

February 20, 2013



Recipient of the 2008 MacArthur Award
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Emilio Álvarez Icaza
Executive Secretary
Inter-American Commission on Human Rights
Organization of American States
1889 F Street, NW
Washington, DC 20006

Re: Human Rights Situation of Children Imprisoned with Adults in the U.S.

Juvenile Law Center writes in opposition to the widespread practice of incarcerating children in adult facilities. Juvenile Law Center is the oldest multi-issue public interest law firm for children in the United States, founded in 1975 to advance the rights and wellbeing of children in jeopardy. Among many other initiatives, Juvenile Law Center works to ensure that the adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights.

Every state permits juveniles to be tried as adults for certain criminal offenses. It is estimated that as many as 250,000 youth annually are prosecuted as adults.¹ Research suggests that the prosecution of children as adults does little to deter crime or reduce recidivism among youthful offenders; indeed some research has found greater risks to public safety among children transferred to the adult system.

Sentencing juveniles as adults not only fails to reduce recidivism, but it also fails to provide youth with age-appropriate rehabilitative treatment that will allow them to lead productive lives post-incarceration. Adult corrections personnel lack the specialized training to meet the educational and mental health needs of young people and cannot provide the necessary programs, classes or activities to address their rehabilitative potential.² As the United States Supreme Court has recognized in the context of life without parole sentences for youth, “[f]or juvenile offenders, who are most in need of and receptive to rehabilitation, the absence of rehabilitative opportunities or treatment” is particularly disastrous.³

¹ Campaign for Youth Justice, <http://www.campaignforyouthjustice.org/documents/KeyYouthCrimeFacts.pdf>, Washington D.C.: Campaign for Youth Justice, 2007 (citing Woolard, J. “Juveniles within Adult Correctional Settings: Legal Pathways and Developmental Considerations.” *International Journal of Forensic Mental Health* 4.1 (2005): 18). See also *Coalition for Juvenile Justice. Childhood on Trial: The Failure of Trying and Sentencing Youth in Adult Criminal Court*. Washington, D.C.: 2005.

² Campaign for Youth Justice, *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform 6-7* (2007). See also Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, Juvenile Justice Bulletin (Office of Juvenile Justice and Delinquency Prevention)(June 2010).

³ *Graham v. Florida*, 130 S. Ct. 2011, 2030 (2010).

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In addition to being deprived of treatment and rehabilitation, youth incarcerated in adult prisons are extraordinarily vulnerable to victimization.⁴ Often these young, vulnerable members of the prison population face physical and sexual abuse and even death.⁵ A recent study by the federal Office of Juvenile Justice and Delinquency Prevention found youth in adult facilities were 500 times more likely to be sexually assaulted while incarcerated and 200 times more likely to be physically assaulted by facility staff than were youth in the juvenile justice system.⁶ Human Rights Watch similarly found that all the youth offenders that it interviewed who were serving life without parole sentences in adult prisons had suffered physical violence at the hands of other inmates.⁷ Adolescents also are far more likely to be psychologically affected by the confinement and restrictions imposed than their adult counterparts and are thus far more likely to commit suicide; according to one report, youth in adult facilities were eight times more likely to commit suicide than those held in the juvenile justice system.⁸

The disproportionate rates at which youth of color are sentenced as adults compared to white youth further undermines the legitimacy of the sentences imposed. Despite a lack of corresponding disparity in delinquency, while black youth account for 17% of the youth population, they represent 58% of youth committed to state adult prison.⁹

Although juvenile adjudications can create many barriers for youth as they grow into adulthood, an adult criminal conviction imposes greater and more severe consequences for success and self-sufficiency. The stigma and barriers that a child must face when tried as an adult will last well into his adulthood regardless of how he might change his behavior. Individuals with criminal records face numerous collateral consequences; in fact, a study funded by the National Institute of Justice and undertaken by the American Bar Association's Criminal Justice Section identified over 38,000 statutes imposing collateral consequences on individuals with a criminal record.¹⁰ These limitations have the unintended consequence of increasing the risk of recidivism by narrowing the opportunities for people trying to

⁴ See Beyer, M., *Experts for Juveniles At Risk of Adult Sentences* (P. Puritz, A. Capozello & W. Shang eds.); *More Than Meets The Eye: Rethinking Assessment Competency And Sentencing For A Harsher Era Of Juvenile Justices* (Washington, D.C.: American Bar Association Juvenile Justice Center) (1997).

⁵ Campaign for Youth Justice, *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform* 7 (2007).

⁶ Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, *Juvenile Justice Bulletin* (Office of Juvenile Justice and Delinquency Prevention)(June 2010), at 7.

⁷ *Against All Odds: Prison Conditions for Youth Serving Life Without Parole Sentences in the United States*, 18 (2012), <http://www.hrw.org/reports/2012/01/03/against-all-odds-0>.

⁸ See Beyer, M., *Experts for Juveniles At Risk of Adult Sentences*, in P. Puritz, A. Capozello, & W. Shang (Eds.), *More Than Meets The Eye: Rethinking Assessment Competency And Sentencing For A Harsher Era Of Juvenile Justices* (Washington, DC: American Bar Association Juvenile Justice Center) (1997) (finding that “[y]outh in adult facilities were eight times more likely to commit suicide than their counterparts held in the juvenile justice system,”⁸ and that 35% of detained adult males have a psychiatric disorder as compared to 64% of youths in adult custody and “the conditions associated with extended detention, such as separation from loved ones, crowding, and solitary confinement, may increase the risk of suicidal behavior.”); Campaign for Youth Justice, *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America* 10 (2007) [citing Mumola, C.J., *Suicide and Homicide in State Prisons and Local Jails* (2005: Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics) (internal citations omitted)].

⁹ The Sentencing Project, *Fact Sheet on Disproportionate Minority Contact*, available at: http://www.sentencingproject.org/doc/publications/jj_DMCfactsheet.pdf

¹⁰ American Bar Association, *Adult Criminal Consequences Statute Demonstration Site*, available at <http://isrweb.isr.temple.edu/projects/accproject/index.cfm> (last visited Jan. 6, 2012).

reenter society.¹¹ In almost every state, adult criminal convictions, as distinguished from juvenile adjudications, bar individuals from employment in certain jobs, including the military, and from accessing certain public benefits, including something as basic as public housing.¹² Almost every employment and higher education application asks about criminal convictions, and students with certain types of convictions cannot obtain federal financial aid.¹³ In addition, a juvenile tried as an adult may be disenfranchised, causing some to lose the right to vote before ever having had a chance to vote at all.¹⁴ Youth may also face the penalty of deportation as the result of a criminal conviction, and confront restrictions in obtaining or maintaining driver's licenses, volunteering, or, later in life, adopting children.¹⁵ The consequences of a conviction, furthermore, last for a young person's whole life; while every state provides for juvenile record expungement, even for more serious offenses, adult criminal record expungement is rarely permitted for anything but the most minor offenses.¹⁶

Importantly, even as an increasing number of youth have been exposed to the harms of adult prosecution, the United States Supreme Court has consistently recognized in recent years that developmental differences of youth as compared to adults mandate treatment consistent with those differences. In *Roper v. Simmons*, 543 U.S. 551, 573 (2005) (prohibiting the death penalty for juveniles); *Graham v. Florida*, 130 S.Ct. 2011, 2026 (2010) (prohibiting sentences of life without parole for juveniles convicted of crimes other than homicide); *J.D.B. v. North Carolina*, 131 S.Ct. 502 (2010) (holding that age is a significant factor in determining whether a youth is "in custody" for *Miranda* purposes), *Miller v. Alabama*, 132 S.Ct. 2455, 2464-65 (2012) (prohibiting mandatory sentences of life without parole for all juvenile offenders); the Court has carved out a separate jurisprudence with respect to children, differentiating them from adults based on their lessened culpability and greater amenability to rehabilitation, even for youth who have committed violent crimes. Implicit in these decisions is the recognition that the underlying brain chemistry of youth does not change because the youth has committed a certain crime and these actions in fact may be explained by the differing brain chemistry.

¹¹ For example, the New Jersey Institute for Social Justice ("NJISJ") recently handled a particularly egregious case illustrative to the harm caused by these provisions. A 60-year-old African-American man was barred from managing contracts with schools because of a 40-year-old disorderly persons conviction for possessing five pills without a prescription. He had led an otherwise exemplary life. NJISJ was only able to secure the client's job by obtaining a gubernatorial pardon. This is not a realistic solution for the countless others who are also barred from lawful employment.

¹² See Michael Pinard, *An Integrated Perspective on the Collateral Consequences of Criminal Conviction and Reentry Issues Faced by Formerly Incarcerated Individuals*, 86 B.U.L. Rev. 623 (2006).

¹³ The statistics are staggering. "[E]x-offenders lower overall employment rates as much as 0.8 to 0.9 percentage points; male employment rates, as much as 1.5 to 1.7 percentage points; and those of less-educated men as much as 6.1 to 6.9 percentage points . . . [T]hese employment losses cost the country \$57 to \$65 billion per year." John Schmitt & Kris Warner, Ctr. for Econ. & Policy Research, *Ex-Offenders and the Labor Market* 14 (2010), available at <http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf> (last visited Jan. 6, 2012). Furthermore, "[E]ach male prisoner can expect to see his earnings reduced by approximately \$100,000 throughout his prime-earning years, following his period of incarceration." Meredith Kleykamp, Jake Rosenfeld & Roseanne Scotti, *Wasting Money, Wasting Lives: Calculating the Hidden Costs of Incarceration in New Jersey* 9 (2008) (citing Bruce Western, *Punishment and Inequality in America* tbl.5.3 (2006)). See also Jeremy Travis, *But They All Come Back: Facing the Challenges of Prisoner Re-Entry* (2005).

¹⁴ Ashley Nellis, *Addressing the Collateral Consequences of Convictions for Young Offenders*, 35 *Champion* 20, 21 (August 2011).

¹⁵ *Id.*

¹⁶ *Id.*

For these reasons, Juvenile Law Center opposes the widespread practice of incarcerating youth in adult prisons, and we appreciate the Commission's attention to this important issue.

Sincerely,

A handwritten signature in blue ink that reads "Marsha Levick". The signature is written in a cursive, flowing style.

Marsha Levick
Deputy Director and Chief Counsel