



Monograph



Juveniles in Adult Prisons and Jails

A National Assessment

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Bureau of Justice Assistance

**Juveniles in Adult
Prisons and Jails
A National Assessment**

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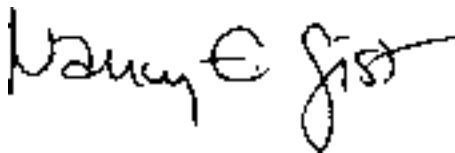
Foreword

Since 1992, 45 states have passed or amended legislation making it easier to prosecute juveniles as adults. The result is that the number of youth under 18 confined in adult prisons has more than doubled in the past decade. This phenomenon is challenging the belief, enshrined in our justice system a century ago, that children and young adolescents should be adjudicated and confined in a separate system focused on their rehabilitation.

In 1997, the Bureau of Justice Assistance funded a nationwide study of juveniles in adult correctional facilities to help policymakers and criminal justice practitioners form an effective response to this critical issue. *Juveniles in Adult Prisons and Jails: A National Assessment* is the product of that study. This report begins to answer important questions about this vulnerable population: What is the extent of juvenile confinement in federal, state, and local facilities? What types of facilities are used to house juvenile offenders? What happens to juveniles in the adult system? Are juveniles in adult facilities educated, treated for substance abuse, and taught skills that will help them find a job after their incarceration? Are prisons and jails protecting young offenders from physical, sexual, and psychological abuse? What are the alternative strategies for housing offenders sentenced to long terms in adult facilities?

As the findings of this study show, there are important steps we can take now to improve the well-being of juvenile offenders in adult facilities. We can develop specialized vocational, sex offender, and substance abuse programs tailored to the developmental needs of youth. We can ensure that staff in adult facilities take seriously their federal mandate to provide regular and special education services to youth in their care. And we can do much more to ensure the safety and care of young offenders who interact with adult offenders.

It is our hope that this work engages public officials, administrators, judges, prosecutors, public defenders, scholars, and other criminal justice practitioners in a frank and meaningful discussion about the incarceration of juveniles with adults.



Nancy E. Gist
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Executive Summary

Historical Context of the Study

The development of a distinct justice system tailored to recognize the mitigating factors associated with juvenile crime is recognized as one of the most progressive developments in the evolution of criminal justice in the United States. Until the 20th century, no formal differentiation had been made between society's response to crimes committed by juveniles and its response to crimes committed by adults. Beginning in Illinois in 1899, juvenile court systems were instituted throughout the United States to place greater emphasis on the welfare and rehabilitation of youth in the justice system. Specialized detention centers, training schools, and youth centers were developed to confine and treat delinquent youth apart from adult offenders. These facilities were to provide a structured, rehabilitative environment in which the educational, psychological, and vocational needs of youthful offenders could be addressed. Although system crowding and funding shortfalls have frequently compromised achievement of these objectives, the goal of the juvenile court system has remained focused on protecting the welfare of youthful offenders.

This concept of a distinct justice system for juveniles focused upon treatment has come under attack in recent years. Beginning in the late 1980s, communities across the nation began to experience dramatically increased rates of juvenile crime. The arrest rate for violent crimes of both males and females began to increase in 1987 and continued to escalate until the mid-1990s. Although this trend appears to have reversed, rates of serious crimes committed by juveniles remain well above historical levels.

The increasing incidence and severity of crimes committed by juveniles led many to question the efficacy of the juvenile court system and to call for a harsher response to juvenile crime. Juvenile delinquency that results in serious offenses has come to be viewed as more a criminal problem than a behavioral problem, resulting in a shift in public response to the management of juvenile offenders. Researchers have noted this shift in trends toward more arrests, longer periods of incarceration, fewer opportunities for rehabilitation, and, most significantly, increases in the transfer of juveniles to the adult criminal justice system.

Juveniles are increasingly placed in adult correctional facilities. Concerned that the juvenile justice system may be ill equipped to handle youth charged with serious crimes and that the juvenile court may be too lenient in its punishment and control of such youth, many states have begun amending their criminal codes so that youth charged with certain crimes can be tried in adult courts and sentenced as adults.

Study Objectives

This report, *Juveniles in Adult Prisons and Jails: A National Assessment*, provides data that are critical for an effective response to the growing number of juveniles being housed in adult jails and prisons. This report documents the number of youth in adult facilities as of 1998, their demographic and offense characteristics, the legal and administrative processes by which such commitments are permitted, the issues faced by adult correctional systems in managing juveniles, and the conditions of juveniles confined in adult facilities.

Three major phases of work were associated with this report.

- ❑ An analysis of recent legislative trends that statutorily require juveniles to be tried as adults and a survey of existing statutes and policies governing the transfer of juveniles to adult court were prepared.
- ❑ A detailed census of juveniles in adult correctional facilities was conducted using federal statistical reporting programs and an extensive survey of federal, state, and local justice agencies.
- ❑ Selected prisons and jails were visited to assess the accuracy of the survey results and to examine the conditions of confinement and access to programs.

Major Findings

This study represents the most thorough examination to date of the issues presented by youth who are incarcerated in adult facilities. The findings include the following:

- ❑ Approximately 107,000 youth (younger than 18) are incarcerated on any given day.
- ❑ Of these, approximately 14,500 are housed in adult facilities. The largest proportion, approximately 9,100 youth, are housed in local jails, and some 5,400 youth are housed in adult prisons.
- ❑ Of the 50 states and the District of Columbia, 44 house juveniles (age 17 and younger) in adult jails and prisons.
- ❑ In recent years, the number of youth in jails has escalated, while the number in prisons has stabilized or declined.
- ❑ The actual number of youth who experience incarceration in an adult prison is much higher than the number shown by a 1-day count, with an estimated 13,876 juvenile state prison admissions in 1997. There are no current estimates of the number of youth admitted to jails each year.
- ❑ In terms of their legal status while incarcerated, 21 percent were held as adjudicated juvenile offenders or pretrial detainees, and 75 percent were sentenced as adults.

- ❑ Of the 44 state prison systems that house juveniles as adults, 18 states maintain designated youthful offender housing units.
- ❑ In comparison with the adult prison population, a higher proportion of youth were black (55 percent of youthful inmates versus 48 percent of adult inmates) and were convicted of a crime against persons (57 percent of youth versus 44 percent of adult inmates).
- ❑ The vast majority of these youth are age 17 (79 percent) or age 16 (18 percent).
- ❑ Approximately 51 percent of the youthful offender population were housed in dormitory settings, 30 percent in single cells and 19 percent in double cells.
- ❑ Health, education, and counseling programs were fairly standard, with little evidence of efforts to customize programs for youthful offenders. A few states operate programs specifically for the most difficult to manage juveniles.

Recommendations

Among the policy recommendations from this report, there are several areas in which the Bureau of Justice Assistance (BJA) could address this issue through the provision of technical assistance programs that target the staff and administrators who manage juveniles in adult correctional settings. Among the key issues are the following:

- ❑ Ensuring that classification instruments are valid for this subset of the adult correctional population and that risk and needs instruments reflect the maturation issues and special needs of the juvenile population.
- ❑ Enhancing the expertise of security staff in managing a younger, more energetic, and more impulsive youthful offender and increasing their awareness of the potential for victimization of youth in adult facilities.
- ❑ Developing specialized programs responsive to the developmental needs of youthful offenders. These include educational and vocational programs, sex offender and violent offender programs, and substance abuse programs that take into account the roles these issues play in adolescent development.
- ❑ Ensuring that staff in facilities are aware of and adhere to federally mandated obligations to provide regular and special education services to youth in their care. Such a program could be developed in partnership with the U.S. Department of Education.
- ❑ Expanding the array of nonviolent incident management techniques that are effective in deescalating volatile incidents involving youthful offenders.

- ❑ Developing appropriate and effective incentives for program participation.

Given the relative newness of this issue and the dearth of knowledge surrounding the conditions, impact, and consequences of juvenile incarceration in adult facilities, additional research is required in the following areas:

- ❑ Full explication of the needs profiles of youthful offenders requiring educational services, substance abuse treatment, mental health services, and medical services. These profiles could assist in the creation of developmentally appropriate programs and industry standards for adult facilities housing juveniles.
- ❑ Assessment of different housing strategies such as the degree of separation from adult offenders, the special management required by dormitory settings, and the cost-effectiveness of these options given the small size of the youthful offender population.
- ❑ Assessment of the impact of youthful offenders on adult prison populations and the development of strategies for minimizing the “contagiousness” of the volatility and impulsiveness that are common among youthful offenders.

Introduction

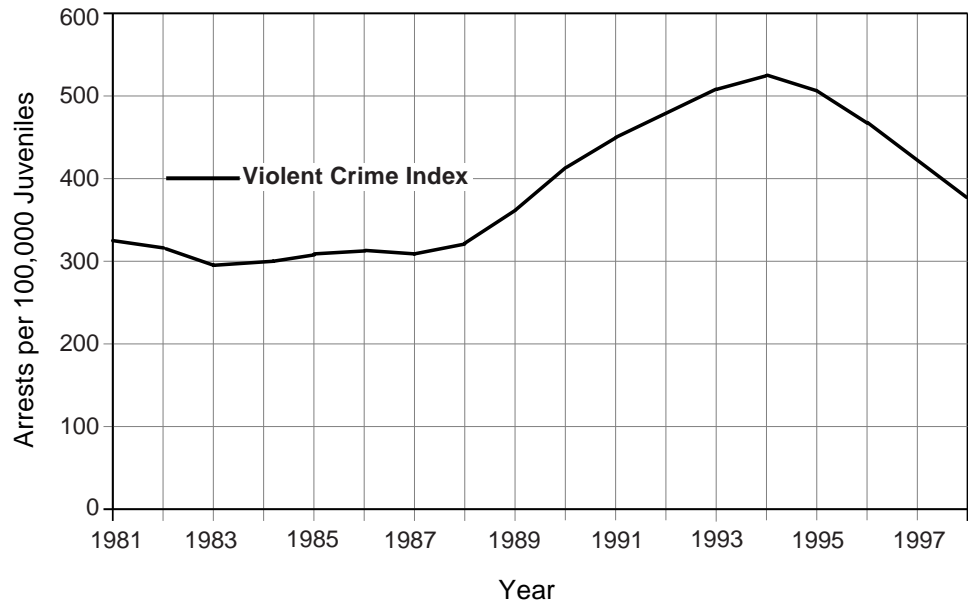
Background to the Study

The development of a distinct justice system tailored to recognize the mitigating factors associated with juvenile crime is recognized as one of the most progressive developments in the evolution of criminal justice in the United States. Prior to the 20th century, no formal differentiation had been made between society's response to crimes committed by juveniles and its response to crimes committed by adults. Beginning in Illinois in 1899, juvenile court systems were instituted throughout the United States to place greater emphasis on the welfare and rehabilitation of youth in the justice system. Specialized detention centers, training schools, and youth centers were developed to confine and treat delinquent youth apart from adult offenders. These facilities were to provide a rehabilitative environment for addressing the educational, psychological, and vocational needs of youthful offenders. Although system crowding and funding shortfalls frequently compromise achievement of these objectives, the goal of the juvenile court system remains focused on protecting the welfare of youthful offenders.

This concept of a distinct justice system for juveniles focused on treatment has come under attack in recent years. Beginning in the 1980s, communities across the nation began to experience dramatically increased rates of juvenile crime. Alarming, serious violent crimes experienced the most rapid growth. From 1984 through 1994, the arrest rate of juveniles for violent offenses increased by 78 percent. Arrests for murder and aggravated assault increased by 45 percent and 37 percent, respectively, from 1989 through 1993. However, since then juvenile arrest rates have declined. Between 1994 and 1998, violent offenses declined by 19 percent, although they are still 15 percent higher than the 1989 level (Snyder, 1999). As shown in figure 1, this trend appears to have peaked in 1994, with the 1998 arrest rates for violent crime index offenses 30 percent below the 1994 level, although the rates of arrests for serious crime by juveniles remain well above historical levels (Snyder, 1997).

The increasing incidence and severity of juvenile crime have led many to question the efficacy of the juvenile court system and to call for a harsher response to juvenile crime. Juvenile delinquency that results in more serious offenses has come to be viewed as more a criminal problem than a behavioral problem, resulting in a substantial shift in public response to the management, rather than treatment, of juvenile offenders. This shift is evident in increasing arrest rates, longer periods of incarceration, fewer opportunities for rehabilitation, and, most significantly, increases in the number of juveniles transferred to the adult criminal justice system (Sickmund et al., 1997). This last development is apparent in surveys of legislative trends.

Figure 1 Juvenile Arrest Rates for Violent Crime Index Offenses, Ages 10–17, 1981–1998



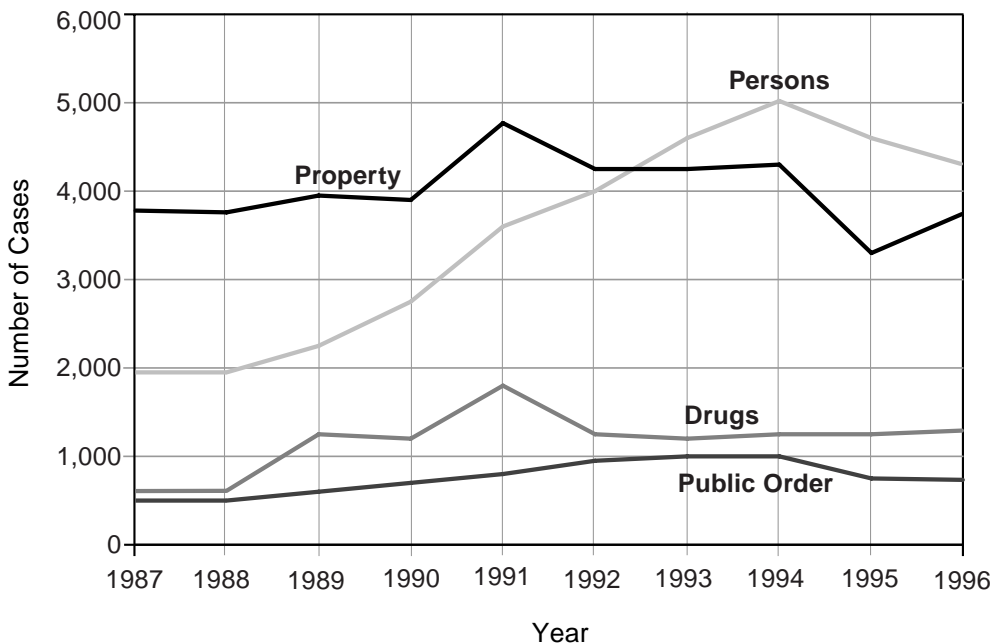
Source: Snyder, 1998.

Concerned that the juvenile justice system may be ill equipped to manage youth charged with serious crimes and that the juvenile court may be too lenient in its punishment and control of such youth, many states amended their criminal codes so that youth charged with certain crimes may be tried and sentenced as adults (National Institute of Justice, 1997). Between 1992 and 1996, 43 of the 50 state legislatures and the District of Columbia made substantive changes to their laws targeting juveniles who commit violent or serious crimes. All but 10 states adopted or modified laws making the prosecution of juveniles in criminal court easier. Nearly half (24) of the states added crimes to the list of excluded offenses, and 36 states and the District of Columbia excluded certain categories of juveniles from juvenile court jurisdiction. The list of offenses considered serious enough for transfer of youth as young as age 14 includes murder, aggravated assault, armed robbery, and rape, as well as less serious and violent offenses such as aggravated stalking, lewd and lascivious assault or other acts in the presence of a child, violation of drug laws near a school or park, sodomy, and oral copulation. Since 1992, 13 states and the District of Columbia have added or modified statutes that provide for a mandatory minimum period of incarceration for juveniles held as adjudicated delinquents for certain serious and violent crimes.

One legal method to try a youth as an adult is to lower the age of adult court jurisdiction. For example, seven states (Georgia, Illinois, Louisiana, Massachusetts, Michigan, South Carolina, and Texas) have set the age of jurisdiction at 16, whereas three states (Connecticut, New York, and North Carolina) have lowered the age to 15 years. Missouri lowered the age for transfer to criminal court to 12 for any felony. In all but two states (Nebraska and New York), a juvenile court judge can waive jurisdiction over a case and transfer youth to the adult court for certain crimes and at certain age limits.

Although the legal basis for waiver varies from state to state, the trend across the country is to expand the use of waivers. This is being accomplished by lowering the age of adult jurisdiction, by adding to the list of applicable crimes, and by adopting more procedures by which youth can be transferred to adult court (e.g., either through the discretion of the prosecutor or through legislative mandate). Currently, waiver provisions are often applied to nonviolent offenders and, in some states, running away from a juvenile institution is grounds for prosecution in adult courts. Although crimes against persons are now the most frequent offenses related to the use of waiver, the majority of offenders are charged with property, drug, and public order offenses (see figure 2).

Figure 2 Delinquency Cases Judicially Waived to Criminal Court, 1987–1996



Source: Stahl, 1999.

Related to the issue of waivers is the disproportionate confinement of minority youth. A number of researchers have noted the overrepresentation of minority youth at every stage of processing in the justice system (Hsia and Hamparian, 1998). Evidence that waiver decisions have been made in a racially disparate manner may support the contention that minority youth are being unfairly targeted for incarceration in adult facilities.

Historical Trends in the Number of Youth Confined in Adult Facilities

Levels of confinement can be measured by the number of offenders admitted to a facility or system in a given year or by a 1-day “snapshot” of the number of offenders incarcerated on any given day. Using the most recent national data and information provided by this study, 14,500 juveniles were estimated to be housed in adult correctional facilities on any given day in 1997. Another 93,000 youth were in public and private juvenile facilities, for a total of approximately 107,000 youth incarcerated on any given day (table 1). Table 2 shows that the number of juveniles in adult jails has increased markedly over the past two decades, from 1,736 in 1983 to 8,090 in 1998. Although the number of juveniles in adult jails has increased, the number of youth in adult prisons appears to have declined. For example, in 1995 the Bureau of Justice Statistics (BJS) reported 5,027 juveniles in state prisons as compared with the 4,775 indicated in this report for 1997.

Table 1 Number of Juveniles Incarcerated, 1997

Type of Facility	Number	Percentage*
Total	107,169	100%
Juvenile Facility	92,664 [†]	86
Jail	9,105	8
Prison	5,400	5

*Discrepancy in total is due to rounding.

[†]This number reflects juveniles in public or private detention and correctional facilities, including status offenders, and is limited to persons under age 18.

Source: Bureau of Justice Statistics, 1999, pages 479 and 481.

Table 2 Juveniles in Adult Jails, 1983–1998

Year	Total Adult Inmates	All Males	All Females	Juveniles
1983	221,815	206,163	15,652	1,736
1984	233,018	216,275	16,743	1,482
1985	254,986	235,909	19,077	1,629
1986	272,736	251,235	21,501	1,708
1987	294,092	270,172	23,920	1,781
1988	341,893	311,594	30,299	1,676
1989	393,248	356,050	37,198	2,250
1990	403,019	365,821	37,198	2,301
1991	424,129	384,628	39,501	2,350
1992	441,780	401,106	40,674	2,804
1993	455,600	411,500	44,100	4,300
1994	479,800	431,300	48,500	6,700
1995	499,300	448,000	51,300	7,800
1996	510,400	454,700	55,700	8,100
1997	557,974	498,678	59,296	9,105
1998	584,372	520,581	63,791	8,090
% Change, 1983–1998	163%	153%	308%	366%

Source: Bureau of Justice Statistics, 1999, page 481.

Aside from aggregate data on the number of juveniles in adult facilities, little has been known about their individual characteristics. BJS, the primary source of these data, recently issued a study of persons under age 18 who are held in state prisons (Bureau of Justice Statistics, 2000). Table 3 compares the attributes of the state prison admission population under age 18 in 1985 and 1997, as presented in the study. Major highlights are detailed below.

- The number of offenders under age 18 admitted to state prison more than doubled from 3,400 in 1985 to 7,400 in 1997. However, persons under age 18 have consistently represented about 2 percent of new admissions in each of the 13 years.

Table 3 Attributes of Juveniles Admitted to State Prisons, 1985 and 1997*		
Attribute	1985 Prison Admissions	1997 Prison Admissions
Total Admissions	3,400	7,400
Offense Type		
Violent	52%	61%
Property	42	22
Drug	2	11
Public Order	4	5
Race/Ethnicity		
White	32%	25%
Black	53	58
Hispanic	14	15
Other	1	2
Gender		
Male	97%	97%
Female	3	3
Age at Admission		
17	80%	74%
16	18	21
15	2	4
14 and Younger	0	1
Average Sentence		
Maximum	86 months	82 months
Minimum	35 months	44 months

*Discrepancies in totals are due to rounding.
Source: Bureau of Justice Statistics, 2000.

- ❑ In 1997, 61 percent of these admissions were for violent crimes, which represents a substantial increase from the 52 percent admitted for violent crimes in 1985.
- ❑ Within the violent offense category, the most frequent type of new court commitments for violent crimes was robbery (32 percent), followed by aggravated assault (14 percent), murder (7 percent), and sexual assault (4 percent).
- ❑ The proportion of new admission for property offenses decreased from 42 percent in 1985 to 22 percent in 1997. This decline is primarily accounted for by a 15-percent decrease in admitted burglary offenders.
- ❑ Drug offense admissions increased from 2 percent in 1985 to 11 percent in 1997.
- ❑ Public order offenders remained fairly stable between 1985 and 1997.
- ❑ Prison admissions for youthful offenders who are black or Hispanic increased from 67 percent in 1985 to 73 percent in 1997.
- ❑ Although the vast majority of prison admissions for youthful offenders are age 17 at admission, admissions in the 13–16 age group increased from 20 percent in 1985 to 26 percent in 1997. Beginning in 1995, offenders age 14 and younger were being sentenced to prison.
- ❑ In 1997, the average maximum sentence for persons under age 18 was 6.8 years, 4 months less than in 1985. Paradoxically, the average minimum time to be served was 3.6 years, an increase of 9 months from 1985, which is probably due to reductions in good-time credits and/or truth-in-sentencing laws. This trend in sentence length for admissions under age 18 admissions was observed for all offense types with the exception of the mean maximum sentence length for drug offenses, which increased by 2 months.
- ❑ On December 31, 1997, fewer than 1 percent of state prison inmates were under age 18, a proportion that has remained stable since the mid-1980s.

The BJS report also notes that state prison admissions for the group under age 18 grew faster than arrests, with the likelihood of incarceration relative to arrest increasing in almost every category with the exception of most property offenses.

Conditions of Confinement

Numerous studies have examined the conditions of confinement and issues faced by juveniles in adult facilities. Research has shown that juveniles in adult facilities are at much greater risk of harm than youth housed in juvenile facilities. The suicide rate for juveniles held in jails is five times

the rate in the general youth population and eight times the rate for adolescents in juvenile detention facilities (Community Research Center, 1980).

Forst and colleagues (1989) reported that, although youth in adult and juvenile facilities were equally likely to be victims of property crime while incarcerated, juveniles in adult facilities were more likely to be violently victimized. In 1988, 47 percent of juveniles in prisons (compared with 37 percent of youth in juvenile facilities) suffered violent victimization, including violence at the hands of staff. Sexual assault was five times more likely in prison, beatings by staff nearly twice as likely, and attacks with weapons were almost 50 percent more common in adult facilities. Clearly, safely housing juveniles in adult facilities and protecting younger inmates from predatory, older inmates are important issues for correctional administrators.

Policy Issues Addressed by the Study

The growing number of juveniles admitted to adult facilities raises a number of important questions for correctional administrators and policymakers. This research provides key information for decisionmakers by documenting the number and profiles of youth in adult facilities, the legal and administrative processes by which they are waived to the adult court system, the issues faced by adult correctional systems handling juveniles, and those faced by juveniles who are confined in adult facilities. The specific questions to be answered by this project are as follows:

- What is the extent of confinement of juveniles in federal, state and local facilities? What is the legal basis for allowing juveniles convicted as adults to be committed directly to the adult system?**

An updated national census is presented of those states permitting juveniles to be charged and convicted as adults, housed during pretrial status in adult pretrial facilities (jails), and sentenced to adult facilities (prisons or jails). Moreover, a summary of recent legislation adopted by the states is provided.

- What types of adult facilities are used to house juveniles and what is the legal basis for such commitments?**

Juveniles are confined in a wide variety of adult facilities. Juveniles, if charged as adults (and for other reasons), can be housed in adult facilities awaiting the court's disposition. As shown earlier, a far greater number of juveniles are admitted to jails than to state and federal prison facilities. Youth may be placed in jails because they are being prosecuted as adults or because the jurisdiction does not have a juvenile facility for those who require secure confinement while awaiting the court's final disposition of the charges. Distinctions in the legal basis for placing juveniles in adult correctional facilities are discussed.

❑ **What happens to juveniles in the adult system? Are they placed in separate areas or allowed to be housed with adults?**

Sight and sound separation of adults and juveniles at all stages of judicial processing is mandated by Congress for all states under the Juvenile Justice and Delinquency Prevention Act (JJDP) of 1974, as amended. This report examines to what degree and under what circumstances this mandate is adhered to when minors are sentenced as adults. Further, the ability of mixed-age facilities to provide required programs and services to minors while maintaining separation from adults is discussed.

❑ **Do juveniles in adult facilities receive unique treatment, education, job skills training, and other services?**

Despite being placed in adult facilities, minors retain special civil rights to education, vocational training, and other services that may require additional or special programs. These rights have consequences in staffing and access to appropriate programs that are responsive to the developmental, physical, social, psychological/emotional, educational, and family needs that are unique to adolescents.

❑ **Does the presence of minors in a mixed-age facility pose unique management problems with respect to disciplinary incidents?**

Practitioners have often asserted that younger offenders are more difficult to manage than older inmates. In some jurisdictions, attempts have been made to house youth with older inmates who will provide a calming influence on juveniles, especially those with long sentences. However, research has shown that juveniles in adult populations are more likely to commit suicide and to be victims of violence and sexual assaults. Transferred juveniles create new problems for the adult corrections system, including development of treatment and reintegrative services and protection from predatory inmates. The way in which these disciplinary issues are managed is a key discussion.

❑ **What are the alternative strategies for housing juvenile offenders sentenced to long terms in adult facilities?**

Some juveniles convicted of violent crimes are now facing extremely long, life, or death sentences. This bleak future may create additional disciplinary and mental health issues that must be managed by correctional administrators and staff.

Overview of the Report

Chapter 2 provides an assessment of the laws and administrative policies that provide the legal basis for placing juveniles in adult prisons and jails. Also presented is an analysis of the circumstances that constitute the

breakpoint between adult and juvenile proceedings. In certain circumstances (e.g., age, offense, criminal history), a youth younger than the statutory age of court jurisdiction can be handled in the adult system. Other prescriptions govern the conditions under which a youth can be held in pretrial and/or sentenced status and the types of institutions in which a youth may be held. The range of allowable sentences to adult facilities is also discussed.

Chapter 3 presents the results of the national survey of the numbers and attributes of juveniles housed in adult jails and prisons. Individuals age 17 and younger were defined as juveniles. Using this definition, the chapter provides an assessment of the prevalence of juvenile incarceration in adult facilities and profiles the demographic and offense characteristics of these juveniles.

Chapter 4 describes the facilities surveyed and the types of programs available to juveniles in these institutions. Of particular interest are the degree to which juveniles are segregated from adult offenders and the types of programs available at these institutions. This chapter also summarizes the management issues created by the presence of juvenile offenders in adult institutions and how correctional administrators attempt to respond to those issues. The chapter provides a discussion of the day-to-day issues associated with housing juvenile offenders with adults.

Chapter 5 identifies issues for further research and topical areas of technical assistance that the Bureau of Justice Assistance (BJA) should consider offering to assist state and local governments to assist them in managing juveniles in adult facilities.

Legal Issues Relating to Conditions of Confinement for Youth in Adult Facilities

Introduction

Youth detained in adult facilities under criminal court jurisdiction have the right to humane treatment, mental health and medical care, education, due process protection, and access to their families and the courts. These rights extend to children who are confined in juvenile detention centers, training schools, adult jails and prisons, and other secure institutions. These rights emanate from the U.S. Constitution and federal laws, including the Juvenile Justice and Delinquency Prevention Act; from state constitutions and laws; and from court interpretations of these laws. This chapter provides a summary of the major legal cases that guide the care of juveniles in correctional facilities. Full citations of the cases mentioned in text can be found at the end of the chapter. (The chapter was adapted for this report from Chapter 2 of *Representing the Child Client*, "Legal Rights of the Child," by Mark Soler.)

Conditions for convicted adult prisoners, and juveniles convicted under adult court jurisdiction only violate the U.S. Constitution where they amount to "cruel and unusual punishment" under the eighth amendment (see *Rhodes v. Chapman*). Adult facilities must provide for basic needs, including adequate food, clothing, shelter, medical care, and protection from violence. To determine whether a particular condition or practice is cruel or unusual in an adult institution, courts evaluate whether the condition poses a substantial risk of serious harm and whether officials acted with "deliberate indifference" to the rights of the inmate (see *Wilson v. Seiter* and *Farmer v. Brennan*).

Youth may be entitled to additional protection under state laws or regulations. For example, most states have laws giving children a right to treatment and rehabilitation. In addition, many states have laws that require that children be placed in the least restrictive environment consistent with public safety needs or that prohibit the detention of children under juvenile court jurisdiction in adult facilities. Also, some states have laws or regulations setting standards for maximum inmate population sizes, building conditions, health and safety requirements, and programming mandates for facilities where children are detained.

The determination of whether a condition or practice violates the constitution or other laws depends on the particular case and the specific legal issue raised. Cases do not have identical circumstances. Thus, to assess the

risk of lawsuits, correctional authorities must be knowledgeable about the cases most analogous to their situation and must realize that slight differences in facts could change the ruling. For this reason, the case law citations included in this overview as a starting point for research should not be taken as the definitive authority for cases involving similar issues. Also, this overview provides citations only to published cases—that is, cases appearing in the official court reports.

Many issues considered here have also been taken up by the American Bar Association Standards on Interim Status, American Correctional Association Standards for Juvenile Correctional Facilities, National Commission on Correctional Health Care Standards, and U.S. Department of Justice Standards for the Administration of Juvenile Justice. Professional standards reflect the collective wisdom of professionals in the field, and courts often use them as a guide for determining whether laws have been violated.

Complying with professional standards does not insulate facilities from liability. Many facilities have been successfully sued, even though they complied with the standards of a professional organization. This situation may occur when the standards do not address a particular issue or when the standards require only that there be an institutional policy on the issue without specifying its contents. The shortcomings of many commonly used standards prompted the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to call for the development of performance-based standards that specify the outcomes facilities should achieve (Parent and Leiter, 1994).

The constitutional standard for measuring violations under the due process clause, commonly used for children and pretrial detainees, is whether the detainees are being held under conditions that “amount to punishment” (see *Gary H. v. Hegstrom* and *Bell v. Wolfish*). These standards give more protection to children than would be afforded to convicted adult prisoners under the cruel and unusual punishment clause of the eighth amendment. In adult prison cases, inmates must show that the deprivation was sufficiently serious to constitute cruel and unusual punishment in that it involves the “unnecessary and wanton infliction of pain” and that the official acted with “deliberate indifference” (see *Wilson v. Seiter* and *Farmer v. Brennan*). The due process clause is a less rigorous standard and broadens the rights of juveniles.

This overview focuses primarily on federal civil rights litigation. State laws may create additional liabilities, eliminate certain defenses (such as immunity) for defendants, and determine who will be reimbursed or indemnified in damage cases. For example, lawsuits may be filed under state tort law or other specific statutes such as the federal Individuals With Disabilities Education Act.

Issues Arising in Institutional Litigation

The remainder of this overview discusses the numerous issues that commonly arise in institutional litigation on behalf of confined youth. Together the issues can be referred to using the acronym **CHAPTERS**. This acronym is an easy way to remember the following eight major areas of institutional considerations:

Classification and separation issues.

Health and mental health care.

Access to counsel, the courts, and family members.

Programming, education, and recreation.

Training and supervision of institutional staff.

Environment, sanitation, overcrowding, and privacy.

Restraints, isolation, punishment, and due process.

Safety issues for staff and confined youth.

Classification

Litigation on classification issues has addressed the separation of, or failure to separate, adult and juvenile inmates under a number of conditions, including segregation of violent or aggressive adult inmates, separation by age (e.g., the JJDPA sight and sound separation requirements), improper separation by gender or race, and separation of inmates with infectious diseases.

Separation of individuals with violent propensities. Much of the case law on classification involves claims by young or vulnerable adult inmates who were physically or sexually assaulted by inmates known to be criminally sophisticated, dangerous, violent, or aggressive. Adult inmates have the right to be protected from the threat of violence and sexual assault. If officials know of an inmate's vulnerability, they have an obligation not to act with deliberate or reckless indifference to that vulnerability. Counties or supervisory officials, as well as institutional staff, may be liable if their policies or customs (e.g., on jail overcrowding or handling of particular categories of inmates) amount to deliberate indifference to inmates' security needs (see *Smith v. Wade*, *Withers v. Levine*, *Woodhouse v. Virginia*, *Stokes v. Delcambre*, *Nelson v. Overberg*, *Redman v. County of San Diego*, and *Hale v. Tallapoosa County*).

The same principles apply to incarcerated youth who have the right to be free from unreasonable threats to their physical safety. Facilities must have

a system for screening and separating aggressive juveniles from more passive ones and for determining appropriate levels of institutional classification (see *Alexander S. v. Boyd*). The failure to protect children from the sexual aggressiveness of other confined juveniles may result in liability (see *Guidry v. Rapides Parish School Board*).

Sight and sound separation/removal of children from adult jails/deinstitutionalization of status offenders. JJDPA requires sight and sound separation of juveniles held under state juvenile court jurisdiction (and juveniles younger than age 18 under federal court jurisdiction) from adults in jails and lockups. The act does not apply to youth in adult facilities who are being prosecuted as adults in state court. In many adult facilities, impermissible contacts occur during admission to the facility, transportation to court, mealtime, and cleaning of living units.

Ironically, jails that separate juveniles from adults may run afoul of other constitutional protections because juveniles are typically isolated for long periods, without access to institutional programs and services. This situation led Congress to amend the act in 1980. Thus, federal regulations permit delinquent children to be held in lockups for only a limited number of hours before and after court hearings.

Separation by gender. Classification and separation of adult inmates may not be used to justify unequal program opportunities for one gender. Thus, educational, recreational, and vocational training programs for female inmates must be equivalent to those available to males (see *Glover v. Johnson*, *Mitchell v. Untreiner*, *Cantarino v. Wilson*, and *Women Prisoners of the District of Columbia Department of Corrections v. District of Columbia*). Compliance with this requirement is often a problem in institutions that house more men than women and that do not adequately provide for females' participation in courses, work opportunities, and recreational programs. Similar situations arise in juvenile facilities housing both female and male youth.

Separation by race. Classification, housing assignments, and job assignments that result in patterns of racial disparity may violate the 14th amendment (see *Santiago v. Miles*). Although facilities may take racial tensions into account when maintaining security, discipline, and order, they may not simply segregate the populations based on race (see *Lee v. Washington*, *Jones v. Diamond*, and *White v. Morris*).

Segregation of inmates for health reasons. The Bureau of Justice Statistics reported that, at the end of 1994, approximately 2.4 percent of male inmates and 3.9 percent of female inmates in adult correctional facilities were HIV positive. There are limited statistical data on the numbers of confined youth who are HIV positive, but the incidence of high-risk, unprotected sexual activity and intravenous drug use suggests that the rate may be even higher for detained youth.

Not surprisingly, a growing interest in classification litigation involves the treatment of inmates who are HIV positive. Issues commonly litigated include segregation (specifically the right to equivalent programming, access to the outside world, and services if segregated), mandatory testing, confidentiality, and medical treatment for HIV/AIDS (see *Harris v. Thigpen* and *Anderson v. Romero*).

Although existing case law helps to describe the relevant issues relating to HIV/AIDS, the decisions from various jurisdictions are inconsistent (compare *Camarillo v. McCarthy* and *Moore v. Mabus*, which found that segregation of inmates who are HIV positive violates the constitution; and *Zaczek v. Murray*, which affirmed a lower court holding that segregation and mandatory testing are not required by the constitution, with *Doe v. Coughlin*, which found that segregation of inmates who are HIV positive violates constitutional privacy rights). Soler (1993) offers a discussion of recent case law. To some degree, these decisions reflect the evolving state of medical knowledge on the treatment of HIV/AIDS and corresponding changes in public health policy about confidentiality, testing, and practices for reducing the risk of transmission. Juvenile detention centers must have thoughtful policies on all aspects of confining persons who may be HIV positive.

Health

Medical and dental care. Inmates are constitutionally entitled to medical care, including both screening and direct service. Institutions may not interfere with access to medical care or interfere with prescribed treatment for illness. Deliberate indifference to the serious medical needs of adult inmates violates the eighth amendment (see *Estelle v. Gamble* and *Boretti v. Wiscomb*). For example, the medical care system violated constitutional standards in *Ramos v. Lamm*, in which there were fewer than 10 hours per week of onsite physician care for an entire prison, overuse of physicians' substitutes, and use of inmates to deliver medical services. Budgetary constraints may not be used to justify a denial of necessary medical care (see *Jones v. Johnson*). Similarly, a substantial delay in medical treatment may result in a finding that medical care was constitutionally inadequate (see *Durmer v. O'Carroll*).

Each facility should have a screening mechanism for inmates. The screening should be done by a doctor or another professional who has had medical training. Many jails and lockups have a nonmedical person performing this task. This situation is not satisfactory and may result in a medical tragedy. Also, someone on staff must have the authority to transfer a seriously ill inmate to another medical facility (see *Colle v. Brazos County, Texas*).

In addition to screening, facilities must provide adequate medical services and access to medical supplies such as eyeglasses (*Williams v. I.C.C. Committee*), prescription medicines (*Gerakeris v. Champagne*), wheelchairs (*Weeks*

v. *Chaboudy*), special diets (*Coades v. Jeffes*), and dental care (*Boyd v. Knox*). In the adult system, cases have involved health-related claims that facilities have failed to make reasonable modifications to serve inmates with disabilities pursuant to the Americans With Disabilities Act of 1990 and claims that inmates have been denied the benefits of institutional programs because of a handicap under the Rehabilitation Act of 1973.

Mental health care. Children and adult inmates are constitutionally entitled to adequate mental health care. For the components of a minimally adequate mental health system see *Ruiz v. Estelle*. *Ramos v. Lamm* found that mental health services in an adult prison were grossly inadequate where 5 to 10 percent of inmates were mentally ill and 10 to 25 percent needed mental health treatment; a psychiatrist visited the prison only twice in the year before trial, and there was a 2- to 5-week wait for services from mental health staff. Similarly, *Coleman v. Wilson* found constitutional violations where a prison system failed to provide a systematic program for screening and evaluating inmates' mental health needs; a treatment program that involved more than segregation and close supervision of mentally ill inmates; access to a sufficient number of trained mental health professionals; maintenance of accurate, complete, and confidential mental health records; administration of psychotropic medication with appropriate supervision and periodic evaluation; and a basic program to identify, treat, and supervise inmates at risk for suicide (see *Madrid v. Gomez* for components of adequate institutional mental health services).

Many detained youth are mentally ill or suffer from severe emotional disturbances. Sometimes confinement adds to their disturbance. Therefore, facilities must screen minors for mental health problems, provide emergency psychological services, establish procedures for dealing with suicidal youngsters, make sure that medications are prescribed and administered by qualified medical personnel, establish provisions for children to request psychological care, and make sure that there is adequate staff for ongoing psychological services.

Juvenile cases addressing mental health needs of detained children include *Thomas v. Mears*, *Gary W. v. State of Louisiana*, *Morales v. Turman*, *Martarella v. Kelley*, *Morgan v. Sproat*, and *Ahrens v. Thomas*. The use of drugs for behavior control is constitutionally prohibited (see *Nelson v. Heyne* and *Pena v. New York State Division for Youth*). *Jackson v. Fort Stanton State Hospital & Training School* includes a discussion of the *Youngberg v. Romeo* standard in relation to developmentally disabled adults.

Apart from cases involving general mental health care in institutions, there are cases involving suicides and other harm to prisoners based on the indifference of officials to known mental health needs. Many cases involve suicides. *Buffington v. Baltimore City* deals with the liability of two police officers who knew that a detainee was on the verge of suicide but failed to follow department policy for the care of suicidal inmates; *Simmons v. City*

of *Philadelphia* addresses holding the city liable for indifference to the medical needs of an intoxicated adult detainee who committed suicide; *Hare v. City of Corinth, Mississippi* treats refusing qualified immunity to jail officials for placing a suicidal inmate in an isolated cell that was not visually monitored despite a recent suicide and failing to have onsite staff with a key who could open the door once the inmate was seen hanging; *Heflin v. Stewart County, Tennessee* holds that the jury should have been permitted to decide whether the jail staff's failure to cut down a hanging inmate until photos had been taken (when evidence suggested that the inmate may have been alive) was deliberate indifference; *Hall v. Ryan* reverses the dismissal of a case in which evidence suggested that the defendants knew of the inmate's suicidal condition because of past encounters with the police department or were recklessly indifferent in failing to consult his file after observing his wild behavior; and *Cabrales v. County of Los Angeles* holds that a county could be liable for deliberate indifference when its policy of understaffing institutional mental health services contributed to the suicide of an inmate placed in isolation after a suicide attempt.

Again, the suicide cases demonstrate the need for thorough mental health screening by trained staff, policies governing the supervision and treatment of suicidal and at-risk inmates, and the availability of mental health services, particularly for detained children.

Access

This issue refers to a minor's right of access to family members and important people in his or her life. It also refers to access to the legal system. Minors have a right to reasonable access, and the cases that have addressed this issue discuss the standard of reasonableness in particular situations. The rules on mail access are more specific.

The experience of being incarcerated is traumatic for youth, particularly when placed in an adult facility. Youth need the emotional support of their family, and access to the community may be critical to the success of court intervention. Thus, in *D.B. v. Tewksbury* the court found that children confined in a jail were deprived of their constitutional rights when they were denied regular visits, use of the telephone, and mail services. The court found that these restrictions needlessly intensified children's fears and hostilities and were counterproductive to the goals of the juvenile justice system.

Visits. Institutions housing children must provide for reasonable visitation. Visits should be permitted during the day, with provisions for alternative visiting times for parents who are unable to visit during the normal hours. Approved visitors should include adult relatives, family friends, and siblings with approval from the minor's probation officer or counselor.

Unfortunately, punitive attitudes, understaffing, and limited visiting areas have restricted visiting opportunities for children. The right to reasonable

visitation has been litigated in a number of juvenile cases, including *Ahrens v. Thomas*, *Thomas v. Mears*, *Gary W. v. State of Louisiana*, and *D.B. v. Tewksbury*. Visitation should not be curtailed because of overcrowding or staff shortages, according to *Patchette v. Nix*.

Telephone access. Case law does not set an absolute requirement for telephone use but insists a facility must provide reasonable access to telephones. Calls may be made to parents, relatives, and attorneys. Monitoring may occur only if justified. Limited staffing and few public telephones often result in undue restrictions on children's ability to make telephone calls from jails and lockups. Juvenile cases addressing telephone use include *Gary W. v. State of Louisiana* and *Ahrens v. Thomas*.

Mail access. There are two categories of mail: privileged and nonprivileged. Privileged mail is between the child and his or her attorney, a judge, a legislator, or some other public official and is usually designated as such (e.g., "legal mail") on the envelope. Privileged mail may not be opened by staff, except to inspect it for contraband according to *Wolff v. McDonnell*. Nonprivileged mail is all other mail and may be opened under certain circumstances to inspect for contraband or criminal activity. Even then, staff must have facts to support their suspicions.

If mail is to be read, the individual must be given an opportunity to appeal to someone other than the person who suspects the correspondence (see *Procunier v. Martinez*). The U.S. Supreme Court has permitted only limited restrictions on inmate mail. *Turner v. Safley* addresses correspondence between adult inmates at different correctional institutions; *Thornburgh v. Abbott* deals with rejection of publications found detrimental to institutional security; and *Ramos v. Lamm* addresses a ruling that struck down prohibition of correspondence in another language in an institution where one-third of the institutional population was Hispanic.

Access to the courts. Correctional facilities must ensure that inmates have meaningful access to both counsel and the courts (see *Younger v. Gilmore*). In *Bounds v. Smith*, the U.S. Supreme Court held that the provision of adequate libraries or adequate assistance from persons trained in the law would meet the constitutional requirement and that facilities should explore various avenues such as volunteer or legal services attorneys, law students, inmate paralegals, or public defenders to meet this requirement. More recently, in *Lewis v. Casey* the Court explained that inmates require the tools to argue their sentences or to challenge the conditions of their confinement. The rights of illiterate or non-English-speaking inmates might necessitate the provision of special assistance.

Earlier cases found constitutional violations where prison library systems imposed hurdles to access (see *Toussaint v. McCarthy*). Also, courts have held that prisons that offer paralegal assistance as an alternative to providing direct library access must provide trained legal assistants, and inmates

must be supplied with a reasonable amount of office materials for court filing of documents (see *Gluth v. Kangas*, *Knop v. Johnson*, and *Ward v. Kort*). However, the Court emphasized, in *Lewis v. Casey*, that constitutional violations must be measured in relation to actual, not theoretical, injuries caused by the inadequacies of libraries or other legal assistance.

Unmonitored visits with attorneys must be allowed upon reasonable request. *Keker v. Procunier* and *Adams v. Carlson* address the duty of institutions to keep lines of communication open among inmates, attorneys, and the courts. The sixth amendment also includes the right of reasonable access to attorneys to challenge unlawful conditions and seek redress of constitutional rights under *Procunier v. Martinez*. Inmates must also be allowed to meet with attorneys on civil matters according to *U.S. v. Janis* and *Corpus v. Estelle*.

Programming

The U.S. Supreme Court has never expressly ruled on the right to treatment for juveniles, and lower court cases have ruled ambiguously on this issue. The Court has recognized a right to treatment for mentally retarded adults who, like children, are confined for treatment without their consent (see *Youngberg v. Romeo*). In addition, a number of courts have found a right to treatment in juvenile institutional cases. In *Alexander S. v. Boyd*, the court found a constitutional right to a minimally adequate level of programming designed to teach juveniles the principles essential to correct their behavior.

Exercise and recreation. Inmates are constitutionally entitled to fresh air and regular exercise (see *Spain v. Procunier*). In adult prisons, restriction to two 1-hour exercise periods per week has been held to violate the eighth amendment (see *Sweet v. South Carolina* and *Spain v. Procunier*). Where there is substantial access to indoor recreation areas, up to 18 hours per day, according to *Clay v. Miller*, there may be a finding of no violation, but such substantial alternatives often do not exist. Where the adult inmate is in disciplinary segregation, the institution must still explore ways to provide regular exercise and may restrict it only in exceptional circumstances (see *Mitchell v. Rice*).

Education/special education. The courts have made it clear that children in correctional facilities are entitled to the benefit of special education laws under *Green v. Johnson* and *Donnell C. v. Illinois State Board of Education*. Children eligible for special education are entitled to a broad range of assessment, evaluation, educational, and related services under the Individuals With Disabilities Education Act. Federal time lines for assessment and implementation apply, even when the child is in temporary detention (see U.S. Office of Civil Rights, Solano County Juvenile Hall, California, Case No. 09-89-1227 and *Nick O. v. Terhune*). Institutions confining children

must also refrain from discriminating against educationally handicapped children under the Rehabilitation Act of 1973.

Religion. Facilities housing children or adult inmates must accommodate religious observances. The traditional view was that religious practices must be allowed provided they did not jeopardize the security of the institution (see *Cruz v. Beto*). In recent years, the Court has taken a narrower view, holding that limitations on the exercise of religion are permissible if they are related to a legitimate penological objective (see *O’Lone v. Estate of Shabazz*). However, the Religious Freedom Restoration Act of 1993 appears to restore a higher standard of legal scrutiny. The government must show a “compelling interest” before impinging on religious practices and use the least restrictive means of regulation.

Work. Children may be required to clean their cells or living areas but cannot be forced to do chores for the personal benefit of staff or be exploited for their labor. Limited case law specifically relates to children on this issue, but the legal theory is clear. People who have not been convicted of a crime may not be punished under the due process principles articulated in *Bell v. Wolfish*. By analogy to the forced labor cases involving mentally ill patients, *Johnson v. Cicone* and *Tyler v. Harris* found that inappropriate work requirements may violate the 13th amendment or provisions of the federal Fair Labor Standards Act (see *Weidenfeller v. Kidulis*, *Souder v. Brennan*, *Wyatt v. Stickney*, and *Wyatt v. Aderholt*).

Training

Over the past decade, courts have ruled on the liability of institutional administrators and supervisors for a wide range of conduct relating to the hiring, training, supervising, assigning, directing, and retaining of staff. Liability may be imposed if supervisors hire unqualified people, fail to train staff adequately, fail to supervise staff on the job, fail to provide staff with formal policy and procedural guidelines, or fail to fire unfit staff. These issues typically arise in cases where injuries or death have occurred and staff have not been trained to handle suicidal children or medical emergencies.

Failure to properly hire or train personnel may constitute indifference to the rights or safety of others and may support liability for punitive damages under *Smith v. Wade*. This case is particularly relevant where there is a governmental pattern of deliberate indifference resulting in injury to the plaintiff (see *Partridge v. Two Unknown Police Officers of the City of Houston, Texas*, and *McKenna v. City of Memphis*). The right to properly trained staff is well established. Thus, in *Garrett v. Rader*, where the plaintiff’s developmentally disabled daughter died in restraints administered by untrained staff, the defendants were not permitted to claim qualified immunity.

Under *City of Canton, Ohio, v. Harris*, a failure to train employees may also form the basis for municipal liability in federal civil rights litigation. The

issue is whether the training program is adequate and, if it is not, whether the inadequate training can justifiably be said to represent city policy. Thus, in *Simmons v. City of Philadelphia*, the city's policy or custom of not training its officers to deal with suicidal inmates amounted to deliberate indifference to inmates' serious medical needs. Similarly, *Gobel v. Maricopa County* holds that a government entity may be liable for the failure to train properly its employees if there is a connection between the violation of civil rights and the inadequate training (see *Davis v. Mason County* and *Young v. Augusta, Georgia*).

Environment

Unsanitary and inhumane environmental conditions may violate inmates' rights under the 8th and 14th amendments (see *Hoptowit v. Spellman*, *McCord v. Maggio*, *Jones v. Diamond*, and *Carver v. Knox County, Tennessee*). Environmental issues may arise if children are housed in inadequate, dilapidated, or unhygienic physical surroundings (see *Inmates of Boys Training School v. Affleck*, *Ahrens v. Thomas*, and *Thomas v. Mears*).

Sanitation. There should be no sewage backup in sleeping quarters, and the area should be free of insects and rodents. The living area should be clean and comply with local and state sanitation regulations. Thus, *Ramos v. Lamm* found constitutional violations at a prison with poor ventilation, fungus and mold, poor drainage, sewage accumulation, rodent and insect infestation, missing tiles/hard-to-clean bathroom areas, exposed wiring, broken windows, inadequate laundry facilities, deteriorating conditions, and inadequate maintenance. Along the same line, *McCord v. Maggio* held that lack of funds was not a justification for requiring inmates to live in cells where sewage backup created squalid and unsanitary conditions.

Hygiene. Children in custody should be provided with adequate supplies for personal hygiene and should be given an opportunity to shower daily, change their clothing reasonably often, and have fresh bed linens on a weekly basis under *Ahrens v. Thomas* and *Inmates of Boys Training School v. Affleck*.

Food. Institutions housing children must provide a balanced diet, with three meals each day and snacks at night. Food should be prepared in accord with public health standards. Food should not be old or moldy; there should not be evidence of insects, rodents, or bad sanitation; and inmate workers should be trained in food preparation and storage (see *Ramos v. Lamm*). Food should never be withheld from children for disciplinary reasons (see *Ahrens v. Thomas* and *Inmates of Boys Training School v. Affleck*).

Ventilation, heating, and cooling. Housing inmates in units with inadequate ventilation and air flow is unconstitutional according to *Hoptowit v. Spellman* and *Brock v. Warren County, Tennessee*. Inadequate ventilation, heating, and cooling may violate inmates' constitutional right to adequate shelter under *Ramos v. Lamm*, *Ahrens v. Thomas*, *Henderson v. De Robertis*,

and *Del Raine v. Williford*. The Court has also recognized that involuntary exposure to unreasonable environmental tobacco smoke may violate the constitution (see *Helling v. McKinney*).

Fire safety. This is a critical area since failure to adequately provide for fire safety may be a matter of life or death (see *Hopowitz v. Spellman*). The facility must have smoke-monitoring devices, a written evacuation plan with posted diagrams for inmates and staff, at least two fire escape routes, fire extinguishers, and lights marking the fire exits (see *Ahrens v. Thomas*).

Lighting. The courts have not required specific levels of candle power, but professional standards require that lighting be sufficient for detainees to comfortably read books in their cells without eyestrain (see *Hopowitz v. Spellman*, *Ramos v. Lamm*, *McCord v. Maggio*, and *Jones v. Diamond*). Juvenile cases addressing lighting include *Ahrens v. Thomas* and *Inmates of Boys Training School v. Affleck*.

Clothing/personal appearance. Children have a right to clean clothing under *Inmates of Boys Training School v. Affleck*. Clothing should be appropriate for the season, and children should be able to wear clothing similar to that worn by children in the community (see *Thomas v. Mears*). Also, restrictions on personal appearance that are unrelated to penological interests may violate prisoners' privacy rights (see *Quinn v. Nix* on striking down a prohibition on shag hairstyles).

Overcrowding. This is a critical issue because it is related to so many others. The effects of overcrowding permeate every aspect of institutional operation, including health issues, education, suicidal and assaultive behavior, and overreliance on restraints and disciplinary measures. Under the constitutional standard, the due process clause is violated where children are held under conditions that amount to punishment (see *Gary H. v. Hegstrom* and *Bell v. Wolfish*).

In measuring overcrowding against constitutional standards, the courts look not at overcrowding per se but at its impact upon conditions in the institution. *Rhodes v. Chapman* stands for the proposition that double-celling itself is not unconstitutional but that it is a factor to be taken into account with other prison conditions affecting essential needs (see *Wilson v. Seiter*). Thus, in *Nami v. Fauver* juveniles in the administrative segregation unit of a youth correctional facility could claim constitutional violations when they were double-celled in poorly ventilated, 80-square-foot rooms with only one bed, with violent or psychologically disturbed felons who abused them. Similarly, in *Hall v. Dalton* the court found constitutional inadequacies in a city jail where an adult inmate spent 40 days in a windowless, two-person cell that held four, with only 14 square feet per person, where meals were served in the cells, where there was little opportunity for exercise, and where the inmates had to sleep on the floor (see the additional adult cases of *Tillery v. Owens*, *Balla v. Board of Corrections*, *Fisher*

v. Koehler, Baker v. Holden, Feliciano v. Colon, Stone v. City and County of San Francisco, Young v. Keohane, and Williams v. Griffin).

There is also case law on overcrowding-related issues such as sleeping conditions. Several cases specifically hold that assigning pretrial detainees to sleep on mattresses on the floor violates the due process clause (see *Lareau v. Manson, Thompson v. City of Los Angeles, and Lyons v. Powell*). Similarly, courts have ruled on overcrowding in juvenile facilities as it relates to program effectiveness, physical plant, staff, security, and other conditions of confinement (see *Alexander S. v. Boyd* and *A.J. v. Kierst*). Where overpopulation has an impact upon the availability of health and mental health services, educational programs, and recreation; institutional violence; suicide attempts; and situations requiring the use of force or restraints, the courts may find a violation of the 14th amendment. In addition, courts may find that the constitution is violated where overpopulation means that children spend most of their waking hours locked in their rooms because of inadequate staff to supervise day rooms or recreational activities.

Courts around the country have imposed population caps to alleviate overcrowding, even when officials claimed that overcrowding was a result of budgetary constraints (see *Alberti v. Sheriff of Harris County, Texas*). In a recent juvenile institutional case, the West Virginia Supreme Court of Appeals ordered that no juvenile detention facilities may accept children beyond their licensed capacity, no child may be held in detention longer than 30 days pending disposition of his or her case, and no child may be held longer than 14 days pending postdisposition placement in an appropriate setting. In addition, the court ordered that detention centers must adopt modified versions of the American Bar Association's detention standards at intake (see *Facilities Review Panel v. Coe*).

The Prison Reform Litigation Act of 1995 limits the permissible remedies in cases involving prison conditions and imposes special requirements on prisoner release orders. Nonetheless, relief may still be granted to remedy overcrowding, consistent with the provisions of the act.

Searches. Incarcerated individuals retain some privacy rights. In *Bell v. Wolfish*, the U.S. Supreme Court held that a determination of whether body cavity searches may be conducted requires balancing the need for a particular search with the invasion of personal rights. For example, adult inmates are entitled to some protection against exposure of their genitals to persons of the opposite gender (see *Arey v. Robinson, Lee v. Downs, and Hayes v. Marriott*). Similarly, random, suspicionless, clothed searches of female inmates have been found unconstitutional in *Jordan v. Gardner*. Also, blanket policies allowing strip searches of all detained persons represent an unconstitutional intrusion into personal rights (see *Chapman v. Nichols, Mary Beth G. v. City of Chicago, Giles v. Ackerman, Ward v. County of San Diego, and Thompson v. Souza* on recognizing qualified immunity of officials for visual body cavity searches and urine tests of prisoners

preselected for prior drug involvement and *Thompson v. City of Los Angeles* on holding that grand theft auto is sufficiently associated with violence to justify a strip search based on the charge itself).

Courts have remained protective in cross-gender searches of female inmates, disapproving practices such as random, clothed body searches of female inmates by male guards in *Jordan v. Gardner* and body cavity searches of females in the presence of male officers in *Bonitz v. Fair*. Even patdown searches of male inmates by female staff violates inmate rights if improperly conducted (see *Watson v. Jones*). In some situations, male inmates enjoy fewer protections than females. The courts have recognized that female guards may conduct visual body cavity searches of male inmates, and may supervise male prisoners disrobing, showering, and using the toilets under *Grummet v. Rushen*, *Somers v. Thorman*, and *Johnson v. Phelan*.

Restraints

Mechanical restraints. Facilities vary in their use of mechanical restraints. Most juvenile facilities use handcuffs, but the use of four-point restraints or straitjackets is rare. In some facilities, a high incidence of restraint incidents results from inadequate staff training and overcrowding. In others, restraints are used to control mentally ill children or adult inmates or as a punitive measure for troublesome youth.

Freedom from bodily restraint is a protected liberty under *Youngberg v. Romeo*. Thus, in *Garrett v. Rader*, the mother of a retarded adult who died in restraints was entitled to bring an action claiming failure to properly hire and train staff and failure to correct conditions that had caused past abuse.

One court has prohibited the restraint of children to a fixed object (see *Pena v. New York State Division for Youth*). The use of restraints as corporal punishment is unconstitutional under *H.C. v. Hewett by Jarrard* and *Stewart v. Rhodes*. Moreover, the use of restraints as a retaliatory device against inmates who displease correctional officers may violate the constitution (see *Davidson v. Flynn*).

Other courts dealing with the use of mechanical restraints have found that due process is violated unless recommended by a health professional (see *Wells v. Franzen* and *O'Donnell v. Thomas* on permitting restraint of a suicidal inmate and *Jones v. Thompson* on finding that use of three-way restraints on a suicidal inmate for a week, coupled with a failure to provide medical treatment or review and the absence of personal hygiene amenities, was unconstitutional). The U.S. Supreme Court permits the use of antipsychotic drugs as a form of medical restraint only where there is substantial due process protection for the inmate (see *Washington v. Harper* and *Riggins v. Nevada*).

There is some authority that restraints may be used for a limited period to prevent self-injury by a minor under *Milonas v. Williams* and *Gary W. v. State of Louisiana*. Such courts have also held that restraints may not be used for longer than 30 minutes without authorization from qualified professionals or institutional administrators (see *Gary W. v. State of Louisiana* and *Pena v. New York Division for Youth*).

Chemical restraints. A few juvenile institutions have begun to use tear gas or pepper spray to restrain children. Although pepper spray alone may not cause death, it may pose serious danger for inmates who suffer from certain health conditions.

Although the use of chemical restraints has seldom been litigated in juvenile cases, at least two cases have found that the use of tear gas and mace on children who were troublesome, uncooperative, or unresponsive to staff violated the constitution (see *Morales v. Turman*, and *State of West Virginia v. Werner*). Similarly, *Alexander S. v. Boyd* found it improper to use tear gas on children to enforce orders.

Isolation. Most institutions use isolation for out-of-control individuals or as punishment for breaking rules. Even though isolation is commonly imposed as a sanction in juvenile institutions, some courts have found that children may be placed in isolation only when they pose immediate threats to themselves or others, that they must be monitored closely, and that they must be released as soon as they have regained control of themselves.

Adult institutional case law on the use of isolation as punishment focuses on arbitrary placement in isolation, the length of time imposed, and conditions in the isolation room (see *Harris v. Maloughney*, *McCray v. Burrell*, and *Lareau v. MacDougall*). The cases, demanding that persons in isolation be afforded humane physical conditions and access to basic necessities such as showers and exercise, also apply to children. Children in isolation should be given books, writing materials, and articles of personal hygiene.

What may be acceptable as punishment for adults may be unacceptable for children. Children have a very different perception of time (5 minutes may seem like an eternity), and their capacity to cope with sensory deprivation is limited. Thus, in *Lollis v. New York State Department of Social Services*, a 14-year-old status offender who got into a fight with another girl was placed in isolation in a 6- by 9-foot room for 24 hours a day, for 2 weeks. The court found this isolation to be unconstitutional.

Corporal punishment. The wanton infliction of pain on prisoners violates the eighth amendment under *Weems v. United States* and *Jackson v. Bishop*. The use of excessive force by police or custodial officials violates the 14th amendment under *Hewitt v. City of Truth or Consequences* and *Meade v. Gibbs*. Torturing inmates to coerce information from them is also improper (see *Cohen v. Coahoma County, Mississippi*). Similarly, depriving an inmate

of adequate food is a form of corporal punishment (see *Cooper v. Sheriff, Lubbock, Texas*).

Due process. A huge body of law governs disciplinary due process in adult institutional cases, mostly in relation to administrative segregation or disciplinary transfers. The leading case, *Wolff v. McDonnell*, holds that inmates are entitled to these protections whenever “major” discipline is to be imposed (see *Baxter v. Palmigiano*). There must be evidence to support the finding of the disciplinary board.

During disciplinary proceedings, inmates are entitled to advance written notice of the charges against them, an opportunity to call witnesses and present evidence in their defense where permitting them to do so would not be unduly hazardous to institutional safety or correctional goals, an impartial decisionmaker, a written decision describing the evidence relied upon and the reasons for any disciplinary action taken, and a procedure for appealing the decision (see *Hewitt v. Helm, Punte v. Real, and Sandin v. Conner*).

Grievance procedures. Grievance procedures are important to children because they provide a means of addressing perceived injustices, and they thereby assist the rehabilitative process. They are also important to institutional administrators, since they provide information about abuses that may be occurring. In cases involving adults, it is clear that the constitutional right to seek redress of grievances is violated if there is any retaliation against the prisoner for filing a grievance (see *Dixon v. Brown*). Similarly, grievance procedures may not place unreasonable restrictions on the language that may be used in presenting the inmate’s complaint under *Bradley v. Brown*.

Constitutional law specific to grievance procedures for children is limited, but many cases have approved various forms of grievance procedures. The basic elements of adequate procedures are notice to the children of the availability, purpose, and scope of the procedure; a clear and simple procedure for the child to present a grievance to staff; prompt investigation of the grievance; an opportunity for the child to present the grievance to an impartial panel; notice to the child of the panel’s decision; appropriate disciplinary sanctions to staff if the grievance is found justified; and written records of the procedure and final action.

Safety

Inmates have a right to personal safety under *Youngberg v. Romeo, Jackson v. Fort Stanton State Hospital & Training School, Smith v. Wade, Farmer v. Brennan, Ramos v. Lamm, and Harris v. Maynard*. A growing body of case law explores the limits of the constitutional right to safety and the liability of institutional officials for the failure to protect vulnerable inmates (see *Young v. Quinlan, Redman v. County of San Diego, LaMarca v. Turner, Miller v. Glanz, Luciano v. Galindo, Sampley v. Ruettgers, and Hill v. Shelander*).

In *Hudson v. McMillan*, the U.S. Supreme Court held that minor injuries suffered by a handcuffed, shackled inmate beaten by three Louisiana prison guards constituted a violation of the eighth amendment. The supervisor on duty had watched the beating and told the guards “not to have too much fun.” The Court held that in measuring the objective component of a violation of the eighth amendment, courts should be guided by contemporary standards of decency (*Wilson v. Seiter*) and, when officials act sadistically, those standards are always violated whether significant injury is evident or not (see *Felix v. McCarthy* on denying qualified immunity to prison guards in connection with an unprovoked attack on an inmate, even though the injury to the inmate was slight, and *Valencia v. Wiggins* on denying qualified immunity to a jailer who bashed an inmate’s head against cell bars and used a choke hold that rendered the inmate unconscious).

It is difficult to say when violence reaches constitutional proportions. A California court ruled in *Inmates of Riverside County Jail v. Clark* that violence had reached an unacceptable level when there was a one in three chance that an inmate would become a victim of violence. In *LaMarca v. Turner*, the court examined reports showing that the prison superintendent was aware of the level of violence and the conditions contributing to it without acting to remedy the situation.

There has been less litigation over safety issues in juvenile facilities, but the same principles apply; facilities must protect children from violence and sexual assault by other children (see *Guidry v. Rapides Parish School Board* and *C.J.W. by and through L.W. v. State*). In monitoring safety issues in juvenile institutions, it is crucial to examine reports of violence or potential violence from individuals, the number and characteristics of violent incidents, and the level of fear in the institution. Another safety issue that, fortunately, arises less frequently is staff brutality. There are few cases on this issue, but further research on the use of excessive force would be valuable.

State Statutes and Juvenile Transfer Laws

During the past decade, most states have adopted legislation that permits the transfer of youth to adult courts to be tried as adults. Usually these laws target serious crimes and permit the age of jurisdiction to be lowered. Relative to the issue of juveniles in adult correctional facilities, these laws often become the basis for a juvenile to be housed in a jail if charged and awaiting court disposition or in a prison if the juvenile has been convicted and sentenced.

Between 1992 and 1996, 45 states and the District of Columbia made substantive changes to their laws targeting juveniles who commit violent or serious crimes (Torbet et al., 1996). All but 10 states adopted or modified laws making it easier to prosecute juveniles in criminal court. Nearly half of the states (24) added crimes to the list of offenses excluded from juvenile

court jurisdiction, and 36 states and the District of Columbia excluded certain categories of juveniles from juvenile court jurisdiction. The list of offenses considered serious enough to warrant the transfer of youth as young as age 14 included murder, aggravated assault, armed robbery, and rape as well as less serious and violent offenses such as aggravated stalking, lewd and lascivious assault or other acts in the presence of a child, sodomy, oral copulation, and violation of drug laws near a school or park. Since 1992, 13 states and the District of Columbia have added or modified statutes that provide for a mandatory minimum term of incarceration for juveniles adjudicated delinquent for certain serious and violent crimes.

A legal method used to try a youth as an adult is accomplished by lowering the age of jurisdiction. For example, seven states (Georgia, Illinois, Louisiana, Massachusetts, Michigan, South Carolina, and Texas) set their age of jurisdiction at 16, whereas three (Connecticut, New York, and North Carolina) have lowered the age to 15. Missouri lowered the age for transfer to criminal court to 12 for any felony. In all but two states (Nebraska and New York), a juvenile court judge can waive jurisdiction over a case and transfer youth to the adult court for certain crimes and at certain ages. The number of juvenile court cases transferred to criminal court increased 71 percent between 1985 and 1994 and 42 percent from 1990 to 1994 (Butts, 1996).

Although the legal basis for waiver varies from state to state, the trend across the country is to expand the use of waivers. This expansion is being accomplished by casting wider nets for waiver by lowering the age of adult jurisdiction, by adding to the list of applicable crimes, and by adopting more procedures by which youth can be transferred to adult court (e.g., through the discretion of the prosecutor or through legislative mandate). Waiver provisions are often applied to nonviolent offenders and, in some states, running away from a juvenile institution is grounds for prosecution in adult court (Shauffer et al., 1993).

As part of this study, an updated assessment of current statutes affecting the ability to try a juvenile as an adult is summarized in appendix A. As shown in chapter 3, these laws have fueled the rapid increase in juveniles being housed in adult prisons and jails.

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Characteristics of Juveniles Housed in Adult Jails and Prisons

Introduction

A current and accurate enumeration of juveniles confined in adult prisons and jails is essential to understand the issue of youth in adult facilities. Data on youthful offenders in national reports were not sufficiently complete or comprehensive to achieve the level of detail required for this study. Consequently, a comprehensive national survey of adult jail and prison systems was required.

Two survey instruments were developed to obtain data on youthful offenders, one for adult state prison systems and one for state and local adult correctional facilities. Both surveys were modeled after the Bureau of Justice Statistics correctional facility surveys. The most critical assumption in developing the surveys was a precise definition of a youthful offender. For these surveys, a "youthful offender" was defined as a person age 17 or younger. In most states, 18-year-old offenders are considered adults and are normally tried in adult court. By focusing on the population age 17 and younger, the surveys concentrated on offenders generally considered juveniles and whose presence in adult correctional facilities was exceptional.

The purpose of the correctional system-level survey was to collect data on the number and characteristics of all youthful offenders incarcerated in a state's prison system, as well as to compare these characteristics with those of the adult offenders incarcerated in the system. The survey collected data on the custodial status of the juvenile residential population, housing patterns, offense background, race/ethnicity, age, length of stay, disciplinary actions, programs, litigation, health services, and capacity.

The facility-level survey was intended to provide specific information on the actual conditions of confinement in prisons and data about some of the large jail systems. This survey asked questions about facility characteristics, housing patterns, offense history, race/ethnicity, age, length of stay, disciplinary actions, programs, litigation, and health services. Although the facility survey addresses many of the issues identified in the system survey, it is designed to give a better sense of the "fit" between the youth and the adults in these institutions.

Both the system- and facility-level surveys were sent to each state prison system, the Federal Bureau of Prisons, and 19 jail systems. The selected jails included all the major metropolitan jail systems and a sample of small

and medium-size jails throughout the country. In total, 70 surveys were distributed. Surveys were mailed in September 1998, and a followup survey was mailed in January 1999. Participating state and local systems were instructed to complete the system-level survey and disseminate the facility-level survey to any facilities in their jurisdiction that housed youthful offenders. The number of participants in the facility-level survey was dependent on the number of adult facilities identified by jurisdictions as housing juveniles, the number of such facilities to which the jurisdictions mailed the facility survey, and the willingness of these particular facilities to respond to the survey.

All 50 states, 3 of the 19 jail systems (Los Angeles County, New York City, and Philadelphia), and the District of Columbia responded to the system-level survey, and 196 correctional agencies responded to the facility-level survey. Despite efforts to solicit their participation, the Federal Bureau of Prisons and other selected jail systems refused to take part in this research. Consequently, these results are not representative of the total population of juveniles in adult prisons.

Findings

Correctional System Survey Findings

Most state adult correctional systems house youthful offenders. Of the 54 jurisdictions responding, 87 percent housed incarcerated juveniles. In terms of the legal status of incarcerated juveniles, 96 percent of the reported youthful offender population fell into two major categories: 23 percent were held as adjudicated juvenile offenders or pretrial detainees, and 75 percent were sentenced as adults.

Two objectives of the survey were to identify the characteristics of youth currently held in adult correctional facilities and to compare the characteristics of the youthful offender population with those of adult offenders held in the same facilities. These data provided information on the types of youth who were incarcerated in adult facilities and their similarities to the adult population housed in these facilities.

The total adult correctional system capacity identified by survey respondents was 826,289 beds. Of the respondents, 46 percent maintained housing designated for youthful offenders. The capacity of these units for youthful offenders totaled 6,708 beds or less than 1 percent of the overall system capacity identified by the respondents.

Seventeen states and the District of Columbia indicated that they maintained separate housing specifically for youthful offenders (table 4). The presence of separate housing for youthful offenders does not necessarily mean that *all* youthful offenders were housed in these separate facilities. States with large youthful offender populations, by necessity, often housed

Table 4 State Systems That Maintain Separate Housing Units for Incarcerated Youth

State	Capacity
Alabama	266
Arizona	196
Connecticut	N/R*
Delaware	40
District of Columbia	40
Florida	2,785
Georgia	N/R*
Michigan	96
Mississippi	60
Missouri	50
Nebraska	68
North Carolina	652
Ohio	N/R*
Tennessee	N/R*
Texas	N/R*
Washington	150
Wisconsin	400
Wyoming	34

*Not reported.

youthful offenders with the adult population when their housing capacity for youth was exceeded. Although a significant number of states maintained separate housing for youthful offenders, their definition of a “youthful” offender was frequently more expansive than the definition used here. In Florida, for example, youthful offenders from the ages of 14 to 24 were provided with dedicated housing and programs.

The number of youthful offenders in each system surveyed is presented in table 5, along with data on the reported number of adult offenders in these systems. The total adult residential population identified by the survey was 1,069,244 offenders in 1998. The youthful offender population totaled

4,775 or 0.5 percent of the total population. For these same respondents, the average system population for calendar year 1997 was 937,460 offenders, with an average youthful offender population of 4,078, again roughly 0.5 percent of the total population. The total average female youthful offender population for all reporting systems was 158 offenders, which

Table 5 State Prison Populations, Youth and Adult, 1998

State	Youth	Adult	State	Youth	Adult
Alabama	104	20,488	Montana	81	2,714
Alaska	24	2,897	Nebraska	29	3,532
Arizona	140	25,154	Nevada	36	9,164
Arkansas	89	10,677	New Jersey	35	23,989
California	163	161,466	New Mexico	9	5,031
Colorado	23	13,773	New York	316	69,499
Connecticut	505	15,778	North Carolina	369	32,118
Delaware	20	3,211	Ohio	158	48,972
D.C.	26	6,719	Oklahoma	46	14,603
Florida	572	66,117	Oregon	25	8,253
Georgia	152	39,347	Pennsylvania	98	35,765
Hawaii	2	4,009	Rhode Island	0	3,657
Idaho	10	3,545	South Carolina	200	20,916
Illinois	162	42,292	South Dakota	N/R*	2,359
Indiana	89	18,830	Tennessee	37	15,554
Iowa	9	7,394	Texas	272	129,661
Louisiana	87	33,572	Utah	21	5,084
Maryland	76	22,566	Vermont	15	1,198
Massachusetts	13	11,224	Virginia	84	26,578
Michigan	208	38,927	Washington	104	13,866
Minnesota	32	5,562	Wisconsin	22	166
Mississippi	164	16,291	Wyoming	37	1,233
Missouri	111	25,493	Total	4,775	1,069,244

*Not reported.

Source: Bureau of Justice Statistics, 1999.

is approximately 3.3 percent of the entire youthful offender population in adult facilities. This proportion of female offenders is somewhat lower than that reported for adult female offenders. Survey respondents indicated that adult female offenders constituted approximately 6 percent of the total adult offender population. Approximately 22 percent of the systems surveyed were planning to expand their youthful offender capacity (table 6).

Table 6 Future Housing Expansion Plans for Youthful Offenders

State	Number of beds	
	Males	Females
Arizona	350	30
Colorado	180	N/R*
Michigan	480	0
Nevada	N/R*	N/R*
Ohio	103	0
Pennsylvania	500	0
Washington	N/R*	N/R*

*Not reported.

As indicated in table 7, approximately 51 percent of the youthful offender population were housed in dormitory settings. Youth in single cells accounted for 30 percent of all housing assignments, whereas 19 percent of the youth population were housed in double cells. By comparison, 43 percent of adults were housed in dormitories, 22 percent in single cells, and 35 percent in double cells. Youthful offenders were much more likely to be housed in either a dormitory or a single cell, and a double cell was much more prevalent for adult offenders.

The profile of youthful offenders in adult facilities shows the predominance of youth convicted of crimes against persons (table 7). Fifty-seven percent of all youthful offenders were being held for an offense against a person, compared with 44 percent of the adult inmate population. Property offenders made up 21 percent of the youthful offender population and 20 percent of the adult population. Juveniles in adult facilities were less likely to be held for drug-related offenses than their adult counterparts (10 percent and 20 percent, respectively). The remaining major distinction between the offense profiles of the adult and youthful offender populations was the presence of a significant number of parole/probation violators in the adult population. Respondents reported that 8 percent of the

Table 7 Characteristics of State Prison Inmates, 1998*					
Offense/Crime	Youth		Adult		Total
	Number	Percentage	Number	Percentage	
Persons	2,722	57%	473,821	44%	476,544
Property	974	21%	216,756	20%	217,730
Alcohol Related	135	3%	20,457	2%	20,592
Drug Related	467	10%	210,975	20%	211,442
Public Order	185	4%	40,468	4%	40,653
Parole/Probation	79	2%	90,260	8%	90,339
Unknown	92	2%	5,676	1%	5,768
Other	85	2%	13,327	1%	13,412
Total	4,739	100%	1,071,740	100%	1,076,479
Race/Ethnicity					
Asian	65	1%	11,056	1%	11,121
Black	2,706	55%	497,343	48%	500,050
White	1,309	26%	355,960	35%	357,269
Hispanic	689	14%	156,782	15%	157,471
Native American	176	4%	9,421	1%	9,597
Total	4,945	100%	1,030,562	100%	1,035,507
Housing Type[†]					
Single Cell	1,019	30%	120,221	22%	121,240
Double Cell	670	19%	193,754	35%	194,424
Dormitory	1,757	51%	237,801	43%	239,559
Total	3,446	100%	551,776	100%	555,222

*Discrepancies in totals are due to rounding.

[†]Housing type statistics are reported for 21 states that house juveniles in adult correctional facilities.

adult offender population were parole/probation violators, compared with only 2 percent of the youthful offender population.

These data suggest that the perception that youthful offenders are being transferred to adult correctional systems for more serious offenses is largely accurate. Violent offenders made up a substantially higher

proportion of the youthful offender population in adult facilities than were present in the adult offender population. Although some research indicates that the majority of juvenile transfer cases involve nonviolent, less serious offenses, these data suggest that the justice system draws appropriate distinctions in determining the types of youthful offenders who are sent to adult correctional facilities.

In terms of race/ethnicity, 55 percent of the youthful offender population was black, compared with 48 percent of the adult offender population (table 7). The proportion of the youthful and adult population with a Hispanic background was 14 percent and 15 percent, respectively. Approximately 26 percent of the youthful offenders were white, compared with 35 percent of the adult population. These data suggest that the concerns expressed regarding the overrepresentation of minority youth among juvenile offenders in adult facilities have some basis, at least with regard to black males.

The age distribution of the youthful offender population was heavily skewed toward 17-year-olds (table 8). Approximately 78 percent of the reported youthful offender population was 17, with another 18 percent in the 16-year-old category. In a number of states such as Illinois, Michigan, and New York, 17-year-olds are considered adults. Accordingly, the presence of 17-year-old offenders in these states' populations does not necessarily reflect a policy of juvenile transfer, but simply a function of the normal prosecution of adult offenders. Few offenders were below the age of 16 in adult correctional facilities. The youngest reported age of a youthful offender in an adult facility was 13 years.

Table 8 Age of Youthful Offender Population, 1998

Age of Offender	Female	Male	Total
13	0	1	1
14	0	11	11
15	9	117	126
16	32	782	814
17	135	3,532	3,667
Total	167	4,443	4,610

In the course of a year, the number of youth experiencing some form of incarceration in an adult facility is much higher than the number shown by a 1-day count. Respondents reported 13,876 youthful offender admissions to adult correctional facilities in 1997 (table 9). Not all jurisdictions reported

Table 9 Juvenile Population Movement Patterns, 1997

Movement Type	Female	Male	Total
Admissions	843	13,033	13,876
Discharges	612	7,274	7,886
Average Length of Stay	106 days	231 days	N/A*

*Not available.

release data; those that did reported 7,886 releases in 1997. The average length of stay for youthful offenders was 106 days for female offenders and 231 days for male offenders. These data are for youth who completed their time served, so they understate the actual length of stay for the youthful offender population by excluding more serious offenders with long-term sentences.

Table 10 Programs Offered by Adult Correctional Systems to Youthful Offenders, 1998

Program Type	Systems Offering Programming	Total Percentage
Formal Elementary or Secondary Education	39	93%
Special Education	38	90
Vocational/Technical Education	35	85
GED Preparation	42	100
College Program	20	50
Counseling Programs	40	100
Psychological/Psychiatric Counseling	42	98
Family Counseling	23	53
Employment Counseling	34	79
Health and Nutrition	36	84
AIDS Prevention Counseling	35	81
Youth Alcohol and Drug Treatment	24	56
Youth Sex Offender Treatment	11	26
Youth Violent Offender Treatment	17	40
Other	21	55

The program offerings of the adult systems were fairly consistent, focusing on education and basic counseling services. As shown in table 10, most respondents offered formal elementary and secondary education programs, special education, general equivalency diploma (GED) preparation, individual counseling, and psychological/psychiatric treatment. In addition, 85 percent offered vocational programs, 50 percent offered college courses, 81 percent offered AIDS prevention counseling, and 84 percent offered health/nutrition programs. Only 56 percent offered substance abuse treatment, 26 percent offered sex offender treatment, and 40 percent offered youth violent offender treatment.

Health services offered to youthful offenders were also fairly consistent. All respondents offered initial health screenings conducted by licensed personnel. Doctors, nurses, nurse practitioners, and mental health personnel were available in most systems on a daily basis.

Facility Survey Findings

Actual confinement conditions represent critical issues for both correctional managers and youth advocates. To better understand the conditions under which youthful offenders are being incarcerated, this section examines data from surveys of adult facilities that housed youthful offenders.

Every state and local correctional system participating in the survey was sent separate surveys for each facility under its jurisdiction that housed youthful offenders. In total, data were collected from 196 adult institutions that housed youthful offenders. However, 15 of these surveys were excluded from the final analysis because they were returned with significant amounts of missing information.

Of the 181 adult facilities that responded to the survey, 148, or 82 percent, were adult prisons (table 11). The majority of these institutions, 74 percent, were either medium- or maximum-security institutions. The predominance of higher security facilities appears to be associated with the offense profile of this population, which, as noted earlier, was heavily weighted toward serious violent offenses. Forty-two percent of the institutions were located in small cities, suburbs, or rural areas, following the typical profile of adult prisons. Only 11 percent were located in large cities.

Of the facilities that responded to the survey, only 13 percent maintained separate facilities or units for youthful offenders. By far the more common practice appeared to be that no differentiation was made between adult and juvenile housing units. This finding is perhaps not surprising when viewed in the context of the rationales for moving youth to adult correctional facilities—the increasing severity of their crimes, the failure of rehabilitation, and the difficulty experienced in managing their behavior.

The age of the facilities housing youthful offenders ranged from new to 163 years old. More than 25 percent of the facilities were opened before

1965. Another 50 percent were opened between 1965 and 1987. The remaining 25 percent have been open since 1987. The median age of these facilities was 20 years.

Table 11 Characteristics of Correctional Facilities Responding to Facility Survey

Facility Type	Number	Percentage
Jail	17	9%
Prison	148	82
Reception Center	8	4
Special Treatment	5	3
Community Correction Center	2	1
Electronic Detention	1	1
Total	181	100
Security Designation		
Maximum	49	27%
Medium	85	47
Minimum	25	14
Close	6	3
Not Reported	16	9
Total	181	100
Location		
Large Urban	20	11%
Small Urban	34	19
Suburban	9	5
Rural	32	18
Not Reported	86	48
Total	181	100
Separate Youthful Offender Housing		
Yes	24	13%
No	74	41
Not Reported	83	46
Total	181	100

Consistent with the operating practices of most adult correctional facilities, 98 percent of the facilities surveyed did not permit community access for youthful offenders. This situation reflects the predominance of medium- and maximum-security prisons in the survey and may be more indicative of the serious nature of the offenses for which these youth have been incarcerated than of a lack of appropriate programming for youthful offenders. Lack of community access may also result from the largely rural locations of many adult correctional facilities.

Summary

The housing of juveniles in adult facilities is more frequent than ever before. Most state adult correctional systems house youthful offenders. Of the 54 jurisdictions responding (50 prisons and 4 jails), 87 percent housed incarcerated juveniles. In terms of their status while incarcerated, 96 percent of the reported youthful offender population fell into two categories: 23 percent were held as adjudicated juvenile offenders or pretrial detainees (mostly in the jails that responded to the survey) and 77 percent were sentenced as adults and housed in state prisons.

Juveniles constitute an extremely small proportion of offenders in the nation's prison system. At the time of this survey, there were 1,069,244 inmates in state prisons but only 4,775, (or 0.5 percent) were under age 18.

Respondents reported 13,876 youthful offender admissions to adult correctional facilities in 1997. The total average female youthful offender population for all reporting systems was only 843 offenders (table 9).

The age distribution of the youthful offender population was heavily skewed toward 17-year-olds. Approximately 78 percent of the reported youthful offender population was age 17, with another 18 percent in the 16-year-old category.

Youthful offenders are housed primarily in medium- or maximum-security facilities. Of the institutions surveyed, 42 percent were located in small cities, suburbs, or rural areas, again following the typical profile of adult prisons. Only 11 percent were located in the large cities. Of the facilities that responded to the survey, only 13 percent maintained separate facilities or units for youthful offenders. The more common practice appears to be that no differentiation is made in housing for youthful offenders in adult facilities.