- ¹ Ensuring Access to Counsel in Ohio: Estimated Waiver Rates By County (American Civil Liberties Union, ACLU of Ohio, State of Ohio Public Defender, Children's Law Center), Mar. 2006, available at http://www.aclu.org/pdfs/ohiowaiverrates20060309.pdf.
- ² In re Gault, 387 U.S. 1 (1967); United Nations Convention on the Rights of the Child ("CRC"), adopted by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, Arts. 37, 40 (any child accused of violating the law has the right to "legal or other appropriate assistance in the preparation and presentation of his or her defence"); United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, adopted by General Assembly resolution 45/113 of 14 December 1990, Rule 18(a) ("filuveniles should have the right of legal counsel"): United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), adopted by General Assembly resolution 40/33 of 29 November 1985. Rule 7.1 ("Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or quardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.").
- ³ Ensuring Access to Counsel in Ohio: Estimated Waiver Rates By County,
- ⁴ Policy Brief: Juvenile Waiver of Counsel (Center for Policy Alternatives, Wash. D.C.), 2007, available at http://www.cfpa.org/issues/issue.cfm/ issue/JuvenileWaiver.xml; Juvenile Justice Standards Relating to Pretrial Court Proceedings (American Bar Association, Ill.), 1979, Standard 6.1; Thomas Grisso and Carolyn Pomicter, "Interrogation of Juveniles: An Empirical Study of Procedures, Safeguards, and Rights Waiver," LAW AND HUMAN BEHAVIOR 1977
- ⁵ Iowa (Iowa Code Ann. § 232.11), New Mexico (N.M. Stat. § 32A-2-14), North Carolina (N.C. Gen. Stat. & 7B-2000). Oklahoma (Okla. Stat. Ann. § 7003-3.7), and Texas (Tex. Fam. Code. Ann. § 51.10).
- 6 CRC, supra n.2, Art. 37(a) ("[n]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment"); United Nations Rules for the Protection of Juveniles Deprived of their Liberty, supra n.2. Rule 64 ("Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time."): United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted on 30 August 1955 by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and approved by the Economic and Social Council in resolutions of 31 July 1957 and 13 May 1977, Rule 33 ("[C]hains or irons shall not be used as restraints. Other instruments of restraint shall not be used except . . .(a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or

- administrative authority; (b) On medical grounds by direction of the medical officer: (c) By order of the [prison] director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property.").
- ⁷ Testimony of Emily Breon, Attorney, in Support of Raised Bill No. 5491 an Act concerning Youthful Offenders and Delinguent Children (Center for Children's Advocacy, CT), Feb. 26, 2008, available at http://www.kidscounsel.org/5491(shackling).doc.
- ⁸ Deck v. Missouri. 544 U.S. 622, 627 (2005).
- ⁹ California (*Tiffany A. v. Superior Court*, 150 Cal. App. 4th 1344 (Cal. Ct. App. 2007)]: Illinois (In re Staley, 364 N.E.2d 72, 74 (Ill. 1977); North Carolina (H.R. 1243, 2007 Session); North Dakota (In re R.W.S., 728 N.W.2d 236, 330 (N.D. 2007); Oregon (In the Matter of Millican, 906 P.2d 857, 860 (Or. Ct. App. 1995)).
- 10 Ohio Public Defender Shackling Procedures Survey, updated via email to Karen Marcus, Legal Assistant, ACLU, Nov. 20, 2008.
- 11 Richard E. Redding, Juvenile Transfer Laws: An Effective Deterrent to Delinguency? [Office of Juvenile Justice and Delinguency Prevention. U.S. Dep't of Justice, Wash. D.C.), August 2008, available at http://www.ctjja.org/media/resources/resource 309.pdf.
- 12 Jeffrey Fagan, M. Frost & T.S. Vivona, "Youth in Prisons and Training" Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy," JUV. & FAM. CT. J. Vol. 40. Issue 1, 1989.
- 13 Megan Kurlychek and Brian Johnson, "The Juvenile Penalty: A Comparison of Juvenile and Young Adult Sentencing Outcomes in Criminal Court," CRIMINOLOGY, Vol. 42, Issue 2, 2008, at 485-515.
- 14 Annual Report (Office of Juvenile Justice and Delinguency Prevention, U.S. Dep't of Justice, Wash. D.C.), 1998, at 55, available at http://www.ncjrs.gov/pdffiles1/ojjdp/178892.pdf.
- 15 Juvenile Justice Standards: A Balanced Approach, Standards Relating to Transfer Between Courts (Institute of Judicial Administration. American Bar Association III 1 1996 Section 2.2 at 287-89
- ¹⁶ Which states try juveniles as adults and use blended sentencing (National Center for Juvenile Justice, Wash. D.C.), 2007, available at http://www.ncjj.org/stateprofiles/overviews/transfer state table.asp.
- 17 Profile of Youth Transferred to Adult Court, Fiscal Year 2007 (Dep't of Youth Services, Ohio) June 2008, available at http://www.dys.ohio.gov/ dysweb/Community%20Partners/FY07%20Transfers%20to%20Adult% 20Court.pdf.
- 18 CRC. supra n.2, Art. 37(b) ("[t]he arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as

a measure of last resort and for the shortest appropriate period of time"): Juvenile Justice Standards Relating to Interim Status. The Release. Control and Detention of Juvenile Offenders Between Arrest and Disposition (American Bar Association, III.), 1980, Standard 6.6.

- 19 Barry Holman and Jason Ziedenberg, The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities (Justice Policy Institute, Wash. D.C.), 2006, at 10-11, available at http://www.cfjj.org/Pdf/116-JPI008-DOD Report.pdf, citing to D. Mace, P. Rode and V.Gnau, "Psychological Patterns of Depression and Suicidal Behavior of Adolescent Youth in a Juvenile Detention Facility." JOUR-NAL OF JUVENILE JUSTICE AND DETENTION SERVICES, Vol. 12, No. 1. 1997, at 18-23; Incarceration of Youth Who are Waiting for Community Mental Health Services in the United States (Committee on Government Reform, Special Investigations Divisions, Minority Staff, Wash. D.C.), 2004, available at http://oversight.house.gov/documents/200408171219 01-25170.pdf; C.B. Forest, E. Tambor, A.W. Riley, M.E. Esminger and B. Starfield. "The Health Profile of Incarcerated Male Youth." PEDIATRICS. Vol. 105, No. 1, 2000, at 286-291; and J.H. Kashani, G.W. Manning, D.H. McKnew, L. Cytryn, J.F. Simonds, and P.C. Wooderson, "Depression Among Incarcerated Delinguents," PSYCHIATRIC RESOURCES, Vol. 3, 1980, at 185-191; Unlocking the Future, Detention Reform in the Juvenile Justice System, 2003 Annual Report (Coalition for Juvenile Justice, Wash. D.C.), 2004, at 22-23, available at http://www.juvjustice.org/media/reso urces/resource 114.pdf; Juvenile Justice Bulletin: Alternatives to the Secure Detention and Confinement of Juvenile Offenders (Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice Wash. D.C.], Sept. 2005, at 13-14 available at http://www.ncjrs.gov/pdffiles1/ojjdp/208804.pdf.
- ²⁰ Melissa Sickmund, T.J. Sladky, and Wei Kang, Census of Juveniles in Residential Placement Databook, 2008, available at http://www.ojjdp.ncjrs. gov/oistatbb/cirp/ (2006 data).
- 21 U.S. Constitution, 14th Amend.; CRC, supra n.2, Art.2 ("States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal quardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."); Beijing Rules, supra n.2, Rule 2.1 ("The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status."); United Nations Standard Minimum Rules for the Treatment of Prisoners, supra n.6, Rule 6(1) ("There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.").
- 22 State and County QuickFacts (U.S. Census Bureau, Wash. D.C.), 2008, available at http://guickfacts.census.gov/gfd/states/39000.html

²³ Profile of Youth Adjudicated or Committed for Felony Offenses, Fiscal Year 2007, supra n.17.

24 Id

25 2008 Kids Count Data Book, State Profiles of Child Well-Being (The Annie E. Casey Foundation, Md.), 2008, at 134 (using 2006 data).

²⁶ RECLAIM Ohio and Subsidy Grant Statistics for Fiscal Year 2007 (Dep't of Youth Services, Ohio), available at http://www.dys.ohio.gov/dysweb/ reclaimstats.aspx.



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EVALUATING JUVENILE JUSTICE IN OHIO

A REPORT CARD

SUBJECT	GRADE
Waiver of Counsel	INCOMPLETE
Shackling of Juveniles	F
Juvenile Transfers	C-
Rates of Juvenile Detention and Commitment	С
Disproportionate Minority Confinement (DMC)	INCOMPLETE

In 2005, the American Civil Liberties Union, the ACLU of Ohio, the Children's Law Center, and the Office of the Ohio Public Defender began an investigation into the extraordinarily high rates at which Ohio youth waived their right to counsel in delinquency proceedings. In the course of that investigation, the groups uncovered a number of other ways in which the Ohio juvenile justice system fails the state's children, often in violation of national and international standards. Although the United States has not ratified all of the international standards cited below, those treaties represent a global consensus on the manner in which juvenile justice systems should be administered.

Too many children accused of crimes in Ohio are not represented by counsel.

According to the United States Supreme Court and international human rights conventions, rules and guidelines, children accused of criminal wrongdoing are entitled to the assistance of an attorney in the preparation of their defense.2 In 2006, however, approximately twothirds of Ohio children charged with delinguent behavior waived their right to counsel.3 In 24 of Ohio's 88 counties. more than 90% of young people charged with criminal wrongdoing were not represented by counsel.

In light of a large body of social science research demonstrating that most youth do not have the knowledge or maturity to understand the consequences of a waiver,4 a growing number of states including Iowa, New Mexico, North Carolina, Oklahoma, and Texas—have passed legislation prohibiting youth from waiving under any circumstances.5 Ohio has no such law.

In 2007, the Ohio Supreme Court held that prior to waiving their right to counsel, children must consult a parent. quardian or attorney sufficiently "capable and willing to assist [them] in the waiver analysis." It also ruled that to determine whether a waiver is valid, a court must consider the child's intelligence, education, background, experiences, conduct, and family and emotional stability, and the complexity of the proceedings. Whether this ruling will reduce the number of Ohio youth who waive their right to counsel remains to be seen.

(Incomplete)

Ohio permits children to be routinely shackled with handcuffs, belly chains and leg irons without a compelling need.

International standards consider as cruel and unnecessary the routine shackling of children who pose no danger to themselves or others during juvenile court proceedings. Shackling can have a chilling effect on the fair administration of justice; can undermine the rehabilitative focus of the juvenile court; is demeaning and dehumanizing; and creates an impression that youth who have yet to be adjudicated delinguent are guilty of the charges against them.⁷ Recognizing the potentially prejudicial impact of restraints, the United States Supreme Court has ruled that they may not be used on an adult criminal defendant during the guilty phase of a trial absent an individual and compelling need.8

For the above reasons, a growing number of states—including California, Illinois, North Carolina, North Dakota and Oregon—prohibit the shackling of a child during a delinquency proceeding unless a judge finds that the child must be restrained to maintain order in the courtroom, prevent the child's escape or provide for the safety of others.9 Ohio is not one of these states. Children may be shackled for any reason or no reason. Youth regularly appear in Ohio's juvenile courts, including those in Cuyahoga, Franklin, Hamilton, Montgomery, Erie, Logan, Lorain, and Lucas Counties, with handcuffs, belly chains and leg irons.10

Ohio mandates that children charged with certain crimes be tried as adults.

JUVENILE TRANSFERS

In the 1990s, many states expanded the circumstances under which children could be tried as adults and incarcerated in adult iails and prisons. Subsequent research, however, has revealed that transferring children from iuvenile to adult courts increases recidivism:11 subjects youth to conditions that jeopardize their physical and emotional safety, making subsequent rehabilitation almost impossible;12 results in unnecessarily harsh sentences:13 and strains the resources of adult correctional facilities and criminal courts.14 The American Bar Association recommends that judges be permitted to decide whether to transfer a youth to adult court based on a multitude of factors, including whether the child is capable of rehabilitation. 15

adults in Ohio's criminal courts.17



All states continue to permit children to be charged as adults under certain circumstances. Ohio, however, is one of only 15 states that remove the transfer decision from judges for certain types of offenses, mandating that children charged with those offenses be tried as adults.16 In fiscal year 2007, 315 youth (three-quarters of whom were African-American) were prosecuted as

Ohio detains and incarcerates a greater percentage of its adolescent population than most states.

JUVENILE DETENTION

AND COMMITMENT

RATES OF

International and national standards state that court-involved youth should be deprived of their liberty only as a "last resort" and "for the minimum period necessary." 18 A growing body of social science research demonstrates that the unnecessary detention and incarceration of youth charged with or convicted of non-violent crimes who are neither dangers to themselves or others increases the likelihood that they will reoffend, exacerbates emotional, behavioral and educational difficulties and costs taxpayers significantly more on a per child basis than programs designed to supervise children returned to their communities.19

Although the total number of youth Ohio detains and incarcerates has declined during the last ten years. Ohio detains and incarcerates a greater percentage of its adolescent population than most states. A 2006 national census of juveniles in residential placement—the most recent census available—found that Ohio detains and incarcerates more youth per 100,000 juveniles than two-thirds of the 50 states and the District of Columbia.20



Ohio disproportionately incarcerates children of color.

(DMC)

The United States Constitution and international human rights standards mandate that state juvenile justice systems treat similarly situated children equally, regardless of their race or national origin. Discrimination on the basis of race, color, language, religion, national or social origin or other status is strictly prohibited.²¹ Systems in which youth of color are overrepresented are often viewed as failing to adhere to these mandates.

In Ohio, youth of color are overrepresented in the state's juvenile detention and correctional facilities. Although minority youth accounted for an estimated 21% of Ohio's 2007 juvenile population,²² they represented 49% of all children adjudicated delinguent for felony offenses, 23 and 64% of those committed to the Department of Youth Services ("DYS") at adjudication.²⁴ In 2006, for every Caucasian child in custody, there were four children of color.25

In 2007, DYS began a Disproportionate Minority Contact initiative targeting the 14 counties with the highest minority youth population.26 Whether this initiative will be successful remains to be seen.

