

The Comparative Risk of Mistreatment for Juveniles in Detention Facilities and State Prisons

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Little research exists on the prevalence of victimization among young people in juvenile correctional facilities and adult jails and prisons. The limited extant research suggests that youth incarcerated in adult prisons and jails are at greater risk for physical and sexual abuse (Redding, 1999) compared to both adult inmates in the same facilities and youths in juvenile detention centers. Yet thousands of juveniles pass through jails and prisons each year, particularly in America. Advocates of juvenile justice reform argue that the risks inherent in incarcerating juveniles in adult jails and prisons, in terms of both their victimization and recidivism rates, call into question the legislation that allow youth to intermingle with more sophisticated criminals.

Keywords: juvenile justice, victimization, mistreatment, prison, sexual assault, physical abuse

Although all U.S. states allow juveniles to be prosecuted and sentenced as adults under certain circumstances, states differ in how they manage youthful offenders. Some states retain them in juvenile justice facilities while others incarcerate them in adult prisons, sometimes in areas of the prison restricted to juvenile offenders (Griffin, 2003). According to a 2000 Bureau of Justice Assistance report, 44 state prison systems house juvenile inmates as adults. Of these, 18 states maintain units designated to house youthful offenders. The report noted that although health, education, and counseling programs in adult institutions are fairly widespread, states seemed to put forth little effort to tailor these programs to youthful offenders (Austin, Johnson, & Gregoriou, 2000).

Waiver Laws

Juvenile crime, particularly homicide, increased in the United States in the late 1980s and early 1990s (Howell, 1996; Mears, 2003). During this time, Dilulio (1995) theorized the rise of juvenile “super predators,” a cohort of immoral juvenile offenders who would wreak increasing havoc on society. As a result of this widespread perception of a worsening problem, policy makers implemented a “get tough” approach

to juvenile justice including the passage of waiver laws in almost every state. Such laws permitted juveniles of certain ages charged with specified offenses to be transferred to the adult criminal justice system in an attempt to promote greater accountability and punishment. For example, California set the minimum age for transfer at age 14, Missouri at age 12, and Vermont at age 10. Many states, including Arizona, Pennsylvania, and Florida, do not specify a minimum age (Griffin, 2008). Over time, waiver was applied to younger juveniles charged with lesser crimes (Kupchik, 2007; Mears, 2003).

Furthermore, youth awaiting waiver proceedings may be held in pretrial correctional facilities even though their case ultimately may not be transferred to the criminal justice system. They may consequently “face a greater risk of victimization, especially if they are held in adult jails” (Mears, 2003, p. 164; Howell, 1996).

Census

The most recent available statistics regarding the number of juveniles in state prisons involves a census taken at midyear 2007. Findings revealed that there are an estimated 2,639 inmates under age 18 in U.S. state prisons: 2,523 males and 116 females. This represents a significant decrease from the year 2000, when there were a reported 3,896 juveniles under the age of 18 in state prisons (Sabol & Couture, 2008).

As previously mentioned, 44 U.S. states and the District of Columbia house individuals under age 18 in adult jails and prisons (Austin et al., 2000). There is significant variability

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within states with a few states (such as Maine and Kentucky) reporting no juveniles within state prisons, and several states (including Texas, Florida, and New York) reporting hundreds of juveniles being held in state prisons (Woolard, Odgers, Lanza-Kaduce, & Daglis, 2005).

The most recent available statistics indicated that there were 6,837 inmates under age 18 in local jails. This includes 5,652 individuals tried or awaiting trial as adults and 1,185 held as juveniles (Sabol & Minton, 2008). The former were held as adults because they were transferred to criminal court or because in their state all 17-year-olds (or all 16- and 17-year-olds) are considered adults for purposes of criminal prosecution (Sickmund, 2004). Finally, a limited number of juvenile offenders are housed in private facilities, leading some authors to conclude that approximately 10,000 U.S. juveniles are housed within adult criminal justice settings each year (Woolard et al., 2005).

Most youth sent to adult prisons in the U.S. are 16 or 17-year-old, African-American or Latino males who have offended against persons (Sickmund, 2004). Other youth serve time in adult facilities for property, drug, and public order offenses. Educationally, many are below grade level when they enter prison (Woolard et al., 2005).

AN INTERNATIONAL PERSPECTIVE

How to manage juvenile offenders is a problem faced by all nations but it is perhaps most pronounced in the United States, which has the highest incarceration rate of all industrialized nations and which incarcerates a greater number of juveniles than any other nation (Muncie, 2008). Because U.S. prisons are generally larger and house more inmates than those in other countries, some argue that the likelihood of inmate victimization may be much higher (Kury & Smartt, 2002). According to certain scholars, the UK and in particular England and Wales have adopted America's "get tough" stance with juvenile offenders: the number of young people detained in the "juvenile secure estate" (youth offender institutes and secure children's homes) doubled between 1993 and 2008 (Muncie, 2008). Similarly, the number of juvenile detention facilities in Holland has tripled since 1990 (uit Beijerse & van Swaaningen, 2006).

Rates of juvenile incarceration vary by country and by continent, with juveniles comprising 4.5%, 5.1%, 6.1%, 7.6%, and 9.2% of the prison population in Japan, Peru, the Netherlands, Papua New Guinea, and Jamaica respectively. In some countries, juveniles make up over 10% of the prison population; for example, they comprise 12.2% of the prison population in Scotland and 14% in Mexico (International Centre for Prison Studies, 2009). Across the world, an estimated one million children are detained each year (Pinheiro, 2006).

THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

In 1974, the U.S. Congress passed the Juvenile Justice and Delinquency Prevention Act, a federal law which established the Office of Juvenile Justice Delinquency Prevention (OJJDP). The Act required states to offer some custody-related protections to incarcerated juveniles in order to be eligible for federal funding under the Formula Grants Program (Krisberg, 2006). Currently, all U.S. states except for Wyoming participate in the program (OJJDP, 2008). Among other things, the Act mandates the deinstitutionalization of status offenders (except those in violation of a court order) and the separation of juvenile delinquents and adult offenders. The Act's "sight and sound separation requirement" prohibits the detention or confinement of juveniles "in any institution in which they have contact with adult inmates. . ." Juveniles may be confined in adult facilities only if they cannot see nor have conversations with adult inmates; they cannot be housed next to adult cells, share common spaces (such as dining halls) with adults, or be placed in circumstances in which they are vulnerable to abuse from adult offenders. The jail and lockup removal requirement of the Act prohibits the detention or confinement of juveniles "in any jail or lockup for adults. . ." (Sickmund, 2006, 2004). This requirement does not apply to adult prisons. Indeed, monitoring guidelines clearly state that "holding a delinquent offender in an adult prison is not a violation of the jail removal requirement" (OJJDP, 2007, p. 31). Importantly, juveniles charged with or convicted of felonies are likewise exempt from this requirement (Sickmund, 2006, 2004).

The Office of Juvenile Justice and Delinquency Prevention monitors U.S. states' compliance with the requirements of the Act. According to critics, in spite of the "sight and sound separation requirement," most children in adult prisons continue to be mingled with adult offenders (Annino, 2000). For example, in a National Institute of Corrections study (1995), 27 state departments of corrections reported housing offenders under age 18 in the general population of adult facilities.

In a related study (Orenstein & Levinson, 1996), the American Correctional Association's Juvenile Project staff surveyed a representative from each state department of corrections and from the largest jails. Only two of the 43 respondents indicated that juveniles in their jurisdiction were *not* housed in adult facilities. Forty-eight percent of the remaining 41 respondents indicated that juveniles were being housed with general prison populations; one did not answer the survey question. Only 15% of respondents reported that juveniles in adult institutions were classified by age.

Moreover, federal law does not protect juveniles who are charged as adults from being placed in adult facilities: "A juvenile who has been transferred, waived, or direct filed or is otherwise under the jurisdiction of a criminal court does not have to be separated from adult criminal offenders pursuant to the separation requirements of the JJD Act" (OJJDP,

2007, p. 31). Most states allow the pretrial detention of youth in adult jails, but only six set age restrictions on youths' pretrial detention. Ten states actually require youth in the adult system to be housed in jails. Only 20 states require that the youth be separated from adult inmates.

When youth are separated from adults in adult jails, they are frequently placed in isolation conditions akin to those experienced by adult inmates in solitary confinement (Arya et al., 2007). Correlational studies, case studies, and personal accounts of adult inmates have revealed that deteriorating mental health and suicide are more prevalent among inmates in isolated housing (Haney, 2003). Psychologist Craig Haney and others argue that this stress is more damaging to juveniles because confinement impedes their ability to develop a healthy adult social identity (Olson, 2003).

RELEVANT DECISIONS IN AMERICAN LAW

Several landmark legal decisions have affirmed the rights of juveniles to be free from abuse in American detention facilities. In 1974's *Nelson v. Heyne*, the United States Court of Appeals for the Seventh Circuit ruled on a class action civil rights case at a medium security state correctional institution for 12- to 18-year-old boys. The Court affirmed the lower court's decision that the institution's use of disciplinary beatings (with a "fraternity paddle") and tranquilizing drugs violated plaintiffs' 14th Amendment right to protection from cruel and unusual punishment.

In *Monroe v. Soliz*, a 17-year-old who had accrued numerous juvenile infractions in a juvenile detention facility sued to prevent his transfer to an adult prison. The Washington Supreme Court reversed the Superior Court's ruling in favor of the juvenile in 1997, holding that his transfer to an adult facility did not convert the juvenile adjudication into an adult conviction, that the juvenile did not have a right to a jury trial, and that the juvenile's due process and equal protection rights were not violated. The Court ruled that a juvenile offender sentenced to incarceration must be housed in a facility that is secure enough to protect the facility's other residents and staff, even if the only such facility is an adult prison. However, the Court took issue with the Department of Corrections' plan to not segregate the juvenile from adult inmates after his administrative transfer to prison, explaining that "such a scenario presents unacceptable risks to a juvenile's safety and may interfere with the Juvenile Justice Act's goal to respond to the needs of the youthful offenders" (p. 13). Juvenile offenders, the Court stated, should be "confined separately from the sight and sound of adult inmates" (p. 3).

In 2004, The U.S. Court of Appeals for the Third Circuit found that there is potential liability for a county juvenile detention center in which a youth had been maltreated. *A.M. v. Luzerne County Juvenile Detention Center* (2004) involved a 13-year-old boy with serious mental health problems who had been repeatedly harassed and beaten by other

detained youth. The Court found that a county can be liable for inadequate hiring, staffing, and training programs; lack of established protocols to ensure youth safety; and lack of recognized policies to address the mental and physical health needs of youth in the facility. In other words, all youth have a constitutional right to be safe in the juvenile justice facilities in which they are held and in fact are entitled to more protection than incarcerated adults because they have not been "convicted of a crime" (Marksamer & Rowen, 2008). Because young people in the juvenile justice system are "under the care and protection of the state, juvenile justice officials have a legal responsibility to protect youth from physical, emotional, and sexual abuse by other youth or facility staff" (Marksamer, 2006, p. 1). Similarly, in *R.G. v. Koller* (2006), the Court found that a juvenile detention facility violated a bisexual youth's due process rights by allowing verbal, physical, and sexual abuse against him by other inmates to persist. Finally, in *Alexander S. v. Boyd* (1995), the court ruled that "juveniles possess a clearly recognized liberty interest in being free from unreasonable threats to their physical safety."

PREVALENCE OF MISTREATMENT IN AMERICAN CORRECTIONAL FACILITIES

Very little data exists on rape and assault rates among juveniles housed in adult prisons and jails (Acoca, 1998; Myers, 2005). The statistics on rape that do exist are "very conservative at best, since discovery and documentation of this behavior are compromised by the nature of prison conditions, inmate codes and subculture and staff attitudes" (Cotton & Groth, 1984, p. 48). Even the incidents that are detected by prison officials may not be reported because they expose the institution to potential legal action (Donaldson, 1995).

Comparative Data

In one of the first and only studies to examine victimization of detained juveniles, Forst, Fagen, and Vivona (1989) interviewed 81 youths sentenced to adult correctional facilities (following a transfer to criminal court) and 59 comparable chronic juvenile offenders placed in state training schools in the same urban cities. The average age at the time of the offense was 16.1 for the 81 youth in adult correctional facilities and 15.7 for youth in the training schools. The youth in training schools served an average of 2.9 years while the youth in prisons served an average of 1.8 years. Both groups were interviewed following their release from the respective institutions.

The authors found that more than half of the residents in both facilities reported being the victim of property crime; the rates were similar for both groups. However, youth in adult facilities more often reported being the victim of violence (45.7%) than youth in training schools (36.7%). For example, one of every four youths in training schools reported

being the victim of an assault with a weapon compared to one in three youth in prison. Moreover, youth in prison were five times more likely to report being sexually assaulted by other inmates than in a juvenile commitment facility: 8.6% of the former reported that someone had attempted to sexually attack or rape them compared to 1.7% of the latter. Other researchers suggested this was cause for particular concern given the high rates of AIDS among the U.S. prison population (Howell, 1996). Finally, Forst et al. found that juveniles housed in prisons were nearly twice as likely to report being beaten by staff: 9.9% of youth in prison endorsed having been beaten by staff compared to 5.1% of youth in training schools. The authors concluded that "although victimization rates were not statistically significant, they nevertheless illustrate the increased danger of violence for juveniles sentenced to adult prisons" (1989, p. 9).

While the aforementioned represents a seminal study in research on victimization among incarcerated juveniles, it is limited by small sample sizes. Additionally, it involved youth in the same geographic area; victimization rates may not generalize to youth in other jurisdictions. Finally, the researchers were unable to validate the youths' reports of victimization.

Unlike the previous study, Lanza-Kaduce, Frazier, Lane, and Bishop's (2002) project did not involve systematically asking interviewees about victimization experiences. Yet during interviews focused on comparing the effects of being processed through the adult criminal court versus the juvenile system, many youth volunteered experiences of being or feeling threatened by older inmates. The researchers interviewed 144 males between the ages of 17 and 20 who were incarcerated in the Florida juvenile and adult correctional systems for crimes they committed while under the age 18. Of the 144 interviewees, 63 reported having experience with both juvenile and adult systems while eight reported exposure only to the adult system.

The youth in Lanza-Kaduce and colleagues' study who had spent time in jail, particularly pretrial, verbalized fear of older inmates who sexually preyed upon juvenile detainees. Juveniles reported that county jail authorities were more abusive than staff in the juvenile detention centers and employed methods of restraint (such as stripping inmates) that were not permitted in detention centers. According to one youth: "Jail staff. . . hog-tied people for banging on doors, they broke ribs, they sprayed you with mace" (p. 51).

Similarly, youth who had spent time in prison also reported feeling threatened by correctional staff. Some recounted witnessing an assault or being assaulted by another inmate or a correctional officer. Many youth reported believing that prison staff concealed incidents in which they used unnecessary and unlawful force. One young inmate reported: "This place is real worse than juvenile programs. In juvenile you ain't got to worry about being beat down by the staff. You ain't got to be in fear for your life. Here I am in fear for my life from staff and inmates" (p. 55).

Lanza-Kaduce and colleagues' study contained several limitations. Some of the youth who were classified as having experience with adult sanctions served only probation. The youth who did serve time in adult prisons were typically housed in Youthful Offender facilities that may be safer settings than those faced by juveniles in prisons that do not contain such units. Finally, because the research was exploratory, the researchers used an unstructured interview and relied on open-ended questions. They did not ask direct questions regarding victimization experiences, which individuals may have been reluctant to volunteer.

Violence in Juvenile Facilities

Juvenile detention facilities are mandated to protect children from violence and sexual assault from other children (Austin et al., 2000). In preparation of a report to the governor on the conditions of youth confinement, representatives from the Human Rights Watch Children's Rights Project (1995) interviewed more than 60 juveniles chosen by Project members from a roster of youth incarcerated in the four long-term secure juvenile correctional facilities in Louisiana. The interviewers found pervasive physical abuse of incarcerated youth and excessive use of restraints. For example, many teenagers in the East Baton Rouge Louisiana Training Initiative reported being beaten while handcuffed. Although this study was limited by a small sample size, Project representatives also interviewed juvenile facility administrators and staff to verify the juveniles' reports. According to the authors, staff generally confirmed that many juveniles suffered injuries and alleged staff brutality, but the lack of systematic records of allegations or suspected cases made confirmation difficult.

PREVALENCE OF VICTIMIZATION AMONG ADULT INMATES

For reasons discussed below, few reliable studies document rates of victimization among adult inmates of U.S. jails and prisons. Prevalence rates vary from less than 1% to 40% for sexual victimization (Gaes & Goldberg, 2004) and 10% to 25% for physical victimization (Wooldredge, 1998). However, a recent study (Wolff, Shi, & Bachman, 2008) of 6,879 male and 564 female prisoners using the National Violence Against Women and Men Surveys appears promising given its large sample size and use of an audio-computer-administrated survey instrument, also discussed below. "Sexual assault" was defined as touching that felt sexually threatening or sex by force or threat of harm. Researchers found that 4.6% of female inmates and 2.7% of male inmates reported being raped during a six-month period in prison. During the same six-month period, 22.8% of females and 32.6% of males in prison reported being the victim of physical assault. When physical and sexual victimization were combined, approximately 40% of male and female inmates in the

study reported at least one form of victimization within a six-month period.

DEFICIENCIES IN JAIL AND PRISON SEXUAL ASSAULT DATA

Few studies have examined the prevalence of sexual assault within correctional facilities, even among adult inmates. Many of the studies that do exist are small in scale; because they involved only a few facilities, researchers cannot generalize results. Furthermore, according to the Bureau of Justice Statistics (2004), there is no reliable collection methodology for measuring prison rape. One-on-one interviews of inmates have generally yielded low positive response rates (perhaps because of shame and embarrassment) which do not permit further analyses of victim, perpetrator, and facility characteristics. Studies with self-administered questionnaires have yielded higher prevalence rates (approximately 20% when a broad definition of sexual assault is used). However, the very low response rates, inconsistency in who completes the questionnaires, and variation in the settings in which the questionnaires are completed call into question the credibility of such studies (Bureau of Justice Statistics, 2004; Wolff et al., 2008).

Importantly, a number of issues further complicate the gathering of sexual assault data among juveniles in detention. Juveniles may be reluctant to report victimization, particularly in cases of same-sex perpetration. They may fear reprisal (Arya et al., 2007). Parents or legal guardians must provide informed consent to data collection, even for juveniles tried and convicted as adults, which may be difficult to obtain (Bureau of Justice Statistics, 2004; Gaes & Goldberg, 2004). If a juvenile reports an incident of rape or sexual abuse during data collection (whether on a survey or during an interview), the interviewer may be required to report the event to child welfare officials. Researchers must also consider the impact divulging incidents of abuse might have on a youth's emotional wellbeing and ensure that appropriate supports (such as counseling) are in place (Gaes & Goldberg, 2004).

Some institutions may, at least initially, refuse researchers access to their facilities (Human Rights Watch Children's Rights Project, 1996). Internationally, some penal systems underreport the number of incarcerated youth to avoid closer scrutiny and critique of their policies (Sarkin, 2008). While planning data gathering for the Prison Rape Elimination Act, the U.S. Bureau of Justice Statistics (2004) noted institution administrators' fear of legal liability and acknowledged that "it will be difficult to obtain accurate and reliable data on sexual assault, especially in facilities that house juveniles" (p. 5). Consequently, "available data are likely to underestimate the true level of sexual violence currently occurring in adult jails" and prisons (Arya et al., 2007, p. 17).

Sexual Violence in Juvenile Facilities

In 2006, there were 2,025 allegations of sexual violence reported in juvenile detention facilities. Following an investigation, 38% of youth-on-youth and 46% of staff-on-youth allegations of sexual violence were deemed unfounded (determined not to have occurred). Forty percent of the youth-on-youth allegations and 35% of the staff-on-youth allegations were unsubstantiated meaning that there was not enough evidence to conclude that the assault occurred. Twenty-one percent of youth-on-youth allegations and 18% of the staff-on-youth allegations were substantiated. This amounts to 3.0 substantiated incidents per 1,000 youth in juvenile facilities which is a higher rate than the number reported in publicly operated local jails (0.52 substantiated incidents per 1,000 inmates) and state prisons (0.46 per 1,000) during 2006 (Beck, Adams, & Guerino, 2008).

However, these differences in rates of sexual violence in juvenile detention centers and adult correctional facilities may reflect variations in the definition of sexual violence rather than differences in prevalence. "Sexual violence" can include nonconsensual sexual acts, abusive sexual contacts (which are unwanted but less serious), staff sexual misconduct (actions) and harassment (verbal statements) directed at youth. Moreover, state and local laws define all sexual acts involving youth below certain ages as nonconsensual and mandate that all allegations be reported to law enforcement and child protective services (Beck et al., 2008; Sickmund, 2006). Differences between rates of sexual victimization in adult and juvenile facilities may thus be "the result of more complete reporting of incidents and more thorough investigations when incidents of sexual violence involve youth" (Beck, Adams, & Guerino, 2008, p. 3). For example, of the youth-on-youth acts of sexual violence reported in 2006, 22% were reported as voluntary sexual contact between youth.

In the substantiated cases of sexual violence in juvenile detention facilities, 64% of the victims were male and 36% were female. Therefore, given their relatively small presence in correctional facilities, females were overrepresented among victims. Females were more likely to be victims of staff sexual violence (51%) than males, who were more likely to be victims of youth-on-youth sexual violence (73%). Nearly 60% of youth-on-youth violence victims were age 15 or younger while victims of staff sexual violence tended to be older. Sixty-six percent of the incidents between staff and youth were part of "romantic relationships" in which the youth appeared to consent while 10% involved explicit force or pressure. Fifty-four percent of the staff perpetrators were male, many of whom were program staff in their mid to late-20s (Beck et al., 2008).

Sexual Violence Against Juveniles in Adult Facilities

While little systematic research documents the incidence of sexual victimization among juveniles placed in adult

correctional settings, anecdotal reports of such abuse are common. Young people's relatively small size makes them vulnerable to exploitation. Some researchers describe the youngest inmate as the prototype prison rape victim and assert that juveniles sent to adult prison systems will likely face the greatest risk of sexual attack (Dumond, 1992; Schiraldi & Zeidenberg, 1997).

As part of the Prison Rape Elimination Act of 2003, the U.S. Bureau of Justice Statistics undertook annual national surveys of administrative records in adult correctional facilities. In 2006, the Bureau found that inmates under age 18 accounted for 1% and 13% of all victims of substantiated inmate-on-inmate sexual violence in prisons and jails respectively. They accounted for 4% of said victims in all correctional institutions (including private facilities). Adults comprised the majority of perpetrators of these incidents (Beck, Harrison, & Adams, 2007). Given their relatively small numbers in adult correctional facilities, juveniles are thus disproportionately represented among victims of inmate-on-inmate sexual violence. Youth may become so fearful of sexual assault that they will violate facility rules or feign psychological problems so that they will be placed in protective custody (Arya et al., 2007).

Studies of young prison inmates indicate that the youngest in the facility are most at risk of victimization. In an older study, Fuller and Orsagh (1977) found that inmates between the ages of 18 and 21 experienced the highest rate of victimization. More recently, using a sample of 111 17- through 25-year-old inmates in a medium security prison, Maitland and Sluder (1998) found that victims tended to be younger than nonvictims. Victimization in these studies was not limited to sexual assault but also included verbal harassment, property theft, and other forms of mistreatment.

Sexual Abuse in Women's Prisons

Since females are, in general, incarcerated less frequently than males, there exist fewer institutions in which to house them. Consequently, they may be more at risk for being housed with adults (Pinheiro, 2006). Gaarder and Belknap (2004) interviewed 22 young offenders and four staff members in a women's prison in the American Midwest. The young offenders ranged in age from 16 to 19; they were 15 through 17 at the time of their arrest, and all but one of the girls were juveniles when they were first confined. They were housed separately from, but ate, worked, and attended school and programming alongside the adult inmates. Most of the girls reported negative incidents with older inmates such as name-calling and sexual comments but none reported unwanted sexual behaviors, though some appeared to fear such contact. Even though they were not asked directly, four girls reported being involved in consensual sexual relationships with adult inmates. They acknowledged that such relationships violated prison rules but noted that staff did not enforce such rules. One staff member spontaneously reported that the

girls were moved from another area within the prison to the juvenile unit in part to keep them away from lecherous correctional officers including one man who had a romantic relationship with an underage inmate.

Acoca (1998) described 153 structured interviews administered to female offenders in juvenile detention facilities and community settings. These girls reported being observed by male correctional officers while being strip-searched or taking a shower. Because many incarcerated girls have a history of physical and sexual abuse (Acoca, 1998; Bill, 1998), the author argued that these girls are often accustomed to harassment and unaware of their rights. Thus the lack of female staff in correctional institutions housing girls puts the latter at additional risk (Pinheiro, 2006).

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

The 1989 United Nations Convention on the Rights of the Child (UNCRC) established a near global consensus that all children have a right to protection and that the "best interests of the child" principle should guide international policy. Article 37 makes explicit the importance of separating children from adults in criminal justice settings. By 2006, 191 countries had ratified the Convention (Muncie, 2008). The U.S. remains the only country aside from Somalia that has refused to ratify it, with past presidents citing concerns that it would infringe on parental rights and prohibit the recruitment of minors for military service (Krisberg, 2006). The American Psychological Association (2001) has strongly encouraged the U.S. Senate to ratify the Convention, in part because it provides a framework for humane juvenile justice and mental health systems to monitor children's wellbeing in various contexts. Nevertheless, among the countries that have ratified it, Muncie (2008) describes the Convention as "the most violated... of all human rights instruments," explaining that "in most cases it has not been incorporated into the domestic statutes of those ratifying it" (p. 111). In at least 78 countries, correctional officers are legally permitted to use corporal punishment (which may include beating and caning) to discipline incarcerated juveniles (Global Initiative to End All Corporal Punishment of Children, 2009).

INTERNATIONAL RESEARCH ON THE VICTIMIZATION OF INCARCERATED JUVENILES

Youth incarcerated in other countries face the same dangers as those in the U.S. In Africa, most prisons lack the resources to house juveniles apart from adults. Consequently, incarcerated youth must compete with adults for scarce resources. Their health and physical safety, including vulnerability to sexual abuse, is further threatened by overcrowding (Sarkin,

2008). Human Rights Watch (2007) investigators uncovered mistreatment while interviewing 142 juveniles in Burundi, a country in East Africa. The majority of the youth were detained in 10 of the country's 11 prisons. Children in most Burundi prisons were generally confined with adults during daytime hours, and in some instances adults were permitted to share showers and sleeping quarters with children. Moreover, dozens of child prisoners reported being sexually abused by adult prisoners, typically men. Some stated that they had been offered or knew of another child who had accepted money, food, alcohol, or drugs in exchange for sexually servicing an adult inmate. Other youth reported knowing of instances in which a peer had been forcibly raped, incidents which were rarely if ever prosecuted.

Human Rights Watch (2005) workers also investigated the treatment of youth in Rio de Janeiro's five juvenile detention centers. Investigators found conditions to be unsanitary and dangerously overcrowded. Moreover, they reported that beatings by guards were customary in all four of the detention centers for boys. Most commonly, youth reported being hit with an open hand but also noted that some correctional officers beat them with pieces of wood. Reasons for beatings included failure to follow arbitrary rules such as eating too slowly. Youth also reported that officers antagonized them by, for example, insulting the youths' mothers and thus provoked them into physical confrontation. Finally, some reported collective punishment in which multiple inmates were beat because of one inmate's wrongdoing. Although Brazilian law prohibits such beatings, there remains inadequate independent monitoring of the treatment of juvenile detainees. Public prosecutors rarely inspect the facilities, and many jurisdictions lack public defenders to provide legal representation for incarcerated youth.

While the victimization of incarcerated youth is frequently overlooked by scholars, researchers in Israel recently surveyed 201 youth, ages 12 to 20, in the country's 20 juvenile detention facilities. Twenty-six percent of boys reported being physically abused by their peers while 14.6% reported being sexually abused. For girls, self-reported rates of being physically or sexually abused by peers were 7.6% and 10.5% respectively. When queried about victimization by staff, boys were again more likely to report having been abused. Thirty-two percent endorsed having been physically abused while 12.5% endorsed having been sexually abused. Twenty percent of the girls reported having been physically abused by staff while 4.8% reported having been sexually abused by them (Davidson-Arad & Golan, 2007).

In Ontario, Canada, Peterson-Badali and Koegl (2002) conducted semistructured interviews with 100 males who had been incarcerated in secure juvenile facilities. Twenty-five percent stated that on at least one occasion, staff had used excessive force on them while 54% reported witnessing staff use excessive force on another inmate. Forty-six percent of respondents stated that correctional staff had "turned a blind eye" to impending peer violence by leaving the room so that

the violence could take place. Some respondents reported incidents in which staff indirectly or directly offered rewards (such as soda or cigarettes) to induce inmates to intimidate or assault other inmates. The authors concluded that explorations of inmate violence must include discussion of the role of correctional officers and that interventions designed to reduce such violence must address officers' behavior toward inmates.

Finally, Kiessl and Würger (2002) surveyed 804 inmates (774 of whom were under age 21) and 404 correctional officers in 12 South African prisons and four places of safety (detention centers for youth awaiting trial). Seventy-three percent of inmates reported that the institution in which they were housed complied with the requirement of the South African Constitution that juvenile and adult inmates be separated; only 52% of staff felt that the institution complied with this requirement. Also in violation of the Constitution, 80% of inmates reported the existence of corporal punishment in their facility. Nineteen percent of inmate respondents in prisons and 20% in places of safety reported that whipping was used as a disciplinary measure in the institution. Twenty-six percent of the prison inmates and 34% of the place of safety detainees reported that smacking was used. In terms of inmate-on-inmate violence, 21% of respondents reported having been physically assaulted, 4% reported having been sexually assaulted, and 6% reported having been subjected to both types of assault (with approximately 11% of inmates opting not to respond). Although the authors did not provide specific values regarding the number of inmates in each facility endorsing the aforementioned, they noted that inmates in places of safety were more likely to be physically assaulted while prison inmates were more likely to be both physically and sexually assaulted. Furthermore, the authors found that the younger the inmate, the greater his risk of being physically assaulted.

FUTURE RESEARCH

The Office of Juvenile Justice and Delinquency Prevention has not yet released the results of its Survey of Youth in Residential Placement, a large-scale study involving anonymous interviews of youth ages 10–20 in many different correctional facilities. The Survey draws a nationally representative sample through a two-stage, probability proportional-to-size sample design, with facilities sampled at the first stage and youth within the selected facilities sampled at the second stage (Sedlak, 2008). While the *Survey of Youth in Residential Placement: Nature and Risk of Victimization in Residential Placement* is forthcoming, researchers have released one major finding: 17% of youth report that while in custody they have been beaten and injured, their property was taken directly by force or threat, and/or they were forced to engage in sexual activity (OJJDP, 2009).

Future studies must, like the aforementioned survey, address prison victimization in a systematic way. Researchers should use a sample of three groups matched on important demographic variables such as age, race, gender, and physical size. The three groups would include one group of juveniles serving time in prison, another serving time in jail (awaiting trial or serving time), and a third group serving time in a juvenile correctional facility. Researchers might also wish to include adult offenders in the same jails and prisons matched on specified demographic variables to determine whether juveniles are indeed at an increased risk of victimization relative to the institution's general population. Optimally, participants would be drawn from several facilities in several states so that the results might generalize to other institutions. Because of the reluctance many youth may have about divulging past instances of abuse, a written questionnaire or an audio-computer-assisted survey instrument (audio-CASI) should be provided to them. With the latter instrument, instructions and questions are asked by the computer, and the respondent answers the questions using the computer's touch screen (Gaes & Goldberg, 2004; Wolff et al., 2008). This methodology is especially helpful in the prison setting, where inmates tend to have limited educational backgrounds and may have difficulty reading. Youth should also be given the option of participating in an interview, which has the benefit of potentially engaging them in the information-gathering process by offering a counselor to establish rapport, ask follow-up questions, and address crises.

In terms of measures, the National Violence Against Men and Women Surveys might be used (Wolff et al., 2008) or perhaps another questionnaire that includes specific, detailed questions about the amount and type of contact juveniles have with adult inmates (if applicable) and their experiences with various forms of victimization including harassment; physical abuse (with and without a weapon); sexual contact, coercion, and abuse; and property theft and extortion. Respondents should also be asked about their level of fear of both staff and other inmates in the facility. Researchers can then examine bivariate relationships between several independent variables related to various forms of inmate victimization. Prevalence measures can be compared in simple contingency tables with Chi-squared statistics.

INVESTIGATIONS

Currently, the U.S. Department of Justice (DOJ) is the only federal entity that investigates jails and prisons across the nation *and* has the power to bring lawsuits against such facilities when federal statutes or inmates' constitutional rights are violated. However, because of limited resources, investigations and lawsuits are rare. For example, between 1998 and 2007, the DOJ's special litigation section issued only 10 findings letters related to conditions in jails even though there are 3,365 jails in the U.S. (Arya et al., 2007).

Ad hoc investigations, however, have brought about significant change in state juvenile justice systems. For example, following an investigation of the Texas Youth Commission (TYC), 11 employees were arrested, and 12 senior executives and three facility superintendents resigned or were fired. Assistant Superintendent Ray Brookins and Principal John Hernandez were both indicted in April 2007 for sexually abusing inmates at West Texas State School. The investigation revealed that other TYC employees and inmates had been filing complaints against Brookins and Hernandez since December of 2003 but TYC officials ignored and in some cases covered up complaints and evidence of sexual abuse. A subsequent investigation revealed that physical abuse (both inmate-to-inmate and guard-to-inmate) was common in most TYC facilities (Penn & Tanner, 2007).

The 2007 Texas Legislative Session made several changes as a direct result of the TYC scandal. These include the creation of an Office of the Inspector General in TYC, the Office of Independent Ombudsman of the TYC, and a toll-free number for reporting abuse or neglect of children in the Commission's custody. The legislature also stiffened penalties for criminal conduct by TYC employees engaging in sexual contact with youth in TYC and prohibited incarceration for youth convicted only of misdemeanors (Penn & Tanner, 2007).

POLICY RECOMMENDATIONS

Given the extant research on transfer laws and the juvenile justice system today, certain legislative and institutional changes emerge as ethical imperatives:

1. Adult correctional systems should either use the classification systems utilized in the state's juvenile correctional agency or develop their own system for youth which take into account youths' developmental issues and special needs. Such a system would help prison staff place youthful offenders in the most appropriate unit within the prison (Austin et al., 2000; Kiessl & Würger, 2002). Ongoing needs assessments should be conducted (Tunnard, Ryan, & Kurtz, 2005) to ensure that youth who experience victimization during confinement receive treatment.
2. Because inmates are thought to be at greatest risk of sexual victimization during their first six months at a facility (Wolff et al., 2008), administrators should take additional precautions to ensure the safety of those new to the institution.
3. Institution administrators must create additional ways for juveniles to report abuse to a third party without threat of reprisal.
4. An individual who is not a member of nor affiliated with the institution's administration should be assigned to receive the complaints made by juveniles (Human Rights Watch Children's Rights Project, 1995).

5. An official policy for responding to children who have been victimized while incarcerated should be established in each institution (Kiessl & Würger, 2002).
6. Charges should be brought against institutional staff who physically or sexually abuse youth in custody (Human Rights Watch Children's Rights Project, 1995).
7. The U.S. Department of Justice should initiate regular investigations into the conditions in which children are confined in the U.S. to ensure that their civil rights are not being violated (Human Rights Watch Children's Rights Project, 1995).
8. The "Jail Removal" and "Sight and Sound" requirements of the Juvenile Justice Delinquency Prevention Act should be extended to apply to youth who are charged in the adult system. This would disallow the practice of housing youth charged as adults in adult jails. States should be encouraged to house youth who are convicted in adult court in juvenile facilities, at least until the age of 18 (Arya & Augarten, 2008).
9. Administrative segregation should be used only when absolutely necessary to protect youth (Human Rights Watch Children's Rights Project, 1995). There should be limits on the amount of time a youth may be placed in solitary confinement.
10. Juveniles should be given an opportunity to rehabilitate by utilizing blended sentencing approaches that allow judges to suspend an adult sentence if the juvenile abides by the terms of his or her juvenile sentence (Redding, 1999).
11. Youth should be counseled on the risk of HIV transmission, particularly within prison settings, and provided condoms (Kiessl & Würger, 2002).
12. Correctional staff should receive training on adolescent development and mental health disorders including attention problems. They should be taught to recognize and respond to victimization, trauma, and related mental health symptoms (Tunnard et al., 2005). Trainings should also include crisis management techniques that do not rely on physical restraints and chemical agents used on adult prisoners (Austin et al., 2000).
13. Adolescents who seem sad, insecure, fearful, and socially withdrawn may be at risk for increased victimization because they appear more vulnerable. Young people's emotional and behavioral problems appear to be risk factors for victimization also because they may interfere with the youths' ability to establish healthy sexual boundaries, solicit social support, and avoid behavior and situations that contribute to victimization. Youth with co-occurring internalizing and externalizing symptoms who have a compromised "ability to avoid, deter, or escape victimization" (Turner, Finkelhor, & Ormrod, in press, p. 12) should be taught self-protective strategies such as recognizing danger cues and identifying supportive adults (Lipovsky & Hanson, 2007).
14. Mental health treatment providers should discuss sexual assault, a taboo topic in many male institutions, openly

with their clients (Kiessl & Würger, 2002). Children should be encouraged to express their feelings about abuse and be educated about its effects (Lipovsky & Hanson, 2007). Mental health staff can also facilitate groups that provide vulnerable youth with the opportunity to engage in mainstream activities within a protective environment (Tunnard et al., 2005).

15. A variety of treatment modalities should be available to victimized youth. Preliminary research suggests that structured group treatment for incarcerated youth suffering from Posttraumatic Stress Disorder may be beneficial (Ovaert et al., 2003). Cognitive-behavioral treatment can focus on the child's attributions of blame and responsibility for the abuse while relaxation training can help traumatized children regulate their emotions (Lipovsky & Hanson, 2007). Additionally, dialectical behavior techniques may help reduce instances of self-harm (Tunnard et al., 2005).

CONCLUSION

Little research exists on the prevalence of victimization in detention facilities and adult jails and prisons. Yet juvenile offenders' developmental immaturity and psychological and physical vulnerability to abuse is unequivocal. This vulnerability necessitates increased efforts, at both governmental and institutional levels, to prevent their mistreatment.

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