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Where Have All the Children Gone?: A Look at Incarcerated Youth in America

Cynthia M. Conward

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ESSAY: WHERE HAVE ALL THE CHILDREN GONE?: A LOOK AT INCARCERATED YOUTH IN AMERICA

Cynthia M. Conward†

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I. INTRODUCTION

Isn't it an old cliché that "children are our future, our greatest resource, and our hope for a better tomorrow?" Why is it then that

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of the twenty-eight million adolescents in the United States, one in four is at risk of engaging in socially unacceptable behaviors like abusing alcohol and drugs, committing delinquent acts, failing academically, dropping out of school, and practicing early unprotected sexual intercourse. Why are the consequences of these acts resulting in court felony convictions for young people, which may also include a loss of a number of rights and privileges, such as losing the right to vote, losing the right to serve in the military, or incarceration in an adult prison? Youth incarceration is the main focus of this publication.

This publication will discuss what life is like for a large number of the 69,075 juveniles in state public juvenile facilities, along with the 468 juvenile offenders who have been adjudicated in the State and Federal criminal justice systems. Part II will discuss the history of confinement of juveniles. Part III will discuss the current conditions of juveniles in confinement, and Part IV will review new innovative ideas, protections, and programs that are available for youth at risk.


2. Richard E. Redding, Legal Consequences of Criminal Court Adjudication, Juvenile Forensic Evaluation Resource Center at 1. Other consequences may include losing the right to own a firearm, having a conviction be made a public record, having to report a conviction on employment applications, being subject to criminal court jurisdiction for all subsequent offenses committed as a juvenile, receiving adult sentences, and risking the possibility of the death penalty for capital offenses, if age sixteen at the time of the offense. Id. The words "prison" and "penitentiary" are used synonymously to designate institutions for the imprisonment of persons convicted of the more serious crimes, as distinguished from reformatories and county or city jails. Black's Law Dictionary 1154, 1213 (7th ed. 1999).

3. Joseph Moone, States at a Glance: Juveniles in Public Facilities, 1995 (Nov. 1997), at http://www.ncjrs.org/txtfiles/fs-9769.txt. California, Ohio, Texas, New York, Florida, and Illinois together held 50.4% (34,800) of the juveniles in custody in public facilities, with California having the highest number of juveniles in custody in public facilities (19,567), and Vermont with the lowest number (twenty-four). Id.

4. U.S. Dep't of Justice, Juvenile Delinquents in the Federal Criminal System, Bureau of Justice Statistics (1995), available at http://www.ojp.usdoj.gov/bjs/abstract/jdfcjs.htm. Forty-nine percent of these cases were declined further action and about one third of those juveniles adjudicated delinquent were committed to a federal correctional facility with the average length of confinement ordered being thirty-four months. Id.
II. HISTORY

The criminal sanctioning of juvenile offenders is not a contemporary phenomenon. Close to a century ago, there was no emphasis on the special needs of juveniles in this country. Adults and juveniles who violated the law were processed in the same manner and subjected to the same types of punishments, which included whippings, mutilations, banishment, torture, and death. Children were seen as being different from adults only in their size. The larger urban jails, county jails and prisons contained men, women and juveniles who were felons, misdemeanors, insane and sane, sometimes all mixed together. The juvenile justice system developed as a result of the atrocities children were subjected to in adult jails, which led to their return to society as hardened criminals. Most people believed that juvenile and adult offenders should be incarcerated separately; consequently, special correctional institutions for youthful offenders were established. In 1820, for example, New York started the first school for males, which was later renamed The House of Refuge. New York’s House of Refuge accepted children guilty of crimes, at risk of getting into trouble, poor, destitute, incorrigible and orphaned. Boston then opened a House of Refuge in 1826, and Philadelphia followed in 1828.

In the mid-nineteenth century as a continuation of the Houses of Refuge, reformatories, or training schools, were developed, dif-

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8. BARTOLLAS & MILLER, supra note 5, at 309.
11. BARTOLLAS & MILLER, supra note 5, at 310.
12. Id. at 310. In some institutions, the youth were taught trades, such as manufacturing shoes, brushes and chairs, or they were readied for apprenticeships to local craftsmen. Id. The first of the houses of refuge set aside for females was chartered in New York in 1824. Id. Most of the schools, especially those in the South, were segregated and African Americans were sent to the state prisons and county jails rather than the new houses of refuge. Id. at 311.
13. Id. at 310.
14. A reformatory is “a penal institution for youthful offenders where the emphasis is on reformation of the juvenile’s behavior.” BLACK’S LAW DICTIONARY 1285 (7th ed. 1999).
ferring by requiring a longer period of schooling. Out of this concept grew the Cottage systems, which were training schools that were no longer fortress-like. Changing behavior was a priority instead of deterrence, with the court providing these youth with the guidance they lacked from their natural parents.

The 1960s and 70s brought about a period of reform, where the emphasis was on reducing the use of training schools and reforming the juvenile justice system. This reform period lasted only until the end of the 1970s and in its place a "get-tough approach" came into existence.

Society once again began changing from one that was primarily oriented toward rehabilitation to a society that was again subjecting juveniles to conservative criminal court practices. States again wanted to increase rather than decrease their power over citizens. This cyclical relationship between reform and retrenchment in

15. BARTOLLAS & MILLER, supra note 5, at 312. Another change was that the contracting of inmates' labor became more exploitative, as manufacturers often inflicted cruelty and violence against juveniles during working hours, for example, using the cat-o'-nine tails on youths who slacked off on their work in the reformatory shops. Id.

16. Id. at 313. With this system, the process of individual reform could be furthered, because residents were housed in separate buildings. Id. Twenty or thirty to a cottage were placed outside cities on farms where they would be exposed to the rural virtues, the simple way of life, and nature's bounty. Id. at 312.


18. JAMES C. HOWELL, JUVENILE JUSTICE & YOUTH VIOLENCE 47 (1997). In 1974, the President's Commission on Law Enforcement and Administration of Justice was established to examine the infirmities within the juvenile justice system. Id. As a means of handling minor offenders in the community, in lieu of juvenile court, the crime commission recommended that communities establish neighborhood youth-serving agencies that would act as brokers of all community services for young people, put limitations on confinement, and encourage early intervention and provisions of services outside the juvenile justice system. Id. at 16.

19. BARTOLLAS & MILLER, supra note 5, at 314.

20. Mark Soler, Juvenile Justice in the Next Century: Programs or Politics, 10 CRIM. JUST. 27 (1996). The political pressure to "get tough" on juvenile offenders is problematic when one considers that the nation's overall crime rates have actually fallen over the last twenty years and that ninety-four percent of young people arrested in the United States are arrested for non-violent, property crimes or less serious offenses. Id.

21. BARTOLLAS & MILLER, supra note 5, at 315. It was believed that the reformers were unable to create meaningful programs and policies aimed at persistent and serious youth crimes. Id.


23. BARTOLLAS & MILLER, supra note 5, at 5.

24. "Retrenchment" refers to when both juvenile officials and the general public believe that youth crime is at an exceptionally high level. THOMAS BERNARD, THE CYCLE OF JUVENILE JUSTICE NEW YORK 3-4 (1992).
the juvenile justice system is clearly evident as one looks at the history of changes in the Juvenile system, and society's inability to find the appropriate sanctions for juvenile offenders.  

Fear of crime has influenced today's politicians and laypersons to adopt the position that a conservative justice system, one that punishes and deters, holds the most promise to begin curtailing juvenile crime. Consequently, State lawmakers have responded to public fears by passing laws to sentence juveniles as adults. Despite the lessons of history, Congress stands poised to reunite adults and juveniles in the same prison system again.

So what will happen in the future to the juvenile justice system? There are those who agree that the following trends will occur: (1) the juvenile population will increase by one third; (2) there will be an emergence of the “super-predator”; (3) the “get-tough” response that has been surfacing over the past five years will get much tougher in the future; and (4) the importance of linking crime rates to family and social economic factors is a trend towards breaking the spirit of violent lawbreakers, whether or not they can be rehabilitated or controlled.

III. JUVENILE INCARCERATION

The United States rate of incarceration is first in the world. This important factor is relevant when looking at the increased

25. BARTOLLAS & MILLER, supra note 5, at 317.
27. E.g., CONN. GEN. STAT. § 46b-127 (2000); FLA. STAT. ANN. § 985.03(47) (West 1997); 75 ILL. COMP. STAT. ANN. 405/5-815 (West 1999); N.M. STAT. ANN. § 32A-2-20 (Michie 1999); N.Y. FAM. CT. ACT § 301.2 (8) (Gould 1983).
A 1996 study found that more than half of local news stories on youth involved violence, and more than two thirds of the violence stories concerned young people under age twenty-five even though fifty-seven percent of violent crime is committed by people aged twenty-five or over. Id. Robin Templeton’s, Teen “superpredators” hype, set the stage for draconian legislation. Id.
number of incarcerated juveniles. Children with imprisoned parents are almost six times more likely than their counterparts to become incarcerated.\textsuperscript{31} Incarceration in this country continues in spite of a study that found the ninety-two percent increase in the U.S. rate of incarceration had little overall impact on crime rates in the ten-year period between 1985 and 1995.\textsuperscript{32}

A. Changes In Sentencing For Juveniles

The Eighth Amendment to the United States Constitution provides that "excessive bail shall not be required, nor excessive fines imposed nor cruel and unusual punishments be inflicted."\textsuperscript{33} Does this apply to juvenile offenders who are now being prosecuted and sentenced with the consequences of the death penalty and life sentences without possibility of parole?\textsuperscript{34} One author commented, "[These] prison inmates who are not yet old enough to purchase cigarettes from the prison canteen have no constitutional basis to challenge the length of their sentences."\textsuperscript{35}

The United States has carried out the greatest number of known executions of juvenile offenders.\textsuperscript{36} In states that have death penalty statutes, juvenile offenders waived into adult court are deemed to be adults, and if they are at least sixteen years of age at the time of their crimes, this means the death penalty could be a reality.\textsuperscript{37} There were 130 juveniles, under eighteen, sentenced to

\textsuperscript{31} S. Barnhil & Dressel, THREE GENERATIONS AT RISK, ATLANTA, GA: AID TO IMPRISONED MOTHERS (1991). For example, in Alexander v. Boyd, 876 F. Supp. 773 (D.S.C. 1995), the courts commented that among the fifty states, South Carolina ranks forty-third in spending on juvenile corrections and has the fifth highest rate of adult crime. Id. at 780. The court further determined that there is a likely correlation between those two statistics; between fifty-six and eighty-two percent of the juveniles leaving South Carolina facilities commit crimes that send them to adult prisons. Id.

\textsuperscript{32} Mauer, supra note 30.

\textsuperscript{33} U.S. CONST. amend. VIII.

\textsuperscript{34} See generally, Wayne A. Logan, Proportionality and Punishment: Imposing Life without Parole On Juveniles, 35 WAKE FOREST L. REV. 681, 681 (1998). In Washington, offenders as young as eight years of age can be sentenced to life without parole, while in Vermont, ten-year-olds can receive such terms. Id. at 690.

\textsuperscript{35} Id. at 684. "Eighth Amendment proportionality challenges brought by juveniles against such sentences have been met with limited success in state courts, and no success in the federal system." Id.


\textsuperscript{37} Logan, supra note 34, at 689. Twelve states plus the District of Columbia remain without the death penalty: Alaska, District of Columbia, Hawaii, Iowa,
death from 1973 to 1996. Six percent of these youth sentenced have already been executed, and the rest are awaiting their final destiny. As of October 1, 1998, seventy-four persons were on death row under death sentences received while they were juveniles. Texas has the largest death row for juvenile offenders, and now holds twenty-seven, or thirty-six percent, of the national total of seventy-four juvenile offenders on death row.

When sentenced to life without parole, young offenders run an even greater risk of physical and sexual assault by the older, more mature offenders, and will suffer this fate for years to come. Although the Supreme Court has implied that the death penalty cannot be imposed on offenders who have not yet reached age sixteen at the time of their crime, states are free to impose this "penultimate penalty" of life without parole and often do so in the form of a mandatory sentence.

B. Types Of Confinement

The purpose of juvenile detention historically has been for the temporary and safe custody of juveniles who are accused of mis-

39. Id.
40. Streib, supra note 36, at 4. Although they were seventeen years old at the time of their crimes, their current ages range from eighteen to thirty-nine, and they have been on death row from a few weeks to nearly twenty years. Id. As of April 1999, sixty-five offenders were on death row. AIUSA, US Death Penalty: Execution of juvenile Offenders, available at http://www.amnesty-usa.org/abolish/juvexec.html (last visited Feb. 8, 2001).
41. Id.
42. Logan, supra note 34, at 713.
44. Logan, supra note 34, at 707. The Kentucky Supreme Court asserts that "life without parole for a juvenile, like death, is a sentence different in quality and character from a sentence to a term of years subject to parole." Hampton v. Kentucky, 666 S.W.2d 757, 741 (Ky. 1984). Currently, thirty-nine states and the federal government have statutes authorizing the death penalty for certain forms of murder. Logan, supra note 34, at 690. Of those jurisdictions, fifteen (38%) have expressly chosen age eighteen at the time of the crime as the minimum age for eligibility for the death penalty, another four (10%) have chosen age seventeen as the minimum. Id. The other twenty (51%) of the death penalty jurisdictions use age sixteen as the minimum age, either through an express age in the statute (nine states) or by court ruling (11 states). Id.
conduct and for those who may require a restricted environment for their own or for the community's protection. They are placed in public juvenile facilities, both secure and non-secure, that are used to hold pre- and post-adjudicated individuals under the jurisdiction of the juvenile court. The number of juveniles in custody is affected by differences in state laws, policies and practices. Of those incarcerated, ninety-six percent are held for delinquent offenses, a small number for status offenses, and about one percent for other reasons, including dependency or neglect.

The increase of juveniles being transferred to adult court has resulted in longer pretrial stays, which are mostly the result of appeals. While they are placed in these facilities, the juveniles are not provided with educational or other services that would be available to youth in detention facilities. The constitutionality of confining children in adult jail has been dealt with in the Oregon Courts, which have held: "(1) that jailing child pretrial detainees constituted "punishment" in some circumstances, and thus violated the due process clause; (2) confinement of a runaway child or a child out of parental control in jail constituted punishment and violated their due process rights; and (3) lodging a child in modern adult jail, pending adjudication of criminal charges, would be fundamentally unfair so as to violate his due process rights."

47. Id. For example, states laws differ regarding the upper age of original or extended jurisdiction, and whether or not a juvenile is subject to juvenile court jurisdiction may depend on the specific offense in the state. Id.
48. "Delinquent offenses can no longer be considered mere youthful indiscretions that will have no permanent impact on the youth's future, but instead there is more of a concern that a delinquency adjudication may be considered and counted against the young person if there are subsequent charges of criminal acts." Marcia McLvor, Can You Be a Good Lawyer When Your Client Needs a Social Worker, 33 Ark. Law. 32, 35 (Fall 1998).
49. "A status offense is one committed by children who, by virtue of their ages, are confined for being beyond parental control or for running away from home." D.B. v. Tewksbury, 545 F. Supp. 896, 898 (D. Or. 1982).
50. Moone, supra note 3, at 2.
51. Patricia Torbet et. al., U.S. Department Of Justice, State Responses to Serious and Violent Juvenile Crime 1, at 7 (July 1996).
54. Id. at 906.
55. Id. at 907.
Today, juveniles in all states can be tried as adults under certain circumstances. This has serious consequences for state adult corrections systems as well as for the criminal justice system as a whole. Although there was only a fourteen percent increase in the number of youth in prisons between 1985 and 1995, the admission of youth to prison has been steadily increasing. The Bureau of Justice Statistics estimated 8,100 youth under the age of eighteen were being held in adult prisons.

Of tremendous concern is the fact that, while incarcerated in adult facilities, juveniles no longer have the protections of the "sight and sound separation" originally afforded to them. The new regulations permit the sharing of common use nonresidential areas of adult and juvenile facilities on a time-phased basis, which according to the American Bar Association, increases the risk of contact between the two groups. The majority of those juveniles waived to criminal court (and sentenced accordingly) will re-enter society not only stigmatized by their criminal label but in all likelihood, be more dangerous than they were before being sanctioned as adults, especially when they serve time in prison alongside of the

59. SICKMUND, supra note 38, at 43.
60. American Bar Association, Criminal Justice Section, Juvenile Justice Center, ABA Comments 1, available at http://www.ABA comments.htm. The comments are made by the American Bar Association in reaction to the Office of Juvenile Justice and Delinquency Prevention publication of the final revisions to the regulations enforcing the Juvenile Justice and Delinquency Prevention Act's Formula Grants Program (a.k.a. "the mandates") on Dec. 10, 1996. Id. Under the old regulations, "sight and sound separation" originally afforded to them. The new regulations permit the sharing of common use nonresidential areas of adult and juvenile facilities on a time-phased basis, which according to the American Bar Association, increases the risk of contact between the two groups. The majority of those juveniles waived to criminal court (and sentenced accordingly) will re-enter society not only stigmatized by their criminal label but in all likelihood, be more dangerous than they were before being sanctioned as adults, especially when they serve time in prison alongside of the

61. Id. at 2. The ABA comments that by creating categories of acceptable contact between juveniles and adults, the safety of juveniles in secure facilities will be further compromised, and reported contact is now at the discretion of observer. Id. The new rules do not require the states to report brief and inadvertent or accidental contact between juveniles and adults in secure areas of a facility that are not dedicated to use by juvenile offenders and are nonresidential. Id. An example can be found in the death of a youth in Ohio juvenile whose attackers were eighteen and older and were restricted to another part of the prison from where the youth was placed. Kristen Delguzzi, Prison Security Went Awry: Youth Killed When Adults Entered Cellblock, THE CINCINNATI ENQUIRER, Apr. 30, 1996, at B01.
criminal adults.  

At present, the youngest age at which an offender may be sentenced to the state's adult correctional system is fifteen years old in Washington state. California incarcerates juveniles at a higher rate than any other state, and only the District of Columbia has a higher proportion of its juveniles incarcerated.  

Under federal law, juveniles who commit an act of delinquency may be processed as a juvenile provided the person has not attained age twenty-one. During the disposition hearing, a juvenile may be ordered to pay restitution, placed on probation or committed to a correctional facility.  

Boot camps are also available for juveniles, but have been...
found to be as ineffective as the wholesale incarceration of youth in adult facilities, and will neither reduce crime nor save on prison costs. Boot camps have also not been shown to reduce recidivism or deter crime. 69

Statistical analysis has shown that juvenile boot camps cannot save money unless they have hundreds of beds and the stay is limited to three months. 70 Juvenile boot camps also can include youth that previously would not have been locked up, 71 and could only reduce correctional costs if the participants are selected from the population that already qualified for incarceration. 72

C. Conditions In Facilities

The similarities between the juvenile and adult justice system are that both systems must deal with case overloads, are overcrowded, operate on fiscal shoestrings, and face the ongoing problems of staff recruitment, training and burnout. 73 Adult correctional institutions however, are a world apart from nearly all training schools. 74 For example, few Departments of Corrections

that shall include: physical training component, education and job training and placement, community service, substance abuse counseling and treatment, health and mental health care, continuous, individualized case management, and intensive aftercare services that are fully integrated with the boot camp program. BRENT ZAEHRINGER, JUVENILE BOOT CAMPS: COST AND EFFECTIVENESS VS. RESIDENTIAL FACILITIES KOCH CRIME INSTITUTE, 1-2 (July 1998).


69. ZIEDENBERG & SCHIRALDI, supra note 9, at 6. The recidivism rate for boot camps in the U.S. is between sixty-four percent and seventy-five percent. Id.

70. Id. See also DALE PARENT, U.S. DEP’T OF J., PLANNING A BOOT CAMP (Apr. 1, 1995).

71. The United States Code states:
A person shall be eligible for assignment to a boot camp if he or she (1) is considered to be a juvenile under the laws of the State of jurisdiction; and (2) has been adjudicated to be delinquent in the State of jurisdiction or, upon approval of the court, voluntarily agrees to the boot camp assignment without a delinquency adjudication.


72. Beyer, supra note 68, at 1. See also PARENT, supra note 70.

73. BARTOLLAS & MILLER supra note 5, at 11. The basic vocabulary is the same in the juvenile and adult systems, and even when the vocabulary differs, the intent remains the same. Id. For example: “adjudicatory hearing” is a trial; “aftercare” is parole; “commitment” is a sentence to confinement; “detention” is the same as holding in jail; “dispositional hearing” is the same as a sentencing hearing; “juvenile court officer” is a probation officer; “petition” is an indictment; “taking into custody” is the same as being arrested; a “petitioner” is a prosecutor; a “respondent” is a defense attorney; a “minor” is a defendant. Id. at 12.

74. Id. at 350.
have special staffing policies for selecting or training those who work with youthful offenders,\(^7\) and few provide special programming for youth.\(^7\)

It has also been found that adult correctional institutions create violent and dangerous situations for juveniles, some of whom become subject to rape,\(^7\) exploitation, exposure to drugs and disease\(^7\) and have higher rates of suicide.\(^9\)

A 1993 study on the conditions of confinement of juveniles found institutional crowding to be pervasive. Institutional population exceeds the facility's design or program capacity.\(^8\) More than seventy-five percent of the confined population in juvenile detention and correctional facilities was housed in facilities that violated one or more standards related to living space.\(^8\) The study also reported the following: (1) juveniles injured 6,900 staff and 24,200

\(^7\) There are various statutory or agency definitions of "youthful offender." Offenders Under Age 18 in State Adult Correctional Systems: A National Picture, 1 CORRECTIONS 2 (Feb. 1995). In five states, youthful offenders are over the age of eighteen, in eleven states under eighteen, five states and Puerto Rico both under and over the age of eighteen, and eight states define youthful offenders as those under a particular adult age with no specific age minimum. \textit{Id.}

\(^8\) Close to ten percent of the youth interviewed reported a sexual attack or rape attempt had been levied against them in the adult prisons, while closer to one percent reported the same in the juvenile institution. \textit{Id.}

\(^9\) (reporting that the suicide rate of juveniles in adult jails is 7.7 times higher than that of juvenile detention center, but that the juvenile institution suicide rate was lower than that of the general population).

\(^8\) This study was required by Congress in its 1988 Amendments to the Juvenile Justice and Delinquency Prevention Act, and included surveys mailed in 1991 to all 984 public and private juvenile detention centers, reception and diagnostic facilities, training schools, and ranches, in addition to a two day site visit to a representative sample of nearly 100 facilities. \textit{Id.}

"Design capacity" is defined as the number of people that can safely occupy a building or space as determined by the original architectural design, building modifications, licensing, accreditation, regulatory authorities, and Fire Marshall building codes. SICKMUND, \textit{supra} note 38.

"Program capacity" is defined as the number of personnel and the amount of funding necessary to effectively operate the facility consistent with established standards. \textit{Id.}

\(^8\) ALLEN-HAGEN, \textit{supra} note 80.
other juveniles, (2) 11,000 juveniles committed 17,600 acts of suicidal behavior, with ten suicides in 1990, and (3) more than 18,600 incidents required emergency medical care.  

D. Lack Of Educational Programs

One common characteristic of juveniles incarcerated in correctional and detention facilities is their prior poor experience in elementary and secondary education. A significant number of these youths are reading below the fourth grade level and are deemed functionally illiterate. Realistically, how could one expect that when released from confinement they will experience anything more than great difficulty in today's increasingly technological world?  

A report of the American Psychological Association, Commission on Violence and Youth, concluded that academic factors, such as poor school achievement, poor attendance, and suspensions place youth at risk of antisocial behavior. The report also found that those more serious or chronic offenders had lower academic skills in childhood than did those showing less serious or less chronic antisocial activity achievement. Why then, for example, would the state of California spend more to incarcerate a youth than it does to educate a young person?

82. Id. In 1994, in Puerto Rico, an investigation addressed life-threatening conditions at eight juvenile detention and correctional facilities. The researchers learned that juveniles were committing and attempting suicide without staff intervention or treatment, that there was widespread infection and control problems caused by rats and other vermin, and that defective plumbing forced juveniles to drink from their toilet bowls. PATRICIA PURITZ & MARY ANN SCALL, U.S. DEP’T OF JUSTICE, BEYOND THE WALLS: IMPROVING CONDITIONS OF CONFINEMENT FOR YOUTH IN CUSTODY REPORT, OJJDP (1998).

In Atlanta, researchers reported that guards batter incarcerated children, place four children in cells meant for one, provide one or two teachers and physicians to work with as many as 100 incarcerated children. Cynthia Tucker, My Opinion Juvenile Jails: Preparing Troubled Kids For Lives Behinds Bars, ATLANTA J. & ATLANTA CONST., 1998, at A10. The author suggests that this system invites abuse because most of the incarcerated children are black, poor, and should not be in jail to begin with. Id.


84. Id.

85. Id.

86. ROLF LOEBER & DAVID P. FARRINGTON, SERIOUS & VIOLENT JUVENILE OFFENDERS; RISK FACTORS AND SUCCESSFUL INTERVENTIONS 1 (1998).

87. Id.

88. California Youth Authority, Office of Public Affairs, Ward Per Capita Cost,
E. Inadequate Physical And Mental Health Care

Incarceration has been described as "dehumanizing, debasing and destructive of the sense of individual worthiness."\(^{89}\) In addition, incarcerated youth are also going through the stage of adolescence,\(^ {90}\) during which the consequences of being imprisoned can be psychologically detrimental.\(^ {91}\) The adult criminal system, boot camps in particular, fail the basic test of balancing nurturing and opportunities for independence, which violates the basic principles of adolescent behavior.\(^ {92}\)

In addition, almost half of the juveniles who are incarcerated have identifiable mental health disabilities, including mental retardation, learning disabilities and emotional and behavioral disorders.\(^ {93}\) It is often the juvenile’s mental health that affects the court’s judgment when making a determination on transfer and other dispositional placements in the first place.\(^ {94}\)

Individuals with Attention-Deficit/Hyperactivity Disorder (ADHD) come into contact with the criminal justice system at a statistically higher rate than others in the general population.\(^ {95}\) The Fiscal Year 1996/97. California spends $32,200 per year to house a youth at the CYA and $5,327 to educate a student. \(\text{Id.}\)

89. MARIA ALEZANDRA ZEPEDA, GIRLS IN COUNTY JUVENILE HALL, A STUDY THAT FOCUSED ON A CALIFORNIA COUNTY JUVENILE HALL, at http://www.aad.berkely.edu/95journal/MariaZepeda.html.
90. "Adolescence" is defined as a transitional period involving psychological growth and oftentimes “prolonged crisis.” \(\text{Id.}\)
91. ZEPEDA, supra note 89.
92. Beyer, supra note 68, at 2 (explaining that teenagers are fairness fanatics, reject imposed structure, and respond to encouragement rather than punishment).
93. PURITZ & SCALL, supra note 82, at 6.
94. Lynda E. Frost & Robert E. Sheperd, Jr., Mental Health Issues in Juvenile Delinquency Proceedings, A.B.A. SEC. CRIM JUST. 1 (1996), available at http://www.abnet.org./crimjust/juvjus/cjmental.htm. The mental health of a juvenile is relevant to a number of issues in a delinquency proceeding, for example the judge may wish to know about prior mental health treatment, social and emotional maturity, special needs, and other indications of a mental disorder at the time of the offense. \(\text{Id.}\) At all stages in adult court it is imperative that a criminal defendant have “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding ... as well as factual understanding of the proceedings against him,” and also have the capacity to assist in preparing his defense. Dusky v. United States, 362 U.S. 402, 402 (1960). \(\text{See also}\) Drope v. Missouri, 420 U.S. 162, 171 (1975). Also noteworthy is that some states have a definition of “incompetence” for juveniles that is more restrictive than the adult constitutional standard, requiring that the incompetence result from an underlying mental disease or defect. AZ. R. CRIM. P. 11.1; D.C. CODE ANN. §§16 23215 (1997).
95. Sam Goldstein, Attention-Deficit/Hyperactivity Disorder Implications for
rate of borderline and antisocial personality disorders appears seven times higher in individuals with histories of ADHD. It appears that the worse an individual’s ADHD symptoms get, the more likely it is that the individual might progress to criminal behavior.

To be institutionalized is a painful process for most offenders, but the mentally ill, persons from different racial or ethnic groups, and women often show distinctive patterns of adjustment and breakdown in confinement. Misunderstood minority youth fall into this category, consequently ending up in the juvenile justice system rather than in the mental health system.

It is also common that when youth are incarcerated, they exhibit righteous indignation, rage, fear and anxiety, shame and humiliation, despair and hopelessness. It is a child’s ability to cope that determines which of these emotions are strongest.

Reportedly, AIDS cases among confined juveniles in juvenile facilities reported a cumulative total of sixty. Although youth have some basic knowledge about how HIV and STD’s are transmitted, confined juveniles often lack a sense of personal risk nor do they think about the consequences of high-risk behavior. Substance abuse, unprotected sex and lack of primary health care are likely to place juveniles who are in confinement, disproportionately
at risk for HIV, STDs and other health problems.\textsuperscript{105}

Many juvenile justice systems do not provide extensive information about HIV/AIDS's prevention because of the pressure of society and juvenile justice agency regulations that prohibited delivering explicit messages and distributing materials such as condoms.\textsuperscript{104} Only two state prison systems, four city/county jail systems and one county juvenile system in the U.S. made condoms available to inmates for use in their facilities, and only one jail system reported officially making bleach available.\textsuperscript{105}

A NIJ/CD Cal Health study, found that virtually all-adult correctional and juvenile systems prohibited their populations access to the means of practicing practical risk reduction.\textsuperscript{106}

\textbf{F. Effects Of Confinement On Incarcerated Boys}

National data for juveniles and adults combined shows that males account for 85\% of violent crimes and 73\% of property crimes.\textsuperscript{107} It has also been found that boys who grow up without a father in the household are at twice the risk of being incarcerated when compared with youth from intact families.\textsuperscript{108} The odds of incarceration for youths from stepparent families are even higher, almost three times as high as for youth from families where both the mother and father are present.\textsuperscript{109}

In October, 1998 all of the juveniles on death row were male and as of June 1999, seventy juveniles on death row were also

\begin{itemize}
\item \textsuperscript{103} \textit{Id.} at 2. There is also a higher risk due to sharing of drug injection equipment, and tattooing. \textit{Id.} Among juvenile systems studied, the gonorrhea incidence rates were forty-two times higher among confined boys than in the corresponding age groups in the U.S. population. \textit{Id.}
\item \textsuperscript{104} \textit{Id.} at 1.
\item \textsuperscript{105} \textit{Id.} at 3.
\item \textsuperscript{106} \textit{Id.}
\item \textsuperscript{107} \textit{BARTOLLAS \& MILLER}, supra note 5, at 63.
\item \textsuperscript{108} Cynthia C. Harper \& Sara S. McLanahan, \textit{A Summary of Father Absence and Youth Incarceration}, \textit{AMERICAN SOCIOLOGICAL ASSOCIATION} (Aug. 1998), at \texttt{http://www.tyc.state.tx.us/prevention/father.htm}. This study was conducted by analyzing a nationally representative sample of 6000 males ages fourteen through twenty-two, from 1979–1993. \textit{Id.} The study concluded that father absence is more common among disadvantaged populations who contend with innumerable socioeconomic difficulties such as teen motherhood, low education, urban residence, and racial inequalities. \textit{Id.} at 2
\item \textsuperscript{109} \textit{Id.} at 1. \textit{See also} Streib, supra note 36. Ninety-eight percent of the juveniles sentenced to death from 1973 to 1999 were males. \textit{Id.} The four females sentenced to death were from the Deep South (Mississippi, Alabama and Georgia) and Indiana. \textit{Id.}
\end{itemize}
G. Effects Of Confinement On Incarcerated Girls

Most people in our society consider delinquency to be a male activity. Young women are also involved in activities which put them in the juvenile justice system. However, this system is not designed to accommodate their needs.111

Throughout history, the legislature has had a bias against female offenders.112 Girls, unlike boys, were charged with "immorality" or "waywardness."113 The purpose, was to control female sexuality, resulting in punishment that was more severe than for the boys.114 Today, non-conforming girls are still entering the juvenile justice system because of their status offenses, more than are their male counterparts.115

A juvenile female offender from the late 1960's to the mid 1980's could have been described as: (1) someone who was approximately sixteen years old, (2) lived in an urban area in a single-parent home, (3) was a high school dropout lacking adequate work and social skills and (4) was a victim of sexual and/or physical abuse.116

Today, a description of the juvenile female offender would be: (1) one likely to have been sexually abused or physically abused, (2) from a single-parent home, (3) and lacking appropriate social

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110. Id.
112. Eggers, supra note 111, at 239.
113. Id.
114. Id.
115. Id. at 240-41.
The major differences would be that in the 90s this female offender is more likely to be under the age of fifteen and a girl of color.

This trend continued to grow in the 1990s. During the 1990s the arrests of juvenile females increased more than male arrests in most offense categories. During this time, law enforcement agencies made 748,000 arrests of females below the age of eighteen.

Even when young women are involved in delinquent behaviors, they still tend to be arrested for the more “female” offenses like prostitution, embezzlement, forgery, and counterfeiting. The juvenile justice system reflects society’s assumption about gender, that is; boys are a threat to society with violent behavior and that society needs protection from them, and girls flaunt moral standards and need protection from themselves. Girls are often inappropriately placed in facilities and programs that were designed for boys, emphasize security over intervention and treatment, and ignore the specific needs and strengths of girls. The justice system’s facilities are ill-equipped to treat the problems of young girls such as sexual abuse, pregnancy, child care, depression, eating disorders and suicide.

Adolescent girls are also more at risk for HIV infection than

117. Id. at 2.
118. Id. at 2. These female offenders also tend to have substance abuse and physical abuse problems, along with pregnancy and child abuse issues. Id. See also LEAGUE OF WOMEN VOTERS OF CALIFORNIA, JUVENILE JUSTICE IN CALIFORNIA: FACTS & ISSUES (September, 1996), available at http://www.ca.lowy.org/jj/groups.htm. The prevalence of sexual and physical abuse is one disturbing characteristic of girls within the juvenile justice system as females account for three-quarters of sexual abuse victims. See Eggers, supra note 111, at 235. These female delinquents sexual abuse at a higher rate within the juvenile justice system. Id.
119. Streib, supra note 36, at 7.
120. Id. In the 1998 update, 22% of female arrest were for aggravated assaults, 31% for simple assault, and more than half (58%) were for running away from home. Howard Snyder, Juvenile Arrest, 1998, 1999 OJJDP.
121. Id. at 13.
122. Maniglia & Temple, supra note 116, at 3
123. League of Woman Voters, supra note 118, at 1.
124. Id. A San Francisco Study reports, that about twenty-two of the 132 beds at the Youth Guidance Center are set aside for girls, while the rest are taken up by boys, and most services are geared towards boys. Report: SP’s Juvenile Justice System Neglects Girl Inmates, NEWS & REP. (July 22, 1996), available at http://www.sddt.com/files/librarywire/96wireheadlines/html.
125. Eggers, supra note 111, at 247. In Minnesota, it was discovered that in an attempt to protect girls from contact with adult inmates, girls were often held in what amounted to solitary confinement. Id.
women in other age groups. 126 "The incidence rate for gonorrhea, a marker of high-risk sexual activity associated with HIV transmission, was 152 times higher among confined girls, then the total U.S. population of equivalent age." 127

H. Effects Of Confinement On Minority Youth

Why is it that an overwhelming majority of the youths entering U.S. prisons, state reform schools and detention centers are minorities, when minority youth constitute only thirty percent of the juvenile population in the United States? 128

Basic differences in the origins of offensive behavior do exist between African-American youth and white youth. 129 White youth, tend to exhibit a higher rate of psychological or family dysfunction than do African-American youth, while minority youth tend to come from inner city environments where their behavior is more accepted by their peers. 130 Research has shown that the type of community in which the juvenile lives has a stronger effect on the likelihood of one becoming involved in delinquency rather than his racial characteristics. 131 The study determined that African-Americans who live in non-disadvantaged areas did not have higher rates of delinquency than whites living in non-disadvantaged areas. 132 Nonetheless, African-American and Hispanic youth are still disproportionately represented in detention centers. 133

126. WIDOM & HAMMETT, supra note 101, at 3.
130. Id.
132. Id.
133. Id. In 1995, of all youth held (males and females), 44% were black, 39 percent were white, and the remainder were from other minority groups. See Bilchick, supra note 58. In 1995, Hispanic youth were admitted to state facilities at three times the rate of whites; blacks were admitted at seven times the rate of whites. Id. Studies conducted in sixteen states found that although minority youth constituted about 32% of the youth population in the country in 1995, they represented 68% of the juvenile population in secure detention and 68% percent of those in secure institutional environments such as training schools. See ROSCOE & MORTON, supra note 131. A San Francisco study determined that 50% of the females in the juvenile justice system were black. NEWS & REP., supra note 124.
Research literature also suggests that racial or ethnic status may be a factor that influences decisions in certain jurisdictions, at particular decision points, during certain time periods, and in response to specific behaviors. To be more specific, minority youth are more likely than whites to be arrested and detained for the same charges, twice as likely to be held in secure pretrial confinement, and once securely detained, are confined for longer periods of time than white youth. Thus this "minority overrepresentation" is often the result of actions that occur at earlier points in the juvenile justice system, well before they are sentenced to secure placements. This creates a situation of "minority overrepresentation" in secure facilities. This uneven ratio has been termed, Disproportionate Minority Confinement (DMC).

Over half (sixty-one percent) of juvenile delinquents confined in the Federal Bureau of Prisons are Native Americans. This is the result of Native American tribes lacking resources or jurisdiction when there is a substantial federal interest, or when the Federal Government has jurisdiction over certain offenses committed in Indian country.

Economic and social conditions also contribute to Disproportionate Minority Confinement. Fewer job opportunities, low in-

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Hispanic girls make up 15% of the women in secure detention. Maniglia & Temple, supra note 116, at 2. Manglia discussed the endangered African American male and what we can do to bolster the fragile self-esteem of the white female, but there was no discussion regarding young poor girls of color. Out of Sight, Out of Mind: The Plight of Adolescent Girls in the San Francisco Juvenile Justice System, NEWS & REP., July 22, 1966, at http://www.com/files/librarywire/html. This study involved interviews with inmates, probation officers, nurses and other staff members. Id.


135. See League of Women Voters, supra note 118.

136. "Minority overrepresentation" is a term that has been used to describe the phenomenon of disproportionately large numbers of minority youth who come into contact with the juvenile justice system at various stages, including but not limited to, secure confinement. PATRICA DEVINE ET AL., DISPROPORTIONATE MINORITY CONFINEMENT, LESSONS LEARNED FROM FIVE STATES 2 (1998). This category has been interpreted to include American Indians, Eskimos, Aleutians and others. Id.

137. Id.

138. ROSCOE & MORTON, supra note 131, at 1.

139. "Disproportionate Minority Confinement" is defined as the share of the juvenile justice population that is minority relative to the share of the at-risk population that is minority." DEVINE, supra note 136.

140. Scalia, supra note 66, at 2.


142. DEVINE, supra note 136, at 7.
come, lack of cultural awareness and a lack of positive role models are prevalent factors, which exist among confined minority juveniles. 145

Adolescents of color are also the majority of adolescents with AIDS. 144 Eighty percent of female adolescents with AIDS are either African American or Hispanic. 145

IV. ALTERNATIVES, INNOVATIONS AND PROGRAMS FOR CHANGE

A. Early Intervention

Early intervention programs 146 could prevent as many as 250 crimes per $1 million spent in comparison to the same amount of money spent on prisons that would prevent only sixty such crimes a year.147 It is estimated that by the year 2005, the total population of youths from fifteen to nineteen years old will grow by twenty-three percent, which makes it clear that there is a need for a comprehensive prevention strategy that addresses the root causes of delinquency. 148

B. Sentencing

The Eighth Amendment to the United States Constitution provides that excessive bail shall not be required, excessive fines imposed, nor cruel and unusual punishments inflicted. 149 Some courts have ruled that the Eighth Amendment's prohibition against cruel and unusual punishment requires states to provide treatment to juveniles, while other courts have found that the challenged

143. Id.
144. Widom & Hammett, supra note 101, at 3.
145. Id.
146. For example, the Omega Boys club, an after school violence prevention program, works on eliminating risk factors like neglect and violence in the home. Marsh R. Jones, From the Edge: Omega Boys Club Reaches out to America's Endangered, TIME MAG., Mar. 31, 1997, at 24. Another example is the Comprehensive Community Wide Approach to Gang Prevention, Intervention, and Suppression program which mobilizes the community to address gang-related violence by making and coordinating social interventions, academic and other opportunities to juveniles within the community. James C. Howell, Juvenile Justice and Youth Violence 123 (1997). See also Cynthia Conward, The Juvenile Justice System: Not Necessar- ily in the Best Interest of Children, 33 New Eng. Law Rev. 39, 71-72 (Fall, 1998).
149. U.S. Const. amend. VIII.
conditions themselves were cruel and unusual punishment. 150

A factor to consider in lessening an imposed sentence is to request that the court consider the ADHD diagnosis as a mitigating factor when applicable. 151

Other protections could arise from The American Convention of Human Rights and the United Nations Convention on the Rights of the Child, both of which have provisions that prohibit anyone under eighteen years old at the time of the crime being sentenced to death. 152

C. Improving Conditions Of Confinement

Youth detained in detention and correctional facilities have specific rights that protect them from dangerous conditions and practices of confinement. 153 One such protection is The Federal Administrative Procedure Act (APA) 154 and corresponding State administrative procedure statutes which sets out the process that agencies must adhere to both when making broad policy decisions 155 and adjudicating 156 the matter. 157 As a result of these Acts, two-thirds of the states have implemented Administrative Procedure Statutes 158

The Civil Rights of Institutionalized Persons Act (CRIPA), 159


151. Goldstein, supra note 95, at 4.


153. PuRitz & SCALL, supra note 82, at 13.


155. "Policy decisions" means rule-making. PuRitz & SCALL, supra note 82. An action determined to be rulemaking must allow for public participation in the formulation of the rule. Id.

156. "Adjudicating" refers to applying those policies to individual circumstances. Id. An action determined to be adjudication entitles an individual to some level of hearing. Id.; see also 47 U.S.C. §. 409 (1994 & Supp. 1998).

157. Id. Hearings such as these can be formal and afford an individual certain rights, which may include the right to have counsel present, the right to cross-examine witnesses, the right to present evidence, and the right to a record of the proceedings, or informal which may merely provide the opportunity to be heard and the right to a written explanation of the factfinder's decision. Id. at 35; 47 U.S.C. § 409.

158. Id. at 33. "When applying administrative procedure to juvenile correction systems, it is important to determine whether the agency is acting in its rulemaking or adjudicatory capacity, which is decided based on the nature of the decision facing the agency." Id. at 34.

protects the rights of individuals, in many institutions, including prisons, jails, nursing homes, psychiatric hospitals, and mental retardation facilities in addition to juvenile facilities. The Department of Justice first decides that a facility qualifies as one that is publicly operated. Then it decides if the allegations warrant an investigation. Finally if there is an established pattern or practice that causes grievous harm.

The National Juvenile Detention Association only endorses the construction and operation of collocated juvenile and adult detention facilities to ensure the total separation of juvenile and adult. Some states have established Ombudsman. Programs for the purpose of monitoring conditions, investigating complaints, advocating for improvements, with the ultimate goal of reducing unlawful deficiencies in juvenile and correctional facilities. Programs

alized Persons Act in Juvenile Correctional Facilities establishes the rights of detained and incarcerated youth and protects them from dangerous conditions and practices of confinement. Puritz & Scall, supra note 82, at 1.

160. 42 U.S.C. § 1997 (1) (B). Institution means an institution that is: (i) for persons who are mentally ill, disabled, or retarded, or chronically ill or handicapped: (ii) a jail, prison, or other correctional facility; (iii) a pretrial detention facility; (iv) for juveniles (1) held awaiting trial; (II) residing in such facility or institution for purposes of receiving care or treatment; or (III) residing for any State purpose in such facility or institution (other than for education purposes) . . . ; or (v) providing skilled nursing, intermediate or long term care, or custodial or residential care.

Id.

161. Puritz & Scall, supra note 82, at 1.

162. Id. at 4.

163. The National Juvenile Detention Association Position Statement reads: The facility is or will be constructed in a way that eliminates even accidental or incidental sight, sound or physical contact between juvenile detainees and adult prisoners. All parties having fiscal, political and/or administrative control over collocated facilities agree in writing that separation is unequivocal. Such agreement shall include: separate direct care and administrative staff; population specific staff training; and separate programs. The agreement identifying conditions of separation shall be monitored by an independent entity which has the authority to ensure compliance.


such as these require qualified staff with legal expertise, social work and educational expertise to address allegations of rights violations and to monitor and make recommendations about the adequacy of treatment and education programs.\textsuperscript{166}

Using a smaller, community-based facility\textsuperscript{167} as opposed to larger congregate care facilities, seems to offer the best hope for successful treatment of juveniles who require a structured setting.\textsuperscript{168} Treatment programs more effectively rehabilitate juveniles than do traditional forms of incarceration.\textsuperscript{169}

D. Educating Confined Juvenile Offenders

With effective instruction, it has been demonstrated that the reading levels of incarcerated youth can improve dramatically.\textsuperscript{170}

\begin{footnotes}
\item[166] Puritz \& Scall, \textit{supra} note 82, at 10. Using interns and law clerks from local law schools and universities can also be an effective way of enhancing an ombudsman program. \textit{Id.} The District of Columbia's Ombudsmen program assigns an attorney to monitor the conditions and treatment of residents in juvenile detention and correctional institutions. \textit{Id.}

\item[167] South Carolina has developed many community-based alternatives to confinement. One such example, the Therapeutic Foster Care program, a South Carolina Department of Juvenile Justice program where parents in foster care homes are trained to deal with the specific problems of the juvenile. \textit{South Carolina Department of Juvenile Justice--Alternative Programs, at http://www.state.sc.us/djj/alternatives.html} (n.d.).

\item[168] \textit{John J. Wilson \& James C. Howell, Serious, Violent and Chronic Juvenile Offenders: A Comprehensive Strategy, OJJDP Fact Sheet #4, 1} (Aug. 1993). The problem with group care, is the power that the peer culture and the influence the other children have over each other, while children placed in foster care programs seem to be happier and function better in families. Randall Edwards, \textit{The Search for Proper Punishment, American Psychological Association, 1995 APA Monitor, 2}.

\item[169] Edwards, \textit{supra} note 168. Patricia Chamberlain, a psychologist and clinical director of Oregon's Social Learning Center, has studied twelve through seventeen year olds who have criminal convictions. \textit{Id.} Some of the children were housed in traditional group homes, and receive group therapy, the others are placed with families are provided intensive supervision and individual treatment, are isolated from their peer group, earn privileges for good behavior and punishment when they violate the rules. \textit{Id.} Compared to the subjects in group care, the children in treatment foster care run away less, are placed in detention less often and experience few mental problems. \textit{Id.}

\item[170] Jane Hodges \textit{et al., Improving Literacy Skills, 1994 OJJDP Juv. Just. Bull. 1} (Oct. 1994). In 1991 competitive grants were awarded to the Mississippi University of Women in Columbus, and the Nellie Thomas Institute in Monterey, California where the results of using intensive systematic phonics was dramatic. \textit{Id.} at 2. Significantly increased skills in composition, vocabulary, mechanics, and spelling were noted for seventy-five percent of the participants and the inmates demonstrated a newly found self-esteem and improved self-image. \textit{Id.}
\end{footnotes}
Incarcerated youth with learning disabilities must be provided with special education in full compliance with federal and state law, and the correctional staff should be trained to meet the mandates of the Individuals With Disabilities Education Act (IDEA). In addition, the IDEA requires that states provide free and appropriate public education for all students with disabilities when that state receives federal support for educating students with disabilities.

Another resource for improving services for disabled youth and children with mental health problems in detention and correctional facilities is the Protection and Advocacy systems (P&A), which exists in all fifty states.

Advocating during the dispositional phase of a delinquency or abuse/neglect proceeding is of the utmost importance. Protection and advocacy programs provide services, such as, recommending appropriate placement, negotiations, legal services, investigation and monitoring.

171. Robert J. Gemignani, OJJDP Update on Research, JUV. JUST. BULL. 2 (1994). See generally 20 U.S.C. § 1400 (1990 & Supp. 1998). See also PURITZ & SCALL, supra note 82, at 15-25. The Individuals with Disabilities Education Act (IDEA) entitles disabled students, including youth in custody, to free appropriate education. Id. When a youth has been identified as eligible for special education and related services, and Individualized Education Program (IEP) must be developed to ensure that the child’s special needs are addressed. Id. at 15. A case in the Rhode Island juvenile correctional facility in 1989 was investigated and the results were a successful suit against the facility for the practice of putting children on waiting lists for special education services. Id. at 12.


173. PURITZ & SCALL, supra note 82, at 27. P&A’s are federally funded and administered by the States. Id. The states have the discretion to design programs that reflect their own needs and resources. Id. at 29. P&A’s have authority to: “pursue legal, administrative and other remedies on behalf of its clients; provide information and referral services to residential and nonresidential program[s], investigate abuse or neglect of its client[s], educate policymakers on decisions relevant to advocacy client[ele], and have access to clients and their records.” Id.

174. Id. at 27. The “P&A staff generally consist of attorneys and advocates with experience in disability issues from diverse backgrounds such as social work, special education, nursing, public health, and administration.” Id. at 30. See also Protection and Advocacy System for Individuals with Mental Illness (PAIMI), 42 U.S.C. §§ 10801-07 (1996); Protection and Advocacy System for Individual Rights (PAIR), 29 U.S.C. § 794e (1996); Protection and Advocacy System for persons with Developmental Disabilities (PADD), 42 U.S.C. §§ 6000-83 (1996).

175. PURITZ & SCALL, supra note 82, at 27. Communities-In-Schools is a one of a kind program operated in South Carolina which allows students to receive regular academic instruction in a small group setting within the juvenile prison setting. SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE—ALTERNATIVE PROGRAMS, supra note 167.
E. Improvements In Health Conditions

Both confined juveniles and adult inmates represent a large, high-at-risk population that could benefit greatly from health interventions.\textsuperscript{176} Not addressing these health issues becomes a problem for the entire community because the vast majority of confined juveniles return to the community and place themselves and others at risk because of their high-risk behaviors.\textsuperscript{177}

HIV education for incarcerated youth provides an opportunity to prevent HIV infection, improve public health, and provide important preventive and therapeutic services for those who may have no other means of accessing this information.\textsuperscript{178} Those incarcerated are "captive audiences" to whom HIV prevention programs should be provided.\textsuperscript{179}

For HIV/AIDS testing to be successful, it is important that it be accessible, that youth be encouraged to participate and that they be ensured that the test results will be confidential.\textsuperscript{180} Ensuring the confidentiality of HIV test results is one of the most important ways to encourage youths to be tested.\textsuperscript{181} This may be a problem in jurisdictions where disclosure without consent of parents may be illegal.\textsuperscript{182} Correctional facilities should also ensure that inmates diagnosed with ADHD have access to appropriate medication and trained counselors, which will enhance rehabilitation and daily functioning.\textsuperscript{183}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{176} Theodore M. Hammet, Public Health/Corrections Collaborations: Prevention and Treatment of HIV/AIDS, STD's and TB.
\item \textsuperscript{177} Id. at 2.
\item \textsuperscript{178} Id. at 13.
\item \textsuperscript{179} Id. at 3. Rhode Island Department of Health in cooperation with the Department of Corrections and the Brown University AIDS program, has instituted a practical, low-cost and effective program for providing HIV-infected inmates with health care during and after incarceration. Andrew A. Skolnick, Correctional and Community Health Care Collaborations, JAMA (January 14, 1998). During the first year of the program, forty-one HIV-positive women inmates (33 of who had at least 2 previous incarcerations) were provided with follow-up medical care, drug rehabilitation services, housing, and other support following their release. Id. at 1. The recidivism rate of the women in the first year of the program was 12\% within six months and 17\% within twelve months. Id. at 3.
\item \textsuperscript{180} WIDOM & HAMMETT, supra note 101, at 2. The Massachusetts Department of Youth Services offers a well-conceived HIV/STD education program. Id. at 7. It includes two full-time educators that cover HIV and STD issues in the context of a comprehensive sexuality education program. Id.
\item \textsuperscript{181} Id. at 11.
\item \textsuperscript{182} Id.
\item \textsuperscript{183} Id.
\end{enumerate}
\end{footnotesize}
F. Improvements For Females

The Juvenile Justice and Delinquency Prevention Act,184 was passed in 1974. The Act’s goal was to make sure the needs of the adolescent female offender were met. The reauthorization of the act in 1992 required all states applying for federal formula grants dollars to examine their juvenile justice systems and identify gaps in their ability to provide services to juvenile female offenders.185

One way could be to develop or modify programs that are gender-specific in nature.186 These programs should meet the needs of the girls as individuals, take female development into account and avoid perpetuating limiting stereotypes based on gender, race, class, language, sexual orientation, disability and other personal and cultural factors.187

G. Improvements For Minorities

States are required by law to reduce the proportion of minority juveniles detained or confined in secure detention facilities, correctional facilities, jails and lockups, if such proportion exceeds the proportion these groups represent in the general population.188

185. Maniglia & Temple, supra note 116, at 5. See also JJDP Act § 223 (8)(B). Pt. E of Title II of the JJDP Act, section 285(B)(2) gives states an additional 10 ways to address these issues and obtain money other than the federal formal grants. Maniglia & Temple, supra note 116, at 6.
186. Id.
187. Id. In addition to providing adequate physical and mental health care, programs should provide accurate information about sexuality education, eating disorders and HIV/AIDS information, along with sexual abuse and substance abuse treatment. Id. See also ROSCOE & MORTON, supra note 131, at 3. In Portland Oregon, a program has been established for victimized girls to learn independent living skills. Eggers, supra note 111, at 256. In the first three to six months the girls live in dormitories, attend therapy and seek employment. Id. The program then allows them to move in their own apartment, while appointing a big sister. Id. The success of this program is attributed to counseling, job skills, development and follow-up treatment. Id. at 256-57; I. Montgomery, et al., What Works: Promising Interventions in Juvenile Justice 10 (1994). Another program for female offenders, P.A.C.E, is a non-residential alternative to institutionalization. This program provides a comprehensive education and treatment program to troubled girls between twelve and eighteen whose components include an accredited education program, career planning, pregnancy prevention, cultural awareness, life-skills and volunteer opportunities. Id.
188. ROSCOE & MORTON, supra note 131, at 2. In 1992, amendments to the JJDP Act, DMC was elevated to a core requirement, with future funding eligibility tied to State compliance. Id. See also § 223(a)(23) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (Public Law 93-415), 42 U.S.C.
To reduce disproportionate minority confinement, the community must work together to address the causes, by enhancing prevention and diversion programs, and by expanding alternatives to secure detention and corrections, particularly in minority neighborhoods. Also of importance are cultural appropriate programs and services that should take place at the youth's initial needs assessment, followed by an evaluation which takes into consideration cultural differences.

H. Developing Aftercare Programs

Incarceration is only as effective as the reintegration services that are available to support these youth when they return home. Aftercare must continue to build on the juvenile’s already established progress with continuous treatment between the residential and aftercare phases forming a linkage with other community services, youth service agencies, schools and employers.


189. Id. Strategies to reduce the disproportionate confinement of minority juveniles include the use of risk and need assessment instruments, cultural competency training for law enforcement and other juvenile justice professionals, individualized home-based care, mentors, therapeutic foster care, community-based family-oriented services, reintegration services for juveniles placed outside the home, independent living, job training, and increased accessibility to treatment. Id. See also Office of Juvenile Justice and Delinquency Prevention Evaluation of the Disproportionate Minority Confinement (DMC) Initiative, Arizona Final Report 1-1 (May 8, 1996).

190. One commentor defines, “cultural appropriate treatment” as treatment adapted to the unique needs of minority adolescents, who have culturally unique needs not only because of easily recognized examples of cultural differences, but also because of their disproportionate exposure to racism and poverty. Pattison, supra note 99, at 577. Examples of this kind of programming may include a multicultural and bilingual staff, providing a grass-root constituency of minority community members and mental health professionals that could serve as advisors in the planning and monitoring of programs, education that includes information regarding the youth's cultural backgrounds. Id. at 579.

191. Id. at 577.

192. Beyer, supra note 68. See also DAVID ALTSCHULTER, REINTEGRATING JUVENILE OFFENDERS OJJDP'S INTENSIVE COMMUNITY-BASED AFTER DEMONSTRATION PROGRAM (1998).

193. ZAEHRINGER, supra note 67, at 7. Aftercare Programs, such as the Associated Marine Institutes which provides treatment and aftercare services to youths adjudicated delinquent by local juvenile courts, offers education life skills, social skills and experimental marine and outdoor activities. Montgomery, supra note 187, at 5. A Philadelphia program: State Intensive Aftercare Unit, provides services to juveniles from commitment into aftercare by ensuring that the staff maintain contact with the institution, home, community, and support services to pre-
Opportunities should also be provided for juveniles age sixteen and over who do not return to school after release from confinement, through on-the-job training, work experience, internships, apprenticeships, mentorships or observing workers on the job.\(^{194}\)

V. CONCLUSION

Results of recent surveys suggest that the public rejects the retributive punishment-centered system and believes in the traditional juvenile justice system that emphasizes prevention, treatment and rehabilitation.\(^{195}\) Even though the public has called for a greater use of transfer process to adult court, they also want these juvenile offenders to be segregated from adults while awaiting trial, afforded rehabilitation and offered the same due process protections as adults.\(^{196}\)

Rehabilitation for juvenile offenders is decreasing while juvenile exposure to deviant peer groups is increasing and causing pare youth for re-entry into the community and to discourage re-offending. \(\textit{Id.}\) The program provides drug testing, outpatient referral, counseling, recreation, exposure to cultural arts, a clothing allowance, and assistance with finding living arrangements. \(\textit{Id.} \textit{at } 1.\) \textit{See also SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE -Alternative Placement, supra note 167.} South Carolina also has developed Marine Institutes which are highly structured programs that provide one-on-one counseling and instruction, and emphasizes education, self-discipline, problem-solving, and self-esteem. South Carolina has developed a Sex Offender Treatment, which is for juveniles who are adjudicated on sex offense charges or who have a substantial, well-documented history of sex offending behavior. \(\textit{Id.}\) This program includes intensive group and family counseling and a strong aftercare component, which lasts for eighteen to twenty-four months. \(\textit{Id.} \textit{See also ERIC PETERSON, JUVENILE BOOT CAMPS: LESSONS LEARNED, OJJDP, at http://www.ncjrs.org/txfiles/fs-96.36txt (n.d.).}\) In the boot camp programs, aftercare has been proven to cause a reduction in recidivism rates, which can be accomplished by providing more probation/parole officers to monitor reintegration of youth back into society following an institutional stay. \(\textit{ZAERHINGER, supra note 67, at 7.}\) Other examples would enlist attorneys and law students to work one on one with juvenile parolees to them to reenter and integrate into the community successfully. Robert A. Vernoff, \textit{Volunteers In Parole: Efforts Within the Legal Community to Stop the Revolving Door to Institutionalization of Juvenile Offenders, 17 J. JUV. L.} 131 (1996).


them to become more entrenched in the criminal community.\textsuperscript{197} Many psychologists agree that incarcerating children, in juvenile jails or adult prisons, fails to reduce juvenile crime, and bleeds money from rehabilitation and treatment programs that could more effectively prevent crime.\textsuperscript{198}

Intensive intervention, while incarcerated, during transition to the community, and when under community supervision, would be much more beneficial to youthful offenders in areas such as family and peer relations, education, jobs, substance abuse, mental health, and recidivism.\textsuperscript{199} If children are indeed "our future, our greatest resource and our hope for a better tomorrow," then it is the role of society to help them to prepare for it.

\textsuperscript{197} See Edwards, \textit{supra} note 168.
\textsuperscript{198} \textit{Id}.
\textsuperscript{199} See Altschulter, \textit{supra} note 192. An example would be the Intensive Aftercare Program (IAP) model that stresses collaboration among the juvenile justice system, parole and probation, and community-based service providers. \textit{Id.} at 2.