-behaved. At the end of the 2004 legislative session, 26 states had passed laws that provided for blended sentencing in some cases.

Sources: Sickmund, M. (2003). *Juveniles in court*. Washington, DC: US Department of Justice, Office of Juvenile Justice and Delinquency Programs. Available from: <http://www.ncjrs.gov/html/ojjdp/195420/contents.html>; Griffin, P. (2003, October). *Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws*. Washington, D.C.: Office of Juvenile Delinquency and Prevention, National Center for Juvenile Justice. Available from: <http://ncjj.servehttp.com/NCJJWebsite/pdf/transferbulletin.pdf>.

Too Many Youth Are Punished Pre-Trial by Being Held in Adult Jails

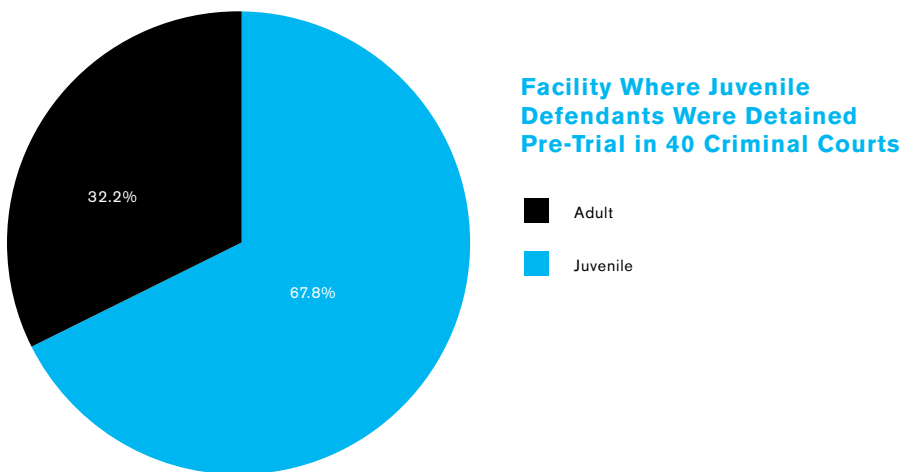
There are only two acceptable purposes for the pre-trial detention of youth: 1) to ensure that youth are present for their court hearings and 2) to protect public safety by preventing the youth from committing more crimes while awaiting trial. The public's desire to punish youth who may have committed serious crimes should not play a role in whether a youth is detained pre-trial. Prior to conviction, the youth is not guilty.

Too many youth across America are punished pre-trial. Every day in America, 7,500 youth are incarcerated in adult jails in conditions that amount to punishment.⁵ While the Campaign for Youth Justice acknowledges that some youth may pose a danger to the public and may need to be detained during the court process, detaining youth in adult jails is a practice that should be abolished. Instead, youth who need to be detained should be held in juvenile detention facilities equipped to meet their unique developmental needs.

Earlier this year, the Campaign for Youth Justice commissioned a study to learn more about the characteristics of youth in the adult system. Jolanta Juskiewicz, Ph.D., completed the study, *To Punish a Few: Too Many Youth Caught in the Net of Adult Prosecution*, providing the most in-depth look at the issue of youth in the adult system through the lens of 40 jurisdictions from all the major regions of the country (West, Midwest, South, and Northeast).⁶ The study analyzed data collected by the Bureau of Justice Statistics as part of the Juvenile Defendants in Criminal Courts, Survey of 40 Counties, 1998 (JDCC) program. The JDCC consisted of cases involving juveniles prosecuted for felony offenses in criminal courts in 40 large, urban jurisdictions. All the cases involving juveniles that were filed for felony offenses during calendar year 1998 in the state criminal courts, regardless of filing mechanism, were selected for the study. The 40 jurisdictions were located in 19 states, with nine of the states having two or more jurisdictions in the study. The five key findings of *To Punish a Few* with respect to youth held pre-trial in adult jails are astounding.

1. If detained pre-trial, two-thirds of youth in adult systems are held in adult jails.
2. As many as one-half of the youth prosecuted in the adult system do not receive an adult court conviction.
3. Most youth who were not convicted as adults spent more than one month in an adult jail.
4. Fewer than 25% of convictions in adult court result in a prison sentence.
5. The majority of youth sentenced to probation or given a juvenile sanction were held pre-trial in an adult jail.

Finding 1: If detained pre-trial, two-thirds of youth in adult systems are held in adult jails.



If detained pre-trial, two-thirds of youth in adult systems are held in adult jails.

Juszkiewicz found that the vast majority (67.8%) of juvenile defendants who were detained pre-trial were held in an adult jail.⁷ Over the course of 1998, a total of 5,021 youth were held in an adult jail for at least 48 hours, and nearly one out of five youth were held in an adult jail for at least six months.

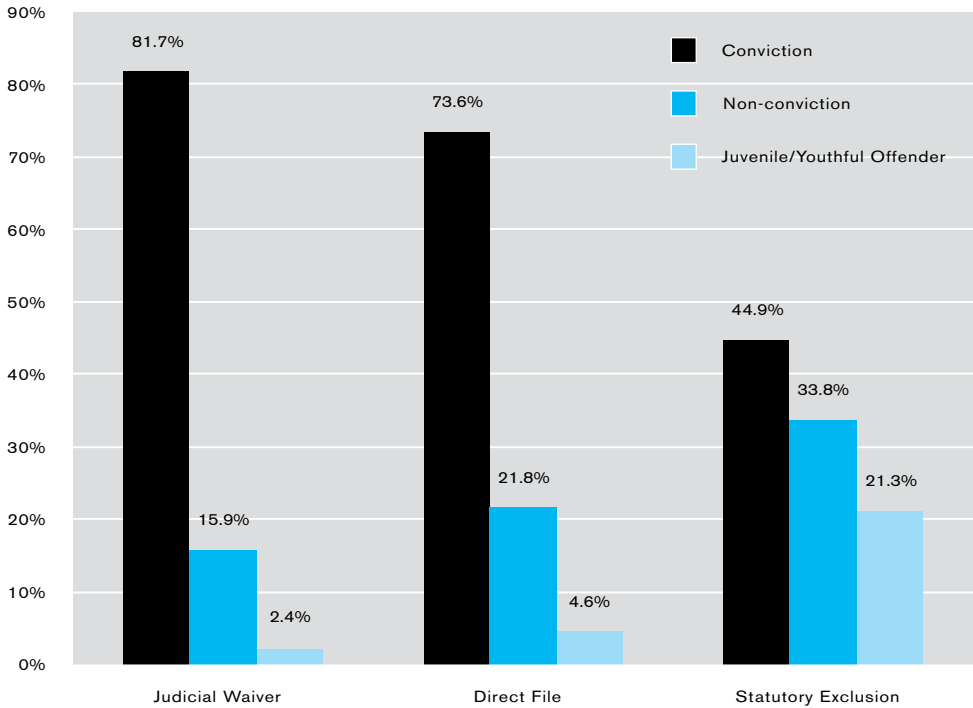
Juszkiewicz also examined the relationship between the facility where the juvenile defendants were held pre-trial and their most serious sentence. Contrary to popular belief that juvenile facilities are ill-equipped to handle serious youthful offenders, Juszkiewicz found that juvenile facilities routinely handle youth who are ultimately sent to adult prison.

The Length of Pre-Trial Jail Stays of Juveniles Prosecuted as Adults in 40 Criminal Courts

County	State	Number of Days										Total
		2 or less	3-5	6-10	11-30	31-60	61-90	91-120	120-180	181-270	271+	
Jefferson	AL	59	11	7	3	7	3	2	4	1	16	113
Maricopa	AZ	104	13	29	62	88	84	59	58	32	22	551
Pima	AZ	64	16	23	29	18	31	30	28	13	10	262
Alameda	CA	0	0	0	0	0	0	0	0	0	1	1
Los Angeles	CA	5	5	8	55	42	52	51	92	64	49	423
Orange	CA	1	2	0	6	5	5	4	7	12	23	65
Sacramento	CA	0	1	0	2	4	2	4	7	10	8	38
San Bernardino	CA	4	0	2	4	4	4	3	0	0	4	25
San Francisco	CA	0	0	0	0	0	0	0	0	0	0	0
Santa Clara	CA	7	0	5	4	7	2	2	1	2	7	37
Ventura	CA	0	0	0	1	0	1	1	2	1	0	6
Broward	FL	121	18	33	58	58	42	35	38	47	51	501
Miami-Dade	FL	51	1	3	140	134	73	42	67	46	93	650
Hillsborough	FL	124	21	32	66	48	46	39	43	19	13	451
Orange	FL	20	8	3	25	32	22	30	55	26	9	230
Fulton	GA	3	2	2	7	1	0	4	3	4	10	36
Honolulu*	HI	1	0	1	2	3	0	1	2	3	2	15
Cook	IL	0	0	0	0	0	0	0	0	0	0	0
DuPage	IL	2	0	0	0	3	0	0	0	0	0	5
Marion	IN	52	21	17	22	12	7	10	14	8	6	169
Jefferson	KY	0	0	0	0	0	0	0	0	0	0	0
Montgomery	MD	31	2	2	8	6	1	1	4	2	4	61
Baltimore City	MD	178	50	14	76	56	19	26	39	73	47	578
Wayne	MI	0	0	0	0	0	0	0	0	0	0	0
Jackson	MO	4	2	3	0	1	0	0	0	6	4	20
St. Louis County	MO	5	2	1	5	3	1	4	3	4	0	28
New York City	NY	0	0	0	0	0	0	0	0	0	0	0
Westchester	NY	0	0	0	0	0	0	0	0	0	0	0
Suffolk	NY	0	0	0	0	0	0	0	0	0	0	0
Hamilton	OH	4	0	1	4	11	4	5	5	1	0	35
Allegheny	PA	17	1	0	3	0	0	3	1	2	0	27
Philadelphia	PA	74	17	24	62	35	18	5	19	47	35	336
Shelby	TN	5	0	3	50	27	8	7	7	11	24	142
Dallas	TX	4	1	0	1	1	2	4	6	5	2	26
Harris	TX	1	6	8	11	8	15	10	19	12	13	103
King	WA	2	8	5	3	8	5	5	5	3	1	45
Milwaukee	WI	6	0	1	2	13	7	5	4	4	0	42
Total		949	208	227	711	635	454	392	533	458	454	5021

Finding 2: As many as one-half of the youth prosecuted in the adult system do not receive an adult court conviction.

Final Disposition by Filing Mechanism in 40 Criminal Courts

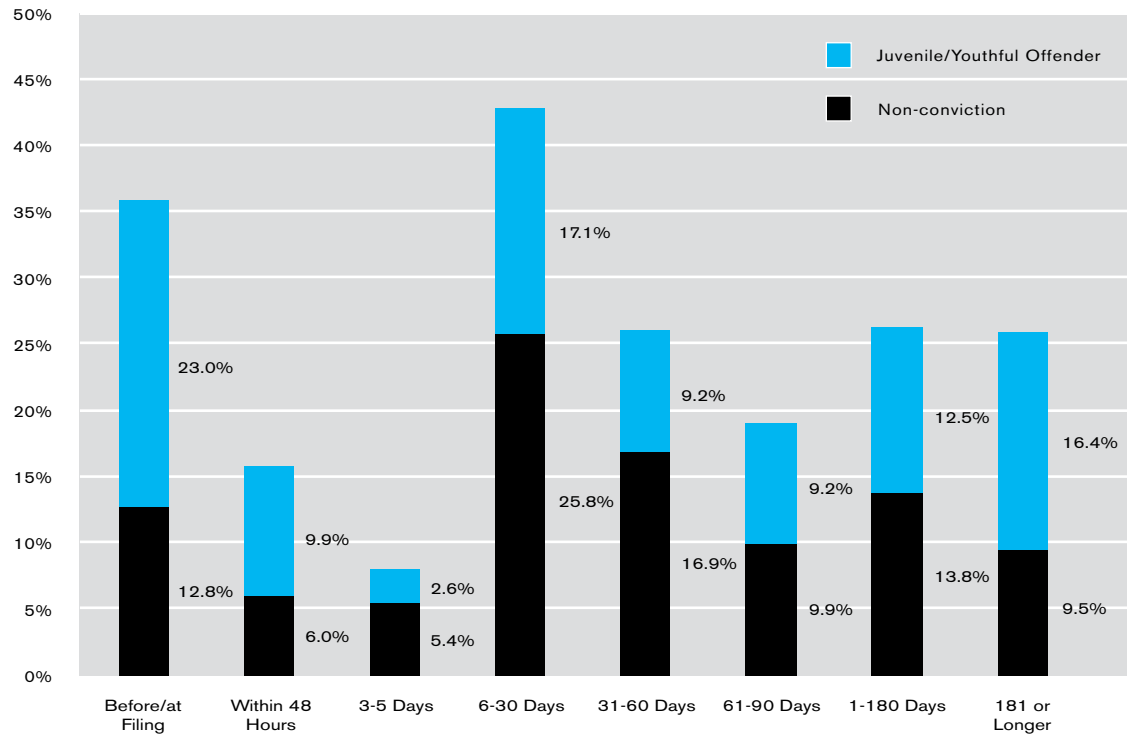


Juskiewicz found that conviction rates varied widely by type of transfer mechanism. In fact, 55.1% of the statutory exclusion cases filed in criminal courts did not result in an adult court conviction. One out of three statutory exclusion cases resulted in a non-conviction, and one out of five cases resulted in either transfer to juvenile court or disposition as a delinquent or youthful offender. By comparison, eight out of 10 cases that were judicially waived from juvenile court to criminal court resulted in a conviction.

As many as one-half of the youth prosecuted in the adult system do not receive an adult court conviction.

Finding 3: Most youth who were not convicted spent more than one month in an adult jail.

Percentage of Juvenile Defendants Not Convicted as Adults or Adjudicated as Youthful Offenders or Juvenile Delinquents in 40 Criminal Courts, by the Number of Days They Were Detained in Adult Jails



Juskiewicz found that half of the youth (50.1%) who were detained pre-trial but were not convicted spent more than one month in an adult jail, with 9.5% spending more than six months in jail. Given the dangers inherent in jails and the lack of adequate education and other programs, it is unconscionable that youth who are ultimately not convicted or are returned to the juvenile justice system spend such significant lengths of time in adult jails.

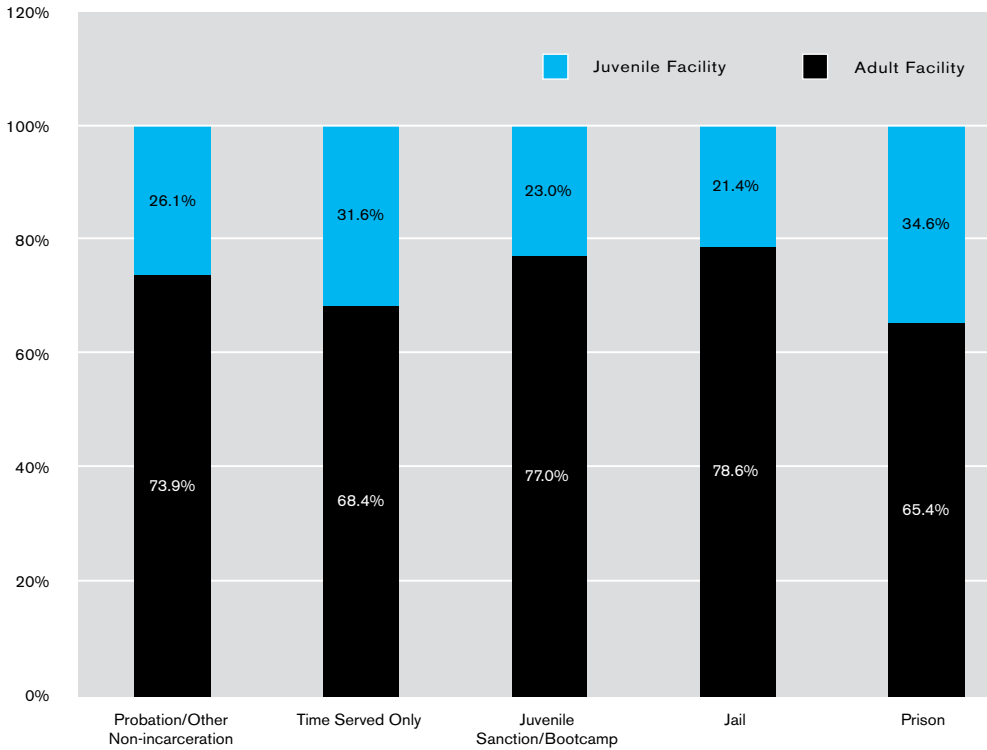
Finding 4: Fewer than 25% of convictions in adult court result in a prison sentence.

As mentioned, the two valid reasons for pre-trial detention are to ensure that youth appear for court and to protect public safety. For youth charged with serious violent crimes, pre-trial detention is often warranted. However, the Juskiewicz study found that cases with an initial violent charge ended in a conviction for only about half of the cases (51.4%) and an adult prison sentence for only 20.3% of the cases. Many youth originally charged in adult court, even youth charged with violent offenses, return to juvenile court. In fact, the highest proportion of juvenile defendants who were either transferred back to juvenile court or adjudicated delinquent or youthful offender in criminal court were youth adjudicated for violent offenses. Further, 9.1% of the juvenile defendants convicted as adults were sentenced to serve their sentence in a juvenile or youthful offender facility, including boot camp. Nearly one-quarter (24.9%) of juvenile offenders were sentenced to probation, and a similar proportion (24.3%) of the juveniles convicted as adults received a non-incarceration sentence.⁸

Finding 5: The majority of youth sentenced to probation or given a juvenile sanction were held pre-trial in an adult jail.

Juszkiewicz examined how many of the youth whose sentence was not prison spent time in an adult facility pre-trial. As stated, the vast majority of all detained youth were held in an adult jail pre-trial. She found that nearly three-quarters (73.9%) of those who were sentenced to probation only were detained in a jail pre-trial, and an even higher proportion (77%) of juveniles who were given a juvenile sanction were detained in an adult jail pre-trial.

Most Serious Sentence Imposed for Juvenile Defendants Detained Pre-Trial in 40 Criminal Courts



The majority of youth sentenced to probation or given a juvenile sanction were held pre-trial in an adult jail.

Notes

- ¹ Austin, J., Johnson, K.D., Gregoriou, M. (2000, October). *Juveniles in Adult Prisons and Jails: A National Assessment*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance. Available from: <http://www.ncjrs.gov/pdffiles1/bja/182503.pdf>.
- ² Calculations by the primary author using a ten-year average (1997 to 2006) of one-day counts taken on June 30th of each year as reported by the Bureau of Justice Statistics (BJS) in annual editions of the BJS publication, *Prison and Jail Inmates at Midyear*, available from <http://www.ojp.usdoj.gov/bjs/jails.htm>. Youth in jails can be held as “juveniles” or “adults.” Youth under the jurisdiction of juvenile court are protected by the federal Juvenile Justice and Delinquency Prevention Act (JJDP A) and can be held in adult jails in limited circumstances, most commonly because the jurisdiction lacks a juvenile detention facility. Of the 7,594 youth held in jails as “adults,” 81% are youth prosecuted in the adult criminal system and are not protected by the JJDP A.
- ³ In 17 of the jurisdictions (Jefferson County, Alabama, Pima County, Arizona; Alameda County, California, Broward, Dade, Hillsborough, and Orange Counties, Florida, Honolulu County, Hawaii, Du Page County, Illinois, Marion County, Indiana; Jackson and St. Louis Counties, Missouri; Hamilton County, Ohio, Allegheny County, Pennsylvania, Shelby County, Tennessee, and Dallas and Harris Counties, Texas) all youth were held pre-trial in adult jails.
- ⁴ Wolfson, J. (2005, March). *Childhood on trial: The failure of trying and sentencing youth in adult criminal court*. Washington, D.C.: Coalition for Juvenile Justice.
- ⁵ Calculations by the primary author using a ten-year average (1997 to 2006) of one-day counts taken on June 30th of each year as reported by the Bureau of Justice Statistics (BJS) in annual editions of the BJS publication, *Prison and Jail Inmates at Midyear*, available from <http://www.ojp.usdoj.gov/bjs/jails.htm>.
- ⁶ Juszkiewicz, J. (2007, October). *To Punish A Few: Too Many Youth Caught in the Net of Adult Prosecution*. Washington, D.C.: Forthcoming study from the Campaign For Youth Justice.
- ⁷ In 17 of the jurisdictions (Jefferson County, Alabama, Pima County, Arizona; Alameda County, California, Broward, Dade, Hillsborough, and Orange Counties, Florida, Honolulu County, Hawaii, Du Page County, Illinois, Marion County, Indiana; Jackson and St. Louis Counties, Missouri; Hamilton County, Ohio, Allegheny County, Pennsylvania, Shelby County, Tennessee, and Dallas and Harris Counties, Texas) all youth were held pre-trial in adult jails.
- ⁸ Time served refers to a sentence whereby the period of pre-trial detention is recognized as the sentence. For purposes of distinguishing between incarceration and non-incarceration sentences, time served is an incarceration sentence.

LIMITED LEGAL PROTECTIONS FOR YOUTH IN ADULT JAILS

“No juvenile shall be detained or confined in an adult jail or lockup for adults.”

– The Juvenile Justice and Delinquency Prevention Act

Federal Loophole Allows Youth to Be Held in Jails

Federal law requires states to keep youth under the jurisdiction of the juvenile court out of adult jail, but there is a loophole: the law does not apply to youth charged as adults. The Juvenile Justice and Delinquency Prevention Act (JJDP) states juveniles “will not be detained or confined in any institution in which they have contact with adult inmates.” This provision of the Act is commonly referred to as the “sight and sound separation” core protection. The Act also contains a “jail removal” core protection which states that “no juvenile shall be detained or confined in any jail or lockup for adults”¹ However regulations interpreting the statute exclude youth in the adult system from these core protections: “a juvenile who has been transferred, waived, or direct filed or is otherwise under the jurisdiction of a criminal court does not have to be separated from adult criminal offenders pursuant to the separation requirements of the JJDP Act. This is due to the fact that such a juvenile is not alleged to be or found to be delinquent (i.e., the juvenile is under a criminal proceeding, not a delinquency proceeding).”²

In 1974, Congress adopted the JJDP in response to concerns that state and local governments were unable to provide sufficient technical expertise and adequate resources to cope effectively with juvenile delinquency. At the heart of the legislation were the requirements that states develop comprehensive plans to remove all non-offenders (dependent and neglected youth) and all status offenders (youth who have committed non-criminal offenses) from secure detention or correctional facilities. The Act also required that juveniles be removed from adult jails. At the time it was originally adopted, and again when it was reauthorized in 1977, 1980, and 1984, provisions to ensure that youth were removed from jails received overwhelming bipartisan support from both Houses of Congress (see letter from the National Coalition for Jail Reform).³

One of the 1980 amendments to the JJDP required states to remove juveniles from adult jails and lock-ups within a few years or risk losing federal juvenile justice funds. The 1980 amendments to the JJDP also mandated that a study be done of the costs, experiences, and ramifications of removing youth from adult jails and lockups. The study found that jail removal could be accomplished at a relatively low cost.⁴

With the JJDP scheduled for reauthorization in 2007, Congress should amend the JJDP and remove the federal loophole and ensure that all youth, regardless of whether they are being tried in the adult criminal system, should be removed from adult jails.

Notes

¹ Snyder, H.N., Sickmund, M. (2006). *Juvenile Offenders and Victims: 2006 National Report*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

² See the Office of Juvenile Justice and Delinquency Prevention (OJJDP) Compliance Monitoring Manual available at: <http://www.ojdp.ncjrs.gov/compliance/section4.pdf>.

³ Ad Hoc Coalition for Juvenile Justice (1983, June). *Guide to the 1984 Reauthorization of the Juvenile Justice and Delinquency Prevention Act*. Washington, D.C.: Ad Hoc Coalition for Juvenile Justice.

⁴ Ibid.

**Letter from the National Coalition for Jail Reform submitted for the 1984
Reauthorization of the Juvenile Justice and Delinquency Prevention Act (JJDA).**

NATIONAL COALITION FOR JAIL REFORM

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COMMENTS ON THE REAUTHORIZATION
OF THE JUVENILE JUSTICE AND DELINQUENCY
PREVENTION ACT

The National Coalition for Jail Reform is composed of 39 national organizations including the American Correctional Association, American Jail Association, National Center for State Courts, National Criminal Justice Association, National League of Cities, National Criminal Justice Association, National League of Cities, National Sheriffs' Association, and Police Executive Research Forum. These organizations are working on the problems of local jails--where many juveniles end up. The member organizations are working to reduce inappropriate confinement and conditions in jails.

All 39 organizations endorsed the goal that, "No Juveniles should be held in adult jails or lockups".

The role of OJJDP in removing juveniles from jail has been critical to the progress that has been made in this area. Many jurisdictions have reduced the number of juveniles held in adult facilities due to the help provided by OJJDP Programs. Establishment of objective criteria for secure detention, twenty-four hour intake screening, and alternatives where needed have been some of the results of the OJJDP act.

But the problem is not yet solved. Juveniles still remain in jail. In 1982, according to the U.S. Department of Justice' Bureau of Justice Statistics, there were still over 300,000 juveniles in adult jails. In addition, there are several hundred thousand more juveniles held in police lockups.

It is critically important in the reauthorization of the OJJDP act, to retain the provision on removing juveniles from adult jails and lockups. The federal leadership role in this area is extremely important. Congress, in 1980, amended the JJDP act to require states to remove juveniles from adult jails and lockups within seven years. A 1981 Congressionally-mandated nationwide survey showed that removing juveniles from jail could be accomplished without expensive construction, which was a concern of Congress. The help that OJJDP provides to local jurisdictions on alternatives to jail is crucial to the effort to remove the rest of the juveniles from adult jails.

State Laws Fail to Protect Youth

States have struggled to determine the best place to house youth prosecuted in the adult criminal system. While most states permit the pre-trial detention of youth being tried as adults in adult facilities, 10 states actually require youth in the adult system be housed in jails.¹ Of the 39 states that allow youth to be jailed, only 20 states have protections for youth (e.g., requirements that youth be separated by sight and sound from adult inmates), and only six states have age restrictions on the pre-trial detention of youth in jails.

Although states have different laws regarding the pre-trial detention of youth in adult jails, jurisdictions across the country are making the choice, even for the “worst of the worst” youth, to keep youth in juvenile facilities. In Kentucky, state law prohibits youth from being held in jails pre-trial. In Los Angeles, County officials use Memorandums of Understanding (MOUs) to ensure that youth in the adult system are held in juvenile facilities.

State Profile: Kentucky

In two states, West Virginia and Kentucky, youth are never housed with adults during the pre-trial phase of court proceedings. Kentucky’s statute was heavily influenced by litigation on behalf of youth in jails in the early 1970s. *Baker v. Hamilton* was a leading decision on the rights of youth in adult jails. The action was brought as a class action on behalf of all youth facing incarceration in the Jefferson County Jail in Louisville, Kentucky. The legal bases for the claims were quite broad. First, they claimed that imprisonment in the jail violated their rights to due process of law under the Fourteenth Amendment, and that their rights under the Eighth Amendment were also violated because the conditions in the jail amounted to cruel and unusual punishment. The court’s decision clearly describes the reasons why the conditions violated both the Fourteenth and Eighth Amendments. One boy was in the jail for two weeks, placed in solitary confinement for four days, slept on a concrete floor without a blanket or mattress, and found filth and human spit and vomit around him. Another boy was in the jail for four weeks, during which time he witnessed sexual acts between two inmates and was the object of sexual advances by two other inmates.²

A subsequent case, *Cox v. Turley*, was brought on behalf of 16-year-old Duane Cox, who was arrested for a curfew violation and taken to the Madison County Jail. He was not allowed to telephone his father and was held by law enforcement authorities for five days on the verbal order of the nonlawyer judge in charge of juvenile matters in the town. Cox brought a federal civil rights action on behalf of himself and all other inmates in the county, and in November 1972, the U.S. Court of Appeals held that he had stated a valid claim for violation of his constitutional rights. The court was particularly concerned with the “intermingling of juvenile and adult offenders that the law forcefully commands shall not be permitted by prison or jail authorities.”³

Kentucky has come a long way since those two cases, and now youth who are tried in the adult criminal system cannot be housed in an adult facility until they are 18 years old. Youth housed in juvenile detention facilities but convicted in adult court will have a hearing to decide their optimal placement after turning age 18. At these hearings, youth often remain in the juvenile detention facility.

County Profile: Los Angeles, California

More than 40 youth at a time had been routinely housed in jails in Los Angeles until a policy change in 2003.⁴ California law allows adult jails to be used as a “disciplinary safety valve” to hold youth who are discipline problems in juvenile detention facilities.⁵ While the majority of youth prosecuted as adults in California are held in juvenile detention facilities, the Los Angeles County Probation Department had a contract with the Sheriff’s Department to house 44 youth in the county jail. Boys in the custody of the Sheriff’s Department were held in a separate juvenile module at the Men’s Central Jail. Most of

these youth were pre-trial detainees who would spend six months to a year or more in jail before their cases were resolved.

At the beginning of June 2003, Javier Stauring, a chaplain in charge of ministry for incarcerated youth throughout the County, heard from other youth that two boys housed at the jail had attempted suicide. One of the boys had a history of mental illness and had previously attempted to kill himself while in police custody following his arrest. Stauring visited the boys and asked them if they wanted help. The boys agreed and Stauring sent a letter to Sheriff Baca requesting that he stop housing youth at the jail; copies also were sent to the key policymakers and media who would have the power to make the change. In response, Los Angeles County Supervisor Gloria Molina asked the County Ombudsman to investigate and review Stauring's concerns. She also convened a closed-door meeting of county officials to discuss jail conditions and how detention decisions could be improved. The Los Angeles County Grand Jury, a citizen oversight commission, also investigated the situation and recommended to the Sheriff that he remove youth from the jail, concluding that the controversial practice might have been contributing to higher recidivism rates among teenagers.

By the end of June, County officials were made aware of the dire conditions that youth were living in, and Supervisor Zev Yaroslavsky directed the County Chief Administrative Officer (CAO) and the Sheriff and Probation Departments to identify alternatives to housing youth in the jail. At a July 8 Board of Supervisors meeting, the CAO presented several alternatives and identified a nearby juvenile commitment facility suitable for the youth. In a few short months, Los Angeles County was able to remove youth from jail using contract agreements between the different facilities. Youth were transferred from the jail to the juvenile facility starting in November. At the juvenile facility, the boys finally were able to attend classes in a group, eat meals together, use the recreational facilities, and have regular religious services. While the majority of youth are no longer housed in the jail, one or two youth may be housed there under a court order or after sentencing while awaiting transport to their next facility.

Notes

- ¹ Of those 10 states, only two mandate it for particular groups of transferred children.
- ² *Baker v. Hamilton* (1972) 354 F. Supp. 345. All case details are from Soler, M. (1988). Litigation on Behalf of Children in Adult Jails. *Crime and Delinquency*, 34(2), 190-208.
- ³ Soler, M. (1988). Litigation on Behalf of Children in Adult Jails. *Crime and Delinquency*, 34(2), 190-208.
- ⁴ See generally Arya, N. (2005, October) Faith in Action: Getting Children Out of Jails in Los Angeles. *No Turning Back: Promising Approaches to Reducing Racial and Ethnic Disparities Affecting Youth of Color in the Justice System*. Washington, D.C.: Building Blocks for Youth Initiative.
- ⁵ Advocates found that many youth were transferred to jails for minor infractions or rule violations that should have been, and could have been, managed by the juvenile facility. In response, the California legislature passed Assembly Bill 945 in 2003 stopping the transfer of youth to county jails for minor infractions or rule violations. Courts now must make findings on the record that the minor's behavior poses a danger to the staff, other minors in the juvenile facility, or to the public before a minor can be incarcerated in a jail.

Most states permit the pre-trial detention of youth being tried as adults in adult facilities.

PRE-TRIAL DETENTION LAWS IN THE UNITED STATES

States	Mandates pre-trial detention in adult jails	Permits pre-trial detention in adult jails	Requires protections for children detained in adult jails	
Alabama	Yes	N/A	No	
Alaska	Yes	Yes	No	
Arizona	No	Yes	Yes—Physical Separation from Adult Prisoners	
Arkansas	No	Yes	No	
California	No	Yes	Yes—Restricted Contact with Adult Prisoners	
Colorado	No	Yes	Yes—Physical Separation from Adult Prisoners	
Connecticut	Yes	N/A	No	
Delaware	Yes—If over 16	N/A	No	

Specifies factors to be considered before detention in an adult jail	Age restriction on ability to detain in an adult jail	State Statute(s)
No	No	Children who are transferred for criminal prosecution and detained must be held in an adult jail. The statute does not specify any protections for such children. Ala. Code § 12-15-6 (d) (West 2005)
No	No	Children being tried as adults may be detained in an adult jail and do not need to be held separately from adult prisoners. Alaska Stat. § 47.12.240(c) (Lexis 2006)
No	No	Children who are accused of a criminal offense or who have been transferred may be detained in an adult jail. Such children must be held physically separate from any adults charged or convicted of a crime. Ariz. Rev. Stat. Ann. § 8-305(c) (West 2006 Supp.)
No	No	Children formally transferred or who could be tried as adults may be detained in an adult jail. The statute does not specify any protections for such children. Ark. Code. Ann. § 9-27-336(b)(1) (West 2005 Supp.)
Yes—Requires restricted finding that child’s contact detention with adult juvenile facility prisoners would present danger to the public or would be detrimental to others in juvenile facility	No	Children who have been transferred to adult court may be detained in an adult jail but only if the juvenile or adult court makes a finding that the child’s detention in a juvenile facility would present a danger to the public or would be detrimental to other youth in the juvenile facility. Children also must have restricted contact with adult prisoners, such that their living arrangements are segregated, they can only be in contact for specific supervised group activities, and they must be “adequately supervised.” Cal Welf. & Inst. Code § 207.1 and § 208 (West 2006)
No	Yes—Can only detain children aged fourteen and up	Children being held for criminal proceedings as an adult pursuant to a direct filing or transfer may be detained in an adult jail if they are 14 years of age or older and the court has ordered it. In such cases, the child must be physically segregated from the adult prisoners. Colo. Rev. Stat. Ann. § 19-2-508(4)(a) and (b) (West 2006)
No	No	Children who are transferred to adult court and “detained shall be in the custody of the Commissioner of Correction upon the finalization of such transfer,” indicating that they must be detained in an adult jail. The statute does not specify any protections for such children. Conn. Gen. Stat. Ann. § 46b-127 (West 2006) Note: In practice, males are detained at the Manson Youth Institution, a Department of Corrections facility that houses 14- to 21-year-olds. There is only one prison for women, the York Correctional Institution. Source: http://www.ct.gov/doc/cwp/view.asp?a=1502&q=265422&docnav Retrieved on January 6, 2007
No	Yes—Must be 16 or older	Children 16 years of age or older who are being tried as adults in Superior Court must be remanded to the Department of Correction if they are detained. They are held in adult jails and the statute does not specify any protections for such children. By implication, children under 16 years old who are being tried as adults can be held in juvenile detention facilities. Del. Code Ann. tit. 11, § 2103A (Lexis 2006) Note: Local practice in at least one county requires hearings to be held to determine if a child who is being tried in adult court should be remanded to the Department of Correction. Youth are eligible to be transferred to the Department of Correction at age 16. Youth under the age of 16 being charged in Superior Court are held in juvenile detention pending resolution of their charges. If sentenced as an adult, the youth is transferred to Ferris School (secure treatment program) until he or she reaches the age of 16. Source: e-mail from Alison M. McGonigal, DSCYF, to Melissa Coretz Goemann, January 30, 200).

PRE-TRIAL DETENTION LAWS IN THE UNITED STATES (continued)

States	Mandates pre-trial detention in adult jails	Permits pre-trial detention in adult jails	Requires protections for children detained in adult jails	
District of Columbia	No	Yes	No	
Florida	Yes—Unless child is alleged to have only committed a misdemeanor	N/A	Yes—Sight and sound separation and constant supervision	
Georgia	No	Yes	Yes—No physical contact with adult prisoners	
Hawaii	Yes	N/A	No	
Idaho	No	Yes—It is presumed that be housed children will separately be detained in adult jails but the court may order otherwise if it finds “good cause”	Yes—Must be housed separately	
Illinois	No	Yes	Yes—Sight and sound separation	
Indiana	No	Yes	No	
Iowa	No	Yes	Yes—Sight and sound separation whenever possible	
Kansas	No	Yes	No	
Kentucky	No	No—While the statute does permit detention in juvenile holding facilities within adult jails, there are no longer any such holding facilities so children are only placed in juvenile detention	N/A	
Louisiana	Yes	N/A	No	

Specifies factors to be considered before detention in an adult jail	Age restriction on ability to detain in an adult jail	State Statute(s)
No	No	Children who are transferred may be detained in an adult jail. The statute does not specify any protections for such children. D.C. Code Ann. § 16-2313(e) (Lexis 2006)
No	No	Children who have been transferred or indicted for criminal prosecution as an adult, except for children alleged to have committed misdemeanors, must be held in an adult jail if detained pre-trial. Such children must be housed separately from adult prisoners to prohibit "sight and sound" contact with adults. The statute further specifies that the jail must have a separate section for children and adequate staff to supervise and monitor the children's activities at all times. Fla. Stat. Ann. § 985.265 (West 2006)
Yes—Court must find that public safety and protection reasonably require detention in adult jail	No	Children who have been indicted for criminal offenses or transferred for criminal prosecution can only be detained in an adult jail if the court finds "that public safety and protection reasonably require detention in the jail and the court so orders." Additionally, such children must be held separately from adults in such a way that they will have no physical contact with adult prisoners. Ga. Code Ann. § 15-11-48 (West 2006)
No	No	Children who are transferred for criminal prosecution and detained must be held in an adult jail. The statute does not specify any protections for such children. Haw. Rev. Stat. Ann. § 571-32 (Lexis 2006)
No	No	Children who have been formally charged or indicted or transferred for criminal prosecution are subject to detention in an adult jail unless the court, after finding good cause, orders otherwise. All such children must be housed separately from adults within the jail. Idaho Code Ann. § 20-509(2) and 20-602(2) (Lexis 2006)
No	Yes—Must be fifteen years old to be detained in adult jail	If a child is being tried as an adult and is at least 15 years old, then the court may order the child to be detained in an adult jail. Such children must be separated from adult prisoners by sight and sound. 705 Ill. Comp. Stat. 405/5-410(2)(e) (Lexis 2006)
No	No	No statutory provision on the pre-trial detention of children being tried as adults. However, case law provides that the Indiana constitution does not require the placement of all youth held pre-trial in a separate juvenile facility. Ratliff v. Cohn, 693 N.E.2d 530, 540 (1998)
Yes—Can only detain in adult jail if there is serious risk child may inflict serious bodily harm on another person	No	Children being tried as adults may be detained in an adult jail if there is a serious risk that they may commit an act which would inflict serious bodily harm on another person. Wherever possible, the child is to be held separated from adult prisoners by sight and sound. Iowa Code Ann. § 232.22 (West 2006)
No	No	Children being tried as adults may be detained in an adult jail. The statute does not specify any protections for such children. Kan. Stat. Ann. § 38-1691(c) (2006)
N/A	N/A	Children being tried as adults are only detained in juvenile detention facilities. While Kentucky law permits them to also be detained in juvenile holding facilities, which are separate portions of adult jails providing sight and sound separation between juvenile and adult offenders, there are no more holding facilities currently in operation in Kentucky. Ky. Rev. Stat. Ann. § 640.020(1) and § 610.015(1) and 610.265(2)(b)(1) (Lexis 2006) and e-mail from John H. Hodgkin, Executive Staff Advisor, Kentucky Department of Juvenile Justice, to Melissa Coretz Goemann, January 8, 2007.
No	No	Children being tried as adults who are detained must be held in an adult jail. The statute does not specify any protections for such children. La. Child Code Ann. art. 305 (B)(4) (2004)

PRE-TRIAL DETENTION LAWS IN THE UNITED STATES (continued)

States	Mandates pre-trial detention in adult jails	Permits pre-trial detention in adult jails	Requires protections for children detained in adult jails	
Maine	No	Yes	No	
Maryland	Yes	N/A	Yes	
Massachusetts	No	Yes—If between 14 and 17 years old and charged with 1st or 2nd degree murder	Yes—In practice, sight and sound separation is maintained	
Michigan	No	Yes—Must have prior approval from the sheriff if under 17	Yes—Physical	
Minnesota	No	Yes	No	
Mississippi	No	Yes	No	
Missouri	No	Yes	No	
Montana	No	Yes	Yes—Physical separation from adult prisoners	

Specifies factors to be considered before detention in an adult jail	Age restriction on ability to detain in an adult jail	State Statute(s)
Yes—Court must find by clear and convincing evidence that child’s behavior presents imminent danger of harm to child or others and there is no less restrictive alternative	No	<p>Children being tried as adults may be detained in an adult jail if the court finds by clear and convincing evidence that the child’s behavior presents an imminent danger of harm to the child or others and that there is no less-restrictive alternative that would serve the purposes of detention. In determining whether the child’s behavior is dangerous, the statute provides a number of factors that the Juvenile Court must consider. The statute does not specify any protections for such children when housed in adult jails. Me. Rev. Stat. Ann. § 3101(4)(E-1) (2006 Supp.)</p> <p>The factors to consider are as follows: A) The nature of and the circumstances surrounding the offense with which the juvenile is charged, including whether the offense was committed in an aggressive, violent, premeditated, or intentional manner; B) The record and previous history of the juvenile, including the juvenile’s emotional attitude and pattern of living; and C) If applicable, the juvenile’s behavior and mental condition during any previous and current period of detention or commitment. Me. Rev. Stat. Ann. § 3203-e-1 (2) (2006).</p>
No	No	<p>Children waived to adult court to be tried as adults must be held in an adult jail if detained pre-trial. They must be placed in accommodations that are separate from adult prisoners 18 years of age and older. Md. CJP Code Ann. § 3-8A-16 and 3-8A-22(c) (Lexis 2006).</p> <p>Note that if a child’s case originates in adult court and there is a possibility that the child will be transferred to juvenile court, then the adult court has the option to detain the child in a secure juvenile facility. Md. CP Code Ann. § 4-202(h)(1) (2006).</p>
No	Yes—Must be between the ages of 14 and 17 to be detained in adult jail	<p>Children are to be detained in juvenile detention facilities unless they are between the ages of 14 and 17 and charged with murder in the first or second degree. In such cases, they are committed to the custody of the sheriff of the county and can be detained in adult jails, so long as sight and sound separation is maintained. Mass. Gen. Laws Ann. ch.119, § 68 (West 2006)</p> <p>As a matter of practice, 14- to 17-year-olds who are charged with first-or second-degree murder are virtually always held in a “youthful offender” facility operated by the Department of Youth Services and located within the Plymouth County House of Correction. DYS has been known to hold such youth past age 17 (up to 21), when the parties agreed. Source: e-mail from Joshua Dohan, Youth Advocacy Project, Committee for Public Counsel Services, to Melissa Coretz Goemann. January 17, 2007.</p>
No	No	<p>Children under 17 who are being tried as adults may be detained in an adult jail. However, there must be prior approval from the county sheriff in order to do so. Such children must be held “physically separate from adult prisoners.” Mich. Comp. Laws Ann. § 764.27a(3) (West 2006)</p>
No	No	<p>Children who have been referred by motion for adult prosecution may be detained in an adult jail. The statute does not specify any protections for such children. Minn. Stat. Ann. § 260B.176 (West 2005)</p>
No	No	<p>Children who have been waived to adult criminal court may be detained in an adult jail. The statute does not specify any protections for such children. Miss. Code Ann. § 43-21-301(6) and § 43-21-315(2) (Lexis 2006)</p>
No	No	<p>Children being tried as adults may be detained in an adult jail. The statute does not specify any protections for such children. Mo. Rev. Stat. Ann. § 221.044 (Lexis 2006)</p>
No	No	<p>A child being tried as an adult may be detained in an adult jail but must be kept in an area that provides physical separation from adult prisoners. Mont. Code Ann. § 41-5-206 (2005)</p>

PRE-TRIAL DETENTION LAWS IN THE UNITED STATES (continued)

States	Mandates pre-trial detention in adult jails	Permits pre-trial detention in adult jails	Requires protections for children detained in adult jails	
Nebraska	No	Yes	Yes—If child is under 16 must be no verbal, visual, or physical contact between child and incarcerated adults and staff must supervise monitor child's activities at all times	
Nevada	No	Yes	No	
New Hampshire	Yes	N/A	No	
New Jersey	No	Yes	No	
New Mexico	Only children previously incarcerated as adults	Yes	Yes—Measures must be taken to provide protection to the child	
New York	No	Yes—Held in juvenile detention facility unless state division of youth approves adult jail	Yes—Can not be kept in same room as prisoners age 21 or over	
North Carolina	No	Yes—But only in a holdover facility when needed in court for hearings or trial	Yes—Child must be closely supervised and cannot speak with or see or be seen by adult prisoners	
North Dakota	No	Yes	Yes—In certain grades of correctional facilities children must be housed separately from adults	
Ohio	No	Yes	Yes—Child must be “beyond the range of touch of all adults detainees” and supervised at all times	
Oklahoma	Yes	No	Yes—Must be separate from prisoners age eighteen or over	

Specifies factors to be considered before detention in an adult jail	Age restriction on ability to detain in an adult jail	State Statute(s)
No	No	Children tried as adults can be detained in an adult jail. If such children are under age 16 then there must be no verbal, visual, or physical contact between the child and any incarcerated adult, and there must be adequate staff to supervise and monitor the child's activities at all times. Neb. Rev. Stat. § 43-250 (3)(c) and (e) (Lexis 2006)
No	No	A child certified for criminal proceedings as an adult may be placed in an adult jail and does not have to be separated from adult prisoners. AGO 98-17 (5-27-98). However, such children can petition the juvenile court for temporary placement in a juvenile detention facility. Nev. Rev. Stat. Ann. § 62C.030(4) (Lexis 2006)
No	No	Once a child is transferred to adult court, he or she must be detained in an adult jail if held pre-trial. The statute does not specify any protections for such children. N.H. Rev. Stat. Ann. § 169-B:24(II) (Lexis 2006)
Yes—Court must make determination based on best interests of child and protection of public	No	Children who are transferred may be detained in an adult jail but the juvenile court must make this determination after a hearing on the matter. The court must make a determination based on the best interests of the child and protection of the public. The court must take the following factors into account: "the juvenile's age and maturity, the nature and circumstances of the offense charged, the juvenile's prior offense history, the programs at each of the detention facilities, and any other relevant factors." The statute does not specify any protections for such children when housed in adult jails. N.J. Stat. Ann. § 2A:4A-36(a) (West 2006)
No	No	Children being tried as adults may be detained in an adult jail. If the child was previously incarcerated as an adult, then he or she must be detained in an adult jail if held pre-trial. The jail must take measures to provide protection to the child. N.M. Stat. Ann. § 32-A-2-12(c)-(E) (West 2006)
No	No	Children being tried as adults who are detained pre-trial are to be detained in juvenile detention facilities unless the state division of youth approves confinement in an adult jail. N.Y. Crim. Proc. Law § 510.15(1) (McKinney2006). They are not to be kept in the same room as prisoners 21 years of age or older. N.Y. Correct. Law § 500-c (effective Sept. 1, 2007 (McKinney 2006)).
No	No	Children who have been transferred to adult court may only be detained in a juvenile detention facility, except when their presence is required in court for pre-trial hearings or trial. At those times, they may be held in a holdover facility. This is a place in an adult jail in which the child is closely supervised and cannot speak with or see or be seen by adult prisoners. N.C. Gen. Stat. Ann. § 7B-2204 and § 7B-1501(9) and (11) (West 2006)
No	No	Children transferred for criminal prosecution may be detained in an adult jail. The statute does not specify any protections for such children. N.D. Cent. Code § 27-20-16(3) (2006) However, note that another statute does provide that, in certain grades of correctional facilities, juveniles are to be housed separately from adults. N.D. Cent. Code § 12-44.1-09 (2006)
No	No	Children transferred for criminal prosecution may be detained in an adult jail. Such children shall be held "beyond the range of touch of all adult detainees" and shall be supervised at all times while in the jail. Ohio Rev. Code Ann. § 2152.26(f)(1) (Lexis 2006)
No	No	Children being tried as adults who are detained pre-trial must be held in an adult jail but in "a jail cell or ward entirely separate from prisoners who are 18 years of age or over." Okla. Stat. Ann. tit. 10, § 7306-1.1(c) (West 2006)

PRE-TRIAL DETENTION LAWS IN THE UNITED STATES (continued)

States	Mandates pre-trial detention in adult jails	Permits pre-trial detention in adult jails	Requires protections for children detained in adult jails	
Oregon	No	Yes	No	
Pennsylvania	No	Yes	No	
Rhode Island	No	Yes	No	
South Carolina	No	Yes	No	
South Dakota	No	Yes	Yes—Sight and sound separation from adults for children only accused of misdemeanors	
Tennessee	No	Yes—Presumed that children will be detained in adult jails unless juvenile court orders otherwise and adult court does not contradict	Yes—Must separate and removed from adult prisoners	
Texas	No	Yes	No	
Utah	No	Yes	Yes—Sight and sound separation from adult prisoners	
Vermont	No	Yes	No	
Virginia	No	Yes	No	
Washington	No	Yes	Yes—Sight and sound separation required unless have been previously transferred as an adult	

Specifies factors to be considered before detention in an adult jail	Age restriction on ability to detain in an adult jail	State Statute(s)
No	Yes—Must be 16 years of age	Children being tried as adults may be detained in an adult jail only if they are 16 years of age or older. The statute does not specify any protections for such children. Or. Rev. Stat. Ann. § 419C.130(b) (West 2006)
No	No	A child transferred for criminal prosecution may be detained in an adult jail. The statute does not specify any protections for such children. 42 Pa. Consol. Stat. Ann. § 6327(d) (West 2006)
No	No	No statutory provision on the pre-trial detention of children being tried as adults. However, case law provides that children who have been waived to adult court can be detained pre-trial in adult facilities. In re Joseph T., 575 A.2d 985 (R.I. 1990)
No	Yes—Must be 13 years and of age or older; 11 & 12 year olds can only be detained in adult jails by order of family court. 10 year olds and younger cannot be in adult jails.	Children who have been waived to adult court to stand trial as an adult may be detained in an adult jail if they are age 13 or older. Children aged 11 and 12 can only be detained in an adult jail by order of the family court. Children aged 10 and younger cannot be detained in an adult jail. The statute does not specify any protections for children when housed in adult jails. S.C. Code Ann. § 20-7-7210(C) and (F)(2005)
No	No	Children being tried as adults may be detained in an adult jail. They are only required to be sight and sound separated from adult prisoners if accused of misdemeanors only. S.D. Codified Laws § 26-7A-26 and § 26-11-1 (2006)
No—But can be done through such mechanism	No	Children who have been transferred to adult court must be detained in an adult jail unless the juvenile court orders confinement in a juvenile detention facility and the adult court does not order otherwise. When detained in an adult jail, transferred children must be separate and removed from adult prisoners. Tenn. Code Ann. § 37-1-134(i) (Lexis 2006)
No	No	Children being tried as adults may be detained in an adult jail. The statute does not specify any protections for such children. Tex. Fam. Code Ann. § 54.02(p) (Vernon 2006)
No	No	Children certified to stand trial as an adult may be detained in an adult jail. Such children may only be held in “certified juvenile detention accommodations” where they are sight and sound separated from adult prisoners. Utah Code Ann. § 62A-7-201(2)(a) and (b) (Lexis 2006)
No	No	Children being tried as adults may be held in an adult jail. The statute does not specify any protections for such children. Vt. Stat. Ann. tit. 33, § 5530 (2006) Note: In practice, there is a memo of understanding between the Department for Children and Families and the Department of Corrections establishing a policy that if a minor under the age of 16 is charged in adult court and is to be detained, he or she, although in the custody of the Commissioner of Corrections, will not be placed in an adult facility and will be placed at the juvenile detention center. Source: e-mail from Bob Sheil, supervising attorney, Vermont Office of the juvenile defender, to Melissa Coretz Goemann, January 4, 2007.
No	No	Children may be detained in an adult jail if a felony charge has been or is about to be filed in adult court. The statute does not specify any protections for such children. Va. Code Ann. § 16.1-249 (Lexis 2006)
No	No	Children may be detained for brief periods in adult jails if sight and sound separated from adult prisoners. However, children who have been previously transferred as adults are not subject to such restrictions. Wash. Rev. Code Ann. § 13.04.116(1) and (2) (Lexis 2006)

PRE-TRIAL DETENTION LAWS IN THE UNITED STATES (continued)

States	Mandates pre-trial detention in adult jails	Permits pre-trial detention in adult jails	Requires protections for children detained in adult jails	
Wisconsin	N/A	Yes—If adult court has original jurisdiction over child pursuant to Wis. State. Ann. § 938.183	Yes—If child is in adult court pursuant to Wis. Stat. Ann. § 938.183. Such children must be detained in “juvenile portion” of adult jail if they are under 15.	
Wyoming	N/A	N/A	N/A	

Specifies factors to be considered before detention in an adult jail	Age restriction on ability to detain in an adult jail	State Statute(s)
No	No—Though can only be held in “juvenile portion” of adult jail if under 15 and are in adult court pursuant to Wis. Stat. Ann. § 938.183	Children who have been waived to adult court pursuant to Wis. Stat. Ann. § 938.18 (2006) must be detained in an adult jail when held pre-trial and do not have to be held separately from adult prisoners. Children who are being tried as adults because the adult court has exclusive original jurisdiction over them pursuant to Wis. Stat. Ann. § 938.183 may be detained in the “juvenile portion” of an adult jail if they are under 15. Wis. Stat. Ann. § 938.209(3), 938.18(8), 938.183(1m)(a) (West 2006)
N/A	No	<p>No specific statutory provisions or case law on the pre-trial detention of children being tried as adults.</p> <p>The interim state public defender for Wyoming, however, states that while there is no specific statute on this issue, based on his 37 years of experience as a prosecutor, judge, and defense attorney, he “do[es] not believe that any jail in Wyoming would house any juveniles within sight and sound of adult prisoners.”</p> <p>Source: e-mail from D. Terry Rogers, Interim State Public defender, Wyoming public defender’s office, to Melissa Coretz Goemann, January 18, 2007.</p> <p>Joe D. Bustos, attorney in Cheyenne, WY, also adds that the sight and sound protections provided to juvenile delinquents pursuant to the Juvenile Detention Standards issued by their State Advisory Council on juvenile justice, are also generally applied to juveniles being tried as adults. Source: e-mail from Joe D. Bustos, Attorney, Cheyenne, WY, to D. Terry Rogers (February 6, 2007, 11:03 p.m.).</p> <p>Source: http://www.wyjuvenilejustice.com/juvenile_detention_standards.html</p>

The Limits of Litigation to Remove Youth from Jails

Litigation has been a useful, if limited, tool to remove youth from adult jails since the mid-1950s. Jails are county facilities, and typically each jail in a state is the responsibility of a different sheriff. Each jail has its own unique environment and its own deficiencies with respect to treatment of youth, so it is difficult, if not impossible, to bring a class action against all the jails in a state. Usually an individual youth has standing only to challenge the conditions in the jail in his or her own county. As a result, even if sufficient legal advocates were able to take jail conditions cases on behalf of youth, litigation would remain an extremely expensive and time-consuming process to remove youth from jails.¹

Litigation also has had limited utility for providing guidance to jail operators to improve conditions by following case law, because the most egregious cases often settle out of court; and even if the case goes to trial and a judgment is reached in favor of the youth, jail officials don't appeal. As a result, case law clearly establishing why housing youth in the adult criminal system (as opposed to youth in the juvenile justice system) in adult jails is unconstitutional doesn't exist. In fact, in a recent compilation of cases surveying the application of the U.S. Constitution to jails, there was no reference to juveniles at all.² In many ways, the lack of case law on this issue demonstrates consensus between lawyers advocating on behalf of youth and the jailers who would prefer that the youth be removed from their facilities. Nonetheless, the history of litigation on behalf of youth in jails is useful to keep in mind.

The earliest cases challenging the placement of youth in jails were primarily habeas corpus proceedings brought to obtain the release of individual youth held in local jails.³ In the mid-1960s and 70s, the federal courts began to hear more civil rights cases, and lawsuits for damages and class actions were brought challenging the conditions and practices in local jails as unconstitutional. After passage of the JJDPA, lawsuits were aided by the statutory restrictions prohibiting placement of youth in the juvenile justice system in jails.⁴ However, litigation to remove youth from jails has always been a limited practice. According to the Civil Rights Clearinghouse at the Washington University School of Law in St. Louis, Missouri, which catalogs civil rights cases seeking policy or operational changes (as opposed to damages cases), out of the 530 jail conditions cases in their collection, only nine involved juveniles.⁵

During the "Habeas Years" or "Hands-Off Era" prior to 1960, courts avoided deciding correctional cases.⁶ Judges felt that they could do nothing to improve conditions of confinement for inmates, and the only relief they could provide was releasing or transferring inmates. During this period, cases were brought on behalf of a single youth held in a jail; the legal basis for each decision was typically quite narrow (e.g., separation of juveniles from adults); and the relief sought was limited to release or transfer of the individual youth to a juvenile facility.⁷ The seminal case of this period was *White v. Reid*, decided in 1954 by the U.S. District Court for the District of Columbia. At the age of 16, Isaac White had been arrested on charges of unauthorized use of an automobile. He admitted to the offenses and was committed to a juvenile training school. After being released on parole, Isaac was arrested on a charge of first-degree murder. Although the charge was later dismissed, he was held at the DC jail for violation of his juvenile court parole. He filed a petition for a writ of habeas corpus to test the legality of his detention. The federal court found that Isaac's detention in jail was prohibited by "both Constitution and statute [referring to the District of Columbia Juvenile Court Act]." The decision in *White v. Reid* not only applied to federal courts in Washington, D.C., but was subsequently considered and adopted by several other courts as well.⁸

As the civil rights movement grew in the 1960s, judges began to apply the Constitution more vigorously to conditions in jails and prisons during the "Conditions Era."⁹ By the late 1960s and early 1970s, there was a flood of civil rights cases. In addition to the already

mentioned *Baker v. Hamilton* case in Kentucky, in *D.B. v. Tewksbury*, the federal court scolded the Columbia County Correctional Facility, an Oregon county jail, for egregious conditions, including failure to provide any form of work, exercise, education, or recreation; failure to provide minimal privacy during showering or toilet use; placing intoxicated youth in isolation cells without supervision or medical attention; and not allowing youth to have contact with their families. In perhaps the broadest condemnation of the practice of jailing youth, the federal court held that *any* confinement of a youth in an adult jail, pending adjudication of the charges pending against the youth, is a violation of the youth's due process rights under the Fourteenth Amendment to the Constitution.¹⁰

Court intervention in jail cases has been shrinking in the past several years for other reasons as well. The Prison Litigation Reform Act (PLRA) was passed by Congress in 1996 to limit the power of the federal court to intervene in corrections cases and made it more difficult to file lawsuits under the civil rights action 42 U.S.C. § 1983. Two of the changes made by the PLRA dramatically limit the ability of federal courts to intervene in corrections cases. First, inmates are required to exhaust any administrative remedies available to them prior to filing a Section 1983 claim in federal court. And second, court injunctions in virtually all types of "inmate rights" cases will presumptively end after two years upon request of the defendants unless the plaintiffs can show that constitutional violations continue.¹¹ Congress should repeal the PLRA with respect to youth housed in both juvenile and adult facilities.

CRIPA Investigations

At present, the only federal entity that investigates state and local jails and prisons across the country and has the power to bring lawsuits against facilities is the United States Department of Justice (DOJ). Through the 1980 Civil Rights of Institutionalized Persons Act (CRIPA), the DOJ can initiate investigations and bring criminal prosecutions and civil actions when it sees incidents or conditions that violate federal statutes or prisoners' constitutional rights. These civil actions can result in court-enforceable consent decrees to improve conditions in jails and prisons. Attorneys from the Special Litigation Section of the DOJ, along with corrections experts, conduct site inspections and talk to both staff and prisoners during an investigation. "Findings Letters" then detail the results and provide recommendations from the experts on how to improve the facility. Unfortunately, due to limited resources, CRIPA investigations and lawsuits are not very common. The Special Litigation Section can only conduct thorough investigations in a miniscule number of facilities. There are 3,365 jails across the country,¹² but from 1998 through 2007, the Special Litigation Section has released only 10 findings letters related to conditions in jails, and only four of those jails held juveniles.¹³

Notes

- ¹ Soler, M. (1988). Litigation on Behalf of Children in Adult Jails. *Crime and Delinquency*, 34(2), 190-208.
- ² Collins, W.C. (2007, September). *Jails and the Constitution: An Overview*. Washington, D.C.: U.S. Department of Justice, National Institute of Corrections.
- ³ Soler, M. (1988). Litigation on Behalf of Children in Adult Jails. *Crime and Delinquency*, 34(2), 190-208.
- ⁴ *Ibid.*
- ⁵ See the Civil Rights Clearinghouse at the Washington University School of Law in St. Louis, Missouri website available at: <http://clearinghouse.wustl.edu/>.
- ⁶ See generally, Soler (1988) and Collins (2007). All discussions related to adult jails come from Soler's article.
- ⁷ Soler, M. (1988). Litigation on Behalf of Children in Adult Jails. *Crime and Delinquency*, 34(2), 190-208.
- ⁸ *Ibid.*
- ⁹ *Ibid.*
- ¹⁰ *Ibid.*
- ¹¹ Collins, W.C. (2007, September). *Jails and the Constitution: An Overview*. Washington, D.C.: U.S. Department of Justice, National Institute of Corrections.
- ¹² Gibbons, J.J., Katzenbach, N.B. (2006, June). *Confronting Confinement: A Report of the Commission on Safety and Abuse in America's Prisons*. New York: Vera Institute of Justice.
- ¹³ See the Special Litigation Section website available at: <http://www.usdoj.gov/crt/split/cripa.htm>.

Litigation would remain an extremely expensive and time-consuming process to remove youth from jails

Court intervention in jail cases has been shrinking in the past several years

“Children and youth have distinct personal and developmental needs and must be kept separate from adult offenders”

– American Correctional Association

Professional Standards

In addition to protections provided by federal and state statutes or case law, an important protection for persons incarcerated in jails and prison is the type of oversight that institutions receive. Few states have monitoring systems that vigorously scrutinize the conditions that youth are in when placed in jails but professional organizations, such as the American Correctional Association (ACA) and the National Commission on Correctional Health Care (NCCHC), provide accreditation for jails and prisons.

Since the mid-1970s, the ACA is the leading standard-setting body for juvenile and adult detention and correctional institutions in the United States. Compliance with ACA standards is strictly voluntary; facilities apply to the ACA for accreditation and undergo a lengthy application process that includes an onsite review of compliance with the applicable standards. Yet today only a tiny fraction of the nation’s jails are ACA accredited (120 out of the 3,365 jails across the country).¹ NCCHC’s origins date to the early 1970s when an American Medical Association study of jails found inadequate, disorganized health services and a lack of national standards. Today, NCCHC’s leadership in setting standards for health services in correctional facilities is widely recognized, but similar to the ACA standards, compliance with NCCHC standards is voluntary.

Both ACA and the NCCHC have policy positions expressly disapproving of the housing of youth in adult jails. The ACA believes “children and youth have distinct personal and developmental needs and must be kept separate from adult offenders”² and “[supports] the adoption of legislation in each state that authorizes correctional authorities to place people under the age of majority who are detained or sentenced as adults in an appropriate juvenile detention/correctional system or youthful offender system distinct from the adult system.”³ The NCCHC “believes the incarceration of adolescents in adult correctional facilities is detrimental to the health and developmental well-being of youth.”⁴

Many established professional organizations have issued policy positions expressly disapproving of the housing of youth in adult jails. The American Jail Association is opposed to housing juveniles in any jail unless that facility is specifically designed for juvenile detention and staffed with specially trained personnel.⁵ The Council of Juvenile Correctional Administrators (CJCA) has also issued a policy statement against the placement of youth in adult facilities.⁶ The ABA Task Force on Youth in the Criminal Justice System also believes that “youth who are detained or incarcerated before, during, or pursuant to, proceedings in the criminal justice system should be held in separate detention or correctional facilities from adults. This should be the goal for all correctional systems that hold persons under eighteen years of age.”⁷

Notes

- ¹ Gibbons, J.J., Katzenbach, N.B. (2006, June). *Confronting Confinement: A Report of the Commission on Safety and Abuse in America's Prisons*. New York: Vera Institute of Justice.
- ² American Correctional Association (2002, January). *Public Correctional Policy on Juvenile Justice Policy*. Available from: <http://www.aca.org>.
- ³ American Correctional Association (2004, January). *Public Correctional Policy on Youthful Offenders Transferred to Adult Criminal Jurisdiction*. Available from: <http://www.aca.org>.
- ⁴ National Commission on Correctional Health Care (1998, May). *Health Services to Adolescents in Adult Correctional Facilities*. Available from: <http://www.ncchc.org/resources/statements/adolescents.html>.
- ⁵ American Jail Association. (1993, May) *Juveniles in Jails Resolution*. Available from: <http://www.aja.org>.
- ⁶ Council of Juvenile Correctional Administrators. (nd). *Position Paper on: Waiver And Transfer Of Youths To Adult Systems*. Available from: <http://cjca.net/photos/content/documents/Waiver.pdf>.
- ⁷ Task Force on Youth in the Criminal Justice System (2001). *Youth in the Criminal Justice System: Guidelines for Policymakers and Practitioners*. Washington, D.C.: American Bar Association Criminal Justice Section.

The American Bar Association (ABA) Task Force on Youth in the Criminal Justice System developed a series of recommendations for policies, procedures, and treatment of youth in the adult system. Below are excerpts relevant to the housing of youth in adult jails.

SEPARATION FROM ADULTS

Youth who are detained or incarcerated before, during, or pursuant to, proceedings in the criminal justice system should be held in separate detention or correctional facilities from adults. This should be the goal for all correctional systems that hold persons under 18 years of age. Whether or not jurisdictions have achieved complete separation of youth from adults, compliance with all of the following is essential.

ADMINISTRATION

Staff and Training Administrative staff and people in policy-making positions dealing with youth in the adult system should have education, training, and experience regarding the distinctive characteristics of children and adolescents. Staff hired to supervise youth should be trained to understand both the physical and psychological components of adolescence...

Classification [Facilities housing youthful offenders, either pre-trial or in a correctional setting, need a classification and screening system to assist in appropriately placing youth within a facility.] Because the safety of youth in the adult system is of overriding concern, institutions that house either detained and/or sentenced offenders must take special steps to protect this population... Among the factors that should be considered when classification decisions are made regarding what facility should house youthful offenders, and where within a facility a youth should be placed are the following: age, social history, institutional history, previous record, physical and mental development, and the charged offense...

Architectural Issues The design and modification of both pre-trial and post-conviction correctional facilities for youth must take into account the special needs of children and adolescents. These include the need for sufficient space for adequate physical exercise; provision of regular, special, and vocational education; therapeutic programming, including individual and group counseling; and contact visitation. Small, community-based facilities for youth are preferable to larger facilities located far from the families and support base of incarcerated youth...

SERVICES

Studies show that youth transferred to the adult system recidivate at higher rates and with more serious offenses than youth who have committed similar offenses but are retained in the juvenile justice system. Therefore, notwithstanding the punishment goal of incarceration in the adult system, public safety requires that youth in that system be provided certain services essential to reducing recidivism... Many youth in adult correctional facilities—including some youth convicted of violent crimes—will be released from incarceration while they are still young adults and in the peak years for offending, and a growing number are released unconditionally at the end of their prison term. Consequently, a major focus in the development of correctional programs must be on equipping these youth to be productive, self-sufficient, and law-abiding citizens after their release from incarceration, and enabling them to resist re-offending once they have returned to the communities from which they were removed.

Gender Equity There should be equity in developing programs and facilities for male and female youth with equal opportunity for participation in beneficial and effective treatment, educational and vocational programs...

Educational Services Education should be compulsory for all incarcerated youth under the age of 18 who have not received a regular high school diploma or a GED... Basic education services should be delivered to students at an appropriate grade level, for the number of hours equivalent to those required by state law for the public schools, and in accordance with public school standards. Teacher-pupil ratios must meet state standards... All youth who qualify for special education and related services pursuant to the Individuals with Disabilities Education Act (IDEA) must be provided an appropriate education. All youth should be screened for educational disabilities and an Individualized Education Program developed for those not previously identified or served. Vocational education and job training also should be provided for all youth.

Physical Activities The developmental stages of a youthful offender require that physical activities be available to maintain good health and physical development.

Physical and Behavioral Health Care Each detained or incarcerated youth should be provided a health assessment to detect problems needing immediate attention as well as to meet ongoing health needs... Each institution should develop policies to address youth who are at risk for suicide or other infliction of harm to themselves. Other mental health programs should be in place to deal with the disproportionate incidence of mental health and emotional problems among incarcerated youth.

Nutrition Nutritional planning should be in place that is specific to the dietetic needs of children and adolescents.

Source: Task Force on Youth in the Criminal Justice System (2001). Youth in the Criminal Justice System: Guidelines for Policymakers and Practitioners. Washington, D.C.: American Bar Association Criminal Justice Section.

RECOMMENDATIONS

This report presents the numerous dangers facing youth incarcerated in adult jails across the country. Below are concrete steps that federal, state, and county policymakers can take to protect youth in the justice system without compromising public safety.

Congress:

As Congress is scheduled to reauthorize the Juvenile Justice and Delinquency Prevention Act (JJDPA) in 2007, Congressional action could include the following:

1) Update the JJDPA's "jail removal" core protection for all children, regardless of which court (juvenile or criminal) they are in

The JJDPA could be updated to reflect the original intent of the law that prohibits the placement of youth in adult jails. The "jail removal" core protection would apply to all youth pre-trial, regardless of which court (juvenile or criminal) they are in. States and counties would remove all youth, including youth charged as adults, from adult jails. This could be accomplished by phasing in the provision over a 4 year phase in period to allow for needed changes in state statutes.

2) Provide federal technical assistance to states and counties

The JJDPA could be amended to require that the U.S. Department of Justice's Office of Juvenile Justice & Delinquency Prevention (OJJDP) provide intensive "Technical Assistance" (TA) to states and counties to comply with the new requirements in the "jail removal" core protection for youth. "Technical Assistance" could include new guidance to states and counties, promotion of best practices, model sites, and provision of experts to support state and counties.

3) Initiate and provide federal funding for new data collection efforts at the federal, state and county levels

The JJDPA could include new provisions requiring OJJDP to work with states and counties to collect data on an on-going basis on youth in the adult criminal justice system and in particular, youth in adult jails. New data collection efforts would include the following information about youth in the adult criminal justice system: age, race, ethnicity, gender, offense, pre-trial detention, transfer mechanism, sentencing outcome, placement pre- and post-trial in jails, prisons or juvenile facilities. The data would be collected annually and reported to state and federal policymakers and OJJDP would be required to issue a national report yearly with state and county data, comparative analysis, and report on the progress of states and counties in complying with the "jail removal" core protection. These new data collection provisions would need separate funding through the congressional appropriations process so that states and counties could collect the data and for OJJDP to produce annual reports.

4) Launch and fund new research on youth in the adult criminal justice system

To date, there has never been a comprehensive report on the impact of trying youth in the adult criminal justice system. The JJDPA could include new provisions requiring OJJDP to conduct research on the effectiveness of the practice of prosecuting youth as adults in criminal courts, the status of youth in adult jails and prisons, and the provision of developmentally-appropriate services and programs for youth in the justice system.

States and Counties:

State and county policymakers could take the following actions:

1) Update state statutes to prohibit the placement of youth in adult jails

State policymakers do not have to wait for federal action to address the public safety concerns of placing youth in adult jails. State laws could be updated now to reflect the original intent of the JJCPA law in accordance with the American Correctional Association's policy to "support the adoption of legislation in each state that authorizes correctional authorities to place people under the age of majority who are detained or sentenced as adults in an appropriate juvenile detention/correctional system or youthful offender system distinct from the adult system." State statutes could be amended to ensure that the "jail removal" core protection would apply to all youth pre-trial regardless of which court (juvenile or criminal) they are in.

2) Promote placement of youth in juvenile justice facilities as an alternative to adult jails for youth charged as adults who may need to be detained pre-trial

State and county policymakers could work together to ensure that youth who need to be detained pre-trial can be placed in juvenile facilities, rather than adult jails. State and county policymakers could produce state and county policies that promote the placement of youth in juvenile justice facilities as an alternative to adult jails through Memorandums of Understanding, contracts or regulations (depending on the state or county).

3) Implement "model approaches" to removing youth from jails

State and county policymakers could take steps now to implement model approaches to removing youth from adult jails. These approaches could be shared through state and county associations of policymakers such as the National Governors Association, the National Council of State Legislatures, the National Association of Counties, the National Sheriffs' Association, the American Jail Association, and the American Correctional Association. Best practices could be showcased at national meetings and documented in publications of these prestigious associations.

4) Initiate new data collection efforts and research on youth in the adult criminal justice system

State and county policymakers could initiate new data collection efforts. States and counties could collect data on an on-going basis on youth in the adult criminal justice system and in particular, youth in adult jails. New data collection efforts would include the following information about youth in the adult criminal justice system: age, race, ethnicity, gender, offense, pre-trial detention, transfer mechanism, sentencing outcome, placement pre- and post-trial in jails, prisons or juvenile facilities. Since there are few state analyses on the impact of trying youth in the adult criminal justice system, state and county policymakers could work with local universities, researchers and other experts to conduct extensive research on the effectiveness of the practice of prosecuting youth as adults in criminal courts in their states and counties; the status of youth in adult jails and prisons; and the provision of developmentally-appropriate services and programs for youth in the adult justice system.

Letter From A Youth Held Pre-trial in an Adult Jail to the Local District Attorney

Mr. [REDACTED]

This may be unusual as I doubt you get many letters from inmates. However, I would greatly appreciate your consideration on the following.

Correct me if I'm wrong, but isn't the purpose of punishing someone not only about them paying for their actions, but also to rehabilitate them so they don't make the same mistake again. Shouldn't it be the goal of the state for convicted felons to be able to re-enter society as law-abiding citizens and lead productive lives. Therefore, is it in the best interest of every inmate to go to prison?

I understand that your in a tough situation and that your main responsibility is for the best interest of the community. However, if I truly am a reckless, dangerous person with no care for the law, then what difference would it make if I were to be released next week opposed to twenty years from now. I would still possess those same characteristics only with the education of a criminal who has been through the system.

I'm not in any way trying to degrade the situation. I do fully understand the seriousness of what happened that night. I thank God everyday that my dad and brother are alright. If they weren't, I don't think I could find the courage to live with myself.

If I were to be sent to prison, it would be difficult for me to mature into a "normal" adult. Still being in my teenage years I am still developing. I do not want to be influenced by the type of people

that reside in the [REDACTED].
Being separated from society, I would be at a disadvantage upon my release as I would not know the ways of a functioning adult in society. I would still be a teenager, just in an adult body with adult situations to be responsible for. On the other hand let me propose the following:

- 12 months county jail
- 60 months justice sanctions electronic home monitoring
- 120 months stayed imposed sentence
- 120 months probation
- mandatory counseling
- mandatory drug and alcohol counseling
- mandatory anger management counseling
- mandatory full-time employment, full-time education or part-time employment and part-time education
- 500 hours community service

The above sentence would be adequate for many reasons. First of all, it is strict. With the combination of electronic monitoring and the regular drug and alcohol test, I would have no choice but to "stay-in-line." I would be able to receive therapy, drug and alcohol treatment, and anger management. Second, I am currently finishing my high school diploma while incarcerated at [REDACTED] jail. If I were to be transferred to a different correctional facility the chance of being able to have my credits transferred are slim. Therefore, I would have to

settle for a G.E.D. In the current job market it will be a huge asset to have my diploma oposed to a G.E.D. Third, time is limited before my younger brother and I go our own ways. I want to be able to be around before he goes off to college. To be a rolemodel and a positive influence in his life. These next few years are scarce and once they're gone they're gone. There's no way to replace them. Lastly, it will be a great opportunity to get back on the right track I can promise you I won't need another chance. I decided the first few days I was here that I'm not going to be like one of these people that keep coming back time after time. This will be a perfect opportunity for me to learn and mature into a respectful law-abiding adult member of the community. Also, not to mention, I'm sure the community would have good use for the service hours.

I deeply regret my actions that night and the months leading up to it. Not just because now I'm in trouble, but mainly because I hurt many people I love. Not only my dad and brother but all of our friends and relatives. I feel ashamed that I let everyone down. Especially that I disappointed my father I've never felt a greater sense of pleasure than when I make my parents proud. For example, on the baseball field. The feeling I have now is the exact opposite. I think that's the best way words can describe it. Nothing can justify my actions that evening. I

was upset with the world and myself. I was disgusted with my addictions to substances and at the same time felt sorry for myself. I kept my feelings inside and "put on an act" to appear content when really I wasn't. Knowing what I know now, this whole situation could have easily been avoided and should have never happened. Within the last four months I've learned that it is absolutely imperative to share my feelings with others. I've also learned that substance abuse is not a stress reliever. I take full responsibility for what happened. It's nobody's fault but my own. I will revamp my entire life and outlook on the world. The counseling will be a substantial part of my transformation, as well as alternative stress relievers, such as exercise opposed to substances. The main way I will revamp my life is through pure will, determination and desire. I've a burning desire to change my behaviors. For my sake and for the sake of my families name.

There are two kinds of punishment, regressive and progressive. Regressive punishment, for example prison, would have many negative affects. It would diminish my self-esteem causing me to think poorly of myself and have a negative outlook on the world. Regressive punishment would not help me to learn anything but how to do time and be a criminal. Studies show that if a child grows up around parents that smoke they are much more likely to pick up the habit themselves than children whose parents don't smoke. That applies to other

behaviors as well. I think it would diminish my character if I were to grow into an adult while in the prison system. I would be exposed to obscene language, foul behavior, negative outlooks on the world and the knowledge of criminals. I don't want any of these factors to even subconsciously affect me in anyway, as I do not want to be like those people.

Progressive punishment, for example my proposed idea, would be very helpful. I would be drug and alcohol free for the first time in two years and ready to put a purpose in my life. I would be able to work on improving my life in all aspects, including my relationship with my family, my education, as I plan on going to college, my work ethics, my self-respect, and my relationship with my girlfriend.

I believe there is a difference between committing a crime and being a criminal. Majority of people in their lifetime commit a crime. The difference is those who learn from their mistakes and those who make the same ones over. I committed a crime, however I am not a criminal. I'll learn from my mistakes and lead a productive, successful, law-abiding life. Like a mentioned before I don't need another chance. Please note the 120 stayed imposed sentence. One misdeed and you can feel free to give me the whole 120 months, but I can promise you'll not have the opportunity.

A wise person once told me, "It is not our mistakes in life that define who we are, but rather how we recover from those mistakes." With that I would just like you

to know that I'm going to use this situation to make me a stronger person and a better person. Thank you for your time and consideration.

Two and one-half months after writing this letter, the youth committed suicide.

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