

BETRAYING THE YOUNG: CHILDREN IN THE US JUSTICE SYSTEM

AI Index: AMR 51/60/98
Distr: SC/CC/CO/GR

Public / November 1998
Embargoed: 20 November

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Cover photo: Twelve-year-old Nathaniel Abraham appears in court in Oakland County, Michigan State, USA, on a murder charge which could carry a sentence of life imprisonment without parole

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Betraying the Young

Children in the US Justice System¹

I INTRODUCTION

Once they enter the justice system of the USA, many children² experience violations of their fundamental human rights.

Children in custody have been subjected to brutal physical force and cruel punishments, including placing them in isolation for lengthy periods. Many children are incarcerated when other action could or should have been taken. Children are often held in facilities that are seriously overcrowded and cannot provide adequate educational, mental health and other important services.

A growing number of children are being tried as adults in the general criminal justice system and are subject to the same punishments as adults. Children are also held for months in jails before they are tried. There, they may be denied access to education and adequate opportunity to exercise. Thousands of convicted children are sent to prisons where they are not separated from adult prisoners, putting them at serious risk of physical and sexual abuse.

People have been executed for crimes that they committed when they were children, in clear violation of international human rights law. As at June 1998, there were 70 people on death row for offences committed when they were under 18 years of age.

Some of the violations of the rights of children described in this report breach US laws as well as international standards. The report contains recommendations to the various US authorities responsible for elements of the justice system, to improve the detection and prevention of such violations. These authorities include the federal, state and local governments, and departments that operate and supervise detention and correctional facilities.

Disturbingly, however, a number of the violations are actually sanctioned by US laws. The USA has refused to implement fully the protection of the human rights of children

¹Amnesty International has also released more detailed reports on the issues covered in this document - *Betraying the Young: Human Right Violations Against Children in the US Justice System*, AI Index: AMR 51/57/98, November 1998, and *On the Wrong Side of History: Children and the Death Penalty in the USA*, AI Index: AMR 51/58/98, October 1998. These reports cite the source of much of the information in this report.

²“Child” describes a person under the age of 18. This is the most common age below which both international standards and US laws consider that people should have special protection.

provided by international standards. Amnesty International urges the US federal government to ratify without reservations all international standards for the protection of children and calls upon all US authorities to ensure that their laws, policies and practices are fully consistent with these standards.

II RESISTANCE TO INTERNATIONAL HUMAN RIGHTS COMMITMENTS

The international community has adopted minimum standards to govern the conduct of states. These are based on the precept that human rights are an international responsibility, not simply an internal matter. International human rights standards articulate the criteria against which the conduct of all states should be measured.

The relevant international treaties and other instruments include the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture), the Convention on the Rights of the Child, the United Nations (UN) Standard Minimum Rules for the Administration of Juvenile Justice and the UN Rules for the Protection of Juveniles Deprived of their Liberty.

Although the USA has made a significant contribution to the development of the international system of human rights protection during the past 50 years, it has also declined to ratify key human rights treaties, has reserved the right not to implement important provisions of treaties it has ratified, and has refused to permit people within the USA to bring complaints of alleged violations to international bodies.

The international human rights obligations that the USA has declined to accept include a number specifically relating to children, in particular:

- the USA reserved the right not to implement certain provisions of the ICCPR that protect the human rights of children, such as the prohibition on the use of the death penalty for crimes committed by people aged under 18;
- the USA has not ratified the most important treaty for the protection of the human rights of children, the Convention on the Rights of the Child. One hundred and ninety-two governments have ratified the Convention. The only other UN member not to have ratified the Convention is Somalia.

The USA's reluctance to accept international human rights treaties and standards denies US children rights and protections which governments in virtually every other country in the world have agreed to recognize.

Recommendation

The USA should withdraw its reservations to the ICCPR and ratify without reservations the Convention on the Rights of the Child.

III CHILDREN PROSECUTED IN THE JUVENILE JUSTICE SYSTEM

“We have seen juveniles locked up for repeated truancy, running away from home, violating curfew, possession of alcohol, possession of marijuana, shoplifting, and missing even a single meeting with a probation officer.” Mark Soler, lawyer with the Youth Law Center, a national US legal assistance and policy agency for children.

1. Background

Children in the USA who are accused or convicted of violating criminal laws may be dealt with in the “juvenile justice system” that deals specifically with children, or in the general criminal justice system that deals primarily with accused and convicted adult offenders.

All states of the USA have a juvenile justice system which deals with the great majority of children arrested on suspicion of violating the criminal law. It comprises courts, programs and services, and residential facilities (including secure institutions in which a child may be held and from which they cannot leave without permission). The terminology of the US juvenile justice system is different from that of the general criminal justice system. For example, when a juvenile court judges that a child has committed an offence, the child is described as an “adjudicated delinquent” rather than “convicted” and the court makes a “disposition” decision rather than passing a sentence. However, key elements and outcomes of the juvenile and the criminal justice systems are similar. Children accused of breaking laws for which they could be prosecuted in a general criminal court may be arrested by the police and detained before trial. If they are found guilty, the court can order them to be placed in custody where they can be held for years.³ In view of the similarity between juvenile justice and general criminal justice systems, this report uses the more commonly known terms of the latter system, such as “convicted” and “sentenced”, for both. On 15 February 1995 more than 84,000 children were in custody as accused or convicted offenders.⁴

Between 1986 and 1995, the number of children confined in custody before their cases were heard or following conviction grew by more than 30 per cent. In many jurisdictions, the increase in the number of children who are held in custody has outstripped

³ Under US law, juvenile court proceedings are regarded as “quasi-civil” rather than criminal. This is significant in some respect, but the US Supreme Court has acknowledged that juvenile justice is sufficiently similar to general criminal justice that a number of the same rights must be provided, such as the standard of proof is “beyond a reasonable doubt”; right to a defence lawyer; no double jeopardy - a child adjudicated delinquent cannot be tried for the same offence in a general criminal court.

⁴ This is the number being held in juvenile justice detention and correctional facilities. For the great majority of these children, their cases had been or were going to be heard in juvenile courts. In some jurisdictions, juvenile facilities also hold children who are being dealt with in the general criminal justice system. At the time this report was completed, 1995 was the most recent year for which national data was available.

the increase in resources that are available to house the children and provide services for them. The most recent survey found that 40 per cent of facilities around the USA housed more children than they were designed to accommodate.

Overcrowding is directly linked to some of Amnesty International's concerns about the treatment of children in the US juvenile justice system, which are described below.

2. Excessive use of incarceration

"Liberty" is one of the fundamental human rights enshrined in international human rights standards and US law. International standards require authorities to avoid depriving children of their liberty unless there is no appropriate alternative. The incarceration of children is a matter of grave concern not only because liberty is a fundamental human right but because incarceration has inherent risks to the physical and mental integrity of children and may expose them to negative influences rather than promoting their rehabilitation. The harm that children suffer as a consequence of incarceration may be permanent.

Various sources of evidence suggest that many children in the USA are detained when they are accused of committing offences and incarcerated following conviction when other options were or should have been available.

The most striking evidence is individual cases reported from around the USA. For example, an investigation of juvenile facilities in Georgia in 1997 found: an 11-year-old boy detained for threatening his teacher; a 12-year-old boy detained for making a harassing telephone call; a 14-year-old girl detained for painting graffiti on a wall; numerous youths detained after relatively minor fights at school; a 16-year-old girl detained for transgressing her father's rules (throwing objects in her room and not attending school); a 13-year-old girl detained for stealing \$127 from her mother's purse; children who had run away from troubled homes; and children who were held on charges of "terroristic threat," which often involved swearing at a teacher.

The records of children incarcerated in various states show that many children who were not persistent offenders have been placed in custody for minor offences. For example, a study that examined the records of more than 50,000 children in 28 state juvenile correction systems found that over half had been committed for property and drug offences and were experiencing their first confinement in a state institution.

Why incarceration is used excessively

A number of reasons have been identified for the excessive incarceration of children.

One is that in some jurisdictions incarceration is regarded as an appropriate punishment for even minor infringements of the law by very young children, such as fighting in school. This punitive attitude towards children has been fuelled by growing community fears about the extent and nature of youth crime in the USA, and media reports of "super predators flooding the nation's streets" and "teenage time-bombs".

Another factor is the inadequate community-based programs for both accused and convicted children. As a consequence, it is reported, judges order children to be held in custody when that option is neither in the child's best interest nor essential to protect the community. In the words of a juvenile court judge from Georgia, "I really have only two major choices. I can place these kids in incarceration, where they will learn to become better criminals, or I can send them home on probation, back to where they got in trouble in the first place."

Reports from around the USA also suggest that there is a shortage of services for children that might keep them out of the juvenile justice system altogether, particularly mental health services. For example, a recent report by Louisiana state officials acknowledged that secure facilities held many children who had been "discarded" from the mental health, educational, child welfare and other systems of care. Social workers in a number of states have instructed desperate parents to have their children arrested in order to get services because community health services are so scarce. In Dallas, Texas, a mental health professional reported in 1998: "I had a 15-year-old girl who was hallucinating and psychotic and a staff member from Mental Health and Mental Retardation agreed she needed hospitalization. But then she said they were over budget for the year, so couldn't I find an offense that would get her arrested, like an assault?"

Recommendation

State and local governments should review their legislation, policies and practices to ensure that children who are accused or convicted of violating the law are not deprived of their liberty except as a last resort. In particular, all authorities should:

- undertake periodic reviews to assess whether children are being placed in custody only when no alternative is appropriate; if the reviews find cases where alternatives were appropriate, authorities should take action to change the policies or practices that cause the excessive use of incarceration;
- provide an adequate range and number of community-based detention and correctional programs;
- provide adequate mental health services in the community so that children whose violation of the law is a reflection of significant mental health problems can be treated in therapeutic rather than correctional environments.

Juvenile justice systems should as a matter of course assess children to determine whether they should receive specialized care and rather than be placed in a detention or correctional facility.

3. Cruel use of force and restraints

In recent years, there have been many reports that staff in juvenile facilities around the USA have punched, kicked, shackled, sprayed with chemicals and even used electro-shock devices against children in their care. The reports include:

- *South Carolina* 1998 - residents of a juvenile correctional facility initiated legal action against the company operating it, alleging that staff had sprayed children with gas to enforce orders, and punched, choked and kicked children.
- *Kentucky* 1998 - a US Department of Justice investigation of the juvenile section of the Daviess County Detention Center found that staff regularly used stun guns and pepper spray to control uncooperative youths and to break up fights. Children detained at the facility also reported that they were hit by staff.
- *Maine* 1998 - the mother of a boy at a juvenile correctional facility reported: "While sleeping, he was physically removed from his bed in only his boxer shorts and taken to a private room in his cottage. There, the guard interrogated him about a rumour of a riot while verbally and physically assaulting him. When my son tried to defend himself, he was taken to another building and put in solitary confinement. When he was not found in his bed the next morning, inquiries were made to his whereabouts. When he was finally located, there were fresh bruises and a hand print found on his back and my son had a story to tell. I have seen changes in my son but they are not the type of changes brought upon by solid rehabilitation and education programs, but rather fear and hopelessness resulting from verbal and physical abuse from untrained and impatient staff. Each Sunday I visit my son, but it is not only his pain and helplessness I see. I overhear horrible stories of the past week's violence as the children try to explain fresh cuts and bruises to their parents."

Some reports of the excessive use of force concern what appear to be isolated incidents. However, a significant number of other reports describe acts committed by numbers of staff over an extended period and would seem to reflect major organizational deficiencies as well as personal misconduct. Litigation and research suggest the following as particularly important:

- staff have not been adequately trained to work with children;
- overcrowding, which increases tension and the likelihood of violence in institutions;
- inadequate number of staff;
- high turnover of staff, resulting in the loss of expertise;
- the use of restraints to control children whose behaviour reflects mental health problems for which they are not receiving adequate treatment;
- weak systems of accountability and inspection.

The use of restraint chairs and chemical agents

In its recent report on human rights violations by law enforcement and adult correctional agencies, Amnesty International expressed concern at the use of restraint chairs, chemical agents electro-shock weapons, and recommended that the federal and other authorities should

take action.⁵ Amnesty International's research on children also indicates significant grounds for concern about the use of restraint chairs and chemical agents in juvenile detention and correctional facilities.

US juvenile justice experts who are preparing new guidelines for facilities warn that there is a substantial risk that chemical restraints may become a first rather than a last resort to control confined youth. The experts accordingly urge facilities that do not now use chemical restraints to refrain from introducing them in the future.

The fact that the great majority of facilities seem to function satisfactorily without the use of chemical restraints suggests that alternative methods can address the needs of facilities effectively without the inherent risks of abuse and injury that chemical restraints present. The experience of these facilities demonstrates that the use of force can be significantly reduced by concertedly addressing the underlying causes of children's misconduct, which may relate to the children themselves (such as emotional disturbance) or the organization (such as staff training), or both.

The use of electro-shock weapons in juvenile facilities appears to be uncommon. However, while there is no demonstrable need for their introduction, there is the risk that facilities will acquire them. Amnesty International urges authorities to act decisively before that occurs, and prohibit the use of the weapons in juvenile facilities.

Recommendations

(i) Preventing the abusive use of force and restraints

State and local governments should:

- provide adequate resources to prevent overcrowding and to allow facilities to employ sufficient numbers of staff ;
- require staff to be specially trained to work with children, particularly those with mental health problems; the training must include skills that reduce the necessity for the use of force.

(ii) Inquiries

US federal authorities should conduct inquiries into the use of chemical restraints and restraint chairs in juvenile detention and correctional facilities.

(iii) Electro-shock weapons

State and local governments should prohibit the use of electro-shock weapons in juvenile detention and correctional facilities.

(iv) International scrutiny

The US federal government should require state and local governments to establish comprehensive standards for juvenile detention and correctional facilities that are consistent with international standards and monitor the implementation of this requirement. The USA

⁵*United States of America: Rights for All*, 1998, AI Index AMR 51/35/98.

should report on measures to prevent torture and other cruel, inhuman or degrading treatment or punishment in the report it is due to submit to the Committee Against Torture on its implementation of the Convention Against Torture. (*Note: The first US report was due in November 1995*).

The authorities should also improve mechanisms to detect and deal with abuses as recommended in Part VII of this report.

4. Solitary confinement

The use of solitary confinement to punish children is prohibited by international standards on the grounds that such confinement is cruel, inhuman or degrading treatment that may compromise children's physical or mental health.

Solitary confinement is a common punishment in juvenile facilities in the USA. A national study of the use of isolation calculated that in 1992 there had been 435,000 occasions when facilities had used isolation for a period of one to 24 hours and 88,900 occasions when it had been imposed for more than 24 hours.

Nicholaus Contreras was incarcerated at the Arizona Boys Ranch, a juvenile corrections facility, in 1998. While there, he was repeatedly placed in solitary confinement for such transgressions as talking to staff without permission and carrying cleaning fluid to his assigned work area (9, 10, 11, and 12 February). He was again isolated on 23, 25, 27 and 28 February for "lethargic effort in exercise" and complaints of feeling ill and tired. On 2 March he was isolated for failing to listen to staff about his attitude to exercise; later that day, Nicholaus died while staff "assisted" him to do push-ups.

In several cases, US courts have decided that children may only be placed in isolation when they pose an immediate threat to themselves or to other people and that they must be released as soon as they have gained control of themselves. However, these decisions do not have national force. Most US jurisdictions and the majority of facilities permit the use of isolation to punish children who have breached the rules of custodial facilities. Some facilities have allowed it to be imposed without time limit. The policies of many facilities allow them to deny isolated children access to education, exercise and counselling and there are recent reports of this occurring in several states.

Recommendations

State and local governments should:

- prohibit the use of isolation as a punishment for children;
- monitor facilities to ensure that isolation is not used and that appropriate action is taken against staff who breach the prohibition.

The USA should report on the use of isolation to punish children in the report it is due to submit to the Committee Against Torture on its implementation of the Convention Against Torture.

5. Inadequate services for children with mental health problems

International standards, US laws and national correctional standards explicitly provide that children deprived of their liberty are entitled to physical and mental health care services. The importance of mental health screening and services is particularly great, because surveys of children confined in juvenile justice institutions have found that a far greater proportion suffer from mental health problems than children in the general population.

Recent reports indicate that many facilities have not provided adequate mental health services and some have responded brutally to the behavioural problems posed by troubled children. For example:

- *Georgia 1997*: a US Department of Justice investigation of 22 detention centres found that children were being systematically denied access to adequate mental health care. Both the quality and quantity of mental health services were found to be seriously deficient. The investigation reported that in certain facilities, mental illness was addressed almost solely through “correctional responses”, including isolation and the use of mechanical and chemical restraints.
- *Virginia 1996*: a study of juvenile facilities found that there were only 2.5 psychologists to see 300 children, although around 40 per cent of the children were identified as having mental health or suicide watch needs. Because of the number of juveniles that had to be seen, a supervisor told his staff that they could not see a child more than three times a month unless they indicated that the child would die if he or she was not seen more often.
- *Louisiana 1996-97*: a US Department of Justice investigation of the state’s secure correctional facilities for juveniles reported that there were serious inadequacies in mental health care. At one facility, children with extensive psychiatric histories who self-mutilated or threatened suicide had never been referred to a psychiatrist.

Several federal agencies are undertaking projects to enhance the delivery of mental health services to children in the juvenile justice system. Federal funding is also being provided for the development of standards for juvenile detention and correctional facilities; among these are standards for the detection and treatment of health problems, including mental health and substance abuse problems. However, facilities will not be required to adopt the standards.

In mid-1998, the US Senate adopted a legislative proposal to allow states to use federal prison construction funds to assess and treat the mental health needs of incarcerated children and adults. The proposed law would also require states that use the funds to develop mental health treatment programs for offenders with mental illnesses and conduct a study of mental illness in correctional facilities. States will not be required to participate in the program.

Amnesty International welcomes the various initiatives to improve the provision of mental health services to children who are being dealt with in the juvenile justice system. However, the recent record of appalling inadequacies in many facilities suggests that more concerted measures are required to ensure that all children in need receive such critically important assistance. Governments must require facilities to deliver the services and provide adequate funds for them to do so; in turn, facilities must be rigorously accountable for the manner in which they discharge their responsibility.

Recommendation

State and local governments should:

- (a) require juvenile and detention and correctional facilities to provide comprehensive physical and mental health care services by qualified personnel;
- (b) provide adequate funds to enable facilities to provide the required services;
- (c) impose specific standards to allow effective monitoring of the adequacy and quality of services and;
- (d) routinely monitor performance.

IV CHILDREN PROSECUTED IN THE GENERAL CRIMINAL JUSTICE SYSTEM

“On 11 December 1995, I was sentenced to 25 years in prison. The judge strongly recommended that I be placed at Crossroad, a private juvenile treatment facility where I could receive counselling. On 18 December 1995, I was taken to the Indiana Women’s Prison Indianapolis.

By March 1996, I was told by the DOC (Department of Corrections) commissioner that I would not be moved to Crossroad at Fort Wayne, but I would remain at the Women’s Prison. This was a shock to me.

Larry Hayes, an editorial writer for the *Journal Gazette* in Fort Wayne contacted people on my behalf. In June 1996, Larry met (lawyers) JauNae Hanger and Richard Maples. They reviewed my case and decided to take my case pro-bono [without fee]. I then filed a lawsuit against the DOC.

By September 1996, a judge decided that I would remain at the Women’s Prison. I appealed the decision.

The Appeals Court overturned the decision on 13 May, 1997. They said my rights had been violated by being housed with adult offenders. The decision to move me to Crossroad was made by the Governor and the State Attorney General.

On 9 June 1997, I was finally moved to Crossroad in Fort Wayne, Indiana. Crossroad is the best place for me.”

Letter to Amnesty International from Donna Ratliff, August 1998.

Donna Ratliff was aged 14 when she was imprisoned. Her legal action to be moved to a juvenile facility stated that she had been sexually propositioned and harassed by older inmates and she feared for her safety. In March 1998 the Supreme Court of Indiana decided that neither the law of Indiana nor federal law requires correctional authorities to house children separately from adults, although separation may be required to protect particularly vulnerable individuals.

The Indiana Department of Corrections has indicated that it will not seek to move Donna from Crossroad until she is an adult. However, 92 other children continue to be housed in adult prisons in Indiana, some in the general population, some with other young offenders. Throughout the USA, more than 2000 children are housed in the general population of adult prisons.

1. Background

Until the end of the 19th century, children in the USA who were accused of violating criminal laws were generally dealt with in the same courts as adults, were subject to the same penalties and were commonly confined in the same prisons and jails. The first juvenile court was established in Illinois in 1899 and in the following decades this model was adopted in other states. The system is responsible for dealing with the vast majority of children accused of violating the criminal law.

During the past 20 years, in response to public concern about the extent and nature of crimes committed by young people, US governments have significantly expanded the role of the general criminal justice system with respect to children and generally increased the severity of sanctions that courts may impose on children. One commentator has characterized the changes to the treatment of young offenders as a “War on Juveniles.”

According to the most recent data:

- about 200,000 children a year are prosecuted in general criminal courts;
- at any time, about 7,000 children are held in jails before trial and;
- more than 11,000 children are in prisons and other long-term adult correctional facilities.

The growing tendency in the USA to prosecute and punish children as if they were adults is inconsistent with the approach encouraged by international standards adopted by almost every country in the world, that governments should establish laws, procedures, authorities and institutions specifically for children.

2. Lack of separation from adults

“Judge Zintner, I have an important question to ask you! Would you please move me out of here? Please don’t leave me here with all these adults. I can’t relate to any of them. They pick on me because I am just a kid. They tease me and taunt me. They talk to me sexually. They make moves on me. I’ve had people tell me I’m pretty and that they’ll rape me... I’m even too scared to go eat... It’s too much for anyone my age to handle... Please help me with this.”

Letter from 15-year-old Paul Jensen, imprisoned in South Dakota State Penitentiary, to his sentencing judge, 1997. In September 1998, his mother told Amnesty International that he had not been moved from the prison.

Young people in prison are notoriously a target of sexual and physical assault by adult inmates. This phenomenon is widely acknowledged by governments and correctional authorities throughout the world, including the USA. In recognition of children’s vulnerability, the ICCPR and other international standards expressly state that children who are detained when they are awaiting trial or imprisoned following conviction should be kept apart from adult inmates.

When the US ratified the ICCPR, it reserved the right to treat juveniles as adults “in exceptional circumstances”. The reservation includes its assertion of a right to imprison children with adults. In its 1994 submission to the Human Rights Committee on its compliance with the ICCPR, the US government defended the reservation by stating that the only exception to segregation occurred when “older” children were prosecuted and imprisoned as adults.

Contrary to the assurances of the US government, Amnesty International has found that in many US states it is common, not exceptional, for children who have been prosecuted in the general criminal justice system to be imprisoned with adults.⁶ Children as young as 13 have suffered such a fate.

In a 1998 survey of state correctional systems undertaken by Amnesty International, 38 states reported that they house children in the general population in adult facilities. There were more than 2,800 children in the prisons who were not separated from adults⁷. Most of the states that house children with adults reported that they do not provide special programs for young prisoners.

Within the USA, politicians have justified the imprisonment of children with adults as an appropriate manner to treat children who have committed serious violent crimes. This is not a justification accepted under international standards. Moreover, the practice of imprisoning children with adults is not restricted to violent offenders. In some jurisdictions, a child who has committed even relatively minor, non-violent offences may be imprisoned in the general population. In 1997, at the age of 16, Native American Yazi Plentywounds was convicted of shoplifting two bottles of beer. He was sentenced to two years at the adult state prison in Cottonwood, Idaho, because he had a prior conviction of “grand theft”: breaking a shop window worth \$300 in order to steal cases of beer.

Recommendation

All states should legislate to keep every detained and imprisoned child completely apart from adult inmates unless separation is considered not to be in the child’s best interest.

⁶Most states require children who are being dealt with in the juvenile justice system to be completely segregated from adult inmates.

⁷Alabama (123); Alaska (290); **Arkansas** (93); California (172); Colorado (91); Delaware(32); Florida (663) Georgia (194) Idaho (11); Illinois (161); Indiana (92); **Iowa** (41); Kansas (32); Louisiana (30); Maine (1); Maryland (79); **Massachusetts** (12); Michigan (133 approx); Minnesota (4); Mississippi (152); **Missouri** (105); Montana (not available); Nebraska (16); Nevada (57); New Jersey (34); New Mexico (5); New York (312); **North Carolina** (1097); North Dakota (3); Oklahoma (56); Oregon (138); Rhode Island (11); South Carolina (182); South Dakota (10); Texas (not available); Utah (19) Vermont (10); Wyoming (9). States in bold house some children in “youthful offender units” with inmates aged up to 21-years-old or in units specifically for under 18 year-olds. (Figures in brackets total 4,470; Amnesty International is aware that at least 2,800 of these were not separated from adults).

The US Congress should legislate to require states to segregate detained and imprisoned children from adult inmates.

3. Imposition of harsh, inflexible sentences

International standards for juvenile justice call on governments to place a high priority upon the best interests of the child in all aspects of justice systems and to seek to avoid imprisoning children.

However, the laws of some US states do not permit courts to actively consider the welfare and circumstances of individual children because they specify that children accused of specific crimes *must* be prosecuted in the general criminal court, as adults, rather than in a juvenile court, or they impose mandatory minimum sentences for certain offences, or both.

The penalties which courts in a number of states may impose on children include life imprisonment without possibility of release, and in some circumstances the penalty is mandatory. In California, there are currently 14 prisoners who were sentenced to life without parole at ages 16 or 17.

A sentence of life imprisonment without possibility of release does not provide any scope for rehabilitation, which the ICCPR states should be the aim of imprisonment generally, and the aim of criminal justice proceedings in the case of children specifically. The USA accepted an obligation to comply with these provisions when it ratified the treaty. The international community does not accept that children should be subjected to such a penalty: the Convention on the Rights of the Child prohibits it as a sentence for an offence that a person committed when they were younger than 18.

US politicians and commentators have asserted that laws to prosecute children as adults are required to deal effectively with children who commit serious violent crimes or are habitual offenders. However, it is common for these laws to include non-violent offences and some apply to children who do not have a lengthy history of offending. In 15 states, children accused of committing specified non-violent offences such as burglary, offences involving weapons and drug offences must be prosecuted in general criminal courts.

A large number of children who are prosecuted in general criminal courts are not charged with violent offences. In 1995, the most recent year for which data is available, fewer than half the cases that juvenile court judges transferred to be tried in general criminal courts involved violence against people. Members of a committee reviewing juvenile justice in Illinois recommended removing non-violent drug and weapons possession provisions from automatic transfer laws. One of the members, Juvenile Court Judge Hibbler, said that drug possession cases were particularly inappropriate for criminal courts because the juvenile system is able to provide better treatment and rehabilitation programs: "I think as a basic action to correct the behavior of kids, to send them to the adult court is going in exactly the wrong direction." His recommendation has not been accepted.

Recommendation

Federal and state governments should legislate to ensure that children are not mandatorily prosecuted and punished as adults. In particular:

- children should not be subjected to harsh, fixed periods of incarceration, particularly life imprisonment without the possibility of release:
- courts should be required to consider the well-being and circumstances of individual children when imposing sentences.

4. Failure to specify a minimum age of criminal responsibility

International standards for the protection of the human rights of children require governments to ensure that all elements of their justice systems take account of children's physical and mental immaturity and need for special care. One of these elements is the determination of when children will be treated as responsible for their conduct under the criminal law, and subject to criminal prosecution and punishment. As reflected in Article 40, 3 (a) of the Convention on the Rights of the Child, there is now strong international support for the principle that there should be a legally established minimum age of criminal responsibility. Such a benchmark is an important safeguard to ensure that children in conflict with the law do not suffer cruel, inhuman or degrading treatment or punishment, but are treated in a manner which protects their well-being and dignity and promotes their reintegration into society.

US laws are inconsistent with the approach of the international community on this issue. Over half of US states have at least one offence for which a child *of any age* can be prosecuted in the general criminal court. A similar situation prevails with respect to the juvenile justice system. Only 15 states specify a minimum age below which children cannot be charged with being delinquent in a juvenile court. In North Carolina the minimum age is six; in Maryland, Massachusetts and New York it is seven.

Recommendation

Federal and state governments should fix a minimum age of criminal responsibility that takes account of children's emotional, mental and intellectual maturity.

5. Length of time before trial

International standards require the prompt adjudication of charges for both adults and children, particularly where the accused person is held in detention. Studies indicate that it is common for people to be held in jail for between six and nine months between their arrest and their trial in general criminal courts. Cases in the juvenile justice system are usually dealt with more quickly. The adverse impact of extended periods in detention must be considerable, particularly because many jails are not equipped to provide education and other services to children.

Recommendation

The federal and state authorities should legislate to ensure that children accused of violating the law are tried as speedily as possible.

6. Lack of access to services

Pueblo, Colorado, January 1998

The District Court heard evidence from correctional officer Patricia Hill about the conditions for youths held at the jail. She was asked, "At this point, is the jail capable of handling the juveniles?" She responded, "Not really.... they are just warehoused." Ms Patricia Hill told the court that there was no money to hire a teacher for the children. Children were given recreation time "when somebody can kind of squeeze them in... I know there have been times that the juvies [juveniles] have been taken at one o'clock in the morning and two o'clock in the morning."

International standards state that children deprived of their liberty are entitled to education and time for daily exercise and that they should have adequate space, installations and equipment.

In the USA, many children who are prosecuted as adults are incarcerated in adult facilities which are unable or unwilling to provide education or other services appropriate to the needs of children. In May 1998 an Amnesty International delegate visited a jail in Washington DC, where a staff member noted with considerable regret the lack of any educational program for the young inmates. He said some youths only reluctantly left their cells when the doors were open because there was little to do. He added that although he was not a teacher he would gladly run classes if he could obtain the materials.

Many jails do not have separate sections for children. As a consequence children are repeatedly kept in their cells for extended periods or confined to very small areas. The result can be the equivalent of solitary confinement. At the time Amnesty International visited the Washington DC jail, it held just one girl. She was allowed out of her cell only briefly when the female inmates were locked in their cells because there was only one area available. Amnesty International delegates who visited jails in Maricopa County, Arizona, in 1997 were told that 13 children in "close custody" were allowed out of their cells for only one hour a day. Others were allowed out for four hours a day. Four female children - the only females in the facility - were each confined to a small cell containing just a bunk, toilet and sink, which afforded no privacy and were open to view through the barred cell doors. It appeared that they spent virtually all day in their cells, without any recreational facilities, and it was unclear what access, if any, they had to educational programs.

Recommendation

The federal, state and local governments should require detention and correctional authorities to ensure that children in custody have access to appropriate educational programs, and are provided with adequate time, space and facilities for exercise and recreation.

V THE DEATH PENALTY

"Retribution or vengeance seems difficult enough for a government to justify where adult offenders are involved and vengeance against children for their misdeeds seems quite beyond justification... The spectacle of our society seeking legal vengeance through the execution of children should not be countenanced." American Bar Association, 1983

In 1997 the American Bar Association, which takes no position on the death penalty *per se*, reiterated its outright opposition to the use of the death penalty against those who commit crimes when under 18 years old. In doing so, the organization echoed one of the longest-standing international restrictions on the death penalty, namely that young people should be exempted it. This principle recognizes that children are not yet fully mature and hence not fully responsible for their actions, and that the possibilities for rehabilitation of children are greater than for adults.

Article 6(5) of the ICCPR prohibits passing a death sentence on anyone aged less than 18 at the time of the crime. International standards deem this to be such a fundamental safeguard that it may never be suspended, even in times of war or internal conflict⁸. The USA signed the ICCPR in October 1977, thereby binding itself not to do anything which would defeat the object and purpose of the treaty, pending a decision whether to ratify it. In the time between signature and eventual ratification in June 1992, US state authorities executed five people for crimes committed when they were under 18, and sentenced to death more than 70 other such people.

When it ratified the ICCPR, the US government reserved the right to impose the death penalty for crimes committed by those under 18. In 1995 the UN Human Rights Committee, the body of experts set up to monitor compliance with the ICCPR, said that the US reservation was incompatible with the object and purpose of the ICCPR and should be withdrawn. However, since ratification, US state authorities have executed six prisoners for crimes committed when they were under 18, including two in 1998. In June 1998, there were 70 such prisoners awaiting this fate on US death rows.

⁸ Additional Protocols I and II to the Geneva Conventions of 12 August 1949 relating to the protection of victims of armed conflict not of an international character, articles 77.5 and 6.4 respectively.

In 1998, twenty-four US states permit the use of the death penalty against those under 18 at the time of the crime⁹. Fourteen states have legislation enforcing 18 as the minimum age¹⁰. The federal government has set 18 as the minimum age of eligibility with respect to violations of federal criminal law, but this does not absolve it from its responsibility to ensure that state governments do the same. Under international law, the federal government is the authority ultimately responsible for ensuring that **all** US officials comply with their international obligations. The US Constitution expressly establishes that powers to sign and ratify treaties reside with the federal state and not with the individual states.

The Convention on the Rights of the Child states that capital punishment should not be imposed for offences committed by persons below 18 years of age. All of the 192 countries which have ratified the Convention have agreed to this obligation without making a specific reservation to it, emphasising the almost global consensus that 18 should be the minimum age for capital defendants.

In contrast to this international consensus, some US politicians are calling for children as young as 11 to be made eligible for the death penalty. For its part, the US Supreme Court, while recognizing that the law should treat children and adults differently, has determined that 16 should be the minimum age, not 18. In *Thompson v. Oklahoma* in 1988, the Court ruled that the execution of a person who was 15 at the time of the crime breached the federal constitutional prohibition against the imposition of cruel and unusual punishments. In its decision the Court said: "Youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage." In 1989 the Court ruled that the execution of offenders aged 16 or 17 at the time of their crimes did not violate the constitution.

In 1993 the Court pointed to the greater scope for the rehabilitation of a young offender. It said that, "the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside." The Court said that, "a sentencer in a capital case must be allowed to consider the mitigating qualities of youth in the course of its deliberations over the appropriate sentence." However, US capital juries have not always been in a position to fully consider the defendant's youth as a mitigating factor, due to improper or ineffective guidance from prosecutors or defence lawyers.

The principle that the defendant's background, as well as age, should be taken into account as potential mitigation, has also not been universally followed in capital trials in the

⁹ The 24 states are (minimum age, either by statute or (US or state Supreme) court ruling, in brackets): **Alabama** (16), **Arizona** (16), **Arkansas** (16), Delaware (16), **Florida** (16), **Georgia** (17), Idaho (16), Indiana (16), **Kentucky** (16), Louisiana (16), **Mississippi** (16), **Missouri** (16), Montana (16), **Nevada** (16), New Hampshire (17), **North Carolina** (17), **Oklahoma** (16), **Pennsylvania** (16), **South Carolina** (16), South Dakota (16), **Texas** (17), Utah (16), **Virginia** (16), Wyoming (16).

States in bold had juvenile offenders on death row in June 1998.

¹⁰ California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee and Washington have a minimum age of 18.

USA. Amnesty International's research indicates that many people on death row who committed murder when they were younger than 18 suffered violence or deprivation during childhood.

In the USA and many other countries, violent crime is a serious problem. Such crimes have tragic and lasting ramifications for the families and loved ones of the victims. As an organization dedicated to the victims of human rights violations, Amnesty International would never seek to excuse or belittle these crimes. But the death penalty is a calculated denial of the right to life and the right not to be subjected to cruel, inhuman or degrading punishment - basic rights to which all human beings are entitled, no matter who they are or what they have done.

There is an international legal and moral consensus against any nation executing people for crimes they committed when they were children. However heinous the crime, the sentencing to death and execution of a young person denies the possibility of rehabilitation, and cannot be justified on grounds of retribution or deterrence. As such, ending the death penalty against people for crimes they committed when they were under 18 years of age is a particularly appropriate first step towards total abolition.

Recommendation

US federal authorities should withdraw the reservation to Article 6(5) of the ICCPR and take all necessary steps to ensure that state authorities comply with the international standards prohibiting the imposition of the death penalty on people for crimes they committed when they were younger than 18.

Authorities in the 24 states which currently allow for the death penalty for people who were under 18 at the time of crime should establish an immediate moratorium on the execution of these people pending the adoption of legislation imposing a minimum age of 18 at the time of the crime in capital trials.

VI DISCRIMINATION

The Universal Declaration of Human Rights and the international treaties and standards that it has inspired all provide that every person is entitled to the fundamental human rights that they enshrine without discrimination. The US Constitution and federal and state laws also prohibit discrimination on the basis of race, sex, disability and other grounds. However, parts of the US justice system treat children in a discriminatory fashion.

1. Gender

About a quarter of children who are in custody because they have been accused or convicted of violating the criminal law are female. The small proportion reflects the fact that they are arrested less often than males for offences generally and for serious violent and property crimes that are likely to result in custodial orders.

Because of the relatively small number of females accused and convicted of crimes, most detention and correctional facilities are oriented to dealing with males. Staff are therefore less likely to have knowledge and experience of what is required to meet females' needs effectively. The federal Office of Juvenile Justice and Delinquency Prevention has reported that "programs to address the unique needs of female delinquents have been and remain inadequate in many jurisdictions."

In 1992 Congress legislated to require states participating in juvenile justice grants programs to analyse gender-specific services for the prevention and treatment of juvenile delinquency, including the types of services available, the need for such services, and to prepare plans for providing gender-specific services for the prevention and treatment of juvenile delinquency. Many states have participated in the programs and a variety of innovative programs have been established. Juvenile justice experts are developing new standards for facilities that will specify the need for gender-specific services. However, these will be voluntary.

Amnesty International considers that providing facilities with voluntary incentives and guidelines is not enough: all facilities should be *required* to provide services that take account of gender-related needs and should be *monitored* for their performance in this regard.

Recommendation

Authorities responsible for juvenile detention and correctional facilities should require those facilities to ensure that males and females receive equitable and appropriate treatment, and should monitor the compliance of facilities with this requirement.

2. Race

In comparison with their numbers in the general population, children of racial and ethnic minority background are greatly over represented at all stages of the general and juvenile justice systems. The disproportion is most marked for black youth. They make up only 15 per cent of the population aged between 10 and 17, but account for approximately 30 per cent of youth arrested, 40 per cent of youth held in custody in juvenile facilities and half of all cases transferred by juvenile courts for trial in adult criminal courts.

Various sources of information indicate that racial discrimination by law enforcement and justice authorities is one reason for the over-representation of black and other minority children. Evidence of discriminatory treatment and bias in police contacts with racial and ethnic minorities has been widely documented by commissions of inquiry, in court cases, citizen complaints and numerous individual testimonies. Amnesty International has received reports from many communities that police unjustly target black, Latino or Asian males, especially in inner cities, and automatically see them as potential criminal suspects. These include reports of the harassment of minority youths on suspicion of gang membership in Chicago, Los Angeles, Philadelphia and San Antonio.

Research studies have also found evidence that minority youths have been treated more severely than similarly situated white youths at different stages of the justice system,

from the point of arrest to sentencing. In surveys of people working in juvenile justice systems, many report that they have seen instances of bias.

Federal action

In 1992, in response to the increasing disproportion of minority youths in custody within the juvenile justice system, Congress legislated to require states and US territories to take measures to reduce the number of minority youths in secure facilities where their proportion exceeded their representation in the general population. As of late 1997, 38 states and territories were undertaking steps to reduce disproportionate minority confinement.

In 1997 members of a Senate Committee reviewing the legislation opposed the mandate to reduce disproportionate minority confinement. The majority recommended that it be replaced by programs targeted to geographic areas with the highest rates of crime. At the time of writing it was not known whether the amendment had sufficient support to be passed.

Amnesty International acknowledges that the over-representation of minorities in the criminal justice systems cannot be addressed effectively by measures restricted to the juvenile and general criminal justice systems. The major causes of the racial and ethnic disparities in the justice system are rooted in the massive inequalities and discrimination in the US community at large and must be dealt with by a range of economic, social and legal programs that fall outside the scope of this report.

However, the evidence of racial bias in the administration of law enforcement and criminal justice systems demonstrates that special measures to address discriminatory attitudes and conduct within the juvenile and adult justice systems, including by the police, must continue to be used.

In its recent general review of human rights concerns in the USA, Amnesty International recommended that the federal government should increase the use of a current program to reduce racially discriminatory treatment by law enforcement officers generally.¹¹ The federal government should also continue to press and assist authorities to take action with respect to the over-representation of children of minorities in the juvenile justice system.

Recommendation

The US Congress should continue to require states to monitor and take measures to reduce disproportionate minority confinement.

VII REMEDIES FOR VIOLATIONS OF RIGHTS

A number of the violations described in this report breach not only international standards but also the laws of the USA. Such violations include the brutal use of force and restraints, and the denial of adequate health care and other services. US courts have been an important mechanism to define the rights of children and to end appalling conditions and treatment.

¹¹*Rights for All*, 1998.

However, litigation provides a very slow, expensive and difficult remedy that is particularly inaccessible to children, many of whom are too young to be aware of their legal rights and may lack skills such as the literacy level required to take legal action.

Recognizing the vulnerability of all people deprived of their liberty to abuse and ill-treatment, international standards require authorities to appoint independent experts to inspect facilities on a regular basis and to draw the attention of competent authorities to any lack of compliance with standards and violations of the law. Within the USA a wide range of local and state systems inspect conditions and handle complaints. Although it was beyond the scope of the research for this report for Amnesty International to assess effectiveness of different arrangements, the organization considers that the following factors are significant and should be considered by US authorities:

(a) In order to detect the possibility of widespread ill-treatment, skilled inspectors must periodically speak with random groups of children in confidence. The authorities should not assume that the absence of formal complaints reflects a satisfactory state of affairs. Children may not complain because - rightly or wrongly - they think they will not be believed; because they fear that staff might retaliate; they may not be aware of their rights; or they may lack the skills (such as literacy) or self-confidence to complain.

(b) Inspectors must be and be seen to be completely independent of the management of the facilities that they are inspecting. If they are not, children may not make complaints because they do not believe their allegations will be impartially investigated.

(c) Detention and correctional facilities must maintain comprehensive and detailed records of all aspects of their treatment of children that should be the subject of inspections, such as the use of force and restraints. Unless they do this, it is not possible for inspectors to perform their responsibilities thoroughly.

(d) Grave violations of children's rights have occurred even where external monitoring arrangements were in place. Authorities should undertake periodic review of their inspection systems to ensure that they are functioning effectively.

Recommendations

State and local authorities should establish independent systems to:

- monitor whether detention and correctional facilities are complying with appropriate standards and
- investigate complaints of ill-treatment.

These systems should have adequate resources and authority to undertake their functions effectively, and their effectiveness should be periodically reviewed.

VIII SUMMARY OF AMNESTY INTERNATIONAL'S RECOMMENDATIONS TO US AUTHORITIES

Amnesty International urges the federal, state and local governments to ensure that the legislation, policies and practices for which they are responsible are in complete accordance

with the rights of children that are set out in international human rights treaties and other instruments. In particular, Amnesty International recommends that relevant governmental, law enforcement and justice authorities act promptly to achieve the following outcomes:

1. Comprehensive adoption of international commitments on the rights of children, including:
 - withdrawal of the US reservations to the ICCPR and ;
 - ratification without reservations of the Convention on the Rights of the Child.

2. Incarceration should be used only **as a last resort**. State and local authorities should review their legislation, policies and practices to ensure that children who are accused or convicted of violating the law are not deprived of their liberty except as a last resort. In particular, all authorities should:
 - undertake periodic reviews to assess whether children are being placed in custody only when no alternative is appropriate; if the reviews find cases where alternatives were appropriate, authorities should take action to change the policies or practices that cause the excessive use of incarceration;
 - provide an adequate range and number of community-based detention and correctional programs;
 - provide adequate mental health services in the community so that children whose violation of the law is a reflection of significant mental health problems can be treated in therapeutic rather than correctional environments.

Juvenile justice systems should as a matter of course assess children to determine whether they should receive specialized care and should not be placed in a detention or correctional facility.

3. The US federal government should require state and local governments to establish comprehensive standards for juvenile detention and correctional facilities that are consistent with international standards and monitor the implementation of this requirement. The US government should inform the Committee Against Torture about measures to prevent torture and other cruel, inhuman or degrading treatment or punishment, including solitary confinement, against children in the report it is due to submit on its implementation of the Convention Against Torture.

State and local governments should end the cruel use of force and restraints by:

- providing adequate resources to prevent overcrowding and allowing facilities to employ sufficient staff;
- requiring staff to be specially trained to work with children, particularly those with mental health problems. The training must include skills that reduce the necessity for the use of force;
- prohibiting the use of electro-shock weapons in juvenile detention and correctional facilities;
- strengthening inspection systems (see recommendation 13).

US federal authorities should conduct inquiries into the use of chemical restraints and restraint chairs in juvenile detention and correctional facilities.

4. State and local governments should prohibit the use of solitary confinement as a punishment for children in confinement.

5. State and local governments should provide adequate services for children with mental health problems. They should:

- (a) require juvenile and detention and correctional facilities to provide comprehensive physical and mental health care services by qualified personnel;
- (b) provide adequate funds to enable facilities to provide the required services;
- (c) impose specific standards to allow effective monitoring of the adequacy and quality of services and;
- (d) routinely monitor performance.

6. State and local governments should legislate to keep children in custody completely separate from adult inmates unless it is considered in the child's best interest not to do so.

The US Congress should legislate to require states to segregate detained and imprisoned children from adult inmates.

7. Federal and state governments should legislate to ensure that children are not mandatorily prosecuted and punished as adults. In particular,

- children should not be subjected to harsh, fixed periods of incarceration, notably life imprisonment without possibility of release.
- courts should be required to consider the well-being and circumstances of individual children when imposing sentences.

8. Federal and state governments should fix a minimum age of criminal responsibility that takes account of children's emotional, mental and intellectual maturity.

9. All authorities should require detention and correctional authorities for which they are responsible to ensure that children in custody have access to appropriate educational programs, and are provided with adequate time, space and facilities for exercise and recreation.

10. US federal authorities should withdraw the reservation to Article 6 (5) of the ICCPR and take all necessary steps to ensure that state authorities comply with the international standards prohibiting the imposition of the death penalty on people for crimes they committed when they were children.

Authorities in the 24 states which currently allow for the use of the death penalty for people who were under 18 at the time of the crime should establish an immediate moratorium on their execution pending the adoption of legislation imposing a minimum age of 18 at the time of the crime in capital trials.

11. State and local authorities should require juvenile detention and correctional facilities for which they are responsible to ensure that males and females receive equitable and appropriate treatment, and should monitor the compliance of facilities with this requirement.

12. The US Congress should continue to require states to monitor and take measures to reduce disproportionate confinement of children.

13. Authorities responsible for detention and correctional systems should establish independent systems to monitor compliance and investigate complaints. These systems should have adequate resources and authority to undertake their functions effectively, and their performance should be periodically reviewed.