HUMAN RIGHTS AND JUVENILE JUSTICE IN THE UNITED STATES

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Introduction

The United States was founded on the principles of individual freedom, equality and due process in a democratic society, but in the area of the justice system, these principles have often been challenged.. Nowhere are the principles of human rights and democratic society more at risk today than in the U.S. juvenile justice system. The United States strongly advocates for the extension of human rights enforcement throughout the world, but when it relates directly to U.S., there is resistance to the enforcement of those rights by United Nations agencies. We act as if no external body, least of all the UN, should question that we do not enforce human rights here at home or that we assert that they do not apply here

In this paper we use principles outlined in human rights conventions and standards to analyze U.S. adherence to international Covenants. We address some of the dramatic changes that have occurred in the laws governing juvenile justice in the U.S., specifically the legal representation of juveniles in the courts, the processing of children as adults, the treatment of juveniles in the facilities of the system, the over-representation of youth of color, and the application of the death penalty against children. We focus primarily on those behaviors of juveniles that result in charges of delinquency rather than protective services related to neglect and abuse.

The seven international conventions include:

1. The Convention on the Rights of the Child.
2. The Standard Minimum Rules for the Administration of Justice.
3. Rules for the Protection of Juveniles Deprived of their Liberty.
4. Standard Minimum Rules for the Treatment of Prisoners.
5. The Convention on the Elimination of all forms of Racial Discrimination.
6. Covenant on Civil and Political Rights.
7. Convention Against Torture and other Cruel, Inhumane, and Degrading Treatment or Punishment.

In addition to the above Conventions, more recently the United States objected to provisions establishing the International Criminal Court. While that Court does not pertain directly to the juvenile justice system, one of the US administration's objections was the potential for investigation of the U.S.

criminal justice system as well as concern about actions that might be taken against U.S. military personnel.

The Juvenile Justice System

The establishment of the juvenile court in 1899 in Cook County, Illinois created a separate system of justice for "children." The principles underlying this court were that children were developmentally immature and required protection; they were malleable and could be rehabilitated; the court should aid children with a broad range of problems including dependency and neglect, abuse, status offenses as well as crime. Because they were children it was further assumed that hearings should be informal and that judges should have broad discretion in the handling of their cases so that the proceedings themselves would not have a negative impact upon youth. The primary focus of the Court was on rehabilitation or habilitation.

Soon after its implementation in Cook County, the juvenile court spread throughout the rest of the country, and it has been modeled in many Western countries (Mehlbye and Walgrave, 1998; Morita, 2002; Eekelaar,2002; and Bottoms, 2002). By 1925, every state had established a juvenile justice system to process the criminal and non-criminal offenses of youth as well as to provide protective services for children (Lou, 1927; Rosenheim, 2002). Along with the court a variety of other agencies and institutions were created under the aegis of child welfare to meet the needs of children. In some parts of the U.S. many of these organizations were private while in the western half of the country the majority were established as county and state agencies. In all instances the need for state intervention was accepted to advance the well-being of children.

Prior to the establishment of the Juvenile Court, children who were charged with delinquent acts were primarily tried in the criminal justice system, but age did play a role in presumptions of criminal responsibility. Individuals under the age of fourteen were presumed not to possess the sufficient criminal responsibility to commit a crime, though the presumption was refutable between the ages of seven and fourteen (Tanenhaus, 2000). Individuals fourteen and older were presumed criminally responsible. The creation of the juvenile court altered this presumption in part, providing almost exclusive jurisdiction over individuals under the age of eighteen in most states.

The juvenile court differed from the adult criminal court in many ways through its philosophy and practice. First, its terminology did not speak about guilt, innocence, trials, or sentences, but created a framework similar to civil transactions by speaking of adjudications and dispositions (Platt, 1969; Scott, 2002). Second, the focus of the court was less on the immediate offense behavior of the child, and more on the needs or "best interests" of the child. Rehabilitation and treatment were considered the primary goals of the system rather than punishment (Rothman, 1980; Allen, 1981). Third, the court structure featured an informal procedural system that allowed very broad judicial discretion. Fourth, privacy was

an important function of the juvenile court system and proceedings and records were closed to the public. Finally, the juvenile court maintained jurisdiction over youth for both criminal and non-criminal behavior. These tenets constituted a separate system of justice that recognized differences between children and adults.

In the 1960s critics addressed the operation of the juvenile court, charging that despite its rehabilitative rhetoric, it often treated children punitively, largely on the basis of race, class, and gender. Because of the volume of cases that were processed in many urban courts, implementation of rehabilitation was nearly impossible. Moreover, some criticized the court for having a conflict of interest in its legal processing of children while at the same time serving as a services provider. This conflict was particularly apparent in the handling of youth in detention both before and after adjudication. During the l960s and l970s, the decades often referred to as the Human and Civil Rights Era, there were national commission reports, legislation and Supreme Court decisions that led to many new federal initiatives.[1]

These initiatives had positive effects in several areas of the juvenile justice system. Policies of decriminalization, deinstitutionalization, community-based programs, and the extension of education were implemented and extended in many states (Downs, 1976). This progress was associated with the extension of social justice and human rights to persons of color, women, children, the disabled and mentally ill. With regard to the juvenile court, Supreme Court decisions provided children with several due process protections, but stopped short of equating juvenile proceedings with adult trials. Children). were still acknowledged to be less competent and culpable because of their immaturity and limited experience. By the 1970s, the progress made in the 1960s resulted in substantial reductions in institutional placement, the development of community-based services, and procedural checks on the court (Vinter, Downs, and Hall, 1976).

The progress of the 60s and 70s was dramatically reversed in the l980s and l990s with the passage of federal and state legislation that emphasized incarceration and punishments, along with withdrawl of the distinction between juveniles and adults as far as certain criminal behavior was concerned. As we “celebrated” 100 years of juvenile justice in 2000, the laws and philosophy had returned to many of the practices in place prior to the invention of the juvenile court. Thousands of juveniles were held in adult jails and prisons, often under extremely punitive conditions. Zimring (1998) posits that legislative changes have not reduced the power of the court, but, instead, have re-oriented its mission toward punitive ideals. Feld (1999) argues that judicial, administrative, and legislative decisions

have transformed the court into a second-class criminal court that does not serve the interests of children. In many courts, the increased authority of prosecutors and the reduced authority of judges has produced pronounced differences in both the processing and outcomes for juveniles. This shift ceases to recognize differences in development, maturity, capacity, and culpability between children and adults. It primarily seeks punishment or "accountability" instead of rehabilitation, the hallmark of the original juvenile justice system and the focus of many human rights standards and rules.

Much of the transformation was "justified" because there was some increase in violent crime by juveniles between l985 and l994. Juveniles involved in violent crime were not viewed as children able to benefit from rehabilitation, and the vocal public sought to provide appropriate "adult" sanctions to these individuals. Legislatures focused on violent juveniles and responded with an emphasis on law enforcement and punishment, impacting the entire juvenile justice system. This occurred despite the fact that the actual numbers of juvenile involved in violent crime never equaled l0% of all of the juveniles arrested for delinquency. Thus, the entire system shifted towards punishment and accountability although the crime data did not support such a shift. Furthermore, punitive law making continued into the 21st Century despite the fact that juvenile crime, including violent crime, has declined dramatically to levels similar to those of the l970s. As of this writing in 2002 there is no concrete evidence of change in the drift toward more punitive ness for juveniles.

Human Rights of Children

There has been much debate in recent years over the rights of children. What are they? Are children entitled to rights? How and by whom will they be enforced? There is conflict about the ability of children to participate in decision making regarding family custody, about the right to make individual decisions regarding medical treatment, as well as their rights to due process in issues pertaining to mental health treatment and responsibility for criminal behavior. Until the early 18th Century children were primarily regarded as chattel of the parents or of feudal lords. They were bought and sold, abused like other property and acknowledged as persons in their own right. Very slowly children's statuses improved as adults acknowledged children's worth (Walker, Brooks & Wrightsman, 1999). These changes led to the development of the 19th Century child-saving movement, but even that was problematic as the incidents of the "orphan trains" showed (Gordon, 1999). Political philosophers such as John Locke and John Stuart Mill asserted that children were immature and thus deserving of protection until they developed adult competencies. However, there was minimal acknowledgement of their dignity rights, as

[1] The most important Supreme Court decisions of this period included: Kent v U.S. 383 U.S. 541 (1966); In re Gault 387 U.S. 1 (1967); In re Winship 397 U.S. 352 (1970). The first major federal juvenile justice legislation, the

Woodhouse (2001, 378-9), notes. Dignity rights, she asserts, call upon the legal system to respect children and recognize them as individual persons with the same claims to dignity as autonomous adults. She further argues for a special language of children's rights that are needs-based and capacity-based.

<u>Human Rights Conventions</u>

After World War I several documents were written which began the movement that culminated in the 1989 UN Convention on the Rights of the Child. These included the 1924 League of Nations Declaration of Geneva, the 1948 United Nations Universal Declaration of Human Rights and the l959 UN Declaration of the Rights of the Child. The l989 UN Convention includes a preamble and 41 substantive articles which note that the inherent dignity and equal and inalienable rights of all members of the human family "are the foundation of freedom, justice and peace in the world" (Walker, Brooks & Wrghtsman, 1999). The General Assembly on November 20, l989 adopted the <u>Convention on the Rights of the Child</u> and by l998 there was nearly universal ratification of the Convention. However, as of 2002 the only two countries in the world not to have ratified the Convention are the United States and Somalia. In l998 the UN called upon all states to implement the provisions without any discrimination, to ensure the education of children, to ensure that all children charged with any penal violation be treated with dignity and with awareness of the developmental maturity of the juvenile. Among the reasons given for the United States' failure to ratify are that its enforcement would interfere with individual state's rights, that rights acknowledged under the UN are not acknowledged as rights in the U.S., and that U.S. laws conflict with the principles of the UN Convention. Specifically, U.S. law permits the use of capital punishment of children that forbidden by Article 37 of the UN Convention.

Human rights conventions and standards serve as a valuable framework for guiding the treatment of children in the juvenile and criminal justice systems. Seven separate frameworks that govern the treatment of children in these systems are analyzed in this paper. The <u>UN Convention on the Rights of the Child</u> is a comprehensive framework for establishing the rights and needs of children. The Convention sets eighteen as the age of majority, and creates a number of rights for children, including safety, education, culture, housing, and food. There are four articles pertaining to criminal processing, Article 40 provides children with due process rights, the right against criminal processing prior to gaining sufficient capacity, the right to be processed outside of judicial proceedings whenever applicable, and the right to dispositions to match the child's circumstances. Article 37 refers to the rights of children who have been

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Juvenile Justice and Delinquency Act passed in l974.

deprived of their liberty and sets out specific protections governing their treatment and prohibition of capital punishment.

The other Conventions are standards and rules that govern the processing and institutionalization of children in the justice systems. The UN Standard Minimum Rules for the Administration of Juvenile Justice focuses specifically on juvenile justice. Whereas the Convention on the Rights of the Child focused on the rights and needs of children overall, this convention focuses on systems developed to adjudicate the offenses of children. It provides a framework to guide the development of juvenile justice systems, the processing of cases through those systems, the range and function of dispositions, and the treatment of children in institutions. The UN Rules for the Protection of Juveniles Deprived of their Liberty focuses on the rights and needs of children institutionalized in facilities primarily, but it can also be applied to community-based programs. Specifically, it applies to children detained, imprisoned, or otherwise held in public or private custody and establishes a framework to guide their treatment in these facilities.

The Standard Minimum Rules for the Treatment of Prisoners further governs the treatment of children in institutions. These standards primarily refers to adult correctional facilities, but pertain to juveniles in those facilities and can be viewed as basic guidelines to govern juvenile facilities as well. The Convention Against Torture and Other Cruel, Degrading and Inhuman Treatment Punishment is also relevant to juvenile justice in the U.S. because of some of the conditions in which juveniles are held in both juvenile and adult facilities, but our use of the death penalty against persons who committed their crime as a juvenile is probably the most egregious violation. The Covenant on Civil and Political Rights also applies to many juvenile cases. The U.S. ratified the Convention on Torture in 1994 and the latter one on civic and political rights in l992. The Convention on the Elimination of all Forms of Racial Discrimination has particular relevance for the U.S. because there is such a serious problem of disproportional presence of youth of color in all aspects of the criminal justice system. We will focus specifically on this Convention later in the paper as it is a major item on the social policy agenda in the United States at present.

Perspectives on Children's Rights in the United States

The importance of rights and standards for the treatment of children is heavily contested terrain in the United States, as is evidenced by the U.S. not ratifying the Convention on the Rights of the Child. A number of perspectives exist regarding whether rights should be afforded to children.

1. Children are viewed as vessels needing care and guidance to develop into productive citizens, not as citizens who could or should possess and exercise rights. In the U.S., families are viewed as the primary institution to care and protect youth, but the state retains power to intervene in the "best interests of the child." Children do not possess many substantive or procedural rights

(Allen, 1981; Levesque, 2000; Woodhouse, 2001). They were afforded some procedural rights by the Supreme Court regarding court processing, free speech, search and seizure, reproduction and control over their sexuality. However, these rights were initially limited in scope and effect, have been limited by subsequent legal decisions and legislation, and are often not exercised given social realities concerning children.

2. Children must have substantive and procedural rights in their own person because families and the state do not appropriately care for children. The Human Rights Conventions and Standards underlie this view. The discretion of various actors is limited and there are specific safeguards to assure protection and treatment, along with monitoring to assure that interventions are effective, fair and humane. The research, policy and popular literature is filled with reports of the abrogation of children's rights today (Woodhouse, 2001).
3. A compromise perspective regarding the extension of rights to juveniles is represented by Zimring's concept of a "learner's permit" as preparation for a juvenile to become a full citizen (Zimring, 1982). He argues that we should view this developmental period as a time when juveniles need to be protected from full responsibility and need particular entitlements to develop, but they also need certain liberties to protect and provide them with the experiences necessary for full citizenship. Zimring does not specify the age period to be covered by the so-called "learner's permit". Moreover, his perspective contrasts with that of Woodhouse who argues for dignity rights based on respect for the child, their needs and their capacities.

These perspectives highlight the competing ideas that exist regarding the treatment and view of children in and by society. Our paper does not present a framework for children's rights, but through our examination of human rights standards and the treatment of children in the justice systems, it does examine the necessity of rights and standards for the treatment of children in the juvenile and criminal justice systems. Through this process, we seek to begin a discussion concerning the rights that children should possess in dealing with the justice systems and other societal institutions and the standards these institutions should adhere to in handling children.

Legal Representation of Children in the Juvenile and Criminal Justice Systems

Only in 1967 did the Supreme Court acknowledge juvenile's right to counsel in *In re Gault*.[2] In a famous line in that decision, Justice Fortas declared that "under our Constitution, the condition of being a boy does not justify a kangaroo court."[3] Essentially, *Gault* held that despite the rehabilitative rhetoric of the juvenile court, children faced and often received punitive consequences. Therefore, the Court

[2] 387 U.S. 1.
[3] *Id.* at 28.

determined that children required safeguards in the juvenile court, including access to counsel.[4] Several other cases regarding the juvenile court were decided before and after *Gault.* These decisions provided youth with a hearing before being transferred to the adult criminal court[5] and required that evidence of a crime be proven beyond a reasonable doubt,[6] but did not provide children with the right to trial by jury.[7] In conjunction with *Gault*, these cases were viewed as an opportunity to impose minimum standards and due process rights for children in the juvenile court, starting with access to counsel.

Human Rights Provisions

Human rights provisions are clear in their agreement with *Gault* about the right to counsel for children alleged to have committed a criminal offense and children who face the deprivation of their liberty. Article 37 (d) of the Convention on the Rights of the Child states that "every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance." Article 40 (2)(b)(ii) states that every child alleged to have committed a crime shall "have legal or other appropriate assistance in the preparation and presentation of his or her defense." Rule (15.1) of the Standard Minimum Rules for the Administration of Juvenile Justice states that "throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country." Similarly, a number of U.S. standards calls for the appointment of counsel for children in the juvenile court at the earliest stages of proceedings.[8] However, the available evidence indicates that this does not often happen because of weak enforcement.

Importance of Counsel: Increasing Costs

Recent juvenile code changes signify an increasingly important role for attorneys in all stages of juvenile proceedings. These code changes have re-oriented the mission of the juvenile court towards more punitive goals (Torbet et al., 1996; Torbet & Syzmanski, 1998; Zimring, 1998; Feld, 1999; Shook, 2001). Between 1992 and 1997 alone, every state and the District of Columbia enacted legislation easing the process of transferring children to the adult criminal court, providing for mandatory minimum, determinate, or blended sentences, making correctional programming more punitive, and/or increasing access to juvenile records and proceedings (Torbet et al., 1996; Torbet & Syzmanski, 1998). In a study of code changes in four states, Shook (2001) found that legislative changes in each of these areas interact to

[4] *Id.* at 31-57. Other rights afforded to children include by the Court include: notice to charges, opportunity to cross examine witnesses, and protection against self-incrimination. *Id.*
[5] *Kent v. United States,* 383 U.S. 541 (1966).
[6] *In re Winship,* 397 U.S. 358 (1970).
[7] *McKeiver v. Pennsylvania,* 403 U.S. 528 (1971).

increase the costs associated with juvenile crime. Additionally, he found that states vary greatly in their strategies for dealing with juvenile crime at various points in the system, including transfer, sentencing, and correctional programming (Shook, 2001).

The processing of juveniles in the juvenile court has steadily increased over the last several decades, despite drastic fluctuations in the crime rate (Sickmund, 2000; Snyder, 1999). Increasing numbers of cases in the system increases the likelihood that more youth will be sanctioned. This is evidenced by the increase in the rate of children incarcerated in public or private facilities at the same time that crime rates continue to drop. Thus, it is apparent that both legislative provisions and court practice have increased the costs of crime. The increasing role of prosecutors in the juvenile court further adds to the costs associated with juvenile crime. Even in the juvenile court, prosecutors primarily maintain a public safety perspective with regard to case decisions, influencing their processing of cases away from the interests of the child.

Defense attorneys can serve to protect youth against these increased costs. They can appear early in cases to reduce the likelihood of pre-trial detention, transfer, or the filing of a formal petition. Attorneys can prepare strong cases, negotiate pleas, and advocate for beneficial disposition alternatives. Furthermore, they can remain with their cases after disposition, advocating for less secure placements and filing appeals when necessary. A strong and organized defense bar can move outside the court to advocate for change in case processing. Consequently, if incarceration is to be contained, it is increasingly important that juveniles receive access to adequate representation at all stages of proceedings.

Access to and Effectiveness of Counsel.

Juveniles are either represented by public defenders, contract attorneys, or retained counsel. Retained counsel is rare in the juvenile court due to the high correlation between class and court processing. Contract attorneys (or appointed attorneys) are assigned cases and paid by the court and typically are sole practitioners. The existence of public defender or legal aid offices varies depending on the jurisdiction. Public defender offices typically provide centralized structure and support to juvenile attorneys, but suffer from a variety of other limitations.

Although the appearance of counsel in the juvenile court has increased dramatically since *Gault*, counsel still does not appear in a significant number of cases, and when it does appear, structural or practice factors limit its effectiveness. Before *Gault*, counsel appeared in the juvenile court in five percent of all cases (Feld, 1993). Following *Gault*, Sarri and Hasenfeld (1976) reported that counsel was

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[8] Standards for the Administration of Juvenile Justice (National Advisory Committee for Juvenile Justice and Delinquency Prevention); Institute for Judicial Administration/American Bar Association (Joint Commission on

only employed full time in 17% of the courts and part time in 11% of the courts in their national study of juvenile courts. Nationwide data on the access to counsel is currently not available. However, available data indicates that counsel does not appear in many instances. In a recent study of six states, Feld (1988; 1993) found that counsel still failed to appear in a majority of cases and representation rates varied tremendously within states. For example, in Minnesota lawyer appointment rates range from 19% to 95% in different counties (Feld, 1988; Feld, 1993). Many of these differences were related to the local and court context. The American Bar Association reviewed studies on the access to counsel and determined that counsel is not available for all youth, access to counsel varies by court, and access varies across the stage of the proceeding (Puritz, et.al.,1995).

There are numerous explanations for the lack of access to counsel for children in the juvenile court. Many of these explanations are related to differences in the administration of juvenile justice. The procedural formality of a court, the adequacy of public and contract attorneys, court culture, parental wishes, inability of children to fully comprehend the importance of counsel, and advice not to access counsel by various court actors are among other reasons why such variations exist in the representation of children. The ineffectiveness of counsel in juvenile courts is yet another reason. Stapleton and Teitelbaum (1972) and Bortner (1982) found that in many cases, adversarial counsel was neither effective nor desirable within the juvenile court context. Feld (1993) reports that children represented by counsel in his study received more punitive dispositions than children not represented. This finding is related to the local and court context, but still exists in all settings.

The ABA Report (Puritz, et. al.1995) reports other reasons surrounding the ineffectiveness of counsel. In public defender offices, juvenile attorneys typically rotate through or advance up the system, meaning that experienced juvenile attorneys are rare in many offices. Longevity in juvenile courts is typically less than two years. Juvenile caseloads among public defenders are extremely high. Contract attorneys typically do not handle a large number of cases, have varying experience in the juvenile court, and often work for fixed fees. When they do represent a large number of cases they may become beholden to the court for continued assignment of new cases., thus negating their ability to function independently for their clients. Attorneys often are appointed late in the proceedings, limiting their opportunity to affect cases early in the process. This is crucial for cases where pre-adjudication detention may be unnecessary. Post-dispositional representation is lacking as most attorneys do not participate in post-dispositional proceedings, and many contract attorneys end representation after the disposition. Juvenile attorneys typically do not appeal cases, and many attorneys are not even authorized to take appeals. The lack of appellate cases reduces the ability to develop further legal precedent governing the juvenile court. Lastly, children who are poor or whose family do not strongly advocate for them are the

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Juvenile Justice Standards).

least likely to have counsel. Many of these children will be held for extended detention both pre-adjudication and after adjudication waiting for placement.

Human Rights Implications This discussion highlights the authority mandating access to counsel for children in the juvenile justice system, the necessity of counsel based upon the increasing costs associated with juvenile court processing, the limited appearance of counsel in juvenile proceedings, and reasons behind the ineffectiveness of counsel at those proceedings. Currently, children are not uniformly provided with counsel in accord with human rights standards or with U.S. legal standards. counsel is appointed, its effectiveness limits its ability to meet these standards. With the changing context of juvenile justice in the U.S., it is increasingly necessary that attention be paid to the provision and effectiveness of counsel. Defense counsel should assist children in all stages of the proceedings, as well as monitor post-disposition conditions. Attention must be paid to structural factors limiting the provision of counsel and quality and effectiveness of counsel. This attention must come in the form of research on access to and quality of counsel, the use of legal rights in the court context by children, developmental information concerning the capacity of children to access counsel, and structural factors in the administration of juvenile justice that affect access to and quality of representation. Attention also must come through a commitment to provide resources, training, and involvement of defense counsel in the juvenile court.

Transferring Children to the Adult Criminal Court

The transfer of children to the adult criminal court represents another area where human rights standards are relevant to juvenile justice. Specifically, Article 40 (3) of the Convention on the Rights of the Child states that "states shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law." Article 40 (3)(a) & (b) and 40 (4) further state that this system should establish a minimum age for children to maintain the capacity to infringe on the penal law, that measures should seek to process children outside of formal proceedings wherever possible, and that a range of dispositional alternatives should be created to insure that children are being treated appropriately based upon their circumstances. Rule 2(3) of the Minimum Standard Rules for the Administration of Juvenile Justice similarly requires that states create a separate system of justice to adjudicate the criminal offenses of children and that this system be designed to meet their basic needs. These provisions have been read to require a distinct system of justice for **all** children (Hodgkin & Newell, 1998; Amnesty International, 1998). It is with regard to these latter provisions where U.S. provisions for the processing and incarceration of juveniles as adults contrast most sharply with principles of the UN Convention.

The U.S. no longer adheres to the requirement to maintain a separate system of justice for all children. As discussed previously, the invention of the juvenile court at the turn of the 20th century created a separate system of justice in the U.S. for children under the age of eighteen. However, the borders between this system and the adult criminal justice system have become porous, as children are transferred to the adult criminal court system by a variety of actors, often ambiguous criteria, no minimum age specified in the transfer provisions, and for a range of person, property, public order and drug offenses. Legislation easing the process of transfer has proliferated and data currently is not available on the total number of children tried in the adult criminal court.

Even with the invention of the juvenile court, some children were still processed in the adult criminal justice system. These cases were either transferred actively by the juvenile court judge or passively through direct filing in the adult court (Tanenhaus, 2000). *Kent v. United States*[9] addressed the issue of standards and criteria for transferring youth to the adult criminal court and held that youth possessed an interest in juvenile court jurisdiction. The Court held that transfer required a hearing comporting to the minimum standards of due process, and, lacking statutorily enumerated criteria, the Court developed a list of criteria. Known as *judicial waiver*, this mechanism provided increased protections to children considered for transfer because it required a judicial hearing and set of criteria that must be considered in the hearing based upon the evidence presented. However, standards still varied between states because individual states could set age, offense, and other criteria governing the transfer decision.

As states determined that judicial hearings were not effective, they enacted alternative mechanisms that did not require a hearing. *Statutory exclusion* involves the state setting of age and offense criteria in the juvenile code that excludes youth meeting those criteria from the jurisdiction of the juvenile court. This mechanism relies merely on the age and offense of a child as an indicator of adult responsibility, not a hearing where evidence can be presented about the circumstances of the youth. *Prosecutorial discretion* provisions allowed them to determine the choice of forum in which to file a case. Under these provisions, prosecutors can make the decision without the necessity of a hearing, providing prosecutors with ever increasing power in the juvenile court. In *United States v. Bland,*[10] the Court held that prosecutorial discretion provisions did not violate due process because prosecutors traditionally held the discretion to make determinations concerning the charge and forum. These two mechanisms serve to decrease the power of judges to make decisions regarding transfer and focus primarily on offense-related criteria in the transfer decision. Many states use a combination of different mechanisms, thereby spreading the decision-making authority to additional parties in the system (Griffin et al., 1998).

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[9] 397 U.S. 358 (1966).
[10] 472 F.2d 1329 (D.C. Cir. 1972), *cert. denied*, 423 U.S. 852 (1972).

Transfer legislation has been a site of major change since the 1980s, further increasing in the 1990s. Between 1992 and 1997, forty-four states and the District of Columbia enacted at least one provision easing the process of transferring children to the adult criminal court for trial. Currently, forty-six states maintain judicial waiver provisions, twenty-eight states utilize statutory exclusion, and fifteen states allow for prosecutorial discretion (Torbet et al., 1996; Torbet & Syzmanski, 1998; Griffin et al, 1998). Ten states have lowered the maximum age of juvenile court jurisdiction to sixteen, while three have lowered it to fifteen, thereby providing exclusive jurisdiction over all children in this age group to the criminal court (Griffin, 1998; Bishop, 2000). With regard to judicial transfer alone, fourteen states lowered minimum age limits, seventeen states added crimes, and six states added or modified prior record provisions to these provisions during this period (Torbet et al, 1996; Torbet & Syzmanski, 1998). Twenty-seven states added crimes to their exclusion statutes, two states enacted exclusion provisions, and seven states lowered age limits (Torbet et al., 1996; Torbet & Syzmanski, 1998). Eleven states enacted or modified prosecutorial discretion provisions (Torbet et al, 1996; Torbet & Syzmanski, 1998). A number of states provide that once a juvenile is transferred to adult court for trial, they continue in that status for any subsequent offense.

As evident above, the lowering of the minimum age requirements has been a primary focus of the transfer legislation. Currently, **twenty-three states do not specify a minimum age for transfer for one or more of the offense classifications (Griffin, 1998).** The minimum age in the remaining states runs from ten years old to fifteen years old, and varies by offense and transfer mechanism. An example of the risks of not specifying a minimum age or setting a low minimum age is found in a recent Michigan case. Michigan maintains a prosecutorial discretion statute that does not indicate a minimum age for a series of eighteen offenses. Under this statute, Nathaniel Abraham was tried as an adult for an offense he committed at the age of eleven, despite the fact that he was evaluated and found to be functioning at a six-year old level. According to the statute, the judge held the discretion to impose an adult sentence, a juvenile sentence, or a blended adult/juvenile sentence and chose the juvenile sentence. Although he did not receive the adult or blended sentence, Nathaniel is now locked-up in a maximum security institution until the age of twenty-one. In another Michigan case, a thirteen-year old boy was tried and convicted of second degree murder under the designation provision and received a life sentence.

Specific youth are deemed not amenable to treatment because of a set of circumstances surrounding their particular case (Tanenhaus, 2000). However, prosecutors may decide arbitrarily to transfer based upon a single offense or for a variety of different offense types. Currently, forty-six states allow transfer for a range of person, property, and drug offenses (Griffin, 1998). A vast majority of states allow a blanket provision for transfer under certain mechanisms for any act that would be a felony or offense if committed by an adult (Griffin, 1998). The minimum age under these statutes is typically

sixteen, but states are increasingly lowering the minimum age under these blanket provisions (Shook, 2001). Thus, it is apparent that these statutes are not only transferring "dangerous" children, but are transferring children for an array of different crimes and under varying criteria.

Once convicted in the adult criminal court, juveniles are often subject to adult sanctions. In an in-depth study of four Midwestern states, Shook (2001) found that transferred children were subject to straight adult sentences in three states, and subject to a juvenile sentence only under particular circumstances in the fourth. In some circumstances they may receive a juvenile placement, but many are placed in adult institutions. Increasingly, states are providing for blended sentencing, allowing judges at the criminal or juvenile court level to impose a juvenile and adult sentence, with the adult sentence contingent on successful completion of the juvenile sentence (Torbet et al, 1996; Torbet & Syzmanski, 1998). However, most juveniles receive adult sentences when tried in the adult criminal court.

Processing Children in Adult Court

Although it is estimated that between 220,000 and 260,000 children under the age of eighteen are processed in the adult court, data are not available on the exact number of children tried in the court and the mechanism through which they were transferred. This estimate includes 30,000 to 40,000 processed through the transfer mechanisms discussed above, and another 180,000 to 220,000 processed in states that end juvenile court jurisdiction at age fifteen or sixteen (Bishop, 2000). The lack of data on transfer is a substantial limitation to understanding the treatment of children in the adult criminal court. Data is currently available on children transferred through judicial waiver, but is not fully available for statutory exclusions and prosecutorial transfers. From what we know nationally about judicial waiver, between 1988 and 1994, the total number of children waived through the judicial wavier mechanism increased from 6,700 to 11,700 (Puzzanchera, 2000). From 1994 to 1997, this number dropped to 8,400, corresponding to decreases in the juvenile crime rate[11] (Puzzanchera, 2000).

With regard to prosecutorial discretion and statutory exclusion, national data on the number of transfers does not exist. Based on existing national data sources, Bishop (2000) estimates that the number of transfers from each of these provisions has surpassed the number of judicial transfers. For example, a study in Florida, one of the states with a prosecutorial discretion statute, reported that in 1995 Florida transferred approximately 7,000 children through this mechanism alone (Schiraldi & Ziedenberg,2000). This number dropped to 4,660 in 1998 (Schiraldi & Ziedenberg, 2000). Although it cannot be used to estimate the total number of cases transferred through prosecutorial discretion nationally, the Florida data do indicate that in at least one state, a large number of cases are transferred through this mechanism.

Although we cannot detail the number of cases of children processed in the adult criminal court with certainty, it is clear that a large number of children are being processed there. With regard to the types of cases processed in the adult court, again we only have complete data on the judicial waivers. In 1997, 40% of cases transferred through judicial discretion were person offenses, while 38% where property offenses, 15% were drug offenses, and 7% were public order offenses (Puzzanchera, 2000). The percentage of person offenses has fluctuated from 29% in 1988 to 44% in 1994, but has always been substantially lower than drug, property, and public order offenses (Sickmund, 2000). Available data about other provisions indicate that juveniles are more likely to be transferred for a "person" offense, but also that they are likely to be younger and not to have an extensive prior record.

Data available on the outcomes for children convicted in the adult court indicate that they are often treated more punitively than adults for felony offenses. Among defendants convicted of aggravated assaults in 1994, children were more likely to receive a prison sentence, 72% to 49% (Brown & Langan, 1998). For eleven other offense categories, there was little difference in the likelihood of receiving a prison sentence. Children sentenced to prison for property and drug crimes received a similar length of sentence as adults, but for weapons and violent offenses they received longer sentences. Children sentenced to jail or probation received longer sentences than similarly situated adults (Brown & Langan, 1998). A recent study in Florida of 475 matched pairs of youth with similar crimes revealed that those sentenced to adult prisons had higher recidivism rates than youth who were placed in juvenile facilities.

Human Rights Implications

The human rights implications of transfer are dramatic. Human rights standards clearly indicate that a separate system of justice should exist for all children. Children may now be tried in the adult criminal court at very young ages and for a variety of offenses. When they are processed in the criminal court, it is more often for property, drug, and public order offenses than for person offenses. Children are often treated more harshly in the criminal court, receiving prison sentences and longer sentences more often than adults. Whereas *Kent* sought to standardize transfer decisions through judicial hearings, current practice allows the legislature and prosecutor to make transfer decisions in many situations. Within a "get tough on crime" climate, these decisions often reflect law and order, not best interests of the child, goals. Even if we determine that human rights standards should allow for transfer in the limited situations where children are not appropriate for juvenile court treatment, the current situation in the U.S. is well beyond this state. It is a situation where children are treated as adults without clear standards or

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[11] The exact correlation between crime rate and transfers is not measured here. Legislation has made it easier for judges to transfer juveniles to the adult court so more children may be transferred in 1997 than 1988 even with similar crime rates.

rationale, clearly in violation of human rights provisions that seek to treat children differently and in the least restrictive way possible.

Overrepresentation of Youth of Color

We now wish to shift to one of the most critical issues facing the entire justice system in the United State, the disproportionate representation of youth of color in all phases of the system. The Convention on the Elimination of all Forms of Racial Discrimination is particularly applicable in the U.S. because youth of color are increasingly overrepresented in the juvenile justice system relative to their proportion in the total youth population. Although overrepresentation can be traced back to the beginning of the twentieth century, a quarter of a century ago fewer than half of the juveniles in residential placements were from youth of color groups and the rate of referral to juvenile courts was 19 per thousand (Sarri and Hasenfeld, 1976). In both instances, youth of color were overrepresented because their proportion in the total youth population was approximately 15%. Arrest rates of African American males are as high as 80% in some U.S. urban areas. As of 1997 minority youth comprise 34% of the population, but 62% in detention facilities and 67% confined in juvenile institutions (Snyder & Sickmund, 1999). Disproportionality is greater in the juvenile system than in adult criminal justice. In several states (California, Connecticut, Louisiana, New Jersey, New Mexico and New York), the proportion of minority youth confined exceeds 80% so unless some substantial action is undertaken, it could well reach 100% nationally as the proportion of minority youth in the total population increases (Snyder and Sickmund, 1999). The Convention on the Rights of the Child asserts that all children are to have rights of equal treatment but in this instance there are serious violations in the U.S..

Factors explaining overrepresentation of youth of color. The question needing serious attention today is how and why this increase has occurred because self-report and victimization surveys do not support the system changes that have occurred (Elliott, 1994; NIJ, 1996). Examining the rate of juvenile confinement during the past century reveals findings that deserve further attention. **Figure 1** indicates that we had a very rapid increase in the rate of confinement between 1950 and 1970 in the period in which the adolescent population grew rapidly and the juvenile crime rate also increased substantially. Then in 1970, following the passage of the Juvenile Justice and Delinquency Prevention Act there was a sharp decline in confinement until 1990. However, as **Figure 2** reveals the "deinstitutionalization effect" of the 1970s and l980s occurred for white youth while the rate for youth of color continued to increase.

(Figures 1 and 2 about here)

In actuality, there was a nearly 80% reduction in Anglo American institutionalization and a 90% increase in minority confinement. Beckett and Western (2001) have suggested that social policies of inclusion occur when and where there is a desire to extend social benefits to the population as in the extension of the welfare state. In contrast, when there is a goal of reduction of social benefits there is a shift toward emphases on exclusion and control. As the proportion of young people of color has increased it is correlated with greater and greater emphasis on coercive control, especially placement in coercive total institutions.

Bonczar and Beck (1997) estimated that at birth today 5.1% of all persons in the United States can expect to be incarcerated in a prison, but 28.1% of all black males can expect to be incarcerated. That number is six times the rate of whites and eight times the rate for women. In fact by age 25, 15.9% of black males and 6.3% of Hispanic males vs. 1.7% of white males can expect to have served time in a state or Federal prison. Miller (1996) estimates that 75% of all 18-year old African American males in Washington, D.C. can look forward to being arrested and jailed at least once before they reach age 35. The reality of these predictions is supported by the fact that in 1994, 11.7% of African American males in the age group 20-29 years were incarcerated (Mauer and Huling, 1995; Mauer, 1997). More than fifteen years ago Blumstein, et.al., (1985) pointed out that the disproportionate number of arrests of African American males over a lifetime occurs primarily in the juvenile years before 18 so it is particularly important to try to determine how and why this disproportionality occurs. Moreover, they note that if you include misdemeanors as well as felonies, 90% of African American males can expect to be arrested at least once in their lifetime.

Numerous study findings concur that minority youth are punished for crimes at disproportional rates, but different explanations are provided as to the causes of disproportionality (Bridges, et. al, 1995). Among the different conclusions are the following explanations:

1. Youth of color are said to have higher rates of offending, especially for more serious and violent crimes (Blumstein, 1982 and l985; Langan, 1991; Terry, 1967; Morash & Robinson, 1998).
2. Crime levels are higher in neighborhoods where people of color live and police are likely to do more surveillance (Rollin, 1997; Lander, 1954)
3. The degree of minority population concentration in an area may be correlated with increase apprehension even when controlling for crime rates. Police surveillance of minority, poor and disadvantaged neighborhoods may be greater (Bynum, 1993).
4. Factors used in decision making to confine reflect the lack of opportunity for minority youth in education and employment, the quality of life in inner city ghettos, the pervasiveness of the drug culture and housing segregation (Bridges and Steen, 1999).

5. Juvenile justice agencies treat minority youth more severely than non-minority youth, particularly in the early stages of processing (Bishop and Frazier, 1992; Fagan, Slaughter and Hartstone. 1987; Thornberry, 1973).
6. The application of structured decision making may inadvertently result in the disproportionate confinement of minority youth. There may be discriminatory attributions about the behavior of minority youth (Bridges and Steen, 1998), or about the characteristics of their families (e.g. single female-headed families).
7. Diversion and similar community-based programs are more frequently available in suburban communities that have lower proportions of youth of color. The lack of such program in inner city areas results in more youth there being processed in the formal justice system (Sarri, et. al., 2001).

Overall, the results are mixed. The disproportionate presence of youth of color occurs not just at the time of apprehension or detention, but it often increases at later stages of juvenile justice processing: adjudication, commitment, placement in public vs. private facilities and in reintegration services. Kempf-Leonard and her colleagues(1995) observed *amplication effects* in some jurisdictions as youth of color moved deeper into the justice system. Bynum (1993) noted that disproportionality increased if a youth was taken to court and placed in secure detention. Even when controlling for class, family structure and offense there was a residual effect associated with race.

Relatively little attention has been given to disproportionate representation of different minority groups or of females vs. males. Although African American youth predominate today, we lack accurate counts of Hispanic and Native American youth because they may often be counted as white. Most of the research has addressed general correlates of disproportionality or has examined disproportionality at the several stages of processing (Bridges, et. al., 1998).

The differential processing of persons of color by both the juvenile and adult criminal justice systems is a matter of increasing national concern. Despite the provisions and policy priorities of the Juvenile Justice and Delinquency Prevention Act (JJDPA), little concrete action has been taken to date to reverse this pattern of minority overrepresentation in the justice system; in arrests, jail or detention, court convictions, in commitments to secure facilities, or probation or parole (Bishop and Frazier, 1990 and Bishop, Henretta & Frazier, 1992). In fact, in 1999 a serious effort was initiated to eliminate the policy priority of reducing minority overrepresentation in the juvenile justice system through Senate Bill 254, although it did not pass.

Michigan Study

In a study of disproportionate minority representation in Michigan, we examined all male commitments to the state between 1991 and 1999. Of these, 32.6% were non-Hispanic white and 67.4%

were minority youth. The largest group were African American comprising 61.5% of the total. The overall percentage of minority youth in public training schools slightly exceeded the national percentage of 66% reported by the Office of Juvenile Justice and Delinquency Prevention in 1994. **Figures 3 and 4** report the overall juvenile population distribution in Michigan with that of youth confined in public facilities. That would conform with the JDDP Act's definition of disproportionality.

(Figures 3 and 4 about here)

With respect to the overrepresentation of youth of collar in adult prisons and jails the patterns are similar to those of the juvenile facilities, but the racial proportions are even more disproportionate than in the juvenile facilities.. Offenses varied among these youth, but there were no clearly discernible patterns indicating that youth of color committed more serious crime. They were slightly more likely to be committed for person and drug related offenses, although our data from youth indicated that a higher proportion of majority youth were substance abusers. Majority youth were more often committed for felony property and sex crimes.

Table 1 presents the juvenile commitment rates to public facilities in Michigan between 1991 and 1999.

(Table 1 about here)

These 15 counties recorded the most inatitutional commitments during the period 1991-1999. In every instance the ratio of minority youth to majority was substantial, ranging from 2.29 in Delta County, a northern rural area to 14.42 in the metropolitan county of Kent. When examining these commitments relative to juvenile arrests rates in each county, a zero order correlation was observed (.0042). It is also noteworthy that Wayne committed the largest number of youth (2031), but they committed a higher proportion of majority youth so their ratio was lower. Since this report was published in 2000, Wayne has taken steps to reduce its institutional commitment substantially.

Given the results from several studies about minority overrepresentation, we correlated Michigan county youth arrest rates, youth poverty, unemployment, and school dropout rates, and proportion minority youth with commitments of youth as the dependent variable. All 83 counties in Michigan were included in this analysis. We entered total and index crime arrest rates, youth poverty rate, county unemployment rate, school dropout rate, and minority youth population rate into the regression in that order. The results are presented in **Table 2.**

Table 2

Total Commitments by Youth Arrest, Poverty, Minority Rates, School Drop-Out and Unemployment*

	R^2	B	T	Sig. T
Youth Arrest Rate	.0042	- 005888	-740	.4617
Youth Poverty Rate	.0120	11.7888	.099	.9213
Youth Minority Rate	.4525	1090.5409	8.037	.0000
School Drop-out Rate	.0299	23.241529	1.579	.1181
Unemployment	.0059	-2.744909	-.695	.4893

*Youth arrest rate is for Part I or serious crimes only. The rate was also calculated for total arrest rates also, and nearly identical results were obtained.

Most of the variance in county commitments is explained by the percent of the youth of color in the county who are committed vs. the percent of majority youth who are committed for placement. Poverty and unemployment rates explain less than would be expected; however, when one considers that counties in Michigan must pay half or more of the costs of commitment of their delinquent youth, they are likely to consider very carefully if that is necessary. Several counties in Michigan committed few youth even when they had somewhat high juvenile crime rates because of the cost factor. . For some the solution was to transfer youth to the adult system. If a youth was convicted and sentenced to an adult prison, the county had no financial obligation. Thus, youth arrest rates explain almost none of the variance in commitments, although it would be expected to be an important predictor.[12]

Structured Decision Making

Similar to many other states, Michigan has variously utilized structured decision making instruments during the past several years, and similar to most other states that we have observed, it was never fully adopted statewide and utilized consistently for a sufficient period of time to yield sufficient results for analysis. Nonetheless, in the sample of 1746 males that we analyzed in this research risk scores were available for 1718 youth. In contrast to what would be expected given the 66% youth of color in the state juvenile facilities, only 40% of African American youth were rated as "high-risk" on the basis of the risk assessment instrument that was employed and 25% were rated as low risk. Among Anglo-American youth 50% were rated as "high risk" and 18% were rated low risk. Overall 365 "low risk" youth were placed in state institutions. This was accomplished by judicial decisions to "override"

[12] The results obtained here closely parallel those obtained by Downs in 1976 when he analyzed information on deinstitutionalization in the fifty states during the early l970s (Downs, 1976).

the assessment recommendation. Although a few overrides were mandatory by law, most were discretionary. There were no instances of placement of higher risk youth in community placements. Judicial decision making was found to be an important factor in minority overrepresentation. Actually, 46% of minority male youth who were recommended for community placement were actually committed to state juvenile institutions. For minority females 54% of the recommendations for community placements were overridden and the young women were placed in institutions regardless of their offenses, because it was thought that they would be "protected" in placement.

Minority males and females were placed at younger ages than Anglo-American youth, and they remained in placement longer. The longest length of stay overall were for Hispanic and Native American youth, followed by African American. Youth of color also had a greater number of different placements.

The findings from this research have several implications for policy and practice critical to effecting changes in disproportional representation of youth of color in the juvenile justice system. First, understanding the dynamics of overrepresentation of youth of color is important, but it is a complex phenomenon, influenced by many factors. Thus, it is not surprising that variables such as arrest rate had little effect. While there is support for the *amplification* effect, it is clear that decision making regarding early confinement in detention or in relation to placement for abuse/neglect must be carefully examined. Once a youth enters any type of out-of-home placement, the probability of subsequent placement increases. Youth of color are overrepresented in the child protective services system so this is likely to be a factor in subsequent delinquency confinement, particularly for females who drift to the justice system in adolescence. It is also apparent that risk assessment mechanisms will not produce appropriate placements if local resources are lacking or if political factors influence decision making. This was particularly apparent in the placement of minority females in secure residential facilities when their commitment offense was incorrigibility, running away, and so forth. Decision makers also may override risk assessment recommendations because there is no consideration of physical and social needs of the youth that they may deem critical in placement decision making. The real test of the value and relevance of structured decision making is in situations where there is a range of placement alternatives available. However, that is seldom the case in the juvenile justice system.

Human Rights Implications

It seems clear from these findings and from review of the literature that youth are overrepresented in the juvenile justice system from the initial stages of arrest through to confinement in juvenile institutions and ultimately to commitment to adult prisons. Moreover, they remain longer and tend to receive few services when they are returned to their communities following confinement. Discrimination in violation of the International Convention of Racial Discrimination is clearly evident and increasing on

a rather dramatic rate from year to year. The disproportionate confinement rate of youth of color in the largest states, California, Texas, New York and Florida, could well reach 100% of the institutional populations within the next decade unless policies are implemented to alter present practices. By the mid-century more than 50% of youth in the U.S. will be children of color. Thus far, no policies or practices have been implemented to reverse this racial discrimination nor is there even serious acknowledgement of the problem.

Conditions of Confinement

In the mid-1990s Lerman (2002) reports that there were 230,700 youth confined in 24-hour institutions on a given day with approximately 75% of that number in correctional or detention facilities. This number results in a rate of 336 per 100,000 youth, probably the highest rate of juvenile incarceration in the world. It is also important to consider the total number of youth who are incarcerated in a year since that is much higher than a single day count. For example, it can be estimated that 85,000 juveniles spend some time in an adult jail or prison in one year, although many remain only for a few weeks in jails (Austin, Johnson & Gregoriou, 2000). Nonetheless, the impact of those few days can be very serious and life-threatening, as we reported in an earlier study (Sarri, 1976).

The several International Covenants provide excellent guidelines against which we can assess conditions in U.S. facilities, both juvenile and adult. Reports of Amnesty International (1998) and Human Rights Watch (1999) recently documented the intolerable conditions for juveniles in many US juvenile correctional facilities, from detention through to confinement in training schools and other correctional institutions. However, these reports do not represent new phenomena. A national study of juvenile courts and correctional institutions in the l970s reported widespread human rights violations, increased suicide attempts and lack of treatment and educational programming (Vinter, Newcomb, and Kish, 1976). In addition, facilities were often located far distant from the juvenile's home so that parents and relatives could not maintain frequent contact. Although the U.S. has been negligent about signing and ratifying many of the Covenants, several state courts have charged juvenile and adult correctional programs with violations of the 8th Amendment against cruel and inhumane punishment. During the 1970s many improvements in institutional conditions were effected by court orders such as those in Breed v Jones in California[13].

Some of the most egregious violations at present occur in facilities that operate under private ownership with very little surveillance by state administrative agencies or by committing courts. Juveniles may be placed in solitary confinement for extended periods of time with no opportunity for physical exercise or participation in programming. Exposes by reporters about two adult facilities in

Michigan within the past year clearly indicated daily and continuing human rights violations of nearly every type that is prohibited by all of the Conventions and Rules that we referred to initially (Kolker, 2000). Cruel and inhuman punishment in violation of the 8th Amendment of the US Constitution continues without any attempt to stop or punish those responsible. The Youth Law Center was successful in a suit against South Dakota about conditions in the Plankington facility that resulted in the closing of that institution.[14] Very serious staff abuse of juveniles of color has been reported by Sussman (2002) about a prison in Georgia. Recently Judge Mark Doherty ordered a private facility for juveniles in Louisiana closed because of the severe abuse of juvenile inmates (Butterfield, 2000).

The lack of interest in juveniles by civil rights attorneys and the punitive laws that prohibit suits against the state or the facility inhibit exposure of much abuse. The Prison Litigation Reform Act of 1995 has stymied actions on behalf of juvenile and adult offenders. The most vocal and persistent critics of juvenile correctional conditions are Human Rights Watch and Amnesty International. The Human Rights report on children in Maryland jails (1999) documents the tragic conditions for children in just one state that is one of the smaller in the U.S. Similarly, the report by Amnesty International in 1998 documents the many violations of human rights in the justice system effecting juveniles in all parts of the U.S.

Among the most common types of abuses found in both juvenile and adult correctional facilities are the following:

1. Severe overcrowding to the point where peer to peer interactions become conflictual and physical well-being is threatened. Gymnasiums, classrooms and halls are being used as housing placements. In adult facilities double and triple bunking may result in physical and sexual abuse of juveniles.
2. Denial of proper food, clothing, health care and so forth as control measures.
3. Allowance of violence, sexual abuse and fighting among peers in institutions, often between racial and ethnic groups.
4. Staff abuse, both physical and sexual.
5. Segregation and isolation for extended periods of time and often in places of serious sensory deprivation.
6. Denial of appropriate education and education required by law, especially special education.
7. Denial of medicine that has been prescribed, particularly for mentally ill youth. Lack of proper health care in institutions is a common situation, even for such things as eye and dental examinations. Juvenile are not provided with regular physical examinations.

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[13] Breed v Jones (421 U.S. 519)
[14] Christina A. v Bloomberg CIV 00-4036 167 F Supp 2d 1094, 2001

8. Punishments, injurious restraints and denial of privileges that are cruel and inhumane.
9. Lack of separation of children from adults in adult facilities
10. Lack of proper nutrition for growing youth, especially for pregnant females.
11. Children convicted of minor or status crimes are held for extended periods.

Children in Adult Facilities. With respect to youth in adult facilities the types of punishment and abuse are not unlike those in juvenile facilities, but they are often more extensive and continue over long periods of time. Isolation in segregation units may be one of the most serious types of punishment, judging from the frequency of suicide attempts and deaths. In addition, where youth are co-mingled with adults, sexual abuse is often predatory and violent with the resulting risk of being raped and receiving sexually transmitted disease. The use of torture in the form of "stunt belts" and other paraphernalia remains widely practiced. Also, because juveniles resist the rigid scheduling in adult prisons, they are in frequent conflict with staff and end up receiving many "misconducts" that lead to longer stay and placement in high security level facilities regardless of the crime for which they were committed. Classification systems are such that juveniles may be assigned to facilities on the basis of control requirements rather than needs of the youth.

The lack of any appropriate educational programs for youth who are supposed to be enrolled in school full-time is likely to be found in most adult facilities, especially local jails. Parent (1994) notes that living space, security control of suicidal behavior, and health care is also lacking. The suicide rate for juveniles held in jails is five times that of the general population and eight times that for juveniles in detention facilities (Community Research Center, 1980). Sexual assault, staff beatings and weapons attacks were also more common in adult than juvenile facilities. Overall, punishment, torture and abuse of juveniles is more common in adult facilities despite its frequency in juvenile institutions.

Human Rights Violations

The conditions of confinement for juveniles in both juvenile and adult facilities appear to violate several provisions of all of the seven Covenants that we noted earlier. What is probably equally disturbing is that so little interest is shown throughout the system with adhering to those standards or to even knowing what they are. Compliance with international covenants is complex in the U.S. because the federal government does not have authority to intervene in the states unless there are challenges of violations of the U.S. Constitution. The reluctance to sign the International Covenants appears in many instances to be the result of Federal and state decisions that had little to do with juvenile incarceration.

Children and the Death Penalty

International law clearly prohibits the use of the death penalty for anyone under the age of eighteen. The International Covenant on Civil and Political Rights (ICCRP), ratified by the U.S. in 1992, states that "the sentence of death shall not be imposed for crimes committed by persons below eighteen years of age." Despite ratification, the U.S. reserved the right to execute individuals under the age of eighteen at the time the offense is committed. Numerous authorities have called for this reservation to be withdrawn (Amnesty International, 1998). Similarly, Article 37(a) of The UN Convention on the Rights of the Child states that "neither capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below eighteen years of age." Signed, but not ratified, by the U.S., this document also stands as a prohibition against use of the death penalty for minors.

The U.S. continues to execute individuals convicted of crimes committed before the age of eighteen, however. Since 1992, 13 individuals were executed for crimes committed before the age of eighteen in five different states (Streib, 2000). Currently, twenty-four states permit the use of the death penalty against individuals under the age of eighteen (Streib, 2000). The federal government and a number of other states set the minimum age at eighteen. In 1989, the U.S. Supreme Court allowed the death penalty to be applied to sixteen and seventeen year olds in *Stanford v. Kentucky.*[15] A year earlier the Court had held that the application of the death penalty was unconstitutional for a fifteen year old in Oklahoma.[16] This prohibition only applied to an Oklahoma statute that did not specify a minimum age. Consequently, it is conceivable that legislation could be introduced that allows for executions at an age below sixteen, but sets a minimum age at which executions could not occur. According to Amnesty International (1998), several states and the federal government have discussed bills that would lower the minimum age for the death penalty. In 2002 the U.S. Supreme Court, in a 5-4 decision, refused to hear the case of a juvenile sentenced to capital punishment, thereby uphold the right of states to execute juveniles.

<u>Conclusions</u>

This discussion highlights the lack of adherence to human rights conventions and standards in the juvenile justice system in the United States. International law provides a framework to measure compliance of policy and practice regarding the treatment of children in the justice systems. However, the U.S. does not adhere to these conventions across the five areas that we analyzed in this paper: representation, transfer, minority overrepresentation, conditions of confinement, and the death penalty.

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[15] 492 U.S. 361.

[16] *Thompson v. Oklahoma,* 487 U.S. 815 (1988).

Specifically, the following conclusions may be made with regard to U.S. adherence to human rights standards:

1. Despite the rising costs associated with juvenile crime, children are not afforded access to counsel at all stages of court processing, and sufficient attention is not made to ensure that when provided, counsel is properly equipped to provide effective representation to children.
2. Differences in the administration of juvenile justice affect the ability of attorneys to effectively represent children.
3. Boundaries between the juvenile court and adult criminal court have become porous, as children are being transferred at younger ages, for a variety of person, property, drug, and public order offenses, by a variety of decision makers, and often according to offense related or no criteria. Additionally, evidence indicates that when children are convicted in the adult criminal court, they often receive stricter punishments than their adult counterparts.
4. Little is known about the treatment of children in the adult criminal court, including the number transferred, the mechanisms of transfer, how they are processed by the system, the effectiveness of defense counsel for children in the adult criminal court, and the outcomes for children processed in the adult criminal court
5. Conditions of confinement in both juvenile and adult facilities violate many provisions of the covenants that we have examined with respect to punishment, abuse, torture, lack of required programming, overcrowding, segregation, and lack of appropriate supervision. Systems of independent monitoring and evaluation are required to obtain compliance with the provisions of the international Covenants and the federal government could demand such as a conditions of its appropriations to the states under the Juvenile Justice and Delinquency Prevention Act and several of the block grants that are provided to the states for correctional programming.
6. Overrepresentation of youth of color is one of the most serious problems in the U.S. justice system, and reflects longstanding institutionalized racism. This problem requires federal as well as state action if changes are to be effected, but federal authorities could initiate systematic monitoring that would provide the needed information about where and how changes could be effected. .
7. Despite the clarity of international prohibitions on the death penalty, and the fact that the U.S. has signed the Convention on the Rights of the Child which prohibits the death penalty, the U.S. continues to execute individuals who commit crimes while at the age of sixteen and seventeen.
8. Human rights standards provide an appropriate framework to address the multiple injustices and inequalities that exist within the juvenile and adult justice system as it affects juveniles.

When viewing the system through this lens, it becomes clear that significant reform is needed in all the areas that we outline. Human rights frameworks provide a powerful tool for effecting these changes.

9. Lastly, the best recommendation that we could offer is for concerted action to reduce dramatically the numbers of juveniles who are incarcerated in both juvenile and adult facilities because the majority of the youth being held could be placed in community–based programs, residential and non-residential. Implementation of several of our recommendations regarding court processing could effect some reduction, but more important will be advocacy for legislative change, for restorative justice programs and for organizational mechanisms to reduce the flow of juveniles into the system. The long term benefit to the society from such a policy change is both necessary and immeasurable.

Reference List

1. Allen, F. A. (1981). The Decline of the Rehabilitative Ideal: Penal Policy and Social Purpose. New Haven: Yale University Press.

2. Amnesty International. (1998). Betraying the Young: Human Rights Violations Against Children in the US Justice System. New York: Amnesty International.

3. Austin, J., Johnson, K. D., & Gregoriou, M. (2000). Juveniles in Adult Prisons and Jails: A National Assessment. Washington D.C.: Bureau of Justice Assistance Institute on Crime, Justice and Corrections at The George Washington University and National Council on Crime and Delinquency.

4. Beckett, K., & Western, B. (2001). Governing social marginality. Punishment And Society, 3(1), 43-59.

5. Bishop, D., Henretta, J., & Frazier, C. (1992). The social context of race differentials in juvenile justice dispositions. The Sociological Quarterly, 33, 447-58.

6. Bishop, D. M., & Frazier, C. E. (1990). Race effects in juvenile justice decision-making: findings of a statewide analysis. The Journal of Criminal Law and Criminology, 86(2), 392-414.

7. Bishop, D. (2000). Juvenile offenders in the adult criminal justice system. In M. Tonry (Ed.), Crime and Justice: A Review of Research (Vol. 27pp. 81-167). Chicago: University of Chicago Press.

8. Blumenstein, A. (1982). On the racial disproportionality of the United States prison population. Journal of Criminal Law and Crimimology, 73, 1259-1281.

9. Blumstein, A., Farrington, D., & Morris, S. (1985). Delinquency careers: Innocents, amateurs, and persisters. N. Morris, & M. H. Tonry (Editors), Crime and justice: An annual review of research, 6. Chicago: University of Chicago Press.

10. Bonzcar, T. P., & Beck, A. J. Ph. D. (1997). Lifetime Likelihood of Going to State or Federal Prison. Washington, D.C.: U.. Department of Justice, Bureau of Justice Statistics.

11. Bortner, M. A. (1982). Inside a Juvenile Court. New York: New York University Press.

12. Bottoms, A. (2002). The divergent development of juvenile justice policy and practice in England and Scotland. In M. K. Rosenheim, F. E. Zimring, D. S. Tanenhaus, & B. Dohrn (Eds.), A Century of Juvenile Justice (1st Ed. ed.,). Chicago: The University of Chicago Press.

13. Bridges, G. S., & Steen, S. (1998). Racial disparities in official assessments of juvenile offenders: attributional stereotypes as mediating mechanisms. American Sociological Review, 63(4), 554-570.

14. Brown, J. M., & Langan, P. A. (1998). State Court Sentencing of Convicted Felons, 1994 . Washington D.C.: U.S. Department of Justice Office of Justice Program Bureau of Justice Statistics

15. Butterfield, F. (2000 March). Privately Run Juvenile Prison in Louisiana Is Attacked for Abuse of 6 Inmates. The New York Times, p. 14.

16. Bynum, T., Wordes, M., & Corley, C. (1993). Disproportionate Representation in Juvenile Justice in Michigan: Examining the Influence of Race and Gender. East Lansing: Michigan State University School of Criminal Justice.

17. Community Research Center. (1980). Juvenile Suicides in Adult Jails. Washington D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

18. Downs, G. Jr. (1976). Bureaucracy, Innovation and Public Policy. Ann Arbor, MI: University of Michigan.

19. Eekelaar, E. (2002). Child endangerment and child protection in England and Wales. In M. Rosenheim, Tanenhaus, D., Zimring F., & Dohrn B (Eds), A Century of Juvenile Justice (lst ed e., pp. 361-412). Chicago: University o f Chicago Press.

20. Elliott, D. S. (1994). Serious Violent Offenders: Onset, Developmental Course, and Termination - The American Society of Criminolgy 1993 Address. Criminology, 32(1-21), 2,3.54.

21. Fagan, J., Slaughter, E., & Hartstone, E. (1987). Blind Justice? The Impact of Race on Juvenile Justice Process. Crime and Delinquency, 33(2), 224-258.

22. Fagan, J., & Zimring, F. E. (2000). The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court. Chicago: University of Chicago Press.

23. Feld, B. C. (1988). *In re Gault* Revisited: A Cross-State Comparison of the Right to Counsel in Juvenile Court. Crime and Delinquency, 34, 394-424.

24. Feld, B. C. (1993). Justice for Children: The Right to Counsel and the Juvenile Courts. Boston: Northeastern University Press.

25. Feld, B. C. (1999). The Juvenile Court Meets the Principle of Offense: Legislative Changes in Juvenile Waiver Status. B. C. Feld (Ed.), Bad Kids: Race and the Transformation of the Juvenile Court . New York, NY: Oxford University Press.

26. Florida Department of Juvenile Justice. (2000). The Impact of Reductions in Recidivism. Tallahassee, FL: Florida Department of Juvenile Justice.

27. Gordon, L. (1999). The great Arizona orphan abduction. Cambridge, Mass: Harvard University Press.

28. Griffin, P., Torbet, P., & Szymanski, L. (1998). Trying Juveniles as Adults in Criminal Court; An Analysis of State Transfer Provisions. Office of Juvenile Justice and Delinquency Prevention.

29. Hodgkin, R., & Newell, P. (1998). Implementation Handbook For the Convention on the Rights of the Child. New York: UNICEF.

30. Huelsman, M., & Bowers, R. (1983). Causes and Treatment of Violence Involving Children. Knowlton Johnson (ed.), Insights and Strategies for Confronting Violence: Conference Proceedings. (pp. 147-157). Anchorage: Justice Center, University of Alaska Anchorage.

31. Human Rights Watch. (1999). The detention of children in adult jails. In Human Rights Watch No Minor Matter: Children in Maryland's Jails . United States: Human Rights Watch.

32. Kempf, K. L., Decker, S. H., & Bing, R. L. (1990). An Analysis of Apparent Disparities in the Handling of Black Youth Within Missouri's Juvenile Justice System. St. Louis, MO: University of Missouri, Department of Juvenile Justice.

33. Kolker, K. (2002). Problems at 'Punk Prison'--'They're breedin' killers here'. Grand Rapids, MI: The Grand Rapids Press; Sunday, April 30; http://gr.mlive.com/news/stories.

34. Lander, B. (1954). Towards an Understanding of Juvenile Delinquency, a Study of 8464 Cases in Baltimore. New York: Columbia University Press.

35. Langan, P. (1990). Race of Persons Admitted to State and Federal Institutions, 1926-1986. Washington D.C.: U.S. Department of Justice, Bureau of Justice Statistics 1990.

36. Lerman, P. (2002). Twentieth-century developments in America's institutional systems for youth in trouble. In M. K. Rosenheim, F. E. Zimring, Tanenhaus D. S., & B. Dohrn (Eds.), A Century of Juvenile Justice (1st ed., pp. 74-110). Chicago: The University of Chicago Press.

37. Levesque, R. J. R. (2000). Adolescents, Sex and the Law: Preparing Adolescents for Responsible Citizenship. Washington, D.C.: American Psychological Association.

38. Mauer, M., & Huling, T. (1995). YoungBlack American and the Criminal Justice System: Five Years Later. Washington, D.C.: The Sentencing Project.

39. Mauer, M. (1997). Intended and unintended consequences: State racial disparities in imprisonment. Washington, D.C.: The Sentencing Project.

40. Mehlbye, J., & Walgrave, L. (1998). Confronting Youth in Europe: Juvenile Crime and Juvenile Justice. Copenhagen: AKF Forlaget.

41. Miller, J. (1996). Search and Destroy: African American Males in the Criminal Justice System. New York: Cambridge University Press.

42. Morash, M., & Robinson, A. (1998). Correctional Adminstrators' Perceptions on Family Programming for Female Offenders. East Lansing: Michigan State University.

43. Morita, A. (2002). Juvenile justice in Japan: a historical and cross-cultural perspective in Rosenheim, M., Tanenhaus, D. B. Zimring, F.E. & Dohrn, B. (Editora), A Century of Juvenile Justice (lst ed., pp. 360-380). Chicago: University of Chicago Press.

44. Office of Juvenile Justice and Delinquency Prevention. (1995). Children in Custody. Washington, D. C.: U.S. Department of Justice.

45. Parent, D. G., Lieter, V., Kennedy, S., Livens, L., Wentworth, D., & Wilcox, S. (1994). Conditions of confinement: Juvenile detention and corrections facilities [Research Report]. Washington, D.C.: US Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

46. Puritz, P., Burrell, S., Schwartz, R., Soler, M., & Warboys, L. (1995). A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings. Washington D.C.: American Bar Association Juvenile Justice Center .

47. Puzzanchera, C. M. (2000). Delinquency Cases Waived to Criminal Court, 1988-1997. OJJDP Fact Sheet, 02.

48. Rollin, J. (1997). The Social Ecology of Criminal Behavior. Unpublished doctoral dissertation, University of Michigan, Ann Arbor.

49. Rosenheim, M. K. (2002). The modern American juvenile court. In M. K. Rosenheim, F. E. Zimring, D. S. Tanenhaus, & B. Dohrn (Eds.), A Century of Juvenile Justice (1st ed., pp. 341-359). Chicago: The University of Chicago Press.

50. Rothman, D. J. (1980). Conscience and Convenience: The Asylum and Its Alternative in Progressive America. Boston: Little, Brown.

51. Sarri, R., & Hasenfeld, Y. (1976). Brought to Justice? Juveniles, the Courts, and the Law . Ann Arbor: University of Michigan.

52. Sarri, R., Rollin, J., Wolfson, C., Pimlott, S., McCammon, R., Ward, G., & Farmer, F. (1998). Minority Overrepresentation and Outcomes in Juvenile Justice in Michigan. Ann Arbor, MI: Institute for Social Research, University of Michigan.

53. Schiraldi, V., & Ziedenberg, J. (2000). The Florida Experiment: An Analysis of the Impact of Granting Prosecutors Discretion to Try Juveniles as Adults. http://www.cjcj.org/jpi/florida.html - January, 2000: Justice Policy Institute.

54. Shook, J. J. (2001). Changes in Legal Codes and Structured Decision Making: An Analysis of Four States. Unpublished Paper, Institute for Social Research, University of Michigan.

55. Sickmund, M. (2000). Offenders in Juvenile Court, 1997. OJJDP Juvenile Justice Bulletin.

56. Snyder, H., & Sickmund, M. (1999). Juvenile Offenders and Victims: 1999 Natinal Report. Washington, D. C.: U.s. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

57. Stahl, A. L., Sickmund, M., Finnegan, T. A., Snyder, H. N., Poole, R. S., & Tierney, N. (1999). National Center for Juvenile Justice:

58. Stapleton, W. V., & Teitelbaum, L. E. (1972). In Defense of Youth: A Study of the Role of Counsel in American Juvenile Courts. New York: Russell Sage.

59. Strieb, V. L. (2000). The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes, January 1, 1973-June 30, 2000. Ada, OH: Northern University Claude W. Petit College of Law.

60. Susman, T. (2002). Growing Up In Jail; law requires juveniles to face adult penalties in prisons. New York: Newsday; August 20; http://www.newsday.com.

61. Tanenhaus, D. S. (2000). The evolution of transfer out of the juvenile court. In J. Fagan, & F. E. Zimring (Eds), The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court (pp. 13-43). Chicago: University of Chicago Press.

62. Terry, R. M. (1967). Discrimination in the Handling of Juvenile Offenders By Social Control Agencies. Journal of Research in Crime and Delinquency, 5, 218-230.

63. Thornberry, T. P. (1973). Race, socioeconomic status and sentencing in the juvenile justice system. Journal of Criminal Law and Criminology, 64(1), 90-98.

64. Torbet, P., Gable, R., Hurst, I. H., Montgomery, I., Szymanski, L., & Thomas, D. (1996). State Responses to Serious and Violent Juvenile Crime: Research Report. Washington, D.C.: US Department of Justice; Office of Juvenile Justice and Delinquency Prevention.

65. Torbet, P., & Szymanski, L. (1998). State Legislative Responses to Violent Juvenile Crime: 1996-97 Update. Washington, DC: Juvenile Justice Bulletin, US Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

66. Vinter, R., Newcomb, T., & Kish, R. (1976). Time Out: Juvenile Correctional Programs. Ann Arbor: University of Michigan National Assessment of Juvenile Corrections.

67. Vinter, R. D., Downs, G., & Hall, J. (1976). Juvenile Corrections in the States: Residential Programs and Deinstitutionalization. Ann Arbor, MI: National Assessment of Juvenile Corrections, The University

of Michigan.

68. Walker, N. E., Brooks, C. M., & Wightsman, L. S. (1999). Children's Rights in the United States. Thousand Oaks, CA: Sage Publications.

69. Woodhouse, B. B. (2001). Children's rights. S. White (Editor), Handbook of Youth and Justice (pp. 377-410). New York: Kluwer Academic/Plenum Publishers.

70. Zimring, F. E. (1998). American Youth Violence. New York: Oxford University Press.

71. Zimring, F. E. (1982). The Changing Legal World of Adolescence. New York: Free Press.

Table 1*

1991-1999										
County	No. of Commitments			Youth Population & Total Commitments				Commitment Rate per 100,000 Majority and Minority Youth		
	Majority	Minority	Total	Total Youth Population	Minority Youth Population	Majority Youth Population	Total Comm. Per 100,000 Youth	Majority Rate	Minority Rate	Ratio Minority to Majority
Muskegon	69	54	123	24408	4744	19664	504	351	1183	3.24
Genesee	105	162	267	68057	18635	49422	392	212	869	4.09
Ottawa	48	23	71	34989	1236	33753	210	142	1861	13.09
Calhoun	18	24	42	21042	3192	17850	199	101	752	7.46
Oakland	98	91	189	154965	22012	132953	122	74	413	5.61
Wayne	462	1569	2031	293370	147440	145930	692	317	1064	3.36
Berrien	24	63	87	24313	5875	18438	358	130	1072	8.24
Macomb	98	25	123	99002	4528	94474	124	104	552	5.32
Washtenaw	25	41	66	41820	8440	33380	158	75	486	6.49
Ingham	17	47	64	45418	8070	37348	141	45	582	12.80
Kalamazoo	65	112	177	33889	5114	28775	522	226	2190	9.70
Saginaw	16	72	88	33533	8377	25156	262	64	859	13.51
Van Buren	32	19	51	11933	1221	10712	427	299	1556	5.21
Kent	52	129	178	77632	11169	66463	229	78	1128	14.42
Delta	89	7	96	6186	205	5981	1552	1488	3415	2.29

* These data include all females and males committed to public state residential juvenile correctional facilities between 1991 and 1999.

Sources: Michigan Familly Independence Agency CSMIS Data, Lansing MI
U.S. Census Current Population Survey, 1998. Population Reference Bureau Analysis.
Michigan League for Human services, Kids County, 1998, Lansing, MI