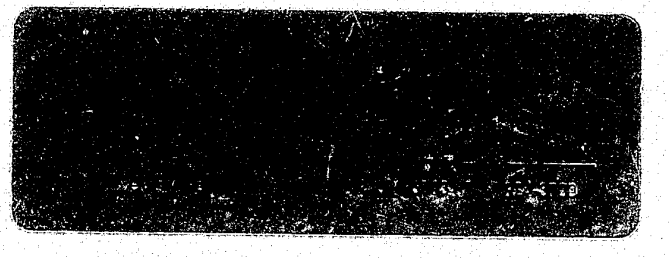

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CHILDREN AND YOUTH UNDER 18 IN THE JUVENILE JUSTICE SYSTEM: INSTITUTIONALIZATION AND VICTIMIZATION

by
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FOREWORD

The National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) of the Office of Juvenile Justice and Delinquency Prevention (OIJJDP) established an Assessment Center Program in 1976 to partially fulfill the mandate of the 1974 Juvenile Justice and Delinquency Prevention Act. NIJJDP currently maintains two Assessment Centers: the National Center for the Assessment of Delinquent Behavior and Its Prevention located at the University of Washington, Seattle, Washington; and the Center for the Assessment of the Juvenile Justice System, which is administered at the American Justice Institute in Sacramento, California. The purpose of the Assessment Center is to collect, synthesize, and disseminate knowledge and information on all aspects of juvenile delinquency.

At the American Justice Institute, the Center for the Assessment of the Juvenile Justice System continually reviews areas of topical interest and importance to meet the information needs of practitioners and policymakers concerning contemporary juvenile justice issues. Methodology includes: search of general and fugitive literature from national, State, and local sources; surveys; secondary statistical analysis; and use of consultants with specialized expertise.

These assessments are not designed to be complete statements in a particular area; instead, they are intended to reflect the state-of-knowledge at a particular time; including gaps in available information or understanding. Our assessments, we believe, will result in a better understanding of the juvenile justice system, both in theory and practice.

This assessment, "Children and Youth Under 18 in the Juvenile Justice System: Institutionalization and Victimization," was intially conducted in 1981 and was reorganized in 1983. Its purpose is to present a national assessment of state-of-the-art-knowledge (as it existed in 1981), regarding the institutionalization and victimization of youth under the age of 18 in the juvenile justice system, as well as some data on juveniles handled in the criminal justice system.

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ACKNOWLEDGEMENTS

This report initially was researched and written by David J. Berkman, Kathleen V. Turney, Dorothy M. Place, and Paul S. Alexander: Kathleen V. Turney and Paul S. Alexander wrote Chpater I; Kathleen V. Turney and Dorothy M. Place wrote Chapter II; Paul S. Alexander and Dorothy M. Place wrote Chapter III; David J. Berkman wrote Chpater IV; Kathleen V. Turney wrote Chpater V; and David J. Berkman and Paul S. Alexander wrote Chpater VI. David J. Berkman was Principal Investigator for the report, and Paul S. Alexander provided technical editing throughout. Paula Emison provided administrative editing. Mardy Dissing, Andrea Marrs, and Loretta Potter served as the production team. Philip Pittman acted as research assistant; and Tom Yamane contributed graphic artwork for the report.

A request to reformat and reorganize the entire report was received by the Center Staff in early 1983. Such organizational and editing revisions were conducted by Cindy L. Athey, Research Assistant. An additional NIJJDP request was a brief augmentation to the Introduction's historical and methodological sections and the Summary of Findings. Teresa Rooney provided these changes. Alissyn Link produced the reorganized document.

Additional appreciation is expressed to Diane Liburd, NIJJDP Project Monitor, for providing reorganizational suggestions.

PREFACE

"Children and Youth Under 18 in the Juvenile Justice System: Institutionalization and Victimization" was written in 1981 to assess current knowledge about institutionalized and victimized youth in the juvenile and criminal justice systems. As such, the report addressed several objectives:

(1) outline the formal legal procedures and informal mechanisms which function to institutionalize juveniles in adult and juvenile facilities;

(2) examine three specific aspects of institutionalization as they existed in 1981--the actual number of juveniles under 18 in institutions, increases or decreases in such numbers, and the proportions of institutionalized juveniles in secure facilities;

(3) review the literature available in 1981 on juvenile victimization in and by institutions; and

(4) discuss legal challenges that may be brought on behalf of incarcerated juveniles.

Through a chapter-by-chapter treatment of each objective, the report examines the available information and materials and provides a series of findings that contribute to a state-of-the-art understanding of institutionalization and victimization.

The report concludes by explaining policy implications of four specific issues affecting victimized youth under 18 in juvenile and adult institutions:

(1) the reduction of juvenile justice system dependency on institutions;

(2) the need for a viable Federal institutionalization policy;

(3) the need for States to take a more critical role in protecting the rights and addressing problems of juveniles placed outside the home; and

(4) the need for local agencies and institutions to take action to prevent institutional abuse.

Additionally, the report points to information gaps regarding institutionalization of youth under 18, the need for further research in this area, and an over-reliance of the juvenile justice system on institutionalization in general.

Keith S. Griffiths
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Center for the Assessment of the Juvenile Justice System

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EXECUTIVE SUMMARY

This report presents a national assessment of the state-of-knowledge regarding the institutionalization and victimization of children and youth under the age of 18 in the juvenile justice system, as well as some data on juveniles handled in the criminal justice system. The report begins with an historical perspective on the development of the juvenile justice system and the movement to institutionalize juveniles. This is followed by a review of current procedures and criteria used for institutionalizing juveniles; the presentation of data on the numbers of juveniles confined in various types of institutions, including adult jails and prisons; an analysis of the victimization of juveniles in correctional institutions, based on a review of the literature; a delineation of the types of legal challenges to juvenile incarceration which may be made; and, finally, a summary of findings, discussion of issues and their policy implications.

Some of the key findings of the assessment are as follows:

- Decisions regarding detention and commitment to correctional facilities for juveniles are too often dependent on the subjective impressions and discretion of authorities.

- Juveniles are institutionalized unnecessarily and in facilities unsuited to their needs.

- The number of institutions, both public and private, is increasing; the number of juveniles in institutions is declining; but the number of juveniles in secure facilities is increasing.

- There may be a trend toward institutionalizing adjudicated delinquents in larger and more secure facilities.

- Over 40,000 juveniles are placed in orphanages, group homes, foster homes and other non-juvenile justice facilites.

- Juveniles in institutions are victimized in various ways, ranging from neglect and indifference to violent assaults and sexual abuses. The extent of victimization is not known.

- Victimization in institutions affects both staff and juveniles and creates an atmosphere in which the victimizing of others is a pervasive part of institutional life.

- The three primary methods for legal challenge to the fact or conditions of juvenile incarceration are appeal, petition for a writ of habeas corpus, and civil suit.

- Legal challenges to conditions of institutional confinement are based primarily on the U.S. Constitution.

- Eighth Amendment challenges, invoking the prohibition against cruel and unusual punishment, have been used to achieve improvement in conditions of confinement such as unsafe facilities and the prohibition of certain practices including solitary confinement and the inappropriate use of tranquilizing drugs.

- Challenges based on the right to treatment, derived from various aspects of the Constitution, have been used to achieve placement in the least restrictive alternative, the right to receive individualized care and treatment, the right to an adequate diet, and the right to educational and vocational services.

The report concludes with the discussion of four issues, together with their policy implications. The issues are:

- Reducing juvenile justice system dependency on institutions.
- The need for a viable Federal policy on institutionalization.
- The need for States to take a more critical role in protecting the rights and addressing the problems of juveniles placed outside the home.
- The need for local agencies and institutions to take action to prevent institutional abuse.

Chapter I

INTRODUCTION

PURPOSE AND METHODOLOGY

The purpose of this report is to present a state-of-the-knowledge assessment of the institutionalization and victimization of children and youth under the age of 18 in the juvenile justice system, as well as some information regarding children and youth handled in the criminal justice system. The report also examines the major issues, problems, and needs surrounding the circumstances under which children and youth under 18 are placed in juvenile justice institutions. The effects of such institutionalization on the juvenile and on the juvenile justice system are assessed, particularly with regard to possible victimization.

The findings presented in the report are based on (1) a review of sociological and legal literature; (2) an analysis of relevant statutes and case law; and (3) an analysis of published and unpublished statistics on the number of juveniles in institutions. The literature review, case law analysis, and statute analysis were completed in 1980. The statistical analysis includes data from the years 1970 through 1979. Thus, the findings reflect trends that prevailed in the late 1970's.

HISTORICAL PERSPECTIVE

The Rehabilitative Rationale for a Separate Juvenile Justice System

Our Nation's juvenile justice system and the institutions which have emerged to serve this system are founded on the tenacious belief that socially deviant juveniles are more amenable to rehablitation than adults. Prior to the legislative creation of this Nation's first juvenile court in 1899,* this belief in rehabilitation spurred nineteenth century social reformers to establish institutions for children who had violated the criminal law, were disobedient to their parents or teachers, or who were without adequate care, shelter, or food. As one commentator has observed, "the development of legal rights for juveniles had to be postponed until the fascination with the paternal benevolence of the state and its courts toward the young had run its course" (Klapmuts, 1972:454).

The social movement to institutionalize juveniles was an outgrowth of the emergence of the State as the protector of the juvenile and arbiter of the juvenile's best interests. This role evolved in response to changing notions of childhood: from that of miniature adults subject to economic exploitation to that of small persons to be guided, supervised, and trained by parents or guardians. This change in ideology prescribed ideal childhood behavior as hardworking, sober, chaste, circumspect in habit, language, and associates, and submissive to authority (Empey, 1977:174). Prior to this change, there appears to have been little need for juvenile institutions. Smith, Berkman, Fraser, and Sutton (1980) found that, during the Puritan Period (1646-1824) complete obedience by juveniles to the household was expected and supported by law but juveniles who did not comply with

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*Illinois Juvenile Court Act (1899), Ill. Laws 134 et seq.

this ethic were not necessarily institutionalized. Instead, families not able to instill Puritan discipline in their children were subject to sanctioning by placing the recalcitrant child with another family as an involuntary apprentice (1980:7). Unruly children who were not apprenticed to other families were often left to wander the streets

During the nineteenth century, juveniles charged with committing criminal acts were generally dealt with differently than were juveniles who were merely disobedient. Such juveniles, like adults, were dealt with in the criminal courts. In the United States, the criminal responsibility of juveniles was determined as it had been in England: children under the age of seven were protected from criminal convictions by an irrebutable presumption that such children were incapable of discerning between right and wrong and hence of formulating criminal intent; children between the ages of seven and fourteen were similarly presumed incapable of formulating such criminal intent, but this presumption could be rebutted if the prosecution adequately demonstrated "guilty knowledge" (Platt, 1969:188) or a "consciousness of wrong" (Platt, 1969:190); however, children who had attained the age of fourteen were believed to be sufficiently mature to be held fully accountable for any of their acts which could be proven in the criminal court. While courts and juries acted, on the whole, more leniently toward children, the sanctions imposed included corporal, and in some cases capital, punishment, and confinement with adults who had been similarly processed through the criminal court (Sanders, 1970: xviii).

The nineteenth century reform movement to establish special institutional settings for children sought not only to remove juveniles from jails and prisons but to shield the impressionable young from the negative influences of the burgeoning cities:

> Both industrialization and immigration were bringing people into cities by the thousands, with resulting overcrowding, disruption of family life, increase in vice and crime, and all the other destructive factors characteristic of rapid urbanization. Truancy and delinquency rose rapidly, and civic-minded men and women worried about the exposure of children to tobacco, alcohol, pornography, and street life in general. With the growing concern over environmental influences came the desire to rescue children and restore them to a healthful, useful life (Winslow, 1976:133).

Typical of the philosophy of the religious, philanthropic and feminist forces which promoted this reform movement, particularly the idea that institutions could provide reasonable replacements for the family, is the following observation in 1823 by New York City's Society for the Prevention of Pauperism:

> Every person that frequents the out-streets of this city, must be forcibly struck with the ragged and uncleanly appearance, the vile language, and the idle and miserable habits of great numbers of children, most of whom are of an age suitable for schools, or for some useful employment. The parents of these children, are, in all probability, too poor, or too degenerate, to provide them with clothing fit for them to be seen in at school; and know not where to place them in order that they may find employment, or be better cared for.... Is it possible that a Christian community, can lend its sanction to such a process without any effort to rescue and to save?*

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*Cited in Fox, 1970:1189, fn. 18.

The institutional "child-saving" movement* began during the Refuge Period (1824-1899) which evolved with new notions of rehabilitation, i.e., the belief that society could change individuals rather than merely control them. This belief by nineteenth century reformers, that children were particularly amenable to their rehabilitative efforts, ultimately provided the rationale and impetus for the development of the juvenile court and a juvenile justice system separate from the adult criminal justice system. Like the juvenile institutions, the new courts had authority over juveniles charged with criminal conduct as well as juveniles who were beyond the control of their parents or teachers, or were simply without adequate food, clothing, or shelter. The juvenile court statutes made few distinctions among the types of children over whom these courts were granted jurisdiction. Juvenile court proceedings were informal, nonadversarial, and private, providing none of the procedural safeguards which were otherwise observed in the criminal courts. It was believed that such procedural differences would facilitate the juvenile court's goal of providing individualized rehabilitative guidance. As noted by Judge Julian Mack at the turn of the century:

> The child who must be brought into court should, of course, be made to know that he is face to face with the power of the state, but he should at the same time, and more emphatically, be made to feel that he is the object of its care and solicitude.... Seated at a desk, with the child at his side, which he can, on occasion, put his arm around his shoulder and draw the lad to him, the judge, while losing none of his judicial dignity, will gain immensely in the effectiveness of his work.... The problem for determination...is not, has this boy or girl committed a specific wrong, but what is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career (Mack, 1909:119-120).

During the time when the first juvenile court was established, a medical model of rehabilitation was introduced in the institutions. Derived from the then emerging social and psychological sciences, the medical model of juvenile deviance was based upon the assumption that such deviance results from individual social and psychological disorders. The juvenile institutions provided convenient laboratories for the application of this model, as was evident by the establishment of psychiatric clinics as affiliates of juvenile reform schools. For example, in 1909 the Juvenile Psychopathic Institute was founded in Chicago to:

> undertake...an inquiry into the health of delinquent children in order to ascertain as far as possible in what degrees delinquency is caused or influenced by mental or physical defect or abnormality and with the purpose of suggesting and applying remedies in individual cases whenever practicable as a concurrent part of the inquiry (Hawes, 1971:250-251).

As applied in the juvenile court, the medical model of juvenile deviance underscored the goal of the court to provide individualized rehabilitative services. According to the medical model, the role of the juvenile court was to:

> ...investigate, diagnose, and prescribe treatment, not to adjudicate guilt or fix blame. The individual's background was more important than the facts of a given incident, specific conduct relevant more as symptomatic of a need for the court to exercise jurisdiction. Lawyers were unnecessary--adversary tactics were out of place, for the mutual aim of all was...to determine the treatment

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*This terminology was coined by Anthony M. Platt in The Child Savers (University of Chicago Press, 1969).

> plan best for the child.... [D]elinquency was thought of almost as a disease, to be diagnosed by specialists and the patient kindly but firmly diagnosed (Winslow, 1976:135).

By the mid-twentieth century, experiments such as Silverlake (Empey and Lubeck, 1971) and Provo (Empey and Erickson, 1972) were developed to test juvenile rehabiliation models. Using intensive forms of therapy and behavior modification methods to determine the differential effects of incarceration and community intervention, it was found that these programs, in general, were no more successful than probation, confirming the suspicion held among some professionals that institutionalization of any kind is not rehabilitative.

The most significant aspect of the juvenile courts, with respect to juveniles' legal rights, is the fact that the State's provision to the juvenile of individualized rehabilitative treatment has historically provided the quid pro quo--the legal exchange--for denying juveniles the procedural protections otherwise accorded to adults. The legal rationale which made this judicial distinction possible was the characterization of the State as parens patriae. The parens patriae principle was taken from the English Courts of Chancery where it was "used to describe the power of the state to act in loco parentis for the purpose of protecting the property interests and the persons of the child" (In re Gault, 387 U.S. 1, 16 (1967)). As applied in this country, the parens patriae doctrine enabled the State to exercise its protective jurisdiction over all juveniles, who thereby acquired the right "'not to liberty but to custody'" (Id. at 17), and provided the legal rationale for characterizing juvenile proceedings involving alleged violations of the criminal law as "civil" rather than "criminal" (Id. at 19; see also Kent v. U.S., 383 U.S. 541, 555 (1966)). Hence, pursuant to the State's parens patriae powers, juveniles could be confined in institutions until they reached the age of majority ostensibly for the sole purpose of being provided with individualized rehabilitative treatment. Underscoring the rehabilitative rationale of the juvenile justice system was the fact that juveniles who did not appear to the juvenile court to be amenable to the court's rehabilitative options could, like today, be transferred to the criminal justice system for processing as an adult.*

Declining faith in the rehabilitative model has fostered debates regarding the fruitfulness of institutionalization of juveniles and the need to keep juveniles out of long-term facilities. In response to these (debates), one notable attempt to deinstitutionalize juveniles occurred in Massachusetts when, in a move to humanize the juvenile correction system, the Department of Youth Services decided to close its reform schools (Coates, Miller, and Ohlin, 1978:22-24).

Despite national and State efforts to deinstitutionalize a majority of juveniles and change the conditions under which others are institutionalized, there are growing doubts that there has been much progress toward those ends. These doubts are promulgated by concerns that there have been increases (1) in the waiver of persons under 18 years of age to adult court, (2) in the temporary detention of juveniles in adult jails and lockups, (3) in the institutionalization of juveniles in facilities for the emotionally disturbed, and (4) in a lowering of the age of adult jurisdiction. While these factors may operate to decrease the number of juveniles below the age of 18 in juvenile justice facilities, they would not decrease the number of institutionalized juveniles.

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*For example, in its first year of operation, the Chicago Juvenile Court transferred to the Grand Jury 37 juveniles charged with criminal offenses (Fox, 1970:1191, fn. 29).

Most States continue to base their juvenile justice systems on the traditional parens patriae notions of protective custody and rehabilitation. This is evidenced by the purpose clauses of several States' juvenile codes. For example:

> [T]he care and custody and discipline of the child shall approximate, as nearly as may be, that which should be given by its parents, and...as far as practicable, any delinquent child shall be treated, not as a criminal, but as misdirected and misguided, and needing aid and encouragement (Oklahoma Stat. Ann. tit. 10, s. 114).

And...

> This chapter [Juvenile Courts] shall be construed to effectuate the following public purposes: (1) To provide for the care, protection, and wholesome moral, mental and physical development of children coming within its provisions; (2) Consistent with the protection of the public interest, to remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and to substitute therefore a program of treatment, training and rehabilitation.... (Tennessee Code Ann. s. 37-201).

It is against this background that the United States Supreme Court, nearly 70 years after the establishment of the first juvenile court, took a critical look at this Nation's juvenile justice system and held that the institutional commitment of juveniles, like the institutional commitment of adults, constituted a deprivation of liberty which is recognized by the Federal constitution and cannot be curtailed without certain procedural protections.

ORGANIZATION OF THE REPORT

The report is divided into six chapters, including this introductory chapter with its historical perspective on the juvenile justice system and the use of institutionalization. Chapter II, "Procedures and Criteria for Institutionalizing Juveniles," discusses the concept of institutionalization, and then describes the process of placing juveniles in institutions, beginning with detention and continuing through both disposition and post-dispositional placements. The materials for Chapter II are drawn from a review and analysis of relevant sociological and legal literature. Chapter III, "The Institutionalization of Juveniles and Other Persons Under 18," addresses as its main topic the number of juveniles placed in various juvenile justice (and some criminal justice) institutions in the United States. Data are presented, analyzed, and discussed regarding juveniles in juvenile detention and correctional facilities, in adult jails and prisons, and in various private juvenile facilities including orphanages, group homes, and foster homes. Materials for Chapter III are drawn from a review and analysis of the sociological literature and various statistical sources, especially from the Bureau of the Census and from the LEAA Children in Custody reports. Chapter IV, "The Victimization of Juveniles in Institutions," reviews the literature on victimization of juveniles in institutions, by staff, by other juveniles, and by the system. Various types of victimization are considered, including physical, psychological, sexual, and economic. Causal relationships between institutionalization and victimization are examined. The materials for Chapter IV are drawn from a review and analysis of the sociological literature. Chapter V, "Legal Challenges to Juvenile Incarceration," presents a careful explication of the range of legal challenges which can be presented to the fact and conditions of juvenile institutional confinement--challenges which are based primarily upon the U.S. Constitution. The materials for Chapter V are drawn from an analysis of relevant State and Federal statutes and case law, together with other legal literature.

Chapter VI, "Summary, Issues, and Policy Recommendations," presents a summary of the findings of each chapter and a discussion of four major issues, together with the policy implications for each issue regarding the institutionalization and victimization of juveniles.

Chapter II

PROCEDURES AND CRITERIA FOR INSTITUTIONALIZING JUVENILES

THIS CHAPTER PRESENTS the current procedures by which juveniles are institutionalized at each point in the juvenile justice process, and the formal and informal criteria upon which decisions to incarcerate a juvenile are made. This discussion examines the placement of juveniles in juvenile and adult detention and correctional institutions, as well as in noncorrectional institutions when pursuant to the juvenile or criminal justice process.

INSTITUTIONALIZATION AS A CONCEPT

Placing a juvenile in an institution does not necessarily mean a correctional facility. In the sociological sense, an institution can be a physical, social, or even psychological setting in which roles and relationships between those roles are clearly established. Accordingly, institution has

- *expectations that the specified roles be carried out according to specified rules, and*
- *the authority to coerce individuals into carrying out those roles according to the specified rules.*

For the purpose of this report, institutionalization will be considered to have occurred when a juvenile has been separated from his or her family of orientation and placed in an institution for reasons of

- *abuse and neglect by parents or guardians,*
- *abandonment by parents or guardians,*
- *deviant (delinquent) behavior on the part of the juvenile, or*
- *an inability on the part of the juvenile to adjust to the usual societal institutions in which juveniles have frequent contact, e.g., schools, churches, or youth organizations.*

While the sociological definition describes the parameters within which institutionalization takes places, it is too broad to provide a sufficient conceptualization regarding the nature of institutionalization. It neither describes these institutions nor reveals how juveniles come to be lodged in them. Consequently, without this information, what it means to be institutionalized and the conditions of institutionalization cannot be understood or discussed.

Therefore, for purposes of this report, institutions are considered to be facilities or settings to which juveniles have been referred or in which they are detained as an alternative to their family of orientation or legal guardian's home and in which they are directly or indirectly under the care or custody of the authority of the State.

WHAT ARE INSTITUTIONS?

The Juvenile Justice and Delinquency Prevention Act of 1974 refers to institutions as facilities serving the juvenile justice system. Such institutions can be either privately or publicly administered and their structure can include both secure and nonsecure elements. Both secure and nonsecure facilities can be long- or short-term facilities designed to accommodate large or small populations of juveniles in correctional or rehabilitative environments.

Private facilities are usually dependent, to some extent, on government funding, subject to government licensing, but operate under the direct supervision or operational control of a private enterprise. Public facilities are under the direct supervision and operational control of a State or local government with a staff of public employees.

INSTITUTIONALIZATION AS A PROCESS

There are three principle stages of juvenile incarceration, the distinctions among them resting on a judicial time-frame. These stages are: (1) detention pending adjudication in the juvenile court, or trial in the criminal court; (2) commitment following juvenile court adjudication and disposition, or criminal court trial and sentencing; and (3) incarceration pursuant to post-commitment processes. These latter processes include the interinstitutional transfer of a juvenile from one institution to another, and incarceration for a second time pursuant to a parole revocation proceeding.

The primary purpose of incarceration is somewhat different at each of the principle stages of the juvenile and criminal justice processes, although the protection of the public is often sufficient justification for incarceration at all stages. Prior to adjudication, incarceration is primarily used to ensure the appearance of the juvenile in court; where the juvenile is allegedly abused or neglected, the primary purpose of pre-adjudicatory incarceration is the protection and care of the juvenile. Following adjudication, incarceration is primarily for the purpose of rehabilitating the juvenile retained by the juvenile justice system; however, if the juvenile is transferred to the criminal justice system, the primary purposes are punishment and deterrence.

Juveniles may be placed in correctional or detention facilities even though alternative placements may be more appropriate. And, all too often, juveniles are found in adult institutions. Status offenders continue to be placed in secure detention and correctional facilities, and they too are frequently detained in adult institutions. These placements may be a function of factors that have little to do with actual behavior of juveniles. Furthermore, these placements suggest an uneven application of Congressional guidelines to reduce the incidence of inappropriate institutionalization and to place juveniles in the least restrictive environments. Therefore, it is clear that not all juveniles penetrate further into the juvenile justice system, suggesting that there may be a differential liability operating to bias the selection of juveniles for institutional referral. The following discussion specifies the legal procedures and the formal

and informal criteria by which juveniles are institutionalized in juvenile and adult detention and correctional facilities.

Detention

Custody

Statutory authority to take alleged delinquents and status offenders into custody is granted to law enforcement alone in 20 States (Arkansas, California, Delaware, District of Columbia, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Massachusetts, Minnesota, Nebraska, New Jersey, South Carolina, Vermont, Washington, West Virginia, Wisconsin, and Wyoming) (Kihm, 1980:31-32), to "law enforcement and a probation officer, youth counselor, or other employee of the juvenile court" in 18 States (Georgia, Hawaii, Indiana, Louisiana, Maryland, Michigan, Missouri, Nevada, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, and Virginia) (Kihm, 1980:31-32), and to "one or more of these...with the addition of a representative of a government department (Alabama, Alaska, Arizona, Florida, Mississippi, North Carolina, and Texas) (Kihm, 1980:31-32) and/or any other adult (Colorado, Connecticut, Montana, New York, Oregon, and Utah)(Kihm, 1980:32) in the remaining States. With respect to juveniles who are allegedly abused or neglected, most States authorize law enforcement to take custody of such juveniles whenever they face immediate or imminent danger,* although some States require preremoval authorization by the court** or by the welfare department.*** Many States also grant emergency custodial authority over such juveniles to designated social service workers (e.g., N.Y. Fam. Ct. Act s 1024-1025 and N.Y. Soc. Serv. Law s 414(2), IJA/ABA Standards Relating to Abuse and Neglect, 1977:79) or to medical personnel.****

The scope of the State's custodial authority over juveniles is significantly broader than its arrest powers over adults. While law enforcement can exercise protective custody over adults who require medical attention or who represent a danger to themselves (e.g., law enforcement in California can take into protective custody adults who are gravely disabled or, as a result of mental disorder, represent a danger to themselves or to others (Cal. Welf. & Inst. Code s 5150, Lanterman-Petris-Short Act)), it does not have authority to arrest adults who have sustained physical or emotional neglect or

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* For example, Ky. Rev. Stat. §119.335(4) (Cum. Supp. 1972); Md. Ann. Code vrt. 27, §35A (f-1) (Cum. Supp. 1973); N.Y. Fam. Ct. Act §1024-1025, and N.Y. Soc. Serv. Law §414(2); Tenn. Code Ann. §37-1206 (Cum. Supp. 1973) (IJA/ABA Standards Relating to Abuse and Neglect, 1977:79).

** For example, Tex. Fam. Code, ch. 34, 34.05(d); S.C. Code Ann. §20-310.2 (Supp. 1972) (Ibid.).

*** For example, Ohio Rev. Code Ann. §2151.421C (Supp. 1972); Nev. Rev. Stat. §200.502 (1973) (Ibid.).

****For example, Conn. Gen. Stat. Rev. §17-38(a) (Supp. 1973); Ky. Rev. Stat. §199.355(4) (Supp. 1973); Mass. Gen. Laws Ann., ch. 199-51c (Cum. Supp. 1974); Mich. Comp. Laws Ann. §722.571(2) (Supp. 1973); N.J. Rev. Stat. §9:6-8.16 (Supp. 1974); N.Y. Fam. Ct. Act §1025(a) NC.C Gen. Stat. §110-118(d) (Cum. Supp. 1974); Tenn. Code Ann. §37-1204 (Cum. Supp. 1974) (Ibid.).

abuse* or who have engaged in conduct which would constitute a status offense if committed by a juvenile.

With respect to constitutional due process protections, the State's broader custodial authority over juveniles is particularly evident regarding the alleged commission of criminal offenses. Adults subject to arrest for criminal prosecution are protected by certain Federal constitutional parameters. These parameters include the Fourth Amendment's prohibition "against unreasonable searches and seizures," "seizures" including any restraint or detention of a person by a governmental entity. A "seizure" constitutes an arrest when a governmental entity takes an individual into custody for the specific purpose of criminal prosecution. In order for such an arrest to be "reasonable" under the Fourth Amendment, it must be based upon probable cause, that is, evidence that is sufficient to lead a reasonable person to conclude that the individual arrested has committed or is committing a criminal offense. Probable cause must be adduced either by means of a warrant issued by a neutral and detached magistrate (U.S. v. Watson, 423 U.S. 411 (1976); Spinelli v. U.S., 393 U.S. 410 (1969); Giordenello v. U.S., 357 U.S. 480 (1958)), or pursuant to the arresting officer's reasonable belief that a crime is being or has been committed and that the person to be arrested is responsible** (U.S. v. Watson, supra; Beck v. Ohio, 379 U.S. 89 (1967); Draper v. U.S., 358 U.S. 307 (1959)).

State courts are divided on whether the Fourth Amendment's protections against unreasonable seizures are applicable to juveniles.*** One of the difficulties in achieving judicial uniformity on this issue, in the absence of a Supreme Court decision, is the fact that most State statutes refer to the process by which law enforcement may assume authority over a juvenile as "taking the juvenile into custody" rather than "arrest." For example, a study conducted in 1969 showed that 36 States used "custody" rather than "arrest" to refer to this process, 15 of these States specifically providing that the exercise of this custodial authority does not constitute arrest (Ferster and Courtless, 1969: 583-584, fns. 76 & 77). Some of these States do, however, use the terminology of the Uniform Juvenile Court Act in providing that "[t]he taking of a child into custody is not an arrest, except for the purpose of determining its validity under the constitution

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* Instead, such adults may be transported to a hospital or other care facility and the alleged defendant(s) responsible for such abuse or neglect may be arrested on the basis of alleged criminal conduct. While the parent(s), guardian, or custodian of an allegedly abused or neglected juvenile may be similarly subject to criminal charges, the distinction rests on law enforcement's broader discretion to deliver such juveniles to non-medical detention facilities pending court action.

** While the law in no way discourages warrantless arrests, the Supreme Court has recognized that the preliminary procurement of a warrant when circumstances permit does provide an additional procedural safeguard. See, e.g., Wong Sun v. U.S., 371 U.S. 471, 479-80 (1963); Beck v. Ohio, supra, at 96.

***Those States which have decided that juveniles come within the protection of the Fourth Amendment include In re J.B., 131 N.J. Super. 6, 13-14, 328 A. 2d 46, 50-51 (Juv. and Dom. Rel. Ct., Union Co. 1974); In re People, 506 P. 2d 409 (Colo. App. 1973); In re Harvey, 295 A. 2d 93 (Pa. Super. Ct. 1972); Brown v. Fauntleroy, 442 F. 2d 838 (D.C. Cir. 1971); Baldwin v. Lewis, 300 F. Supp. 1220 (E.D. Wis. 1969), rev'd on other grounds, 442 F. 2d 29 (7th Cir. 1971); In re Marsh, 40 Ill., 2d 53, 237 N.E. 2d 529 (1968); State ex rel. L.B., 240 A. 2d 709 (Juv. & Dom. Rel Ct. 1968); and Ciulla v. State, 434 S.W. 2d 945 (Tex. Ct. App. 1968) (Davis, 1980:3-4, fn. 12; Piersma, 1977:64).

of this State or of the Untied States" (Uniform Juvenile Court Act, s13(b) (1968) (emphasis added).* In States which have adopted this terminology, the laws pertaining to the arrest of adults are fully applicable to juveniles. Nonetheless, many States do not require, either by statute or judicial decision, that juveniles can be taken into custody only on the basis of probable cause (Piersma, 1977:64). As a result, police have much broader "discretion in dealing with juveniles than they exercise in dealing with adults" (Davis, 1980:3-4). It should be noted that in addition to the fact that the application of Fourth Amendment protections decreases the likelihood that a juvenile will be taken into custody, one of the most important advantages to juveniles who are accorded these rights is the full availability of the exclusionary rule at adjudication, which excludes or prohibits the admissibility of evidence obtained in violation of the Fourth Amendment.

In most States, once a juvenile has been taken into custody, the custodial agent has the following alternatives, all of which include the option to file a formal juvenile court petition: (1) release the juvenile to the custody of parent(s) or guardian; (2) hold the juvenile for further investigation and questioning; (3) refer and/or transport the juvenile to another agency such as welfare, probation, a medical facility, or a community youth services program; or (4) place the juvenile in a detention facility pending further action. Criteria and standards for detaining a juvenile at this stage of the juvenile justice process are variable, ranging from the "undesirability" or "impracticality" of release to a judgement that detention is "in the best interests of the child or community" (Ferster, Snethen, and Courtless, 1969:175-176).

The sociological literature shows that the translation of the law into practice is not always straightforward. Estimates of juveniles either perfunctorily released or released with either counseling or field interrogation vary considerably: from 88 percent (Terry, 1967:17) to 49 percent (Black and Smith, 1980:46). For those juveniles not released, the decision to detain is based on two major criteria: (1) that the juvenile, if released, will run away if not detained, and (2) the juvenile will commit an offense dangerous to him or herself or the community if not detained (Pappenfort and Young, 1977:11).

While police detain juveniles because they fear they will not appear in court, research presents contrary evidence: that the rate of failure to appear among juveniles not detained is quite low (Kihm, 1980:15). With respect to juveniles detained because it is believed they are a danger to self or the community, Ferster and Courtless found that those juveniles with past offenses were more likely to be detained and that juveniles exhibiting repentance had a better chance of being released (1972:8). It was significant that they found that the seriousness of the juvenile's present offense did not seem to be a major criterion of whether they were detained. Ferster and Courtless found that 75 percent of the juveniles detained were held for other than dangerous offenses (1972:9). Furthermore, Kramer and Steffensmeier (1978:798) reported that juveniles referred to court for offenses such as runaway or incorrigibility were more likely to be detained than those who were accused of more serious offenses, indicating that the decision to detain may have more to do with the control of juveniles than the desire to protect the juvenile or the community from further injury.

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*For example, Ill. Ann. Stat. ch. 37, s703-1(3) (1972); Minn. Stat. Ann. s260.165(2) (Davis, 1980:3-3).

Intake

The initial decision to take a juvenile into custody and place him or her in a temporar detention facility must in many States be confirmed by probation or juvenile court inta workers. Several States have 24-hour intake units to which juveniles taken into custod must first be delivered, and these units have the responsibility for the intial detenti decision. (See, generally, Black, Campbell, and Smith, "A Preliminary National Assessm of the Function and Impact of 24-Hour Juvenile Justice System Intake Units," 1980.)

Most intake units have two primary functions,* first, to ascertain whether there is suf ficient evidence to support the allegations of a formal juvenile court petition; and, secondly, if there is sufficient evidence, whether to detain the juvenile pending formal action by the juvenile court. The criteria applied by intake workers to determine whether or not to detain a juvenile varies from State to State, and from community to community within a given State. There has been no Supreme Court decision or other Federal mandate to guide States in the development of intake standards. A recent report of the National Juvenile Justice System Assessment Center noted

> Organizational and administrative variations in the operation of local intake procedures are the result of jurisdictional responses to legal issues associated with efforts to establish due process guarantees in juvenile case decision processing procedures. The right to silence and to counsel, establishing sufficient evidence to support the allegations in a complaint, safeguards against self-incrimination, written notice outlining the specifics of the offense, timely judicial review of temporary detention orders, and the use of jury trials are a few example. The way jurisdictions have chosen to deal with these issues with respect to the juvenile court process depends on two major variables: the State's judicial code, and the "cultural" environment of local courts.... The greatest contributing factor to the lack of uniformity is the difference in concepts regarding the overall function of intake (Black, Campbell, and Smith, 1980:37-38).

One commonality among intake units is that they base their decisions upon social evaluations of the juvenile, which are developed from information provided by the juvenile, the juvenile's family, school personnel, and juvenile court record.

Detention Hearing

Many States statutorily provide that juveniles have the right to a formal detention hear ing (Piersma, 1977:184), the primary purpose of which is to provide a judicial determina tion whether detention pending the adjudicatory hearing is required to protect the publi and/or the juvenile, or to insure the juvenile's appearance in court (Davis, 1980:3-37; Fox, 1970:143; Piersma, 1977:194-195). The criteria applied to these determinations, like the detention criteria applied by nonjudicial personnel, vary considerably and frequently include a judgement of "the juvenile's best interest" (Ferster, Snethen, and Courtless, 1969:183). These determinations must, however, be based upon the court's careful consideration of the facts of each case, not upon "a general policy of detaining all those charged with a certain offense" (Piersma, 1977:195; see, e.g., In re William M 3 Cal. 3d 16, 473 P. 2d 737, 89 Cal. Rptr. 33 (1970)).

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*Another aspect of the intake function, the diversion of juveniles to programs and agencies outside of the juvenile or criminal justice systems, is discussed later in this chapter.

There has recently developed a trend in Federal and State courts to hold, on the basis of Federal constitutional law, that an alleged delinquent cannnot be detained pending adjudication without a determination that the evidence upon which the juvenile was taken into custody establishes probable cause that the juvenile has committed the alleged offense.* Such holdings apply to juveniles in the Supreme Court's decision in Gerstein v. Pugh, 420 U.S. 103 (1975), which held, on the basis of the Fourth Amendment, that an adult criminal suspect against whom no indictment has been filed or who is arrested without a warrant, cannot be detained pending trial unless provided with a hearing which establishes probable cause.

There is great variation from one State to another with regard to the provision of a detention hearing for allegedly abused or neglected children after they have been taken into custody. As one legal commentator has noted, "...many states provide no statutory right to contest emergency removals of children. If such an opportunity exists, the statutes differ as to the nature and timing of the hearing. Children are often removed from their homes and kept in detention or shelter care facilities for six months or more before there is a full hearing on the merits of the original allegations" (Piersma, 1977:483). In States which do not statutorily provide for such detention hearings, an increasing number of courts are holding that such hearings are constitutionally required. For example, Oklahoma has held that "the failure to schedule a hearing for nearly two months after depriving the parents of the custody of their children is an impediment to the continuance of the parent-child relationship and a denial of due process" (York v. Halley, 534 P. 2d 363, 365 (Okla. 1975). See also White v. Minter, 330 F. Supp. 1194 (D. Mass. 1971); In re Ronald Lee Willis, 207 S.E. 2d 129 (W.Va. 1973)).

States which require a detention hearing generally specify the maximum time period within which the hearing must be held once the juvenile is taken into custody or admitted to a facility, or once the court has received notification of the juvenile's detention or a petition for the juvenile's adjudication has been filed. This time period varies from 24 hours (e.g., California, District of Columbia, Maryland, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, Oklahoma, Rhode Island, West Virginia, and Wisconsin; Kihm, 1980:67-68) to 96 hours (e.g., North Dakota; Kihm, 1980:64), generally excluding nonjudicial days, and in some States varies according to whether the juvenile is allegedly delinquent, a status offender, or abused or neglected (e.g., Florida, Idaho, and North Carolina; Kihm, 1980:64,67-68).

Bail

A right routinely accorded to adult criminal suspects which is only infrequently available to alleged delinquent juveniles is the right to release on bail. While the Eighth Amendment prohibits the imposition of "excessive bail" without providing that there is any absolute right to bail, Federal statutes provide that all persons arrested for noncapital Federal offenses must be granted the right to post bail, leaving it to the judge's discretion whether bail should be available in capital cases (Federal Rules of Criminal

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*For example, Moss v. Weaver, 525 F. 2d 1258 (5th Cir. 1976); Cox v. Turley, 506 F. 2d 1347 (6th Cir. 1974); People ex re. Guggenhein v. Mucci, 32 N.Y. 2d 307, 298 N.E. 2d 109, 344 N.Y.S. 2d 944 (1973), aff'd, 46 App. Div. 2d 682, 360 N.Y.S. 2d 71 (1974); M.A.P. v. Ryan, 285 A. 2d 310 (D.C. 1971); Cooley v. Stone, 414 F. 2d 1213 (D.C. Cir. 1969); Baldwin v. Lewis, 300 F. Supp. 1220 (E.D. Wis. 1969); rev'd on other grounds, 442 F. 2d 29 (7th Cir. 1971); and In re Edwin R., 60 Misc. 2d 355, 303 N.Y.S. 2d 206 (Fam. Ct. 1969) (Davis, 1980:3-36, fn. 158; Piersma, 1977:187).

Procedure, s46(a)(1)). Since the purpose of bail is to insure the defendant's presence at trial (Stack v. Boyle, 342 U.S. 1 (1953)), the Federal statutes further provide that bail can be imposed in noncapital cases only if releasing a defendant on his or her own recognizance (promise to appear) is not sufficient to reasonably insure the defendant's appearance at trial (Federal Bail Reform Act of 1966). While the Federal statutes apply only to persons accused of committing Federal crimes, the Supreme Court has not ruled on the applicability of the Eighth Amendment's bail provision to the States and most States have followed the Federal Statutes in granting the right to bail by statute or State constitution.

States are divided on the question of whether juveniles have a right to release on bail. While a minority of States have established this right by statute* or court decision,** some States have authorized release on bail only at the discretion of the judge.*** Several States have expressly prohibited bail to juveniles.**** Most States do, however, provide for a juvenile's release on the juvenile's and/or on the juvenile's parent's or guardian's promise to appear (Kihm, 1980:34).

Place and Length of Dentention

While abused or neglected juveniles may be placed temporarily with foster parents or in a medical facility, there are primarily two types of juvenile detention facilities to which all juveniles may be taken. These types of facilities are commonly known as "detention" and "shelter care," distinguishable in most instances only by their respective degrees of physical security. The Office of Juvenile Justice and Delinquency Prevention relies upon the following definition of a secure facility, which has been adopted for purposes of this chapter to apply to "detention" as compared to "shelter care" facilities:

> Secure Facility: one which is designed and operated so as to ensure that all entrances and exits from such facility are under the exclusive control of the staff of such facility, whether or not the person being detained has freedom

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* For example, Colo. Rev. Stat. Ann. s19-2-103(7) (1978); Ga. Code Ann. s24A-1042(d) (Supp. 1979); Mass. Gen. Laws Ann. ch. 119, s67 (Supp. 1979); Okla. Stat. Ann. tit. 10 s1112(c) (Supp. 1979); S.D. Comp. Laws Ann. s26-8-21 (1976); W. Va. Code Ann. s49-5-1(b) (Supp. 1979) (Davis, 1980:3-40, fn. 172).

** For example, Trimble v. Stone, 187 F. Supp. 483 (D.D.C. 1960); State v. Franklin, 202 La. 439, 12 So. 2d 211 (1943); and In re Osborne, 127 Tex. Crim. 136, 75 S.W. 2d 265 (1934) (Piersma, 1977:197).

*** For example, Minn. Stat. Ann. s260,171(1) (Supp. 1980); Neb. Rev. Stat. s43-205.03 (1968); Tenn. Code Ann. s37-217(d) (1977); Vt. State. Ann. tit. 33, s641(c) (Supp. 1979) (Davis, 1980:3-40, fn. 171).

****Ore. Rev. Stat. s419.583 (1977); Hawaii Rev. Stat. s571-32(f) (1976); Pauley v. Gross 1 Kan. App. 2d 736, 574 P. 2d 234 (1977); Aubry v. Gadbois, 50 Cal. App. 3d 470, 123 Cal. Rptr. 365 (1975); R. v. Whitmer, 30 Utah 2d 206, 515 P. 2d 617 (1973); Baker v. Smit 477 S.W. 2d 149 (Ky. 1972); State ex rel. Peaks v. Allaman, 51 Ohio Op. 321, 115 N.E. 2d 849 (Ct. App. 1952) (Davis, 1980:3-40, fn. 170; Piersma, 1977:196).

of movement within the perimeters of the facility or which relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents. (Where the operation involves exist from the facility only upon approval of staff, use of locked doors, manned checkpoints, etc., the facility is considered secure.) If exit points are open, but residents are authoritatively prohibited from leaving at any time without approval, it would be a secure facility. If the facility is not characterized by the use of physically restricting construction, hardware, or procedures and provides its residents access to the surrounding community with minimal supervision, it would be a non-secure facility ("Final Guideline Revision for the Definition of a Juvenile Detention or Correctional Facility," issued by OJJDP on September 27, 1979, revising the State Planning Agency Grants Guideline Manual: M-4100.1F, Change 3, July 25, 1978, Chapter 3, Paragraph 52(n)(2) and Appendix 1, Paragraph 4; as provided in Hutzler and Vereb, 1980:2).

At least 36 States statutorily distinguish between secure and nonsecure juvenile detention facilities,* 24 of these States characterizing secure or physically restricting facilities as "detention" and secure or physically unrestricting facilities as "shelter care."** However, the potential abuses to juveniles in shelter care facilities can be similar to those abuses which can take place in secure detention facilities.***

Juvenile detention pending an adjudicatory hearing may extend for a maximum period of 3 days (e.g., Oregon) to 90 days (e.g., Florida and South Dakota), usually measured from the time a petition has been filed**** and not including possible extensions (Kihm, 1980:70). In 29 States, however, there is no statutory time limitation on the interval between a decision to detain and the adjudicatory hearing. These States are Alabama, Alaska, Arizona, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Kentucky, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, and Wyoming.

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* Alabama, Arizona, Arkansas, California, Colorado, District of Columbia, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Montana, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming (Kihm, 1980:41).

** Arizona, Arkansas, California, Colorado, District of Columbia, Hawaii, Illinois, Iowa, Kansas, Louisiana, Maryland, Minnesota, Montana, New Hampshire, New Jersey, North Carolina, Ohio, Oregon, South Dakota, Utah, Vermont, Washington, Wisconsin, and Wyoming (Kihm, 1980:41).

*** It should be noted that some States (e.g., Kansas, Minnesota, Mississippi, Nebraska, New Hampshire, Pennsylvania, and South Carolina) apparently allow the temporary detention of juveniles in State juvenile correctional institutions which are normally geared to juveniles who have been adjudicated delinquent and committed to the institution by a juvenile court (Kihm, 1980:41).

****Petitions themselves must be filed within statutorily specified periods of time, e.g., within 10 days from the beginning of detention in Maine, and no later than the time of the detention hearing in Illinois and Oregon (Kihm, 1980:65).

A third type of facility in which a juvenile may be temporarily detained is an adult jail. According to one source, only five States (Arizona, Maryland, Mississippi, Pennsylvania, and Rhode Island) (Kihm, 1980:39) aboslutely prohibit by statute the detention of juveniles in jails. Most of the remaining States apparently permit the jailing of juveniles if they are above a specified age and/or if certain conditions or circumstances are met.* Many of these States also distinguish among alleged delinquents, status offenders, and abused or neglected juveniles for purposes of detention in jails.** Most of the States authorizing the jailing of juveniles require some type of separation between incarcerated juveniles and adults, in accordance with the Juvenile Justice and Delinquency Prevention Act's directive that such juveniles shall not have "regular contact" with adults who are charged with, or convicted for, committing a crime (Juvenile Justice and Delinquency Prevention Act, s233(13).***

Diversion

"Diversion" is characterized as the referral of juveniles (and in some instances thei parents or guardian, particularly in cases involving abuse or neglect) by law enforce intake workers, or public prosecutors, to community services in lieu of formally proc ing. Diversion may occur as a result of informal bargaining: a juvenile admits the a gations contained in the juvenile court petition and agrees to participate in a desig nated diversion program in exchange for being diverted from formal court processing. The practice of diversion is based on the assumption that a diverted juvenile faces a greater likelihood of being rehabilitated than if he or she were processed through th regular channels of the juvenile correctional system. Central to the present discuss is the fact that the community services to which juveniles are diverted sometimes inc local public and private agencies which operate institutional treatment programs, e.g mental health or other social service agencies.

Implicated in the diversion of juveniles from juvenile justice processing are restric tions on the juveniles' freedom. If a juvenile does not comply with, or successfully complete, the diversion program or treatment to which he or she has agreed, the juven may be returned to the juvenile justice system for regular processing. Diversion whi results in the actual confinement of juveniles (e.g., in mental institutions) represe an even greater restriction of freedom. Since such restrictions constitute a depriva of the juvenile's constitutionally recognized right to liberty, some commentators hav suggested that diversion should be accomplished only pursuant to procedures which mee the requirements of due process.

A complete analysis of the due process issues pertaining to diversion is beyond the s of this chapter. However, it has been suggested that the following due process consi ations are particularly relevant to procedures which result in diversion (Shakman, 19 Gottesman, 1978):

(1) the juvenile should be entitled to a preliminary hearing to determine whether there is probable cause that he or she committed the alleged offense (an obvious

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* See, e.g., Kihm, 1980:39-40 and 52-56, Table 6a.

** See, e.g., Kihm, 1980:43-44, Table 5.

***For a breadkown of the statutorily authorized methods of separation, see Kihm, 1980:45-51, Table 6; and Hutzler and Vereb, 1980.

corollary to this right would be to provide allegedly abusive or neglectful parents with a preliminary hearing on the issue of probable cause);

(2) where the basis of official intervention is the juvenile's or parent's admission of the alleged offense and acceptance of diversion, the voluntariness of such admission and acceptance must be tested against current due process standards (e.g., two standards of voluntariness set forth by the Supreme Court are: (i) absence of coercion; and (ii) knowledge of applicable rights and the consequences of waiving those rights (Schneckloth v. Bustamonte, 412 U.S. 218 (1973));

(3) admissions made in the course of determining the applicability of diversion should be protected by the Fifth Amendment's privilege against self-incrimination and therefore not submitted into evidence should the case later be formally processed;

(4) the juvenile and the juvenile's parents should have the right to be represented by counsel during the diversion decisionmaking process, since counsel is needed to advise whether to waive certain rights;

(5) participation in a diversion program should be for a specified and reasonable duration; and

(6) placement in institutions pursuant to the diversion process should comply with due process protections which are applicable to the particular placement, e.g., the placement of juveniles in secure mental institutions should comply with the particular State's laws regarding the involuntary civil commitment of minors.

Critical attention to the due process dimension of diversion procedures is of recent origin, and hence diversion represents one of the practices within the juvenile justice system which is particularly susceptible to constitutional challenge.

Adjudication

As discussed earlier, the United States Supreme Court has set forth the constitutionally mandated due process rights to which juveniles facing the possibility of institutional commitment are entitled at the adjudicatory stage of the juvenile process. These rights include notice of charges, right to counsel, right to confrontation and cross-examination, and the privilege against self-incrimination (Gault, supra). Additionally, the State has the burden of proving that the allegations set forth in any delinquency petition are true beyond a reasonable doubt (Winship, supra).* As discussed later in this chapter, an adjudicatory proceeding which ultimately results in the dispositional commitment of a juvenile to a correctional institution but which did not comply with the above standards renders the juvenile's confinement subject to legal challenge.

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*However, in juvenile court proceedings to ascertain whether a juvenile is a status offender or is abused or neglected, the permissible standards of proof include the less stringent "clear and convincing evidence" or "preponderance of the evidence."

Waiver and Other Methods for Processing Juveniles in the Criminal Court

In lieu of adjudication,* a juvenile court can relinquish its jurisdiction over a juvenile who is an alleged delinquent by transferring him or her to the criminal court for trial as an adult. This option, known interchangeably as transfer, waiver, remand, bind over, and certification, is only available to the juvenile court when a juvenile is charg with the commission of a criminal offense. Many States have further limited this option to juveniles who have committed specified or certain types of criminal offenses and/or are above a certain age.**

The Supreme Court's holding regarding waiver in Kent v. U.S., supra, ruled that juveniles could not be transferred to the criminal court unless pursuant to a formal hearing in which the juvenile, with the aid of legal counsel, has the right to examine social records upon which the transfer decision may be made, and in which the judge must make a statement of his or her reasons for transfer. The Supreme Court also provided an appendix to its decision in Kent which set forth suggested considerations or criteria upon which the transfer decision should be made. These considerations were:

- the seriousness of the alleged offense to the community and whether the protection of the community requires waiver;
- whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
- whether the alleged offense was committed against persons or property, greater weight being given to offenses against persons, especially if personal injury resulted;
- the prosecutive merit of the complaint, i.e., whether there is evidence upon which a grand jury may be expected to return an indictment;
- the desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime;
- the sophistication and maturity of the juvenile as determined by considerations of his home, environmental situation, emotional attitude, and pattern of living;
- the record and previous history of the juvenile, including previous contacts with the [juvenile agency], other law enforcement agencies, juvenile courts in other jurisdictions, prior periods of probation...or prior commitments to juvenile institutions; and

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* In Breed v. Jones, supra, the Supreme Court held that the Fifth Amendment's Double Jeopardy Clause prohibited the State from presenting evidence against a juvenile in both juvenile and criminal courts on the alleged commission of the same offense.

**See, generally, Hutzler, 1980.

- the prospects for adequate protection of the public and the likelihood of rehabilitation of the juvenile...by use of procedures, services, and facilities currently available to the juvenile court.

These factors bear on at least three broad considerations: (1) a particular juvenile's amenability to treatment within the juvenile justice system; (2) deterrence, or the protection of the community; and (3) retribution, or society's judgement that a particular juvenile, because of the nature and gravity of his or her alleged offense, should not be entitled to benefit from the less stringent processing of the juvenile court but should be made subject to the more punitive philosophy and sanctions of the criminal justice system. Theoretically, however:

> If the fundamental justification for the existence of the juvenile justice system is the rehabilitation of children who run afoul of the law, the only relevant factor in a transfer decision would be whether the child is amenable to treatment and rehabilitation. Any consideration that is not directed toward resolution of this question should be of no consequence (Piersma, 1977:276).

And, as another legal commentator has noted:

> The fitness determination constitutes an institutionalized admission of the system's failure.... The decision to declare a minor unfit signifies a departure from the philosophy of the juvenile justice system and is justified by a showing that the minor lacks potential for successful treatment (Parker, 1976:992 and 994).

The decision to transfer an alleged delinquent to the criminal justice system for processing as an adult is vested in the juvenile court judge in most States, and with the juvenile on his or her own motion in some States.*

The consequences of waiver upon the institutional confinement of juveniles vary from State to State. If a juvenile is near the State's statutory maximum age of juvenile court jurisdiction, he or she may be placed in an adult detention facility pending criminal prosecution. This is particularly likely if the alleged offense is particularly serious or heinous.** Younger juveniles or juveniles ultimately convicted of minor offenses may be retained in juvenile facilities throughout the criminal process, including the duration of their criminal sentence. Such juveniles may in fact be transferred back to the juvenile court for disposition following a criminal conviction.***

Methods other than waiver for processing juveniles in the criminal rather than the juvenile court are: (1) the statutory exclusion of specified criminal offenses from the jurisdiction of the juvenile court, thereby authorizing exclusive original jurisdiction over

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* For example, Arizona, Florida, Illinois, North Dakota, and Virginia permit transfer upon the juvenile's own motion (Hutzler, 1980; see chart pertaining to "Waiver or Transfer to Criminal Court"--no pp. given).

** See, e.g., Georgia Code Ann. s24A-1801(a); Mississippi Code Ann. §43-21-159(3), 43-23-37; Nevada Rev. Stat. s62-193(1) (1977) (Hutzler, 1980).

***See, e.g., District of Columbia Code s16-2316(a) (1973); Pennsylvania Stat. Ann. tit. 42, s6322 (Hutzler, 1980).

these offenses to the criminal court. Such excluded offenses may or may not be dependent upon the juvenile's age. This method for processing juveniles in the criminal court is distinguishable from waiver in that the latter process provides for the transfer of juveniles to the criminal court for criminal charges over which the juvenile court has exclusive original jurisdiction, while statutory exclusion of criminal offenses from the juvenile court places such offenses within the exclusive jurisdiction of the criminal court; (2) the statutory authorization of concurrent original jurisdiction between the juvenile and criminal courts over specified criminal offenses and/or over alleged delinquent juveniles who are above a specified age. In States authorizing such concurrent jurisdiction, the decision to file a criminal charge against a juvenile in the juvenile or criminal court is usually a tactical determination made by the public prosecutor at the time of intake.

Disposition

The dispositional phase of the juvenile proceeding is frequently referred to as "the heart of the juvenile court process" (Piersma, 1977:345). Such sweeping characterizations are based on the assumption that the essential purpose of disposition is to determine which of the juvenile court's treatment options is best suited to achieve the rehabilitation of a particular juvenile. As discussed earlier, this assumption is derived from the rehabilitative ideals which supported the original development of the juvenile justice system.

Today, juvenile courts are authorized by statute to choose among several dispositional alternatives, many of which include institutionalization. Such statutes seldom provide criteria for choosing among the various dispositional alternatives, thus leaving this choice to the discretion of the juvenile court judge. In contrast to the adjudication hearing, there have been no Supreme Court decisions or other Federal mandate which sets forth procedures to which dispositional hearings should conform. Unlike adjudication, which must conform to formal rules of evidence in fulfilling its fact-finding function, dispositional decisions are routinely determined on the basis of all available information pertaining to a particular juvenile's background and family. As one legal commentator has observed:

> ...it is generally accurate to state that at the formal level juvenile court philosophy seeks to focus on the personal condition and social situation of the child and architecturally invites this through standardless and procedurally barren dispositional law.
>
> Statutory guides for the selection of dispositions and for the conduct of dispositional proceedings are virtually nonexistent. The "best interests of the child" and "the protection of the community" represent the most frequently used statutory langauge (Cohen, 1978:2).

The sociological literature concurs with such legal commentaries on disposition. It has been found that, for the purpose of disposition, the juvenile court often has at hand detailed information on the juvenile and his life circumstances in the form of probation reports or predisposition studies; however, Cohn found that recommendations for the disposition of juveniles contained in probation reports are based primarily on the juvenile's personality, family background, and general social adjustment (1963:264). On the other hand, Krause investigated the influence of social history reports on juvenile court decisions and found that previous number of court appearances was the most decisive factor (Krause, 1975:27). The apparent differences between the results of these

two studies may be explained by Dungworth (1977) who found that offense type and previous court referrals were the most important variables used by dispositional decisionmakers, but differences existed between dispositions for status and nonoffenders and adjudicated delinquents. Dispositional decisions for adjudicated delinquents were more likely to be based on objectively measured criteria and characteristics in contrast to more subjectively based decisions for status and nonoffenders (Dungworth, 1977:41).

Given the broad dispositional powers of the juvenile courts, the remainder of this discussion is limited to the power of the juvenile court to commit juveniles to institutions.

All States provide for the juvenile court commitment of adjudicated delinquents to secure juvenile correctional institutions. Some States require that juvenile institutional placements be made by the State juvenile correctional agency rather than by a juvenile court; in such States the juvenile court must commit juveniles to the juvenile correctional agency and cannot make direct commitments to institutions.* This is even true for States such as Massachusetts, which espouses a statewide policy of deinstitutionalizing juvenile offenders and provides as an alternative a number of nonsecure community-based correctional programs; however, Massachusetts still provides a small number of secure institutional settings in which to place hardcore, difficult-to-control, or difficult-to-place adjudicated delinquents (see, e.g., Vorenberg and Trotter, 1980:83-87). Several States also provide for the juvenile court commitment of adjudicated delinquents to adult jails or to adult correctional institutions. This alternative is statutorily authorized in Idaho, Kansas, Maine, Wyoming, Colorado, Virginia, and New Hampshire (Kihm, 1980:72). Note, however, that such commitments, like the detention of juveniles in adult facilities, may be subject to age or offense limitations. Adjudicated status offenders and abused or neglected juveniles are prohibited in many States from being confined in either juvenile or adult correctional institutions, although this practice continues to be statutorily sanctioned in a significant number of States. Only 18 States clearly prohibit the institutional commitment of adjudicated status offenders and abused or neglected juveniles in both juvenile and adult institutions (Alabama, Alaska, Arizona, Arkansas, California, Colorado, Indiana, Iowa, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Oregon, Washington, and Wisconsin) (Hutzler and Vereb, 1980).

An additional institutional option available to some juvenile courts is the direct commitment of adjudicated juveniles to public or private mental health or mental retardation facilities (e.g., Ind. Code Ann. s231-5-8-15). Other States require that such commitments be preceded by voluntary or involuntary civil commitment procedures (e.g., Fl. Stat. Ann. s394.57).

Juveniles who are placed in institutions pursuant to the dispositional authority of the juvenile court may in most States be retained for an indeterminate period which cannot, however, exceed the State's maximum age of continued juvenile court jurisdiction.** The

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* For an explanation of this process and statutory authorization in most States see Turney, 1980:10-12 and 69-70, Appendix F.

**The maximum age for continued juvenile court jurisdiction is 21 rather than 18 (18 being the State's statutory age of majority and the maximum age over which the juvenile court can obtain original jurisdiction) in the following States: Alabama, Colorado, Indiana, Maryland, Minnesota, Nevada, New Mexico, Ohio, Oregon, Rhode Island, South Dakota, and Tennessee (Smith, Alexander, Halatyn, and Roberts, 1979:99 and 103).

most common criteria for release from institutional commitments, prior to a juvenile attaining this specified age, is an official determination that a particular juvenile has been rehabilitated. There is a definite trend, however, for States to place other limitations on the duration of juvenile institutional commitments. For example, 16 Stat have enacted legislation which establishes maximum periods of institutional confinement (Alaska, California, Connecticut, District of Columbia, Georgia, Iowa, Louisiana, Minnesota, Montana, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, Washington, and Wisconsin) (Kihm, 1980:72), and 9 States have provided that juvenile institutional commitments cannot exceed the maximum sentences which can be imposed on adults for the same offense (California, Florida, Iowa, Louisiana, Montana, New Hampshire, Oregon, Pennsylvania, and West Virginia) (Kihm, 1980:73).

Another trend, parallelling the trend in adult corrections, is for States to establish juvenile determinate sentencing schemes (see, e.g., Washington Juvenile Justice Act of 1977). Determinate sentencing is based on the theory that the length of institutional confinement should be proportionate to the relative seriousness of the offense committed. In States which have adopted determinate sentencing, judges are required to sentence individuals for a legislatively determined period of time, which can be lengthened or shortened by the judge on the basis of statutorily specified aggravating or mitigating circumstances. Thus, in States such as Washington, determinate sentencing greatly reduces the dispositional discretion of the juvenile court judge and establishes a retributive rather than rehabilitative theoretical basis for institutional confinement.

Post-Dispositional Institutional Placements

Once a juvenile has been committed to a juvenile or adult correctional institution, he or she may be subsequently subject to a second institutional placement by one of two methods.* These methods are: (1) the interinstitutional transfer of the juvenile (a) fro one correctional institution to a more secure correctional institution, (b) from a juvenile correctional institution to an adult penal institution, or (c) from a correctional institution to a noncorrectional treatment institution such as a mental health facility; and (2) following the juvenile's release from a correctional institution, the subsequent placement of the juvenile in a detention or correctional institution pursuant to a parole revocation process.**

Interinstitutional Transfers

Juveniles incarcerated in correctional institutions may in some States be transferred to maximum security facilities or, if confined in a juvenile institution, to an adult penal institution for one of the following reasons: (1) such a transfer is perceived to be in the juvenile's best interests; (2) the transfer is necessary to maintain institutional management, that is, the juvenile represents a management problem and transfer is viewed as a needed disciplinary measure; and (3) transfer is necessary to protect the welfare of the other inmates. Interinstitutional transfers of juveniles to mental institutions are usually based on their perceived consistency with the rehabilitative

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* Interinstitutional transfers can also occur during preadjudicatory detention.

**The continuing jurisdiction of the juvenile court following a juvenile's release from a correctional institution is sometimes referred to as "probation" rather than "parole."

purpose of the juvenile correctional system and therefore viewed as being in the juvenile's best interests.

While interinstitutional transfers, generally authorized by State statute, may be effected pursuant to administrative or judicial hearings, they are frequently based solely on the discretion of a correctional administrator.* Such official discretion can only be based on the well-entrenched belief that in juvenile dispositional matters, the State, ever seeking the most rehabilitative environment for the juvenile, will always act in the best interests of that juvenile. Such procedurally unburdened access to other correctional and treatment facilities is thereby consistent with the traditional parens patriae role of the State toward juveniles.

Revocation of Parole

The second post-dispositional method by which juveniles may be incarcerated is pursuant to the revocation of the juvenile's parole. Since the Supreme Court has not reached the issue of juveniles' parole revocation, lower courts have in many instances based their holdings on the Supreme Court's decision regarding the revocation of an adult's parole. In 1972, in Morrissey v. Brewer, 408 U.S. 471, the Supreme Court held that the potential loss of liberty involved in a parole revocation proceeding is sufficiently significant to warrant the application of constitutional due process protections. These protections include: (1) a prompt preliminary hearing (this hearing need not be judicial), held reasonably near the place of the alleged parole violation, to determine whether there is probable cause to believe that the parolee has violated a condition of his or her parole; (2) such hearing must be presided over by an impartial examiner; (3) the parolee must receive adequate notice of the alleged violation, the purpose of the hearing, and the evidence against the parolee; (4) the parolee must be given the opportunity to present evidence on his or her own behalf, and cross-examine adverse witnesses; and (5) the parolee must receive a statement of the examiner's reasons if a probable cause finding is made. The parolee is further entitled to a second hearing on the issue of revocation itself. This hearing can be conducted at the institution to which the parolee is returned and is subject to the same safeguards accorded to the preliminary hearing.

A number of lower court cases decided after Morrissey have thus held that juvenile parolees are entitled to comparable due process safeguards and, in some States, the right to counsel.**

CONCLUSIONS

The preceding discussion has outlined the formal legal procedures and the less formal but nonetheless critical mechanisms which function to institutionalize juveniles in adult and juvenile facilities. The discussion indicates that as juveniles move through the juvenile justice system, social, economic, and behavioral information is accumulated. Presumably, this information assists decisionmakers to select the most appropriate placement for each juvenile. However, the combination of these factors with legal criteria

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* See, e.g., Turney, 1980:35.

**See, e.g., People ex rel. Silbert v. Cohen, 29 N.Y. 2d 12, 271 N.E. 2d 208, 323 N.Y.S. 2d 422 (1977); State ex rel. Bernal v. Herchman, 54 Wisc. 2d 626, 196 N.W. 2d 721 (1972) (Davis, 1980:6-34, fn. 140).

for detention and disposition, often ambiguous in themselves, may make the decision to institutionalize juveniles heavily dependent on subjective impressions and the discretion of authorities.

The implications of decisions based on subjective impressions and discretion of authorities for the disposition of juveniles may be grave. While it is not easy to isolate any one point in the juvenile justice system at which decisions are based largely on non-legal variables--such as race, sex, age, socioeconomic status, family structure, and other factors not directly related to the offense or the prior record of the juvenile it is apparent that the absence of objectivity and dependence on discretion may lead to bias and discrimination. Therefore, it is not surprising that blacks are less likely than whites to receive psychiatric evaluations, females more likely than males to be institutionalized for less-serious offenses, and personality factors used inconsistently as criteria for adjustment (Cohn, 1963:196). Furthermore, considering the large number of criteria available for making such decisions, it is suggested that juveniles are not only institutionalized unnecessarily, but they are institutionalized in facilities unsuited to their needs.

Inappropriate or unnecessary institutionalization may take place not only for nonconforming juveniles but for such groups as the mentally ill who are seen as dangerous and are subjected to secure and restrictive environments for "treatment." The particularistic approach to these methods of treatment may be brought into proper perspective by a cross-cultural comparative analysis which would tend to demonstrate that the extensive use of isolation of deviant populations from the public is probably a feature unique to Western society.

Chapter III

THE INSTITUTIONALIZATION OF JUVENILES AND OTHER PERSONS UNDER 18

THIS CHAPTER FOCUSES on the number of juveniles and other persons under 18* in public and private juvenile custody facilities, especially secure facilities. Information will also be presented on persons under 18 in adult jails, lockups, and prisons, and on persons under 18 in facilities outside the juvenile or criminal justice systems, such as social welfare and mental health institutions. Estimates vary depending on the year, estimating procedures, and the type of facilities taken into account. The President's Commission on Law Enforcement and Administration of Justice estimated that in 1965 317,860 children were detained in juvenile detention homes and 87,951 were detained in jails (1967:121). Lerman found that almost 80,000 juveniles were institutionalized in 1973 because they were either dependent, neglected, or emotionally disturbed (1980:291), and Smith estimated that over 120,000 juveniles were held in jails (not including police lockups) in 1978 (1980:2). Although these figures do not provide a sufficient basis for estimating the total number of persons under 18 in juvenile or criminal justice facilities, they do indicate that, over the years, large numbers of persons under 18 are institutionalized in a wide range of facilities.

Concern over the large number of juveniles in institutions is directly related to the move in recent years to deinstitutionalize juveniles, or to place them in the least restrictive facilities when some type of institutionalization is required. To assess the progress toward these goals, data for specific aspects of institutionalization are examined. These include:

- the actual numbers of juveniles and persons under 18 presently in institutions,
- whether there have been increases or decreases in those numbers, and
- whether greater proportions of institutionalized juveniles are in secure facilities.

While available data do not allow quantitative responses to all the questions raised, this chapter begins to draw together presently available information in order to provide

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*It is important for the reader to keep in mind that the terms "juvenile" and "person under 18" are by no means always synonymous. This is because there is considerable variation from State to State regarding the age at which a person is considered a juvenile. The maximum age for juvenile court jurisdiction (the age at which a juvenile becomes an adult) is 19 in one State (Wyoming), 18 in 39 States, 17 in 7 States (Georgia, Illinois, Massachusetts, Michigan, Missouri, South Carolina, and Texas), and 16 in 4 States (Connecticut, New York, North Carolina, and Vermont) (Alexander, Turney, and Sutton, 1981:15).

some insight into the most pertinent problems associated with the institutionalization of juveniles and other persons under 18 in the United States.

JUVENILES IN JUVENILE DETENTION AND CORRECTIONAL FACILITIES

Juvenile detention and correctional facilities are administered by both public and private agencies. Although data will be discussed for both public and private facilities, the data for public facilities are more likely to be current and complete. Problems related to the lack of current and complete data will be discussed later in this chapter. Appendix C, Table C-1 (p.123)presents data on the number of public and private juvenile detention and correctional facilities by state for the years 1974, 1975, 1977, and 1979 and the percentage change in the populations of these institutions between 1974 and 1979 Analysis of the data indicates that, across States, between the years 1974 and 1979, there has been an increase in both the number of public (19.8 percent) and private (16.2 percent) facilities. Furthermore, a State-by-State analysis indicates that the percent change for public institutions was not as variable as that for private. This finding suggests that the development of privately administered facilities is not occurring uniformly across States. The data disaggregated by State show no clearcut trend away from public toward private institutions, indicating that each State is probably meeting the move toward deinstitutionalization and less restrictive environments with a different structural approach. This conclusion is based on the finding that most private juvenile detention and correctional facilities are group homes or ranches, which are less restrictive than public juvenile detention centers and training schools.

Considering the increase in the number of both public and private facilities, it might be expected that the increase results from growth in the total juvenile population, or a larger number of juveniles being institutionalized. However, since the increases in the number of facilities over the period of time shown in Appendix C, Table C-1 (p. 123) occurred at the same time the population at risk (i.e., juveniles age 5-17) declined by 8.0 percent (U.S. Bureau of the Census, 1980), the increase in the number of public and private facilities is clearly not due to population increase. Two alternative explanations for the increase in the number of facilities are: (a) increases in the number of juveniles being placed in institutions, and (b) increases in institutions in order to reduce overcrowding.

The Number of Juveniles in Juvenile Justice Institutions

One might think that the number of juveniles institutionalized is a function of the number of institutions (i.e., the more space available, the more likely juveniles will be institutionalized). The data for public facilities in the juvenile justice system, shown in Appendix C, Table C-2 (p. 124) indicate otherwise. Instead, they show, with the exception of 1975, there has been a steady decline in the number of juveniles institutionalized in public facilities between 1971 and 1979; a decline that occurred at the same time the number of institutions, on a nationwide basis, was increasing.

Data on private juvenile facilities shows that in 1974, 1975, 1977, and 1979 respectively, 31,749, 27,290, 29,070, and 28,678 juveniles were institutionalized in these facilities. The number of residents in private juvenile custody facilities is given by State for these four years in Appendix C, Table C-3 (p.125). This table shows that the number of juveniles in such facilities varies widely from State to State (0 to 3,932 in 1979). The number may also fluctuate widely from year to year in a given State with marked ups and downs in States such as Alabama, Arkansas, Pennsylvania, and Washington, steady

increases in States such as Alaska and Kansas, and decreases in States such as Georgia and Michigan. Data for the years reported show a -9.7 percent change in the number of juveniles institutionalized in private facilities--as compared to the -1.8 percent change for the number of juveniles institutionalized in public institutions over the same period of time. This decline in the juvenile population was accompanied by an 8 percent decrease in the number of private institutions nationwide.

Thus, at the national level, there appears to be a decline in the number of juveniles in private facilities but this decline does not appear to be indicative of a trend as it is occurring unevenly over the years. It is well known that aggregate data often mask variations between groups at lower levels. Therefore, it cannot be assumed that all factors involved in institutionalization are distributed equally across States or even within individual States. In order to consider the number of juveniles institutionalized at the State level, data are shown in Appendix C, Table C-4 (p.126) for the number of residents in public facilities for the years 1974, 1975, 1977, and 1979, the percentage change in the population between 1974 and 1979, and the percent change in the number of institutions for the same period of time.

An analysis of the data suggests that between 1974 and 1979, most States had exhibited a decline in the number of juveniles in institutions but were less likely to exhibit a decline in the number of institutions.

These data indicate trends for only public facilities. Therefore, they show only a portion of the institutional changes that may be taking place in the juvenile justice system. In addition, percentage changes must be interpreted with caution since they are often poor reflections of absolute changes. For instance, although the percentage change for Idaho suggests that the number of institutions in that State doubled, it is representative of an absolute increase of one institution, while an increase of one institution in the State of Nebraska is only a 25.0 percent increase in that State. Therefore, for the purpose of this report, percentage changes are discussed to suggest trends over the 5-year period for which data are reported rather than provide a measure of the magnitude of absolute increases or decreases. While the data indicate a trend toward a decrease in the number of juveniles in public facilities, they do not necessarily describe whether or not States are changing policy toward institutionalization.

Based on Children in Custody, Advance Report (U.S. Department of Justice, 1980) as a comparison, the rates of commitment for the population at risk (ages 5-17) were calculated for each State. The age group 5-17 was used to represent the population at risk because it is the category in the census population estimates and projections that best conforms to the needs of this report. Appendix C, Table C-5 (p.127) shows the total population at risk, the number of juveniles in public juvenile facilities, and the rate of commitment per 100,000 by State for 1974 and 1979.

On a national basis, the rates of commitment of juveniles to public institutions increased between 1974 and 1979 at a rate of 8.1 per 100,000 or 9.2 percent (see Appendix C, Table C-5, p.127). State level data reveal a wide variation in these rates for both years, a range of 11.7 (Massachusetts) to 421.9 (District of Columbia) per 100,000. Twenty States reduced their rates of commitment while the remaining States increased their rates. The three States with the highest rates of incarceration in public juvenile facilities in 1979 were: (1) District of Columbia, (2) California, and (3) Nevada, with rates per 100,000 of 336.4, 238.4, and 237.5, respectively. The three States with the lowest rates of incarceration in public juvenile facilities were: (1) Massachusetts, (2) Connecticut, and (3) New York, with rates per 100,000 of 12.1, 38.0, and 38.1,

respectively. It is important to note, however, that these rates are not comparable. California's high ranking for rate of incarceration of juveniles is due, in part, to the fact that California continues jurisdiction over juveniles until age 23, and in certain cases, until age 25. No other State continues such jurisdiction beyond the age of 21 (Alexander, Turney, and Sutton, 1981:13-14). The low ranking rate of juvenile incarceration for Connecticut and New York is due, in part, to the fact that these two States have a maximum age of jurisdiction of 16 for the juvenile court (Alexander, Turney, and Sutton, 1981:13-14). Such differences in statutes from State to State are numerous and add to the difficulty of making comparisons across States.

Although this analysis should be considered with caution, it deals with an important aspect of institutionalization of juveniles--that of public facilities. Caution also should be exercised since the data are based upon a 1-day count, which may not be representative of all days throughout the year. The lack of representativeness may be an artifact of fluctuations in arrest rates and law enforcement's differential emphasis on types of crimes. For instance, the 1979 Uniform Crime Report (UCR) shows that robberies are more likely to be committed in some years than others (U.S. Department of Justice, 1979:17). Statistics for other crimes show similar variations by season and year (c.f. U.S. Department of Justice, 1979:8, 21, 24, and 33).

Finally, these data are inconclusive because they do not take into account the conditions of institutionalization. The increase in the number of institutions may result in many smaller facilities replacing larger institutions, but this may or may not result in improved conditions and programs.

Although the data are incomplete, they do indicate that the number of juveniles institutionalized decreased between 1974 and 1979, despite the fact that there was a decided increase in the number of facilities. The reasons for increase in the number of institutions is not clear, particularly with regard to incomplete data for private facilities. Therefore, the analysis of data for private facilities is complicated because they are not as complete nor as current as those for public institutions. This absence of data on private facilities may be attributed to collection and reporting difficulties, for it is more difficult to collect data for private institutions since they are usually small, independently owned and operated, and less likely to have sufficient staff to provide the necessary data. Also, reported data for private facilities are not always disaggregated since rules of confidentiality prohibit the publication of identifiable information.

Despite the paucity of the data, it appears that the increase in the number of facilities for juveniles may be the result of a move from larger to smaller facilities.

The Move From Larger to Smaller Public Institutions

To determine whether a move from larger to smaller institutions is a plausible explanation for increased numbers of institutions in the face of declining institutional populations, data for the design capacity of public institutions are shown in Appendix C, Table C-6 (p. 128). The data, for years 1974 and 1975, show the percentage of public institutions by design capacity for three groups: less than 49, 50-199, and over 200 juvenile residents. Some of the absolute numbers of facilities (Appendix C, Table C-1, p. 123) are very small so the percentages for these States can be misleading. However, the years 1974 and 1975 can be compared for proportional changes by size of facility which will provide some basis for assessing whether a shift to smaller institutions is occurring.

Appendix C, Table C-7 (p.129) shows a listing of States by the changes that took place in the 2-year period presented in Table C-6 (p.128). The data show that 25 States (49 percent) closed at least some, if not all, of their large or medium-sized facilities and opened smaller ones. Nineteen States (37 percent) exhibited no change in the distribution of institutions by size, and seven States (14 percent) show some increases in larger facilities. Of the 25 States that showed increases in the percentage of small facilities, about one-third (seven) exhibited no change in the total number of institutions. Taken together, the data indicate a definite move among States toward closing facilities, as well as a move toward substituting them with fewer and smaller facilities.

The data also show that the move to smaller facilities is not happening evenly across States since more than one-third of the States show no changes. Moreover, those States exhibiting no change are those most likely to have fewer than 10 facilities in the entire State. Thus, the kind of facility to which a juvenile is sent (i.e., whether the facility is large or small) probably has little to do with the seriousness or number of offenses in these States, but rather to the availability of alternatives. Therefore, under these structural conditions, a juvenile committing a less-serious offense may be sent to reside in a large, inhospitable, and punitive environment based upon a lack of alternatives, while a juvenile in another State with more serious behavior may be sent to a small facility offering an array of services and treatment. While it cannot be argued that more serious offenders should not be exposed to beneficial opportunities, it can be argued that the less-serious offender may be denied an appropriate facility and services due to its nonavailability.

Appendix C, Table C-8 (p.130) presents data for the percentage of the juvenile population in private institutions by design capacity. The data show that, overall, private facilities are appreciably smaller than public facilities. For the most part, the incompleteness of the data for private facilities is the outcome of governmental efforts to protect identifiable institutions by not publishing specific, identifiable data. While these data conform to the demands of confidentiality, their format thwarts research efforts to locate trends on anything but a nationwide or regional basis. While assessments at these levels are useful, they mask urban-rural, socioeconomic, racial, and local differences. It is at these levels that decisions to institutionalize juveniles are made.

Even if these data do indicate a trend toward the use of smaller facilities, this does not necessarily mean smaller is better. In Massachusetts, for example, the data show that 100 percent of the public facilities have a design capacity of less than 50 juveniles. However, in their study of the Massachusetts Department of Youth Services facilities, Vorenberg and Trotter (1980) found that the reforms initiated by Miller may not always have humanized the system to the degree intended or projected. They found that detention continues to be commonly used (1980:8) and that some of the facilities are similar to jails or fortresses (p. 15) offering few recreational or social opportunities (p. 29). They also found strip-searches, physical restraints, and seclusion were commonly employed (p. 39) and minorities were often found in the worst facilities (p. 40).

Therefore, while it is clear that the institutionalized juvenile population is declining and that there may be a trend toward smaller facilities, it may also be true that the conditions for those juveniles who are put into or remain in institutions may not have improved. If, under the rubric of deinstitutionalization, it is thought that conditions in institutions are improving and that juveniles not needing institutionalization are

consistently released, then the institutionalized population may very likely become an ignored group, labeled as the most serious offenders and simply warehoused. The lamentable aspect of this is that these juveniles may often be victims of the structural situation more than victims of their own behavior since it has already been shown (see Chapter II, pp. 23-24) that placement is frequently the "luck of the draw" rather than a rational decision for the most advantageous disposition.

One of the most important questions arising out of the data is concerned with the criteria for detention and institutional commitment. Since status and nonoffenders are increasingly diverted out of the juvenile justice system, there is a growing concern that juveniles remaining in the system will more likely be put in secure detention. The following section discusses the placement of juveniles in the juvenile justice system.

Juveniles Held in Secure Facilities

Data for the number of juveniles detained in or committed to secure juvenile facilities for both delinquent or nondelinquent groups are shown in Appendix C, Table C-9 (p.131) These data are for the years 1977 and 1979 only as data prior to these years were collected in a different format, complicating the possibility of comparability across years Equally important, these data are for public facilities only and should not be interpreted as reflecting the entire juvenile justice system.

As Appendix C, Table C-9 shows, there were more juveniles held in secure facilities in 1. (29,042) than in 1977 (25,951). However, looking at those juveniles committed to institutions by the category of delinquent or nondelinquent,* some interesting changes can be seen over the 2-year period. The percentage of delinquent juveniles held in secure facilities increased from 57.1 percent to 61.6 percent (4.5 percent), while the percentage of nondelinquents decreased from 3.4 percent to 1.5 percent (1.9 percent). Thus, in 1979, increased percentages of delinquents were found in secure facilities at the same time the percentages of nondelinquents in these facilities fell.

Looking at Appendix C, Table C-9, which presents data on juveniles committed by type of facilities, a significant pattern appears to emerge. The number of delinquent youths detained in or committed to secure juvenile facilities, training schools, ranches, camps and farms increased from 13,097 to 15,597, while commitments to secure reception and diagnostic centers decreased from 1,039 to 696. Commitments to secure shelters, halfway houses, and group homes and foster homes** declined. For nondelinquents the pattern is reversed. Numbers of juveniles in secure detention (training schools, ranches, camps, and farms) declined but rose for shelters, halfway houses, group homes, and foster homes. Commitments of nondelinquents to secure reception and diagnostic centers remained approximately the same. The data suggests a polarization of juveniles by status and type of facility, with nondelinquents being placed in shelters, halfway houses, and group homes, and delinquents being sent to training schools, ranches, farms, and camps.

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* This category includes status offenders, neglected/abused children, and others, such as mentally retarded and emotionally disturbed children.

**Halfway houses, shelter facilities, group homes, and foster homes are not usually secure, but a small number of them are secure.

The interpretation of these data is difficult because data on type of facility and previous offense or seriousness of current offense are not available. However, the percentage increase (4.5) in the commitment of delinquent juveniles to secure facilities, in contrast to the 1.9 percentage point decrease of nondelinquents to these same institutions, might suggest that the spaces left vacant by deinstitutionalized nondelinquents are simply being filled by adjudicated delinquents who might otherwise have been put on probation. This fact supports the contention that there is a connection between availability of institutional beds and decisions to commit to these institutions. This contrasts with our finding that the number of institutions did not correlate with the number of commitments.

The pattern for detention facilities and facilities to which juveniles are committed is similar. The populations appear to be polarized with nonoffenders more likely to be detained in smaller and usually less restrictive facilities, and delinquents in larger institutions. What appears to have changed substantively are the percentages of delinquents and nonoffenders held in reception and diagnostic centers. Appendix C, Table C-9 (p. 131) shows that placement within the juvenile justice system for delinquents is more likely to be in restrictive and large facilities.

JUVENILES AND OTHER PERSONS UNDER 18 IN ADULT INSTITUTIONS

Of particular concern to those interested in the institutionalization and victimization of juveniles is the number of persons under 18 years of age being held in facilities built and maintained for adult offenders. Until recently, efforts to deinstitutionalize juveniles focused on status offenders. However, growing fears that public reaction to reported increases in juvenile crime may induce courts to sentence an increasing number of persons under 18 years of age to adult institutions, has brought attention to the circumstances surrounding juveniles in adult facilities. This section reviews estimates of the number of persons under 18 years of age in adult institutions over the past decade, and the underlying basis for placing them in these facilities. The discussion is divided into three sections: juveniles in adult jails and lockups, State prisons, and Federal prisons.

Juveniles and Other Persons Under 18 in Adult Jails and Lockups

Data for the number of juveniles in jails and lockups for adults and the reasons for detention in these facilities is not only limited, but often misleading. Differences in data collection methods; differences in definitions of juveniles, jails, and lockups; incomplete source material; and poor research methods all result in an inadequate description of the problem.

Estimates of the number of juveniles in adult jails and lockups, the rates of commitment, and comparisons across years for which data are available are contained in Appendix C, Table C-10 (p.132). This data, based upon the 1970 and 1978 National Jail Census, indicates that the population of juveniles in adult jails fell from 7,792 (1970) to 1,611 (1978): a 79 percent decrease in the number of juveniles lodged in these facilities. Looking at the data by State only four States* show increases in the rates of commitment to jail facilities, while the remaining States show either similar rates or declines. Comparing the range of the rates of commitment to jails (0-28 per 100,000) to those for public juvenile facilities (11.7-421.9 per 100,000), it is evident that not only are the rates smaller for jail, but the variation across States is much narrower.

*Arkansas, Maine, New Hampshire, and South Dakota.

While the data of the National Jail Census are probably among the best available, they should be viewed with some caution as they represent a 1-day count and may be distorted by seasonal or yearly fluctuations. These data do not include the numbers of inmates in drunk tanks, lockups, prison hospitals, or jails not authorized to hold inmates for more than 48 hours; they also do not include States with jail-prison integrated systems. Moreover, the National Jail Census does not survey communities with fewer than 10,000 population because they are less likely to contain jails or lockups as defined by the census (see page 36, this chapter). Therefore, approximately 10,000 localities in which about 4 million people reside are not censused.* Since jails are, in general, more likely to be used for juvenile detention than disposition, it is not surprising that a census of facilities authorized to hold inmates for more than 24 hours shows few inmates specifically labeled as juveniles. Juveniles are more likely to show up in those facilities commonly referred to as adult lockups and these, by definition, were excluded from the National Jail Census. As important, rural areas are more likely than urban not to have suitable juvenile detention facilities and, therefore, use jails and lockups for juveniles. However, these locations are excluded by the National Jail Census definition of jails, since these areas are less likely to have facilities authorized to hold inmates more than 24 hours. Therefore, there is an unknown number of institutions not included in this census that could hold juveniles. This suggests that the number of juveniles reported in jails and lockups is probably underestimated.

Comparing the data from 1970 and 1978 also presents some other problems. The 79 percent decline in the number of juveniles is not adjusted for the 9 percent decline in the age at risk (5-17) over the same period of time. More important, the 1978 census excludes 193 small jails lodging approximately 900 inmates: jails that were included in the 1970 study but no longer eligible because they were not authorized to hold inmates more than 48 hours in 1978. Although each component of the analysis of the National Jail Census does not completely explain away the dramatic decline in the number of juveniles in jail over the 8-year period for which data are given, together they suggest that the data may not be representative of the number of juveniles in adult jails, nor consider the conditions under which they come to be placed in these institutions.

The summary statistic showing an 85 percent decline between 1970 and 1978 can be misleading as it appears that the rates of commitment remained approximately the same in 13 States and increased in 4 of the 46 States for which data are available. Therefore, in more than one-third of the States (37 percent), little or no declines occurred in the commitment rates of juveniles to jail. Moreover, while the rate of commitment for 23 States and the District of Columbia decreased by half or more, between 1973 and 1978 only two other States and the District of Columbia removed all juveniles from jail. This brought the number of States in 1978 with no juveniles in jails to four. More important, only one state, New York, had a dramatic decrease in commitment rates--a declin from 104.4 per 100,000 juveniles age 5-17 in 1970, to 2.2 per 100,000 juveniles age 5-17 in 1978. Therefore, it appears that the national decline of 79 percent suggested by the summary statistic is largely the result of a major reduction in one State (i.e., New York).

To adjust for the omission of juveniles under 18 who were certified as adults, Lowell and McNabb (1980) surveyed a sample of adult detention facilities and jails and projected those findings for a 1-day national estimate of persons under 18 years of age detaine

*These figures did not change in the 1960 and 1970 U.S. Census, the 10 years used as a data base for the National Jail Census of 1970 and 1978.

in jails and adult detention facilities. These data are shown in Appendix C, Table C-11 (p. 133). The Lowell and McNabb survey reported 741 offenders under 18 in jails and detention centers. From that number, they projected a 1-day count of 4,061--an estimate almost two-and-one-half times that of the National Jail Census.

The discrepancy between the results reported by the National Jail Census and the Lowell and McNabb survey can be accounted for by differences in methodology. The Lowell and McNabb survey selected 33 percent random sample from the Adult Detention Facility and Jail Directory published by the American Correctional Association (1980:27). Although the Lowell and McNabb study received a 51 percent return rate, a respectable rate for a mailed survey, it was reported that only 16 percent of the adult detention facilities and jails in the United States were represented (1980:27). Since the American Correctional Association (1978)* reports that they received 1,203 responses from 3,300 jails surveyed (1978:vii), the estimate of 16 percent representation given by Lowell and McNabb is inflated as they presumably took a sample from a sample. Furthermore, since there was no reported attempt to calculate a sampling error, there is no way to determine the effect of the response distribution on the survey results.

More important, the populations counted by the two studies differ. The National Jail Census directed each State to apply their own definition of juvenile, while Lowell and McNabb specifically requested information for sentenced prisoners 17 years old and under. Thus, not only do the populations likely differ in age parameters, but, by definition, Lowell and McNabb excluded juveniles held in detention facilities.

The survey results from the Lowell and McNabb study were used to project a nationwide 1-day count. Since the projection techniques employed by this study assumed an average incarceration rate across each State, it is possible that the biases produced in the original sample were magnified by the projection techniques.

The States' Reports section (Lowell and McNabb, 1980:40), analyzing the validity and reliability of the data sources used by Lowell and McNabb, show that: definitions of jails vary from State to State; the data used to project a 1-day count was differentially collected by States so that it represents a 12-13 month time period rather than a 1-day count; jail data in urban areas are underrepresented (see Illinois, p. 42); and the data reports juveniles certified as adults along with those retained as juveniles.

Lowell and McNabb, on the basis of their projected data, argue that juveniles are more likely to be placed in jails for nonviolent crimes than violent (1980:23). While there is clearly a need to research the conditions under which juveniles are placed in jails, the reported findings are not as adequate as they would have been if the reported projections were more carefully developed. Moreover, offenses for both juveniles certified as adults and juveniles retained in the juvenile justice system are reported together. Since there is a strong possibility that there is a difference between the type of offenses committed by these two populations, combining the offenses masks differences. For instance, it can be expected that juveniles certified as adults are more likely, as a group, to commit more serious offenses. Thus, separating the data by population group might show that juveniles retained in the juvenile justice system, who find their way to jail, are even less likely to commit "serious" offenses as shown by Lowell and

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*Lowell and McNabb did not report the date of the Adult Detention Facility and Jail Directory used to select the sample. Use of the data from the 1978 Directory is based on the assumption that they used this document.

McNabb, and those juveniles certified as adults more likely to commit serious and violent offenses.

In their study, Lowell and McNabb divide offenses into three major categories: violent crime, property crime, and crime against the public order, but do not provide definitions for these categories. Their bias appears to be that only crimes against persons are serious--or at least imply that only they are serious enough for action. Others might suggest that property crimes such as robbery, arson, and in some cases even vandalism (i.e., property crimes with the potential for causing bodily harm) should be separated from less-serious property crimes for analysis. Analyzing the data by types of offenses and more definitive geographic areas might provide a more firm basis for identifying areas in which juveniles are jailed as a matter of practice and those in which only juveniles considered a danger to themselves and to the community are placed in adult jails or lockups.

Poulin, Levitt, Young, and Pappenfort (1980) also attempt to assess the number of juveniles in adult jails by accessing sources such as State comprehensive plans, monitoring reports, surveys of jails and detention facilities, and probation reports. Since not all States reported data for the same years, the results of this study represent data collected between 1972 and 1977 and are reported as variations by State in the mid-70's. Appendix C, Table C-12 (p. 134) shows a wide range in the rate per 100,000 of juveniles adult jails, based on the Poulin, Levitt, Young, and Pappenfort study. This study was probably based on a presumption of the superiority of data collected at the State level over those collected nationally.

The Poulin, Levitt, Young, and Pappenfort study reports that approximately 120,000 juveniles were being admitted annually to adult jails in States for which the data are available (Poulin, Levitt, Young, and Pappenfort, 1980:11). Applying Smith's (1980:4) formul for estimating the number of juveniles in adult jails to the Poulin, Levitt, Young, and Pappenfort data, it can be suggested that using the Poulin, Levitt, Young, and Pappenfo data collection techniques, a 1-day count would find approximately 2,500 juveniles in jail--a reasonable estimate for the time period during which these data were collected.

Along with reporting variations in the number of juveniles in jails across States, Poulin, Levitt, Young, and Pappenfort offer information about the variations in practices for detaining juveniles. This study found that two States (Wyoming and Montana) use adult jails exclusively for detaining juveniles, while seven States (Connecticut, Massachusetts, Rhode Island, Vermont, New Jersey, Delaware, and Arizona) and the District of Columbia use juvenile detention centers only for this purpose (1980:15). They also report that reliance on adult jails for detention appears to be more predominant in the West.

Employing zero-order correlations, Poulin, Levitt, Young, and Pappenfort found significant associations between the use of jails, juvenile detention centers, urban/rural locations, and types of charges. According to their analysis, it was found that the less urban the location, the more likely the juvenile would be placed in jail, and that those charged with status offenses were more likely to be detained in jail than those charged with criminal offenses (1980:35-37).

The Poulin, Levitt, Young, and Pappenfort study also ascertains the variance of selecte predictor variables on the rates of detention in jails by employing a stepwise regressio model. The model dictates that jail detention rates can be explained by arrest rates

of status offenders, percentage of urban arrests, the number of juvenile detention centers, and the arrest rates for criminal charges. The results show that arrest rates of status offenders are the strongest predictor of jail detention for juveniles. While the results of this model are suggestive, they are somewhat flawed by the use of stepwise regression which assigns the greatest R^2 (percentage) change to the variables by the order in which they are fed into the model (c.f. Dixon, 1979).* Moreover, Poulin, Levitt, Young, and Pappenfort did not report a statistic showing the degree of significance, nor did they report Beta weights or attempt to interpret the regression coefficients. Consequently, reliance on the R^2 (percentage) change alone makes the reported results of this model somewhat questionable.

Polier and Rademacher (1976) conducted a study for the Children's Defense Fund. In this study, 449 jails were surveyed in large, urban areas of 9 States (Florida, Georgia, Indiana, Maryland, New Jersey, Ohio, South Carolina, Texas, and Virginia). They found that 38 percent of the jails visited reported detaining juveniles as a matter of policy. Furthermore, the overwhelming majority of children found in adult jails were not detained for violent crimes and could not be considered a threat to themselves or the community. Almost 20 percent of the juveniles detained in these jails were nondelinquents. Minorities were disproportionately represented in the juvenile jail population. They also found that the length of time and reason for detention often was in violation of State laws (1976:3-4).

The results of the Polier and Rademacher study of children in jails have been widely distributed and quoted. In fact, the frequency with which they are used to represent the problem of juveniles in adult jails and lockups highlights the absence of adequate data in this area. Although this study is an excellent example of exploratory and case study research, the results are not presented as representative but as a piece of work upon which more definitive studies should be based.

While data for the number of juveniles in jails is lacking, studies of the number of juveniles in police lockups are virtually nonexistent. The major impediment to the implementation of research regarding the incidence of juveniles detained in these facilities is that very little is known about the existence and use of police lockups.

Responding to the need for a listing of these facilities, the International Association of Chiefs of Police (IACP) is conducting a project to compile such a list by surveying the estimated 12,600 or more police agencies. Since some police agencies contract out to the County Sheriff's Office for detention facilities and other police agencies have as many as 80 lockups serving one agency, the focus of this study is to ascertain the number of lockups used primarily for prearraignment detention of less than 48 hours.

Although no national study of the number of juveniles detained in police lockups has been carried out, two studies offer some insights into this problem. Flaherty (1980:9) estimates that almost 10,000 children were held in 142 municipal lockups during 1978. This number of police lockups was derived from a survey of all municipal lockups listed in a list of criminal justice agencies developed by LEAA (U.S. Department of Justice, 1973).

The discrepancy between the 142 municipal lockups surveyed by Flaherty and the estimate that as many as 12,000 police lockups may exist can be explained by the definitions used

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*No reports of alternative options for selecting variables for the model were reported.

in the data source from which Flaherty chose his sample. The Criminal Justice List is compiled (1980:6) from the National Jail Census which, by definition, excludes all jails and lockups not authorized to detain inmates more than 48 hours. Thus, while Flaherty did survey municipal lockups, they probably are not included in the study being conducted by IACP because they are, by definition, authorized to hold inmates for more than 48 hours.

Smith (1980) used data on juveniles in adult lockups in Wisconsin in 1978 and Illinois in 1979, and a formula that assumed for each juvenile placed in an adult jail one juvenile wasplaced in an adult lockup (1980:4). This report estimated approximately 588,015 juveniles were placed in adult lockups per year in the 41 States that also place juveniles in adult jails for periods exceeding 48 hours. While both the estimates by Flahert and Smith are problematic, their magnitude suggests that, although juveniles may be detained in these facilities for only a few hours, the negative conditions under which they are placed and retained, and its impact, is enough of a justification for considering this a serious national problem.

The reason for differences in the suggested number of juveniles in jails and adult lockups is that the available studies use different definitions for jails and lockups, different definitions of juveniles, and different methods for counting the number of juveniles in the institutions surveyed.

It is important that studies not only carefully define the institutions they are surveying with regard to type of facility, authority, and primary purpose, but inform the reader of that definition. Data collected from different universes cannot be compared. It would seem more prudent to separate juveniles defined as such from those certified as adults as they probably represent two entirely different populations.

One-day counts, average daily population, and admissions-separations are all different methods for counting juveniles and each has particular characteristics. Findings must take into account both the assets and liabilities of each approach. Once again, comparisons cannot be made across studies using different counting methods.

Finally, the use of predictor variables and associations can provide useful insights into the conditions under which juveniles are placed in jails and lockups for adults. However, models must be more carefully specified and interpreted. While each of these points may appear fairly simplistic, not to employ them would perpetuate the practice of quoting numbers without understanding their meaning and limitations.

To explore the relationship between placing juveniles in secure detention in juvenile facilities and in adult jails, two hypotheses can be suggested. The first is that State with few juvenile facilities will be more likely to rely on jails. The second is that States with lower maximum age of jurisdiction for the juvenile court will be more likely to place juveniles in jails.

Appendix C, Table C-13 (p. 135) shows a comparison between the percentage of juvenile facilities operated as highly or moderately restrictive, the rates of commitment of juveniles to jails per 100,000 population age 5-17, and the age of jurisdiction by State.* There is little support for the first hypotheses that States with few juvenile facilitie

*The actual number of juveniles in highly or moderately restrictive facilities by State would offer a better comparison. However, the 1979 figures were not available.

will be more likely to rely on jails. And there is no strong relationship between the percentage of juvenile facilities operated as highly or moderately restrictive and the rate of commitment of juveniles to jail. For instance, among the States reporting no juveniles in jails, the percentage of facilities operated as restrictive ranges from a high of 100 to a low of 18. On the other hand, States such as Idaho, South Dakota, and Virginia show both a high percentage of restrictive facilities and a high rate of commitment to jail.

In part, the results of this comparison are probably an artifact of the jails counted. The jails represent only those authorized to hold inmates 48 hours or more, and therefore do not include the juvenile population in lockups or holding cells. Since lockups are probably the facility in which most juveniles are placed for detention, the comparison on Table C-13 does not represent the total picture of juveniles in jails.

The second hypothesis is not supported by these data, either. In fact, the results are quite conclusive. It is clear that a lower age of jurisdiction does not mean a higher rate of commitment of juveniles to jails. It should be emphasized, however, that these figures include juveniles in jails only. The disposition of juveniles waived to adult court might be prison instead of jail. Also, as will be shown in the next section, there is some correlation between a lower age of jurisdiction and a higher rate of commitment to adult correctional facilities.

Juveniles and Other Persons Under 18 in State Prisons

The number of juveniles and the rate of commitment per 100,000 population at risk (14-17) to State prisons in 1973, 1978, and 1979 are shown in Appendix C, Table C-14 (p. 136) data for 1973 are from a survey by the United States Department of Justice, National Criminal Justice Information and Statistics Service (1973) of each State correctional facility. These data are a 1-day count of prisoners, sentenced at least one year to an adult facility. The survey collected personal, social, economic, and criminal justice history information. No response rate was given (1973:1).

The 1978 data were collected by Abt Associates (Boston) and published by the U.S. Bureau of the Census (1978). This was a 1-day count survey of all adult correctional facilities. The survey collected structural, sociological, and criminal justice data.

The 1979 data were collected by Lowell and McNabb (1980) through telephone surveys primarily to the Department of Corrections in each State and, in some selected States, to individual institutions (1980:10). There is no estimate of the number of institutions covered by this survey nor whether all adult correctional facilities are included in the final count.

Although comparability across studies is flawed by the different methodological approaches, an analysis raises some significant questions. Lowell and McNabb (1980), in their analysis of the data, reported no increases in the proportion of younger to older inmates in adult prisons (1980:12). The analysis shows that while there was a 53 percent increase in the total adult population between 1973 and 1979, the percentage of the population under 18 years of age in State prisons decreased from 1.1 percent in 1973 to less than 1 percent in 1979.

While the proportion of younger inmates to older has declined somewhat between 1973 and 1979, the population (ages 14-17) committed to State correctional institutions for adults increased by about 38 percent during that time. More important, this 38 percent increase

in juveniles committed to State correctional facilities took place during the period whe the total population at risk (ages 14-17) declined by almost 3 percent and the populatio over 18 years of age increased by over 11 percent. Thus, the proportion of younger to older inmates in State correctional facilities may be as much a reflection of the changing age structure of the United States, as an indicator of the practice of placing persons under 18 in State correctional facilities for adults.

Looking at the three years for which data are presented, the extreme range in the variation of commitment rates across States indicates that despite the mandates to keep juveniles out of adult institutions, some States continue to make various statutory provisions which place youth under 18 in adult correctional facilities. If the data can be accepted as reasonably accurate, they show that between 1973 and 1978 the rate of committing juveniles to adult correctional agencies increased remarkably for many States.

Juveniles who find themselves in adult State prisons and correctional institutions may come under the jurisdiction of the adult criminal justice system in various ways, including the following:

- a lower maximum age of jurisdiction for the juvenile court, such as 16 or 17
- the exclusion of certain offenses from the jurisdiction of the juvenile court, usually more serious offenses
- transfer of jurisdiction from the juvenile court to the criminal court, usually after a waiver hearing.

Appendix C, Table C-15 (p.137) shows the rate of commitment of persons under 18 to State adult correctional facilities in 1978 and the maximum age of jurisdiction in the juvenile court by State. Appendix C, Table C-15 shows that, although there is by no means a perfect correlation, those States with the lowest maximum age of jurisdiction in the juvenile court tend to have the highest rates of committing juveniles to adult facilities.

Juveniles in Federal Prisons

In 1977, 383 persons under 18 years of age were in Federal prisons (U.S. Department of Justice, 1980:648). Of these persons received from court into Federal institutions, the largest number (164 or about 43 percent) were held on immigration charges. The average sentence served in Federal prisons for juvenile delinquency is 24 months for white inmates and 45 months for all other (1980:645). The data for Federal prisons, while published in 1979, may not be up-to-date. Data in the Sourcebook are collected from local agencies and are not always complete, nor are they for the year the table was published (1980:v). Other sources of data are not current. For instance, a census of Federal prisons has not been published since 1975. Therefore, it is not possible to assess the number of juveniles currently residing in these facilities However, if the major reason continues to be for violation of immigration laws, it seems that this area is one that should be subjected to further research.

PROCEDURES FOR THE PLACEMENT OF JUVENILES

Although there is little or no agreement on the exact number of juveniles in adult institutions, it is clear that mechanisms for entry into adult institutions continue to

exist and to be exercised. Two of the procedures for placing juveniles in adult facilities are: detention prior to disposition and waiver to the criminal court.

Detention in Adult Jails and Lockups

Juveniles are often detained for short periods of time in jails or police lockups when there are no juvenile detention facilities available; when they come into contact with law enforcement over the weekend, evenings, or holidays; or when the philosophy of a law enforcement agency dictates that putting juveniles in jail teaches them a lesson that will deter further delinquent behavior.

Once inside an adult institution, a juvenile may be physically separated from adults--literally out of sight and sound--resulting in isolation to the extent that the law attempting to prevent victimization creates a situation producing extreme loneliness and sense of abandonment. On the other hand, in some situations juveniles may find themselves in contact with adult inmates due to limited space, thus making it necessary for some comingling for part or all of each day.

As important, adult institutions are much less likely to provide the facilities and services needed by juveniles. Also, in some institutions separation from adults may constitute restriction from services necessary for the health and well-being of the juvenile.

Similar to detention in juvenile facilities, the decision to detain a juvenile in an adult facility is frequently a function of available time and place rather than the behavior of the juvenile. Kihm (1980:8) found that one rural county in southern New Jersey had a detention rate that was five times that of another, nearby county. This suggests that circumstances related to the availability of alternatives and county policy may be more significant in determining detention decisions than differences in juvenile behavior between the counties.

Waiver of Juveniles to Criminal Court

Procedures for waiving juveniles to the criminal court are more informed by the regularized procedures of due process, including criteria for waiver hearing, than may be the case for procedures which result in the detention of juveniles in adult jails and lockups. A comparison of waiver and sentencing data suggests that, once waived to adult court, juveniles in many States are at a very high risk of being sent to adult correctional institutions. For example, as Appendix C, Table C-16 (p.138) shows, out of 118 juveniles waived to adult court in Alabama, 25 were sent to adult jail and 42 were sentenced to adult corrections. Similarly, out of 118 juveniles waived to adult court in Pennsylvania, 31 were sentenced to adult jail, and 66 were sentenced to adult corrections.

It would be expected that, given the parens patriae role of the juvenile courts, these juveniles would have committed crimes that transcend both their age and status as juveniles. However, looking at the offenses for which persons under 18 are sentenced to adult institutions, Lowell and McNabb (1980:16-17) found that the most serious sentencing offenses were more often against property than persons. They found that crimes against property accounted for 41.2 percent of the delinquent population sent to prison, while crimes against persons accounted for 39 percent. To place into perspective the consideration of the seriousness of an offense as a factor in sentencing juveniles, it should be recognized that about 20 percent of the juveniles sent to prison are placed there for status offenses or are neglected/abused children.

JUVENILES IN OTHER INSTITUTIONS

Juvenile detention and correctional facilities, jails, and prisons are not the only facilities in which juveniles are institutionalized. Other facilities such as orphanages, homes for dependent children and unwed mothers, and mental health facilities also lodge juveniles. A survey by the U.S. Bureau of the Census (1976) indicates that approximately 44,000 juveniles under the age of 18 are living in these facilities.

Juveniles can be placed in facilities outside the juvenile justice system by parents or social service agencies or through a formal court process. The most common decision is to place these juveniles for a short period of time in the care of a foster home, institution, or group home until things can be worked out, and then discharge them to their own families or relatives or to permanent adoptive parents. However, a study carried out by New York City (New York City Comptroller's Office, n.d.:6) suggests that the reverse often happens. Many of these juveniles remain for longer periods of time and only a minority of the juveniles committed to these institutions ever find permanent homes.

Data from the U.S. Bureau of the Census (1976:10-11, Table 1-4) confirms the finding that few juveniles find permanent homes--in fact, the data show that juveniles live in institutions for an average of one to three years.

These data are presented in two ways: (1) by facilities listed as "children's" and (2) for populations under 18 years of age in all facilities for which data are given.* There are 1,324 facilities outside the juvenile and criminal justice systems in the United States that lodge approximately 44,000 juveniles under 18. The majority of these are private, nonprofit facilities housing between 1 and 99 residents (U.S. Bureau of the Census, 1976:8-9, Table 1-1). About two-thirds of these facilities (882) are listed as orphanages. Although it might be thought that the large, dormitory-style orphanage is a thing of the past, the data show that of all facilities listed as orphanages, 90 percent (795) lodge between 1 and 99 children, 9 percent (81) from 100-349 children, and about 1 percent (6) 350 or more children (1976:10-11, Table 1-3). While there is no method for determining the median size of the smaller facilities (i.e., those housing between 1 and 99 children), it can be conservatively estimated that 10,200 or more juveniles are institutionalized in facilities that have the capability of lodging 100 or more children. The estimate** of 10,200 children in orphanages holding 100 or more suggests that potentially about 25 percent of the population institutionalized in other than juvenile justice institutions are in orphanages of 100 or more children. Therefore, evidence indicates that although the goal to place juveniles in institutions as "homelike" as possible, it is never achieved for many of the juveniles who must be place in institutions having 100 or more residents.

The fact that approximately 44,000 persons under 18 are institutionalized in noncorrectional facilities suggests that these juveniles might have special health or emotional

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* These facilities include convalescent hospitals, homes for emotionally disturbed and mentally retarded, and others which include sanitariums and specialized health care facilities.

**The estimate of 10,200 children was calculated as follows: 81 facilities x 100 (the lowest capacity for this group) = 8,100 children; 6 facilities x 350 (the lowest capacity for this group) = 2,100; 8,100 + 2,100 = 10,200. These calculations assume all facilities listed in each group are operating at minimum capacity.

problems. Surprisingly, the data indicate otherwise. While two-thirds of the facilities are listed as orphanages and about 18 percent are categorized as "custodial home care," less than 10 percent of these institutions are for emotionally disturbed (7.5 percent) or neurologically handicapped children (0.5 percent) (U.S. Bureau of the Census, 1976:10-11).

Looking at the population data for juvenile institutions, it can be seen that the majority of the juveniles do not have special health problems or, if they do, their health problems have not been diagnosed and treated. The data show that 76 percent of the juveniles in these institutions have not received treatment for any diagnosed condition, 12.6 percent received treatment for nervous disorders, and 4.2 percent for digestive problems (U.S. Bureau of the Census, 1976:119). Not only is there a marked absence of treatment for specific disorders, but those disorders treated may be a result of institutionalization itself rather than physical problems brought to the institution.

The fact that juveniles in these facilities are not institutionalized for specific health or emotional problems is further supported by discharge data. About 62 percent are discharged to a private home or apartment rather than another institution or shelter for juveniles. Of those discharged, 51 percent receive no aftercare, about 37 percent receive counseling, and the remaining 12 percent receive rehabilitation, outpatient treatment, or home health care (U.S. Bureau of the Census, 1976:34-35, 92).

The data suggest another serious consequence of long-term institutionalization under conditions already described. Despite the poor record of adjustment to the "outside world" by persons who have been institutionalized for long periods of time (at any age), it is apparent that over half the juveniles discharged receive no assistance once they leave the facility. This is particularly distressing considering the numbers of juveniles placed in large-scale institutions that are unable to provide even the simple amenities of family life.

The data would suggest that since most juveniles are not receiving treatment, they may have been abandoned or orphaned and left to the care of the State. However, almost half the juveniles (47 percent) admitted to children's facilities are committed by families, while only one-third are committed by legal authorities (U.S. Bureau of the Census, 1976:82). Despite the fact that families are instrumental in placing juveniles in these facilities, data suggests that social service agencies have an enormous influence over placement decisions made by parents, guardians, and judges.

While it is reasonable to believe that social service agencies have the best information about the types of facilities and the programs they offer, there is also reason to believe that the decisions made by these agencies are not always in the best interests of the juveniles and their families. Knitzer and Allen (1978) found that juveniles were frequently separated from their families when simple remedies such as adequate child care, homemaker services, legal counseling, and day treatment programs could provide a means for keeping these juveniles in their own homes (1978:16). Case studies show that juveniles who lost their parents through death, divorce, or abandonment were placed in institutions even though relatives were willing to rear them. Knitzer and Allen (1978: 20-21) found that social service agencies removed children from the homes of relatives for such reasons as too many children in the home or improper care because the female relative was going to school. Ironically, a large proportion of these juveniles are placed in large institutions in which there is little opportunity for person care from adults. Another unfortunate outcome in placement decisions is that juveniles are removed from their homes simply because agency workers disapprove of the parental lifestyle. In some of these cases, Knitzer and Allen (1978:18) found that parents were unaware that they were making arrangements for long-term separations from their children.

Racial and ethnic factors of families enter into the decisions to place juveniles in institutions. Knitzer and Allen found that minority children are at greater risk of being institutionalized. In some States, black, Spanish American, and Native American juveniles are disproportionately placed in out-of-home facilities (1978:51). Not only are these juveniles more likely to be placed in institutions, but the regulations for adoption are so stringent that these children are the least likely to find new families in which they can receive the support and emotional nurture they need.

Even though the importance of family ties to the development of the juvenile is stressed in the sociological and psychological literature (c.f. Erickson, 1968), all too often the concept of family is ignored by both courts and social service agencies. Once juveniles are institutionalized, Knitzer and Allen found that parents lose many of their rights over their own children (1978:23-25). Institutions discourage contacts and parents are sometimes cautioned not to visit. Data from the U.S. Bureau of the Census show that almost 20 percent of the juveniles lodged in children's facilities have no visitors (U.S. Bureau of the Census, 1976:142). In part, the absence of parental visits may be a function of abandonment; in part, a function of the fact that rarely is a facility chosen for convenience of geographic location; and in part because the institutional staff do not see the juvenile's family as a resource to help the child (Knitzer and Allen, 1976:27). The fact that the rights of parents are threatened or reduced is illustrated by the data on handling funds for institutionalized juveniles. While almost half the juveniles committed are supposedly committed through parental request, or at least approval, only 29 percent of the parents with juveniles under 18 in institutions actually control the funds awarded for the care of the child. Instead, in 44 percent of the cases, an official of the institution takes control of the money set aside for the child (U.S. Bureau of the Census, 1976:117).

Another example of the State's disregard for the need for proximity of child and family or kinship ties is the placement of juveniles in institutions in other States, and, in some cases, out of the country. Knitzer and Allen found that not only were juveniles removed from their home State (1976:58ff), but that some States did not keep adequate records of a juvenile's placement out-of-state. Thus, efforts to locate a juvenile's family are often thwarted.

If many of the juveniles in these institutions do not receive visitors, and most do not receive treatment, the remaining question is, what do these juveniles receive from the institutions in which they are lodged? Data on leisure time activities show that 95.5 percent of the juveniles watch television and about 80 percent read. About half engage in competitive sports, 27 percent go to plays, movies, or concerts, and 24 percent swim, bowl, or dance. The data show that a majority of these juveniles attend parties but these are often sad caricatures of similar events for children outside, highlighting the fact that many juveniles in institutions are deprived of a full and stimulating childhood (U.S. Bureau of the Census, 1976:137).

CONCLUSION

This chapter shows that it is difficult to accurately determine the number of juveniles in institutions and exactly how they come to be lodged in these institutions. However, the salient features of this chapter can be summarized as follows:

- The number of institutions, both private and public, is increasing, while the number of juveniles in institutions is declining. However, the number

of juveniles held in secure facilities increased between 1977 and 1979.

- The increase and maintenance of private faciliites does not indicate a trend toward changing from public to privately operated facilities in the juvenile justice system. Not only do private facilities show a smaller percentage increase than public over the years studied, but there appears to be a more erratic approach to developing and maintaining these smaller institutions at the community level.

- The data indicate that more than half the States operate at least half their institutions as secure. The data indicate that secure facilities remain a prominent part of the juvenile justice system. Therefore, although there are no data to support it, it can be suggested that the courts may be having a difficult time making dispositions to the least restrictive environments as mandated by the 1974 Act.

- Data from 1977 and 1979 indicate there might be a trend toward institutionalizing adjudicated juveniles in larger and more secure institutions. This finding can be interpreted to mean that the juvenile justice system might be returning to a reliance on secure custodial institutions for adjudicated delinquents.

- While there is a slight decrease in the number of nonoffenders committed to juvenile institutions, over 22,000 were still committed to juvenile facilities in 1979. Many juveniles who are nonoffenders and do not need institutionalization find themselves in harsh and punitive environments due to a lack of alternative institutions and a predominance of administrative policy and bias which continues to rely upon institutional placements rather than fostering the creation of alternative programs which strengthen and support the family--and to facilitate the placement of juveniles with their families in the community.

- There appears to be little agreement on the number of juveniles lodged in adult facilities. The absence of data and the disagreement among those who have studied the number of juveniles in jails and prisons clearly indicates that more research must be carried out in this area. Moreover, while there is qualitative data regarding the conditions under which juveniles are kept in these institutions, there is no quantitative assessment of how separation of juveniles from adults is interpreted at the State and local level.

- Over 40,000 juveniles are institutionalized in orphanages, shelters for dependent children, group and foster homes, and other facilities. The data show that these institutions do not always fulfill their intended role of temporary housing for abandoned, neglected, or abused juveniles. Moreover, these facilities too often reduce the rights of parents over their own children, resulting in unnecessary confinement. The data also show that the mandate to find permanent homes for these children is sometimes thwarted by institutional staff notions of ideal family environments, as well as administrative policy and laws that either prevent adoption by single or handicapped parents or retain the rights of parents who have truly abandoned their children for unduly long periods of time.

- There is little evidence in the data that institutions, of any kind, are able to recreate the supportive atmosphere of even the most humble homes. It can be argued that the reliance on institutions to provide a homelike atmosphere, at any level, is erroneous. The literature on juvenile justice, adult corrections, mental health, developmentally disabled, and the aged concur that these facilities, more often than not, produce hostility, retardation, loneliness, and generate a loss of self-esteem--at all ages. In the face of this evidence, the most important question is raised: Why do they continue to be built and used?

Chapter IV

THE VICTIMIZATION OF JUVENILES IN INSTITUTIONS

JUVENILES ARE VICTIMIZED in and by institutions. Although it is public knowledge that juveniles institutionalized in large secure facilities or in small group homes are abused, neglected, and sexually victimized, reliable data on the extent and dimensions of the problem are scarce. The research community has only recently begun to shift its attention from the victimizations that take place in prisons to juvenile institutions.

As will be discussed below, most of the studies which consider juvenile victimization in institutions focus on juveniles victimizing other juveniles in secure correctional facilities. Victimizations, which are outcomes of program policies and practices that fail to protect juveniles or place them in situations which lead to other abuses, are often not addressed. Except for periodic Federal and State legislative committee hearings, typically following a serious case of juvenile abuse or neglect in a public or private facility, little attention is given to the pervasiveness of victimization in all types of juvenile institutions (e.g., detention, correctional, mental health, foster care, and privately owned and operated facilities).

It is the objective of this chapter to examine the available literature from a broad perspective in order to assess its limitations as well as provide a useful framework for futher study and investigation.

Although the initial objective of this section was to include a wide variety of institutions and categories of juveniles (e.g., delinquents, status offenders, dependent and neglected), it became clear that except for numerous descriptive reports of victimizations based upon individual cases, occasional Congressional hearings into the abuse and neglect of juveniles less-secure correctional institutions, most of the literature on juvenile victimization focused on large secure correctional facilities. Therefore, this assessment is limited for the most part to a consideration of the dynamics of juvenile victimization in these larger institutions. Perhaps the knowledge that juveniles are being victimized and an understanding of how they are victimized in these institutions in terms of which factors contribute to their victimization can provide a basis for considering victimization of juveniles in other types of facilities.

Based upon the results of this review, it appears fairly safe to say that if victimization is considered in a broad sense, juveniles are in many different and pervasive ways being victimized in all kinds of institutions. It is a paradox that the efforts of society to reform, protect, and provide for juveniles in institutions often tend to worsen their chances of survival in the outside world. Furthermore, a recent research study

on victimization in juvenile institutions concluded that:

> The juvenile correctional institutions, not unlike every other type of total institution, is or can be far more cruel and inhumane than most outsiders ever imagine. The dynamic of a large juvenile correctional institution is not the inverse of the real, the outside world.... In that both indigenous and imported patterns combine, the juvenile institution is a culmination of the worst features of a free society. If the concentration camp exaggerated the "sickness unto death" of Nazi Germany; a Siberian labor camp, the vicissitudes of life in the Soviet utopia; then the juvenile institution, the fortress prison, the mental hospital, the institute for the mentally defective, and the geriatric center define the current widom and conceptions of the management and control of deviant, dependent, and disruptive members in American life. Far from being a deviant social organization, the total institution, whatever its specific clientele of losers, reflects and embellishes the motifs of our era and the value priorities of the social system (Bartollas, Miller, and Dinitz, 1975:259).

Therefore, before the harmful environments of juvenile institutions can be changed and their victimizing elements reduced or eliminated, it is first necessary that they be identified and understood. It is toward this goal that the victimization of juveniles in institutions is examined here.

VICTIMIZATION IN JUVENILE INSTITUTIONS

According to a recent review of the literature on victimization in State prisons, there are two approaches to the study of victimization in institutions. The first approach focuses upon the individual as the primary unit of analysis and the other takes the social system. Physical, psychological, and economic victimization use the individual as the unit of analysis. On the other hand, social system victimization considers individual victimization (e.g., sexual, assaultive, economic, and psychological) as dependent upon the individual's group membership. Therefore, individuals are victimized within an institution due to visible membership in a group rather than as a result of individual characteristics. The three major characteristics that differentiate groups subject to social system victimization in a juvenile institution are race or ethnicity, religion, and offense (Bowker, 1979:2).

The individual and social system approaches to victimization are useful if the focus is to be upon inmate to inmate victimization; however, it limits an understanding of the full dimensions of victimization in adult or juvenile institutions. Although the majority of the literature on institutional victimization focuses upon inmate as perpetrator and inmate as victim, there is a gradual recognition of other types of victimization within the institutional setting which interact and can contribute to inmate-inmate victimization. With a recognition of victimization from a broader perspective, one can appreciate the accumulative effect of a victimizing environment as well as how one type of victimization contributes to others.

In order to comprehend the dimensions of institutional victimization of juveniles, it is helpful if one thinks of victimization in terms of a perpetrator-victim matrix. For discussion purposes, one can conceive of three major perpetrator-victim categories: inmate, staff, and system (see Table 1, p.122). Therefore, there are nine possible combinations of perpetrator-victim subcategories: inmate-inmate, inmate-staff, inmate-system,

Table 1

PERPETRATOR-VICTIM CONCEPTUAL MATRIX

PERPETRATOR \ VICTIM	Inmate	Staff	System
Inmate	Physical* Sexual Economic Psychological Self-(mutilation and suicide)	Physical Psychological Sexual Economic	Vandalism Manipulation
Staff	Extreme Punitiveness Exploitation Sexual and physical abuse Neglect of legitimate juvenile needs Encouraging or condoning inmate-inmate exploitation	Indifference Exploitation Psychological	Economic "Gold-bricking" Theft
System	Inappropriate institutionalization Social isolation Dehumanization Lack of treatment and indifference to harm Boredom Overcrowding Poor architectural design	Underpay Understaff Undertrain Lack of status Burn-out Lack of Administrative support for staff Inconsistent and/or unclear policies	Interorganizational conflict Violation of court orders "Passing the buck" The "self-fulfilling prophecy" of therapeutic and punitive systems

*Examples of types of victimization involving a perpetrator and victim are provided in each cell of the matrix.

Table constructed by the NATIONAL JUVENILE JUSTICE SYSTEM ASSESSMENT CENTER (Sacramento, Calif.: American Justice Institute, 1981).

staff-inmate, staff-staff, staff-system, system-inmate, system-staff, and system-system. It is important that it be recognized that these types of perpetrator-victim incidents often become mixed--victims can and do become perpetrators, and that from a social system perspective what may appear as a perpetrator-victim situation may in reality be more accurately described as a victim-victim type (both parties are victims further victimizing each other). This chapter of the report will examine three subcategories of victimization: inmate-inmate, staff-inmate, and system-inmate, while recognizing that the six other subcategories often occur concurrently and interact (e.g., influence) with these subcategories.

Inmate-Inmate Victimization

Although an extensive body of literature has been developed on adult male prison victimization (Bowker, 1979), very few studies deal with victimization in juvenile institutions. Furthermore, the literature on victimization in adult and juvenile institutions tends to focus upon inmate-inmate victimizations of the assaultive (Feld, 1977) and sexua types (Bowker, 1979; Lockwood, 1980; Weiss and Friar, 1974; Bartollas, Miller, and Dinitz 1976).

Bowker suggests that the mass of materials written on victimization can be categorized into four types: physical, psychological, economic, and social (Bowker, 1979:1). A fifth type will be added to this list: self-victimization, which generally takes the form of self-multilations and suicide. Each of these types will be discussed below.

Physical Victimization of Inmates by Other Inmates

Physical victimization of inmates by other inmates in juvenile institutions appears to be the most prominent type of victimization. It generally takes two forms: assaults and sexual attacks. However, a review of the literature indicates that assaultive and sexual victimization often operate together as dimensions of the victimizing situation. Therefore, it is understandable that the earliest report of victimization in juvenile institutions was contained in Ward's 1958 article, "Homosexual Behavior of the Institutionalized Delinquent." Ward found that in training schools, the bullying and aggressive homosexual behavior of many of the male residents becomes confused with masculinity, and dependence and submission become confused with femininity. He also found that many of the boys who are at first victimized for their dependence and passivity, later become con-wise and prey on other inmates (Ward, 1958).

Ward's observations were confirmed by Polsky in his study of a well staffed eastern reformatory (Polsky, 1962). In his book, Cottage Six, Polsky presents one of the most detailed studies of juvenile inmate victimization. According to Polsky, there was a clear status structure in the institution, with scapegoat roles such as "queer" and "rat" being at the bottom. Upper status inmates turned some inmate scapegoats into virtual human punching bags. Newcomers and social isolates were also heavily victimized until they fought their way up the social ladder. Many weaker boys never succeeded in working their way up the status system and partially as a response of the severe and continual victimization they were subjected to from other juveniles, ended up in mental institution

Halleck and Hersko (1962) and Giallombardo (1974) were able to show that homosexual victimization of juveniles by other juveniles was not unique to male institutions. Halleck and Hersko indicate that 69 percent of the girls in a training school were involved in homosexual behavior. Giallombardo pointed out the importance of homosexuality in the social organization of incarcerated girls (1974). Propper (1978) was able to provide

further insight into lesbianism among 13- to 17-year-old girls in an institution as well as point out the problems of definition inherent in the earlier studies. According to Propper, although 14 percent of girls responded in a self-report questionnaire that they were going with or "married" (to other girls), among females in institutuions much of the homosexuality may be more due to importation (previous homosexuality playing a more important causal role) than due to the deprivation of the institution. Recent research on the informal inmate social structures of correctional institutions for women and girls has disclosed that what may have appeared as homosexuality to Propper and other investigators, may be a part of the complex patterns of pseudo-kinships which develop among female inmates. Within a single institution, there may occur a number of separate inmate primary groups, each of which are organized as distinct kinship units, and in which inmates behave toward each other as if they were members of the same family (Foster, 1975:72). Kosofsky and Ellis hypothesized that the "make-believe families" function as surrogates for girls within juvenile institutuions who had been deprived of love and security in their actual families (Kosofsky and Ellis, 1958:157). It is important to note that the existence of pseudo-kinships, which may or may not involve homosexual exploitation, mark a major difference between juvenile male and female subcultural patterns in institutions. According to Foster, there is no evidence in the literature that female inmates are ever coerced into joining a family group, although some informal peer pressures apparently are operative (Foster, 1975:73). Therefore, the voluntary feature of the pseudo-family, which Foster suggests may be viewed as a "voluntary association of deviants" attempting to manage their own identities in response to the depersonalization and status degradation of a custodial regime, differentiates it from how juvenile males cope with institutionalization (Foster, 1975:73). However, it is also important to note that Foster's findings contradict earlier studies of female sexuality in juvenile institutions. Ford, in a 1929 study based upon observations and interviews in a correctional institution for female delinquents, found that rivalry over sexual partners often led to violent fights between the girls. These jealousies resulted in fist-fights, hair pulling, and trumped-up stories that were designed to discredit and undermine the status of the rival (Ford, 1929:442-448).

Juvenile males, upon entering a juvenile institution, are immediately confronted with the inmate social hierarchy and are tested through a process of intimidation and violence for their social position in the hierarchy. The newcomer's reaction to this hazing or status degradation helps determine what role he will be allowed to fill. In many institutions, the newcomer's race also contributes to the testing procedure. Black newcomers are often recruited directly into one or the other of the higher-status groups without initial hazing or degradation. White juveniles are exposed to verbal challenges to fight, insulting insinuations about feminine traits, ultimatums to hand over "commissary" or else, by the tough predatory core members of the dominant group (Rubenfeld and Stafford, 1973:252-253). The testing separates the sheep from the goats: the few that meet the challenge move upward in the status system, thus generating a newcomer cluster which then becomes the target of exploitation by veteran inmate groups (Rubenfeld and Stafford, 1973:252-253).

This initial testing of newcomers to juvenile institutions through physical and sexual threats is significant because it places a juvenile at the mercy of the inmate subculture and sets the stage for future victimization. Research findings of studies on juvenile victimization suggest that three factors tend to influence the likely outcome of a juvenile's initiation to the inmate subculture. White juveniles often face a black-dominated milieu and have a much more difficult time escaping victimization than their black peers. Boys also vary widely in their abilities to defend themselves physically. The youth who may be "tough" in a middle-class section of town may find himself looked upon as

a "pansy" in an institution. In addition, a boy's former institutionalization is also important. The uninitiated first-time inmate is at a disadvantage (Bartollas, Miller, and Dinitz, 1976:52).

It is beyond the scope of this report to fully describe the dynamics of the physical and sexual victimization that institutionalized juveniles experience on a daily basis.* However, it is important to note that there are numerous paradoxes in the exploitation-victimization spectrum in relation to physical and sexual victimization of inmates by other inmates. As pointed out by Bartollas, Miller, and Dinitz in their study of juvenile victimization in an Ohio boy's correctional institution, there are three major paradoxes:

- The training school receives young men who consider themselves among the toughest, most masculine and virile of their peers who are victimized by the even tougher peers who were in turn victimized earlier. Therefore, the process of victimization becomes self-sustaining and produces an internal environment and organization which is less fair, just, humane, and decent than the worst aspects of the criminal justice system outside.

- The institutional environment paradoxically inverts the black-white relationships of the outside. On the outside, whites almost inevitably are in subordinate roles and blacks in inferior ones. Inside black is predominant. "...the values, norms, privileges, and high statuses, preferred roles and inmate power reside in the black and not in the white community."

- The institution reinforces the "inversion of middle-class norms." Successful institutional adaptation mandates conformity to lower-class standards. Even the professional staff become influenced by this inversion due to the fact that they must react and respond in resident terms. Perhaps, as Bartollas suggests, this is the ultimate paradox in that the inmates determine the milieu of the institution and the values and norms for the staff rather than being influenced by the rehabilitative aspects of the institution (Bartollas, Miller, and Dinitz, 1976:270-272).

Therefore, the literature tends to support a conceptualization of physical and sexual violence as being interrelated. Physical force or the threat of violence is used to gain sexual favors from weaker inmates. Physical victimization is also dispensed to help maintain the inmate social system by keeping violators in line. Although the literature on juvenile institutions portrays both sexual and physical violence as prevalent and prevailing, there are few research studies which give any sound data on the incidence of sexual and nonsexual aggression. Bartollas, Miller, and Dinitz found that almost 90 percent of the youths in their study were involved in either exploiting others, being exploited, or some combination of the two. Most important, they found that over 70 percent of the boys were being exploited in some manner (Bartollas, Miller, and Dinitz, 1976:134). Sixteen out of 149 boys were the subject of frequent sexual exploitation.

Although there are few reliable estimates of the incidents of physical assault and sexual attacks in juvenile institutions due mainly to the fact that many of these incidents

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*For a detailed discussion of how juveniles are victimized daily in juvenile institutions, see Bartollas, Miller, and Dinitz, 1976.

go unreported, its impact upon the daily lives of juvenile inmates should not be underestimated. As pointed out by Bartollas, Miller, and Dinitz, rumors about inmate violence and about the capability of some inmates to victimize anybody, both sexually and physically, abound in and outside the institution (Bartollas, Miller, and Dinitz, 1976:53). Toch suggests that the threat of violence is how inmates victimize other inmates:

> It is more likely that the nature of the aggressor's threat is incidental to his real purpose, which is to be threatening. The latter assumption suggests that the medium in inmate victimization is in fact its message, that the aim of the activity is to provoke stress and to make stress visible (Toch, 1977:144).

A stressed inmate "is one who has discovered that familiar environmental transactions--customary ways of coping with the environment--are hopelessly challenged. The result is typically a period of psychological disequilibrium, which includes disbelief and dispair" (Toch, 1977:141-142). The process set into motion by the perpetrator through the threat of violence or sexual attack (rape) often has its intended goal. It weakens the victim's resistance and strengthens the perpetrator's ego at the expense of the victim's misery. The use of violence as a threat for obtaining sexual liberties from weaker victims serves to not only degrade the victim, but also to protect the aggressors from sexual temptation if the victim resists, rule out any chance of consensual love affairs, and at the same time release sexual tensions and support for the perpetrator's masculinity (Allen, 1969). Therefore, the threat of violence, either assaultive or sexual, pervades the institution and has its desired impact upon victims somewhat independently of its actual incidence. Furthermore, as has been shown, continual exposure to institutional violence affects the perceptions of juveniles in such a way as to increase the amount of violence perceived in one's environment (Nachshon and Rotenberg, 1977:454-457). Therefore, it is likely that increased perceptions of one's environment as violent can lead to violent behavior. In other words, violence leads to violence as a result of actual as well as potential violence.

Economic Victimization

Within the institutional environment, the politics of scarcity becomes a way of life, and material goods take on value out of proportion to their value in the community. Things are bartered, services are traded for goods, and goods are exchanged for freedom from physical or sexual victimization (Slosar, 1978). While the details of economic victimization of inmates by inmates have been described (see Bowker, 1979) in some detail in adult prisons, it is not well documented in juvenile institutions. The Bartollas, Miller, and Dinitz study suggests that it is probably very prevalent in juvenile facilities. They found that economic victimization had a different ecology than physical victimization. Economic victimization was more common in the cottages where the boys kept most of their material items, and where staff members showed little concern when boys lost their possessions. In addition, the educational, vocational, and the recreational areas were the sites of a number of economically victimizing incidents (Bartollas, Miller, and Dinitz, 1976:116-120). Many of these stolen items end up on the barter market handled by the institutional "peddlers":

> Generally one inmate in each cottage--more often black than white--trades goods from one cottage to another. Because the goods are either stolen, illegal, or exploited, they must be concealed from staff. Similar to the merchant in adult prisons, this social type works subrosa because institutional rules and procedures are being violated.

...a common transaction is for a peddler to pay so many "squares" (cigarettes) for a coat or other stolen items. He then finds a "buyer" somewhere in the institution who will guarantee him a profit, usually several packages of cigarettes. Or a boy may "borrow" a radio from one of the weaker youths, and the peddler will then trade the radio for merchandise from another cottage and give some of the merchandise to the original thief. Especially aggressive peddlers sometimes coerce weaker inmates to buy something like cigarettes for a ridiculous price, even though they may already have cigarettes. Other peddlers serve as the middle-men between the youth who wants to "sell butt" (sex) for a couple packs of cigarettes and the youth interested in buying the offered commodity (Bartollas, Miller, and Dinitz, 1976:116-117).

Bartollas, Miller, and Dinitz were able to develop a ranking of material (economic) exploitation which provides some indication of the relative value of material possessions in juvenile institutions (ranking from most important to least):

Table 2

RELATIVE VALUE OF MATERIAL POSSESSIONS IN JUVENILE INSTITUTIONS

Radios	Radios are the most important material object because of their expense and that they were probably brought from home. Boys feel that a boy who would give up a radio will give up anything.
Personal Clothing	Personal clothing is highly valued because it is used for home visits, dances, and other "off-campus" trips and once it is gone it is gone for good.
Cigarettes	Cigarettes are a valued commodity because they are a unit of exchange for trading, gambling, and buying sexual favors.
Toilet Articles	In the impersonal and sterile setting, soap and lotion are highly esteemed.
Institutional Clothing	Since staff harass boys who do not have clean clothing for school, the loss involves not only losing respect from peers for giving up a clean shirt, but being hassled by staff for wearing dirty clothes.
Parents' Pop and Candy	These items are brought from home by "mom," therefore the value is increased.
Canteen Pop and Candy	These items are purchased by the boys with their own money, therefore their value is high.
Institutional Favorite Foods	Certain foods such as "ribs" are highly desired by the boys and they resist giving them up.
Institutional Dessert	This item refers to cake and other desserts served for lunch and supper. Boys do not mind giving up institutional desserts very much.

Source: Developed by the National Juvenile Justice System Assessment Center from Bartollas, Miller, and Dinitz, 1976:74-75.

Based upon a review of the literature with regard to economic exploitation in juvenile institutions, it generally follows the form prevalent in adult facilities. Economic victimization in prisons can occur through theft (taking something from someone's cell when he is not there), robbery (taking something from someone in person), loansharking, selling goods at outrageous mark-ups, and manipulating victims into debts through gambling (Bowker, 1979:24).

Psychological Victimization

In this category of victimization, the focus is on juveniles victimizing other juveniles through a psychological medium. For example, the threat of violence or sexual intimidation of younger, weaker juveniles would be considered a psychological type of victimization. The fear and resulting stress from the threat, as well as the lowered self-esteem or self-concept, would constitute a psychological victimization because the medium for delivering the victimization as well as the intended result were both psychological.

On the other hand, physical assaults and homosexual rapes may not be motivated by a psychological victimization intent, but nevertheless they may have both short-term and long-term psychological outcomes on the targets. To further complicate our understanding of this type of victimization, threats, intimidations, and actually carried-out violence against juveniles tend to create stress and fear in other juveniles in the institution who see themselves as potential victims by identifying with the actual victim of the attack.

Although the literature does include much discussion of physical and sexual assaults between juveniles in institutions and occasionally considers their psychological overtones, few if any of the studies focus upon the psychological aspects or are able to separate out this type of victimization. Part of the difficulty of focusing upon this type of victimization is that it rarely occurs in isolation from other types of victimization. For example, the use of psychological victimization may be for the purpose of weakening the resistance of a juvenile who is being set up for sexual, economic, or other kinds of exploitation. Until more research findings are available, it would be useful to consider some of the dynamics of psychological victimization (how juveniles use psychological means to victimize their targets) and some of the likely short-term and long-term effects.

The Dynamics of Psychological Victimization

Garfinkel described the conditions of successful degradation ceremonies as a communication directed to a target with the intent of transforming an individual's total identity lower in the group's scheme of social types. A major ingredient of a successful degradation ceremony is the perpetrator's attempt to reconstitute the victim into a social object by getting the witnesses to appreciate the perpetrator and the process of degradation (Garfinkel, 1956:420-424). Juveniles entering an institution are not only examined, processed, and put under pressure of the formal rules of the institution, they are also carefully examined, put through a series of degradation ceremonies, and placed into a pecking order and role by the inmates. Bartollas, Miller, and Dinitz provide some insight into this informal inmate process. According to one of the juveniles in their study (a strong white youth), the juveniles size up a new boy by:

> ...the way you talk and the way you act, and when they talk to you they find out what you've done and they kind of put it all together in a way to determine whether you're bad or what. Whether you can fit in with them or not. If you just seem like some silly little kid off the street then you're the scapegoat--like a

few people are in this cottage. If you don't know how to handle yourself, then somebody is always picking on you (Bartollas, Miller, and Dinitz, 1976:54).

Most of the interactions between the newcomer and the veteran are geared to see how far a neophyte can be pushed. The inmates want to "process" the newcomer to answer four basic questions: "How much does he have?" "Will he defend himself?" "How is he holding himself?" and "Is he a punk?" These questions need to be answered in order for the inmates to determine what they can hope to exploit from him (e.g., food, clothes, cigarettes, and sex), whether he will fight back, how fearful he is, and whether he has been sexually exploited in the past (Bartollas, Miller, and Dinitz, 1976:55). Through a series of degradations and attempted exploitations, the newcomer is positioned in the social hierarchy of the inmate subculture. In a very strong sense his die is cast based upon his reactions to these early interactions, and the process of regaining his self-esteem or moving up the social ladder is a long and hard road. The psychological impact of being placed into a lowly social strata by your peers is compounded by increased vulnerability resulting from being "marked" as a scapegoat and weakened defenses resulting from a lowered self-concept (Feld, 1977:160-161). The major psychological reaction to these threats and exploitations is fear of escalating violence and sexual attacks. Lockwood found that frequently in the case of sexual attacks (e.g., rape), long after incidents initially inspiring fear are over, inmates continue to view themselves as open to imminent attack. This generalized fear (anxiety) tends to color perceptions of the entire institutional environment. Inmates may see danger everywhere, they may believe that encounters with other inmates are likely to disintegrate into aggressive episodes, they may see potential terrors in every part of their institutional world (Lockwood, 1980:60-61). Next to strong feelings of generalized fear, Lockwood found that anger was a common emotional response to victimization:

> Anger can directly cause significant harm. When social interaction results in one party becoming angry at another party, communication falters. Mutual misunderstanding grows. Potential for violence increases dramatically. Targets ...can also suffer when anger, surviving in unexpressed form, leads to frustration and tension. Incidents that cause anger are thus victimizing incidents. Targets can be harmed by participating in violence motivated by their anger or their anger can lead to internal or psychological discomfort (Lockwood, 1980: 63).

As many juveniles subjected to continual psychological harassment learn, the resulting stress, fear, and anger can lead to further harassment and exploitation. Bartollas, Miller, and Dinitz found that many middle-class juveniles show the strain of exploitation and psychological victimization sooner and tend to bring on further abuse as a result of their increased vulnerability (Bartollas, Miller, and Dinitz, 1976:157-158). Often these juveniles become so emotionally distrubed that they have to be removed to psychiatric hospitals (Huffman, 1961:120-121).

Short of psychological breakdown and removal to a psychiatric hospital, some juveniles find themselves having to face the stress-provoking environment on a daily basis. The fear often becomes overbearing and generalized so that it is not related to one incident or threatening situation, but to the whole experience of having to cope with a threatening and unpredictable situation after situation (e.g., being moved from one part of the facility to another, having to work in one setting versus another) until the reaction is extreme anxiety. This anxiety can be symptomatically defined as feelings of uneasiness, apprehension, or tension. Some inmates report physiological symptoms of anxiety such as shaking, uncontrollable crying, stuttering, weakness, inability to sleep or concentrate (Lockwood, 1980:64).

Up to this point our discussion has focused on the effects of psychological victimization on the target; however, a few researchers have provided some insights into how it can also victimize the perpetrator of the act. Perpetrators are faced with the threat of retaliation. Allen mentions the procedure known as "creeping." According to Allen, the threat of "creeping" tends to operate to prevent stronger youths from relentlessly exploiting the weaker ones. The threat is that a weaker boy, or "lame," might creep up on a stronger, exploiting him at night when the lights are out, often by cutting his throat. The fear of being a victim of the "creeper" preys on the paranoid fear of retaliation that many of the boys have, and even though it may not occur for years, it is kept alive by various homemade weapons that are found from time to time (Allen, 1969:295).

Another situation where the perpetrator and victim both become victimized by the psychological damage of the victimizing event is with homosexual activities in the institution. If the majority of the researchers on adult and juvenile institutions are correct, deviate sexual behavior permeates juvenile institutions. The fear of being labeled homosexual or of accepting a homosexual self-image appears to be a major psychological stress factor in male institutions. Although it is generally held that most male inmates who participate in homosexual activity do not perceive themselves as being sexual deviates, the long-termer or young inmates who spend their preadolescent, adolescent, or young adult years in institutions tend to internalize their negative status, carrying this stigma throughout their lives, for they are socialized within a perverse institutional environment coming to internalize these affectual and sexual relationships as well (French, 1978:18). Therefore, although they may remain heterosexual, their homosexual behavioral patterns are difficult to overcome. Both the victim and perpetrator often share serious readjustment problems once they return to their home-world environment.

Self-Victimization

One of the outcomes of the high levels of stress, anger, fear, and anxiety felt by juveniles in institutions as a result of their victimization by other juveniles or indirectly by the institutional environment is that the juvenile may turn against himself through self-mutilation or ultimately through suicide.

Johnson examined 344 male inmates who committed self-mutilations or attempted suicide in New York penal institutions (penal institutions included all secure State facilities for adult and adolescent felons and three major pretrial detention facilities in New York City). He found that young offenders differed reliably from their adult counterparts; youths were disproportionately prone to crises. This was reflected in their inability to maintain self-control and composure in solitary confinement, signalled last-ditch efforts to revitalize flagging social supports, and marked a declaration of psychological bankruptcy in the face of social pressures and threats (Johnson, 1978:462-463). In other words, the youths prone to self-mutilation and attempted suicide were unable to cope with the institutional environment or to threats to their self-esteem. One of the major threats to the youth's ability to cope is segregation. According to Johnson, "segregation is prison within a prison" (Johnson, 1978:463).

> It is a setting in which the person is very much alone. He is also paralyzed and shut in. Activity is confined to a 6 by 8 cell and is limited to solitary diversion. Most youths describe their confinement as irritating and boring, as an unpleasant interruption of their prison routine. For some of these men, however, the conditions of isolation undermine coping efforts and promote psychological breakdown (Johnson, 1978:463-465).

In addition to the extreme feelings of isolation resulting from segregation within the institution, for some juveniles the separation from their families can prove to be equally traumatic. For some, the gap between the family world and the institution seems wide and unabridgable. The result is often feelings of helplessness. In such cases, self-destructive behavior may represent a dramatic bid to gain an unearned response from significant others (Johnson, 1978:470). In this situation, the self-destructive conduct represents an extreme move on the part of a helpless and desperate juvenile to communicate distress and establish a legitimacy as a candidate for help.

The works of Toch (1977), Fox (1973), Gibbs (1966), and Lockwood (1980) provide some further insight into the motives of self-mutilation and suicide among adult male prisoners which may serve to stimulate further research into juvenile motives for such behavior. These researchers describe the psychological state of these men as a "break down" in coping abilities, leaving the individual in a state of disorientation, paralysis, or helplessly self-destructive (Toch, 1977:70). The individual experiences extreme feelings of self-doubt, hopelessness, and confusion. The situation is often worsened by self-imposed isolation and self-injury or violent acts which again bring on further crisis as other inmates and staff react to the violent behavior. Lockwood quotes one of the men experiencing this crisis:

> I was really an emergency case the second day that I was here. I had so many fears and so many worries going on in my head. I felt such a broken spirit. I guess you might say that all I could do was crawl under the concrete (Lockwood, 1980:67).

The above researchers are describing the crisis experience of adult men; however, their experiences are probably not very different from juveniles under similar circumstances. Johnson suggests that adolescents who are emotionally unequipped to deal with the institutional environment probably experience the same syndrome (Johnson, 1978:470). For some juveniles the elements of a forthcoming crisis begin even before they enter the institution. The rumors passed on in detention or on the streets between juveniles contribute to their fear and eventual psychological breakdown. According to Johnson, some adolescents class themselves as victims even before they begin their institutional careers.

> They have an image of prison that is shaped by inexperience. As they see it, men like themselves are open game in prison. Pressure for sex, which they feel is commonplace, looms as a major focus for fears. Personal crises mark a declaration of impotence; the youths know prison will pose tests they are unable to counter (Johnson, 1978:474).

As discussed earlier, for many juveniles entering institutions their worst fears are conformed early in their institutional careers through the informal "testing period" in which their peers selectively evaluate them for victimization. For many juveniles, the "testing" is more than they can take and their inability to handle peer victimization reflects their lack of street sophistication and poise. Their efforts to cope by placating their aggressors becomes a sign of weakness and vulnerability in the eyes of their peers. Finally, after all strategies to "make it" fail, the juvenile feels completely worthless and alone, the crisis escalates from one of panic to one of hopelessness, and hopelessness can lead to self-mutilation or suicide, as one inmate describes it:

> For a man to kill himself, it takes two things. His people cuts him loose, including his wife or girlfriend or whoever is involved, and then a mother-

> fucker tries to fuck him. My people cut me loose because I locked up. Just because I committed one crime, I was a dope fiend. Can you help being on dope? I couldn't help it. It's that kind of thing. They had to degrade me for this and abandon me just for this one thing? Why must they leave me? Why must people constantly harass me about fucking me? So I would give up hope totally. It's what the preachers are talking about, man, death is beautiful (Johnson, 1978:480).

Although in recent years there has been a rising interest in juvenile suicides among the youth population in general, there is a scarcity of professional literature on suicides of juveniles in jails and correctional institutions. A recent study on the topic of the incidence of juvenile suicides in adult jails, lockups, and juvenile detention centers provides some valuable information with regard to this neglected area (see Flaherty, 1980). Flaherty found that the rate of suicide among juveniles in county jails during 1978 was 7.2 per 100,000, which was more than twice the suicide rate of 2.8 per 100,000 among juveniles in the general population during 1977 (Flaherty, 1980:10). The suicide rate of juveniles in municipal lockups was 10.3 per 100,000, or more than three times greater than the suicide rate among juveniles in the general population (Flaherty, 1980:10). Surprisingly, the suicide rate among juveniles in juvenile detention facilities was lower than that of the general population. The researcher concluded that even though these findings are indicative of a serious problem, they may underestimate the significance of juvenile suicides in institutions because: (1) suicide of juveniles in the general population is calculated for persons at or below the age of 19, while the study data reflect the suicide rate for persons below 18; therefore, since there is a strong positive correlation between suicide rates and age, the difference between the suicide rate among juveniles held in jails and the suicide rate among youth in the general population is probably greater than the data indicate; (2) the study data show that the average length of stay for juveniles in juvenile detention centers is approximately 17 days; therefore even with more limited time available (17 days as compared to 1 year for general population) the rate is greater; and (3) it is more difficult to commit suicide in jail than it is in the general population simply because the techniques at one's disposal are much more limited (Flaherty, 1980:12). Taken together these findings imply that the problem of juvenile suicide in institutions is a very serious social problem; moreover, if it is also remembered that the data did not consider suicide in juvenile correctional institutions where the conditions are as bad or worse and the length of stay is longer, the problem of juvenile suicide in juvenile institutions may be even more serious.

Staff Victimization of Juveniles

From time to time, notorious cases of sexual or physical victimization of juveniles by staff make the newspaper and the public react with astonishment and disgust. However, the full extent of this problem, and why and how it occurs, has not been given the attention it should by the research community. This section will bring together and synthesize the little that is available on staff victimization in an effort to stimulate further research and understanding.

The John Howard Association's report on the Illinois Youth Centers at St. Charles and Geneva (1974) provides a rare view of the extent of physical abuse of juveniles by staff. Of 46 youths between the ages of 14 and 19 that they interviewed at St. Charles, 23 stated that they had been slapped, punched, kicked, and their arms twisted or were struck with an object by a staff member. About half of the juveniles stated that they witnessed staff committing such acts against other juveniles (Cited in Bowker, 1979:38). Other reports of staff abuse of juveniles have appeared in the literature based upon the

observations and investigative reporting of a few persevering writers, often stimulated by a sense of injustice and outrage to the cruelties perpetrated against juveniles in public and private care and treatment facilities (Wooden, 1976).

In an effort to provide a preliminary framework for further study and research into staff victimizations, our review of the literature is organized into a typology of staff victimization. Essentially, there are four major types of staff victimizations with numerous variations within each type: extreme punitiveness, exploitation, sexual and physical abuse, and indifference or ineffectiveness to juvenile needs. Each type will be described briefly.

Extreme Punitiveness

Zimbardo was horrified by the results of his laboratory experiment on the pathology of imprisonment (Zimbardo, 1972). He selected two dozen young men in the college town of Palo Alto, California, to participate in a study which attempted to artificially create a prison environment for the researchers to carefully examine. Half of the young men were arbitrarily designated as prisoners by a flip of a coin, the others as guards. Afte six days the study had to be discontinued. Even under a mock prison situation, the consequences were too frightening and dangerous to take the risk of long-term harmful effects on both the role-playing prisoners and guards. As Zimbardo describes it:

> It was no longer apparent to most of the subjects (or to us) where reality ended and their roles began. The majority had indeed become prisoners or guards, no longer able to clearly differentiate between role playing and self. There were dramatic changes in virtually every aspect of their behavior, thinking and feeling. In less than a week the experience of imprisonment undid (temporarily) a lifetime of learning; human values were suspended, self concepts were challenged and the ugliest, most base, pathological side of human nature surfaced. We were horrified because we saw some boys (guards) treat others as if they were despicable animals, taking pleasure in cruelty, while other boys (prisoners) became survile, dehumanized robots who thought only of escape, of their own individual survival and of their mounting hatred for the guards (Zimbardo, 1972:4).

About a third of the role-playing guards in Zimbardo's experiment became tyrannical in their arbitrary use of power. They enjoyed their control over others and were corrupted by this power. In fact, they were quite inventive in their techniques of breaking the spirit of the prisoners and making them feel they were worthless. Zimbardo also found that some guards were tough but fair and several were actually considered "good" guards by the prisoners. It is significant, though, that no guard--good or otherwise--ever interfered with a command by any of the "bad" guards; they never told the others to ease off because it was only an experiment (Zimbardo, 1972:5).

The Zimbardo experiment points out some issues worthy of further study with regard to staff behavior. First, the institutional environment takes its toll on the staff; it can change their sense of values and morality over time. It can make them capable of committing horrible acts through the exercise of their power to control and punish. Second, it suggests that guards tolerate the abusiveness of other guards. While it must be recognized that the young men playing these roles were untrained and the "prison" was artificially constructed, it nevertheless raises some important questions regarding the effects of total institutions upon untrained custodial staff.

The effects of the institutional environment upon staff has been discussed in the literature. Zald found that in custodial institutions, staff had a relatively dominating relationship with inmates, while in treatment institutions staff were less domineering and relied more on manipulation and persuasion to control inmates (Zald, 1964:254). These differences in staff relationships with inmates also reflected their attitudes toward inmates. Custodial institutional staff thought that the juvenile inmates should keep to themselves, conform, not make too many friends, and not have close relationships with others. In contrast, staff in the more treatment-oriented institutions wanted boys to make friends with both staff and the other boys, and to express themselves and articulate their needs (Zald, 1964:254).

Staff often resort to extreme punitiveness to control the inmates. As discussed earlier, the use of solitary confinement is probably one of the most extreme punishments a staff member can legitimately use. The effects are well known; however, staff also use physical sanctions to punish misconduct either directly administered or indirectly, by having other inmates do the deed. Feld reports that the director of one of the cottages in the institution used a plastic baseball bat called the "teacher" to administer "whacks" for minor types of misbehavior such as cursing, lying, and the like. The whacks were accumulated during the day and administered in the evening in the locker room (Feld, 1977:1972). In other situations, slaps, choking, or some minor physical punishments were administered throughout the day in other parts of the institution. Probably one of the most insidious types of punishment is either administered by other inmates through provocation or set-up or through indifference.

Staff Exploitation of Juveniles

The exploitation by the staff of juveniles was one of the most surprising forms of institutional exploitation found by Bartollas, Miller, and Dinitz (1976:154). Some inmates, especially the emotionally disturbed juveniles, have high dependency needs. This dependency upon staff makes them easy "marks" for staff to exploit them by taking their pies, candy, cakes, and cigarettes in exchange for attention. Some of these juveniles shine staff's boots or voluntarily give up their share of an especially good meal in exchange for the attention of staff they so desperately need. As pointed out by Bartollas, Miller, and Dinitz, the extreme of this need for attention can also lead to sexual exploitation of the juveniles by the staff (1976:154).

Sexual and Physical Abuse

As reported earlier, extreme cases of sexual and physical abuse of juveniles frequently are reported in the media. The literature also makes occasional mention of passing comments about jailers, sheriffs, deputies, or other officials who sexually assault girls and young women (Kassebaum, 1972); however, these types of victimization often do not get reported, probably due to the vulnerable position the inmates occupy and because at times it is willingly given in exchange for favors, cigarettes, protection from peers, or a promise for early release (Bowker, 1979:38-39).

Staff Indifference or Ineffectiveness in Dealing With Juvenile Needs

This type of victimization is more subtle and invisible than the other forms of staff victimization of juveniles; however, examples have been discussed in the research literature. Some authors believe that other forms of victimization such as sexual assaults would probably be impossible without the connivance, or at least the deliberate inattention, of those in authority. Therefore, the indifference of staff to victimization is an

important contributing element to other types of victimization (Sagarin and MacNamara, 1975:13-25). Based upon the literature, it appears that staff victimization due to indifference or ineffectiveness can be subdivided into: support of violent response by targets, ignoring complaints of inmate victimization, and ineffectiveness in dealing with victimizations. Each will be discussed briefly.

- Support of Violent Response by Targets

  One of the surprising findings of Lockwood's study was that staff often support inmate violence (Lockwood, 1980:53-56). He suggests that this may be due to the fact that some staff members have cultural backgrounds similar to those of the inmates. They are working-class men themselves and hold norms supporting "masculine" responses to intimidation, namely physical violence. In addition, staff and inmates both belong to the institutional community with its norm that a violent response is one of the simplest and most effective ways of handling an aggressive sexual approach (Lockwood, 1980:53). Lockwood notes that staff offer violence as a solution to the inmates they speak with informally and during counseling sessions. According to Lockwood, administrators, counselors, and even chaplains participate in giving such advice. In other words, the norm of the institution is "violence will win respect, it will deter future approaches; it will cause the aggressor bothering you to back off." Lockwood also suggests that in certain situations, staff may even make private arrangements to overlook a fight provided it is in the service of survival. Staff thus monitor and even encourage instrumental inmate assaults on other inmates (Lockwood, 1980:55).

  In some situations staff use violent inmates to control other inmates. This cooperation with the aggressive inmate elite serves to strengthen the inmate subculture which is generally violent, stratified on a hierarchical basis, and organized around exploitation and aggression. It therefore serves to give inmates incentives to exploit each other (Feld, 1977:198). The long-term consequence of the prevalence of violence is that it leads to authoritarian inmate relationships in which high status inmates physically and psychologically dominate their inferiors, just as staff do inmates. The outcome is that ultimately staff and inmates become brutalized by their institutional experience. This becomes an insidious problem when the weaker inmate is weaker due to mental illness or mental retardation (Santamour and West, 1977). Offer suggests that sometimes staff get vicarious gratifications from the acting-out behavior of juveniles in institutions. He considers this an unconscious problem that some members of the staff have to struggle with individually, and that the more these neurotic conflicts are understood and resolved on the part of the staff, the less acting-out will result from this factor (Offer, 1975:1185).

- Ignoring Complaints of Victimization

  Davis, in his study of sexual assaults in the Philadelphia prison system and sheriff's vans, showed that such assaults were epidemic. He also found that many of the guards discouraged complaints by indicating that they did not want to be bothered. In fact, one victim screamed for over an hour while he was being gang-raped in his cell, and the block guard ignored the screams and laughed at the victim when the rape was over (Davis, 1968:10). Because complaints of inmates victimizing each other reflect on the guards' failure to do their duty, pressure is put on victims not to complain

(Davis, 1968:10). Further, a victim who knows that most likely very little will happen as a result of the complaint except the retaliation of the other inmates, is discouraged from taking the chance. In addition, the humiliation of having their peers and families find out about their victimizations, especially if it is sexual rape, tends to force victims to try to keep it quiet. To make matters worse, victims soon learn that they may become further victimized by the guards by being placed in "lock-in/feed-in" ostensibly for their own protection. This means that a victim who complains is locked in his cell all day, fed in his cell, and not permitted recreation, television, or exercise until it is determined that he is safe from retaliation. Therefore, any reaction to victimization other than a revengeful, violent reaction is likely to result in further victimization and long-term loss of inmate acceptance for violating the inmate code of silence by "snitching" to the authorities. The findings of Davis tend to be supported by other researchers. Johnson also found that guards in the New York system offer little protection to the targets of violence. Accordingly, they are viewed as unable to control aggressive inmates or to aid potential victims (Johnson, 1978: 479).

Fischer found victimization to be extensive at Lomo, a State correctional institution for boys in California (Fischer, 1961:87-93). According to Fischer, many supervisors ignored the complaints of juvenile victims about predatory attacks. It was felt by many of these supervisors that the victims needed to grow up and learn how to defend themselves. This indifference, coupled with some staff members providing a model of physical violence, tended to encourage victimization. On the other hand, Fischer found that those supervisors who consistently punished predatory behavior were successful in greatly diminishing the incidence of aggression in their cottages. In a later report, he further discussed the influence of staff victimizing of juveniles, their indifference to inmate aggression, and their support of the patronage system as factors contributing to aggression and victimization of the weak by the strong (Fischer, 1965:214-222).

Therefore, considering the indifference and ineffectiveness of many of the staff within an inherently hostile environment, it is not surprising that the attitudes of the juvenile inmates toward staff are often negative (Taylor, 1973; Wood, Wilson, Jessor, and Bogin, 1966). Rubenfeld found that regardless of individual differences, juveniles tend to perceive staff in terms of a few negative stereotypes: those who were self-serving and venal; those who were coldly indifferent to the boys' needs; and those who were provocatively hostile and persecuting. Only occasionally was a correctional officer specifically excepted from the negative stereotypes (Rubenfeld and Stafford, 1973:246). The perceptions of staff serve to further alienate the staff from the workings of the inmate culture and precludes their effective control of inmate deviance and violence (Feld, 1977:200). Therefore, staff indifference, ineffectiveness, and exploitation of juveniles contributes to the alienation of staff and inmates which, in turn, permits violence and victimization to continue. The major issue is that victimization of juveniles by other juveniles and staff tends to perpetuate further victimization by creating an environment which tolerates, encourages, or supports victimization by accepting it as the way things get done and the way one survives.

VICTIMIZATION OF JUVENILES BY THE SYSTEM

This section focuses upon how the system, through its policies, organization, and procedures, victimizes juveniles in institutions. Although, as has already been discussed, the system may contribute to the victimization of juveniles by other juveniles and the staff, this section will consider how the system itself directly victimizes juveniles. Since this topic is very complex, considering all the minute ways in which the system has the potential of victimizing institutionalized juveniles, the scope of the present discussion is limited to some of the major types of system victimization with the objective of raising the consciousness of the reader to this area, as well as to suggest further study.

Inappropriate Institutionalization

Probably the most serious victimization of juveniles by the system is inappropriate institutionalization. In other words, placing juveniles in institutions ranging from smal group homes to large maximum security reform schools, when it is more appropriate for them to remain in the community living with their families and receiving whatever treatment or services they require. The system, or, more specifically, the juvenile court, incarcerates juveniles for a number of reasons: protection of society, protection of the juvenile, lack of any other alternative when the family is unwilling or unable to provide for the juvenile's needs, as well as the belief in some quarters that institutionalization actually can benefit the juvenile through deterrence, rehabilitation, or some form of maturation. The literature is extensive on the failure of institutions to reform, change, or effectively deal with the problems of juveniles, and it would lead us beyond the focus of this report to consider all the arguments and findings on both the positive or negative aspects of institutionalization here. Suffice it to say, most correctional and juvenile justice experts would agree that institutionalization of most juveniles should be a last resort. The last resort argument is also supported by the finding that five out of six juveniles in all juvenile facilities are held in detention (Sarri, 1974:19). Furthermore, the data tends to indicate that about 75 percent of the females and 25 percent of the males are held for status offenses, behaviors that are not law violations for adults, and when these numbers are coupled with those for dependent and neglected juveniles, it is apparent that many thousands of juveniles are held each year in secure facilities when incarceration has not been proved necessary, and when in fact it may actually be shown to be harmful (Sarri, 1974:18).

The major point made by the data on juvenile institutionalization is that most juveniles do not belong in institutions; they are there because it is convenient for the system to place them there or because effective alternatives (e.g., home or community placement with the necessary support services) are unavailable.

The Social Isolation of Institutionalization

One of the first things that happens to an institutionalized juvenile is that the juvenile's ties to the community and family are either broken or strained. The juvenile's ability to freely communicate with family and peers outside the facility is reduced or terminated as a result of intentional policy or unintentional lack of sensitivity to the need for these supports. Often juvenile institutions are geographically located many hundreds of miles from the homes of the residents. This distance in miles often tends to become transformed into a social distance as well. The families find it impossible or extremely difficult to visit, and the juveniles gradually find that their interactions terminate with their families or become greatly reduced. Furthermore, thos

families that do visit the institution frequently are confronted with humiliating body searches and interrogations, tending to further discourage visits.

It should be pointed out that even when secure facilities are located within the community, the social distance between the "inside" environment and the community outside can become strained and severed. The body searches and other types of treatment confronting families and friends attempting to maintain contact with the juvenile tend to discourage rather than encourage family contacts and maintenance. Therefore, depending upon the policies and behavior of the institutional staff, the geographical distance from home may only exaggerate the inherent problem of institutional isolation.

The Dehumanizing Effects of System Processing

Adjusting to the institutional environment forces the juvenile to undergo a number of formal procedures, rules, and daily routines, as well as the informal system created and maintained by the juvenile subculture.

The stripping away of individuality through uniform dress, rules of behavior, and schedules, while they may be justified on the basis of control and "treatment," may also tend to dehumanize the juvenile. When the demands of the inmate system are added to those of the formal system, it can be seen that the juvenile becomes forced to adjust to an alien environment which may later become detrimental toward survival on the outside. Goodstein, in her research on inmate adjustment, found that inmates who adjusted more successfully to the institutional environment actually accounted the most difficulty making the transition from institutional life to freedom (Goodstein, 1979:265). According to Goodstein:

> It appears that the prison, like the traditional mental hospital, does not prepare inmates for a successful transition to freedom through its routine administration of rewards and punishments. It is ironic that institutionalized inmates, who accepted the basic structure of the prison, who were well adjusted to the routine, and who held more desirable prison jobs--in essence, those whom some might call model prisoners--had the most difficulty adjusting to the outside world (Goodstein, 1979:265-266).

Goodstein's study examined the effects of institutionalization on adult males. The effects may be even more dramatic for juveniles considering their lack of maturity and their need to develop coping skills during this period of their development to succeed in the world. Therefore, the isolation and artificiality of the institutional environment (in relation to the outside) robs the juvenile of the opportunity to cope or succeed as an adult. It is this paradox, a system which is supposed to correct and prepare juveniles for constructive adulthood but actually reduces their growth and development, which caused a counselor of a pretrial juvenile detention facility to write:

> The final process of making the juvenile a delinquent or criminal occurs in the detention facility. The dehumanizing process of handling juveniles in these institutions is highly destructive to his positive feelings about himself.... In this limited arena of interaction, the youngster is often traumatized for life. The milieu established by the administration and staff shows their lack of clinical understanding by concentrating on the punishment of undesirable behavior, while not rewarding positive achievement. The youngster is in a state of chronic anxiety with nothing to maintain self-esteem. The harm inflicted is

so severe and ubiquitious that it would be better for all concerned if he were not detected, apprehended and institutionalized (Fetrow, 1974:227 and 231).

In addition to not preparing juveniles for the transition to the outside world, the system often makes the institutionalized juvenile's attitudes toward others and the world even more negative. Hautaluoma (1973), in his study of the effects of the time incarcerated on the values and sociometric choices of 107 young inmates at a Federal correctional institution, found that the longer a juvenile remains in the institution, the more the values of kindness, religiousness, achievement, and honesty decrease. The only significant value that increased was independence; however, as the researchers note, independenc may represent primarily a rebellion against adult authority, rather than mature autonomy and immunity to irrational influence (Hautaluoma, 1973:235-236).

Bartollas, Miller, and Dinitz discuss a number of ways that the staff processing of juveniles victimizes them. The physical brutality by youth leaders called the "goon squad" who adroitly "work over" a youth who runs away or who place the target in the midst of their peers for a few minutes to take care of a problem youth while the staff turn their backs, are examples of dehumanizing staff processing. Other examples of physical brutality are presented and the long-term effect of this type of treatment or the threat of it requires little imagination (Bartollas, Miller, and Dinitz, 1976:222). The institution in a number of ways assaults the self-respect of the juveniles, such as short haircuts, restriction against going to the bathroom at night, strip searches, and even the cold, bland, distasteful food, which are constantly dehumanizing the juvenile. Add to this the invasions of privacy resulting from reading and censoring personal mail, searching of rooms, and chronic exposure to meaningless programming and programless boredom, and the problem of dehumanization can be further appreciated. While some facilities may be more dehumanizing than others as a result of differing needs of security and degrees of regimentation, the basic dehumanizing ingredients are present in all institutions.

Lack of Treatment and Indifference to Harm

Probably one of the most cruel types of victimizations of juveniles by the system is indifference. Indifference to the medical, psychiatric, and psychological needs of juveniles placed in its care and at the mercy of its services, as well as indifference or inability of the system to provide for the educational or vocational training needs necessary for "making it" on the outside. As some researchers have recently begun to point out, it is this indifference or incapacity of the system which makes up the significant paradoxes so prevalent with juvenile victimization in institutions (Bartollas, Miller, and Dinitz, 1976:270-273). Subjecting a juvenile to an institution which does not treat, does not protect, and does not teach is a cruel type of victimization. At best it wastes a valuable period of time in the juvenile's life for learning, preparing, and developing into a productive human being; at worst it brutalizes, distorts, and reduces the chances of ever becoming a person of worth and substance. Bartollas, Miller, and Dinitz describe this paradox in the following:

> The training school revives the worst of the labelled--the losers, the unwanted, the outsiders. These young men consider themselves to be among the toughest, most masculine and virile of their counterparts and they have the social credentials to prove it. Yet in much the same way that they themselves were processed, they create, import, and maintain a system which is as brutalizing as the one which they passed. If anything, the internal environment and the organization and interaction at TICO are less fair, less just, less humane, and

> less decent than the worst aspects of the criminal justice system on the outside. Brute force, manipulation, institutional sophistication carry the day, and set the standards which ultimately prevail (Bartollas, Miller, and Dinitz, 1976:271).

Under these conditions, it becomes unclear who is victim and who is perpetrator; in a very real sense all are victims. Violence degrades those who use it and destroys the potential of those who suffer it. Aggressors deny their victim's humanity and ultimately their own through their inability to empathize (Feld, 1977:198). A system which ignores the plight of juveniles under its care further demeans its authority to control or change their behavior, for it degrades their humanity by remaining indifferent to their human needs and democratic values.

> When a society incarcerates people, whether for benevolent rehabilitation or any other purpose, it assumes a responsibility to do so under the least harmful and destructive circumstances, simply because they are human beings. Virtually every incarcerated juvenile will eventually return to the community, and it is imperative for both the community and the individual that the period of separation not be a source of harm, injury, or irreconcilable estrangement. We are legally and morally obliged to avoid inflicting additional pain and suffering on those whom we already punished through imprisonment (Feld, 1977:198).

Another subtle form of system victimization is enforced boredom. The lack of programs, either educational or therapeutic, to fill the day of the institutionalized juvenile leads to chronic and fatiguing boredom. As Wooden points out, boredom, although not overtly violent, can be just as cruel as the beatings and verbal abuse (Wooden, 1976:108). Boredom develops in a number of ways in institutions: lack of meaningful and interesting programs to provide rehabilitative direction; the security, mentality, and the regimentation of penal facilities; and the attitude of indifference that slowly erodes tolerance or concern for a person's individuality. The juvenile who conforms to the institution's rules and regulations is often ignored, the juvenile who "acts-out" frequently ends up in solitary confinement where boredom is punishment at its most intense form. Wooden believes "that boredom is the actual catalyst for physical, psychological, and sexual brutality among inmates. Without a healthy continuous outlet for physical, mental and (in adolescents) sexual energies and frustrations, emotional pressures build which sooner or later manifest themselves, oftentimes in a violent or abusive way" (Wooden, 1976:110). Therefore, boredom can be a subtle form of victimization when it evolves out of indifference or it can be overtly manipulated to serve as punishment as with solitary confinement. However, regardless of its etiology, boredom can foster further victimization of juveniles as inmates try to fill their time with excitement or break away from the psychological pressures created by boredom.

CONCLUSION

A review of the literature on the victimization of juveniles in institutions raises more questions than it answers. Essentially, although there has been more attention directed toward this topic recently, it has generally been neglected as an important research and policy fact-finding issue. What is available tends to indicate that juveniles are being victimized to some extent, ranging from subtle forms of neglect or indifferences to violent assaults and sexual abuses either by other juveniles or the staff, in all institutions. The extent of victimization in its various forms is not known.

Probably the most important outcome of this assessment is the recognition that the victimization of juveniles in institutions is multifaceted and interactive. The accumulative effect of concurrent forms of victimization, each contributing to the overall effect on juveniles and staff, creates and perpetuates a milieu in which victimizing others (as well as self) becomes a significant and pervasive element of institutional life. In a very real sense, all institutions victimize their inhabitants (inmates or staff) in one form or another due to their artificiality, isolation, and the intensity of their social relationships.

Short of closing down all institutions, it is probably only realistic to consider reducing the dependency of the juvenile justice system on their use (e.g., use only as a last resort) and creating mechanisms for the monitoring and reduction of the victimizing aspects. This conclusion was also expressed by a group of experts convened by the National Center on Child Abuse and Neglect. It was felt that the best way of reducing institutional maltreatment was to reduce the entire institutional population. Only violent juveniles should be considered for institutionalization, and secure institutionalization only if they cannot cope with nonsecure facilities (National Center on Child Abuse and Neglect, 1978).

Before recommendations can be made with regard to specific procedural, policy, and informal operational aspects of institutions to reduce and control victimizing situations, more field research and observations are required. A body of knowledge on victimization of juveniles in institutions is now beginning to emerge. Hopefully, this knowledge will enable social scientists, policymakers, and administrators to take appropriate and effective action to reduce or eliminate those aspects of institutions which harm its occupants, for:

> The scientist, social policymaker, social worker, politician, and citizen are all part of the same world. All are concerned with the ends desired for society. Today there is no crisis of means; there is a crisis of purpose. This applies, particularly, to our penal systems; for what defines a society more efficiently than its failures? What better indication of the state of development of a people than the people it cannot integrate, accommodate, or accept? What reveals the nature of a society's goals more clearly than the way it deals with those who fail to achieve them? (Wilkins, 1969:148-149).

Chapter V

LEGAL CHALLENGES TO JUVENILE INCARCERATION

THE TOPIC OF challenges to juvenile incarceration can be approached in a variety of ways. The particular amenability of this subject area to different analytical approaches derives from the several ways in which such legal challenges may be classified. These classifications depend upon whether a particular legal action:

- challenges the very fact that a juvenile has been incarcerated; or challenges the conditions within a particular institution to which a juvenile has been confined

- seeks judicial relief from incarceration per se (that is, the release of the juvenile); seeks a judicial declaration or order that certain institutional conditions or practices be prohibited or that compels institutional officials to do certain things; or seeks money damages from institutional officials to compensate the juvenile for the infringement or deprivation of his or her rights

- challenges the State and/or Federal constitutionality of official actions--whether such actions are pursuant to allegedly unconstitutional State statutes; or whether such actions are within the scope of authorized official discretion but represent an arbitrary or capricious abuse of this discretion; or challenges that the actions of officials are technically in violation of otherwise unchallenged State or Federal statutes

- is brought as an individual or class action, that is, whether the legal action seeks to benefit only one or a small number of individuals, or to benefit all juveniles within a particular institution or State who are subjected to the same challenged conditions or practices

- is brought in a State or Federal court; this choice involves a number of jurisdictional, procedural, and tactical considerations, including the nature of the challenge (e.g., whether it involves a question of Federal law), the legal parameters which will be relied upon, the standing of the plaintiff or plaintiff cases, whether or not State, administrative, and/or judicial remedies have been exhausted, and the form of relief sought.

The purpose of this chapter is to provide readers, who may or may not be trained in the law, with an introduction to the legal challenges which may be brought on behalf of incarcerated juveniles. However, the complexity of this subject area may necessitate an oversimplification of the presentation. This chapter presents (1) the three principle methods for judicially challenging the fact or conditions of a juvenile's institutional confinement; and (2) the legal arguments or theories upon which challenges to juvenile

incarceration have been pursued, presented in the context of illustrative State and lower Federal court holdings which grant to incarcerated juveniles, on the bases of these legal arguments, certain specified rights.

The purpose of this chapter is not to provide an exhaustive summary of all applicable cases which pertain to this subject area, but to present an overview of the principle legal methods, arguments, and judicial decisions which currently shape the legal rights of incarcerated juveniles.

METHODS FOR CHALLENGING JUVENILE INCARCERATION

There are primarily three judicial methods for challenging the fact or conditions of juvenile institutional confinement. These methods are (1) appeal; (2) a petition for a writ of habeas corpus; and (3) an independent civil suit. These methods are by no means mutually exclusive, nor are they exhaustive of the methods by which a juvenile can challenge his or her confinement. Yet these methods do provide the principle procedural components for obtaining judicial review of matters pertaining to juvenile confinement. A juvenile often has the option of choosing one method rather than another as a means for raising the same legal challenge. This choice is usually a matter of legal tactics, e.g. whether his or her particular legal challenge stands a better chance to prevail in a State or Federal court; whether one method of challenge provides different remedies than another; whether there is a sufficient number of other similarly situated individuals to bring the challenge as a class rather than an individual action. The important point for purposes of this discussion, however, is that the various methods of legal challenge provide different procedural vehicles by which legal arguments, often the same legal argument, can be brought to the attention of the reviewing court. In contrast, the legal arguments upon which challenges to confinement can be based, as discussed later in this chapter, in a sense transcend the nonetheless necessary and technical methods by which such arguments are raised.

Appeal

Appeal provides for the judicial review of a lower court decision, resulting, if successful, in the reversal of a prior adjudication or criminal conviction and the release of the juvenile from institutional confinement. The reversal of a juvenile or criminal court decision by an appellate court must usually be based upon alleged legal or factual errors which are evident from the record.* These errors may, for example, include alleged procedural irregularities in the process by which a juvenile is taken into custody or confined, or the lower court's reliance on an allegedly unconstitutional State statute. Such appeals can also result in the remand of the appealed case to the lower court for retrial and a subsequent modification of the lower court's original decision. Errors pertaining to the jurisdiction of the lower court need not be evident from the record, but may be raised for the first time on appeal.**

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* See, e.g., Smith v. State, 280 Ala. 241, 192 So. 2d 442 (1966); Harris et. ux. v. Souder, 233 Ind. 287, 119 N.E. 2d 8 (1954) (Fox, 1971:248-49).

**See, e.g., State v. Sluder, 463 P. 2d 594 (Or. 1970) (Id. at 249).

There is no constitutional right to appeal from criminal convictions (Griffin v. Illinois, 351 U.S. 12 (1956)), let alone from juvenile adjudications (the Supreme Court specifically avoided this issue, In re Gault, supra, 387 U.S. at 57-58). However, all States provide for appeal from criminal convictions and most States recognize either by statute or State constitution the right of appeal for juveniles adjudicated on the bases of delinquency, status offense, or abuse and neglect statutes (Piersma, 1977:395). Appeals can generally be based only upon a final judgement or order of the lower court. The nature of a final judgement may vary according to the nature of the particular proceeding, although in most States the dispositional order of the juvenile court is considered final and hence appealable.* Some States recognize the adjudicatory decision as a final order for purposes of appeal.** Additionally, most States recognize a juvenile court order waiving jurisdiction of the juvenile to the criminal court as a final order upon which an appeal can be brought.***

The right to appeal a particular judicial decision usually exists only for those individuals who were a party to the original proceeding and/or who are directly affected by the court's decision. Since the juvenile is the real party in interest in all criminal convictions and in most juvenile court adjudications, the juvenile almost always has the right to bring an appeal (see, e.g., J. v. Super. Ct., 43 Cal. 3d 836, 484 P. 2d 595, 94 Cal. Rptr. 619 (1971); In re Sippy, 97 A. 2d 455 (D.C. Mun. Ct. App. 1953)) (Piersma, Ganousis, and Kramer, 1975:68, fn. 607). Similarly, when the custodial rights of the juvenile's parent(s) or guardian are adversely affected by decisions which result in the removal of the juvenile from their custody, e.g., pursuant to an institutional commitment, such parent or guardian may usually appeal the decision whether they were (see, e.g., In re Guardianship of Pankey, 38 Cal. App. 3d 919, 113 Cal. Rptr. 858 (Ct. App. 1974) (Id. at p. 68, fn. 609)) or were not (see, e.g., Briston v. Ksnopka, 336 N.E. 2d 397 (Ind. App. 1975); In re Hartman, 93 Cal. App. 2d 801, 210 P. 2d 53 (1949); In re Dargo, 81 Cal. App. 2d 205, 183 P. 2d 282 (1947); In re Santillanes, 47 N.M. 14, 138 P. 2d 503 (1943); In re Aronson, 563 Wisc. 608, 58 N.W. 2d 553 (1953) (Id. at p. 68, fn. 610; Piersma, 1977:526)) a party to the original proceeding.

The procedural rights which accrue to the appealing party depend upon applicable State statutes. Generally, these rights include notice of the right to appeal, the right to

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* See, e.g., In re Maricopa County, 20 Ariz. App. 570, 514 P. 2d 741 (1973); People v. D., 23 Cal. App. 3d 592, 100 Cal. Rptr. 351 (Ct. App. 1972); In re E.M.D., 490 P. 2d 658 (Alas. 1971); In re Raya, 255 Cal. App. 2d 260, 63 Cal. Rptr. 351 (Ct. App. 1967) (Piersma, Ganousis, and Kramer, 1975:69, fn 616).

** See, e.g., In re Pyles, 40 Ill. App. 3d 221, 351 N.E. 2d 893 (1976); Ill. Rev. Stat. ch. 37, s 704-8(3) (1975) (Piersma, 1977:527).

***See, e.g., P.H. v. State, 504 P. 2d 837 (Alas. 1972); In re Maricopa Co., supra; Graham v. Ridge, 107 Ariz. 387, 489 P. 2d 24 (1971); Agnew v. Super. Ct., 118 Cal. App. 2d 230, 257 P. 2d 661 (Ct. App. 1953); In re Doe I, 50 Hawaii 537, 444 P. 2d 459 (1968); Aya v. State, 17 Md. App. 321, 299 A. 2d 513 (Spec. App. 1973); In re Wafers, 13 Md. App. 95, 281 A. 2d 560 (Spec. App. 1971); State v. Lorvy, 46 N.J. 179, 215 A. 2d 539 (1965); In re Doe II, 86 N.M. 37, 519 P. 2d 133 (Ct. App. 1974); State v. Ross, 23 Ohio App. 215, 262 N.E. 2d 427 (1970); State v. Yoss, 10 Ohio App. 2d 47, 225 N.E. 2d 275 (1967); State v. Little, 241 Ore. 557, 407 P. 2d 627 (1965), cert. denied, 395 U.S. 902 (1966); State ex rel. Juvenile Dept. v. Johnson, 501 P. 2d 1011 (Ore. App. 1972); In re Houston, 221 Tenn. 528, 428 S.W. 2d 303 (1968) (Piersma, Ganousis, and Kramer, 1975:69, fn. 618).

court-appointed counsel if indigent, and the right to receive a free transcript of the lower court proceeding. Additionally, if an appellant is indigent, any filing fees required to initiate appeal may be waived.

Habeus Corpus

The writ of habeus corpus is "a procedural device for subjecting executive, judicial, or private restraints on liberty to judicial scrutiny" (Peyton v. Rowe, 391 U.S. 54, 58 (1968)). Habeas corpus provides for an immediate judicial inquiry into the legality of an individual's confinement or, less frequently, into the conditions of such confinement A successful petition for a writ of habeas corpus can result in the release of a juvenile from his or her place of confinement, or relief from the challenged institutional conditions.

Habeas corpus is generally an appropriate remedy only when no other judicial (e.g., appea or administrative (e.g., institutional grievance procedure) remedy is available, or when available remedies would inadequately protect the rights of the person who is confined.* For example, habeas corpus has been found to be appropriate when appeal would provide an available but nevertheless inadequate remedy, since the juvenile would have completed the duration of his or her institutional commitment before the appeal was decided (see, e.g., People ex rel. Soffer v. Luger, 75 Misc. 2d 70, 347 N.Y.S. 2d 345 (Sup. Ct. 1973); In re F.C., supra (Ibid.)). Habeas corpus is, therefore, a particularly appropriate method for challenging preadjudicatory detention, since such orders are not final judgements subject to review by appeal (see, e.g., Fulwood v. Stone, 394 F. 2d 939 (D.C. Cir. 1967); In re Macidon, 240 Cal. App. 2d 861 (1966) (Id. at p. 415)).

The writ of habeas corpus can also be used to challenge juvenile court commitments to correctional or other institutions on the basis that the facts upon which a juvenile was adjudicated did not come within the specified statutory jurisdiction of the juvenile court (see, e.g., In re Hook, 95 Vt. 497, 115 A. 730 (1922); Ex parte Post, 199 Misc. 1075, 107 N.Y.S. 2d 896 (Sup. Ct. 1951); People ex rel. Selicen v. Murphy, 243 App. Div. 216, 276 N.Y.S. 837 (1935); In re Frinzl, 152 Ohio St. 164, 87 N.E. 2d 583 (1949); Lewis v. Reed, 117 Ohio St. 152, 157 N.E. 897 (1927) (Id. at p. 413)).

Challenges to the conditions of a juvenile's confinement generally attack the juvenile's place of confinement or specific practices within a given institution.** For example, the writ has been used to successfully challenge the proposed placement of a juvenile who was temporarily detained after disposition but pending placement in a juvenile correctional institution; habeas corpus was held appropriate as a means to prevent the transfer of the juvenile from detention to placement, since an appeal would have taken too lon to be effective (In re. Butterfield, 253 Cal. App. 2d 794, 61 Cal. Rptr. 874 (1967) (Id. at p. 415)).

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* See, e.g., In re F.C., 484 S.W. 2d 21 (Mo. Ct. App. 1972); In re T.A.F., 252 So. 2d 255 (Fla. Dist. Ct. App. 1971); In re Solis, 274 Cal. App. 2d 344, 78 Cal. Rptr. 919 (1969); In re Newborn, 53 Cal. 2d 786, 3 Cal. Rptr. 364, 350 P. 2d 116 (1960) (Piersma, 1977:414)

**See, e.g., Commonwealth ex rel. Bryant v. Hendrick, 444 Pa. 83, 280 A. 2d 110 (1971); Newton v. Cuppm 3 Or. App. 434, 474 P. 2d 532 (1970) (Id. at p. 417).

The Federal habeas corpus statute, 28 U.S.C. §§2241-2255, authorizes juveniles or persons acting in their behalf, to challenge in the Federal courts the juvenile's institutional confinement as being in violation of Federal constitutional or statutory law. Additionally, Federal habeas corpus actions may be brought as class actions (Federal Rule of Civil Procedure 81(a)). Reliance upon this statute requires that the applicant has exhausted all State remedies. While this statute has been used by parents to obtain custody of their children (see, e.g., Heryford v. Parker, 396 F. 2d 393 (10th Cir. 1968)), it has been more commonly utilized by incarcerated juveniles to vindicate their constitutional rights within the juvenile and/or criminal justice systems. For example, one adjudicated delinquent successfully relied upon the Federal habeas corpus statute, prior to the Supreme Court's holding in Breed v. Jones, supra, to prevent, on the basis of the Fifth Amendment's prohibition against double jeopardy, his subsequent trial as an adult on the same alleged offense (Fain v. Duff, 488 F. 2d 218 (5th Cir. 1973)).

Another example is the challenge of a New York statute directed at "wayward minors," which was held by a Federal court to be unconstitutionally vague and hence void; this holding resulted in the Federal court granting the requested writ of habeas corpus and setting aside the adjudications of all "wayward minors" who had been committed to adult correctional institutions (Gesicki v. Oswald, 336 F. Supp. 371 (S.D.N.Y. 1971), aff'd 406 U.S. 913 (1972)).

Civil Suit

The broadest method for seeking State or Federal judicial review of the conditions of a juvenile's confinement is pursuant to an independent civil action. Such actions are most frequently based on the alleged failure of State or governmental officials to comply with State or Federal statutory or constitutional requirements, and on the alleged unconstitutionality of State statutes. While these types of challenges may be included in appeal or habeas corpus actions, they can also be brought independently. Perhaps the best example of such independent civil actions are those based upon the Civil Rights Act of 1871, 42 U.S.C. s1983.

The purpose of the Civil Rights Act is to provide a Federal judicial forum for bringing challenges that persons acting "under color" of State law are depriving individual(s) "of any rights, privileges, or immunities secured by the Constitution and laws" of the United States. There is no requirement that State judicial (Home Tel. & Tel. Company v. City of Los Angeles, 227 U.S. 278 (1913)), or administrative (Finney v. Hutton, 410 F. Supp. 251 (1976), aff'd 98 S. Ct. 2565 (1978)) remedies be exhausted before initiating a s1983 suit. However, if the relief which is sought is immediate release from confinement because of procedural or substantive irregularities regarding the fact or duration of one's institutional confinement, the proper remedy is habeas corpus (Prieser v. Rodriguez, 411 U.S. 475 (1973)) or appeal (Reich v. City of Freeport, 388 F. Supp. 953 (1974)). As the Supreme Court has noted, the purposes of the Civil Rights Act is to provide a direct method for challenging State laws, to provide a Federal remedy where State remedy is either inadequate or not available, and to provide a supplementary Federal remedy to any remedy a State might have (McNeese v. Board of Ed. for Community Unit School District, 373 U.S. 668). Remedies pursuant to the Civil Rights Act include declaratory and injunctive relief and money damages.

Challenges pursuant to the Civil Rights Act, like most civil suits, may be brought as either individual or class actions. Class actions in the Federal courts are governed by Federal Rule of Civil Procedure 23. This rule provides that Federal class actions are appropriate where individual suits might lead to inconsistency and injustice, or where

the court finds that a class action is the fairest and most efficient way to adjudicate the controversy (Rule 23(b)). The requirements for a Federal class action are provided by Rule 23(a): the class must be so numerous that joinder of all members is inpracticable; there must be questions of law or fact common to the class; the claims or defenses of the representative parties must be typical of the claims or defenses of the class; and the representative parties must fairly and adequately protect the interests of the class. A significant number of s1983 challenges to conditions of juvenile confinement have been brought as class actions, e.g., Miller v. Carson, 563 F. 2d 741 (1977) (juvenile detainees in adult jails); Patterson v. Hopkins, 350 F. Supp. 676 (N.D. Miss. 1972) (pretrial juvenile detainees subject to jail confinement); Swansey v. Elrod, 386 F. Supp. 1138 (N.D. Ill. 1975) (juveniles transferred to adult criminal court for prosecution and detained in adult jails); Pena and Lollis v. New York State Division for Youth, 419 F. Supp. 203 (1976) (consolidated s1983 actions challenging conditions in juvenile training school system).

Independent civil actions may also be brought to seek compliance by State detention or correctional institutions with the provisions of State statutes, e.g., the New York Bill of Rights for Children, 9 N.Y.C.R.R. 1971; or with the provisions of Federal statutes, e.g., the Juvenile Justice and Delinquency Prevention Act of 1974 and its 1977 Amendments 42 U.S.C. 5601 et seq., and the Child Abuse Prevention and Treatment Act, 42 U.S.C. 5101 et seq. Each of these Federal statutes are presented in the following discussion on the legal bases for challenging juvenile institutional confinement.

LEGAL BASES FOR CHALLENGING JUVENILE INCARCERATION

This condition presents the constitutional and statutory bases for challenging conditions of juvenile incarceration, and provides an overview of juvenile legal rights as determined by lower Federal courts to derive from these legal bases.

The constitutional bases for legal challenges to juvenile incarceration are based on the United States Constitution, since State constitutions must, at a minimum, provide the same rights as those set forth by the Federal constitution, and since the Fourteenth Amendment makes several provisions of the U.S. Constitution directly applicable to the states. The Fourth, Fifth, and Sixth Amendment rights which were applied to juvenile proceedings by the line of Supreme Court decisions discussed earlier are not presented for a second time since the procedural challenges which can be based on these provisions should be evident.

The statutory bases for legal challenges have been divided into Federal and State statute and this discussion incorporates by reference any regulations which provides for the implementation or monitoring of such statutes.

The lower Federal court decisions presented in this section are based on primarily three sources: (1) "Conditions of Juvenile Confinement: A Manual of Judicial Decrees," prepared by the Youth Law Center, Juvenile Justice Legal Advocacy Project, San Francisco, California; (2) Draft Chapter VIII, "Conditions of Confinement," prepared by the National Juvenile Law Center, St. Louis, Missouri; and (3) a Memorandum (2-27-80) regarding the right to treatment and conditions of confinement, prepared by Amy Rodney for the National Center for Youth Law, San Francisco, California.

Constitutional Bases for Legal Challenges

Procedural Due Process

The Fifth Amendment to the United States Constitution requires that the Federal government recognize that:

> No person...shall be deprived of life, liberty, or property, without due process of law....

Similarly, the Fourteenth Amendment is directed toward such deprivations by the State:

> No State shall...deprive any person of life, liberty, or property without due process of law....

The Due Process Clause of the Fourteenth Amendment protects individuals from being arbitrarily deprived by the State of any of the fundamental rights set forth in the Constitution's Bill of Rights, which includes the rights specified by the Fifth Amendment. Taken together in the present context, these Amendments acknowledge that every individual, including juveniles (see In re Gault, supra), has a constitutionally recognized right to liberty, which cannot be deprived except pursuant to due process of law. Due process requires that any restriction by government of an individual's right to liberty must be procedurally justified.

In determining the applicability of the Due Process Clause to actions by the State, the Supreme Court has typically employed a two-step analysis: (1) whether a person has been deprived of an interest which is within the Fourteenth Amendment's scope of protection; and (2) if such an interest is implicated, a determination of what process is due (Board of Regents v. Roth, 408 U.S. 564 (1972)). The second step in this analysis requires a balancing of competing interests between the individual and the State, to determine whether the risks of an individual being erroneously deprived of this constitutionally recognized interest are sufficiently high to warrant the imposition of procedural safeguards, and whether the benefits which would accrue from constitutionally mandated procedural protections would outweigh the accompanying increase in the State's fiscal and administrative burdens (Mathews v. Eldridege, 424 U.S 319, 335 (1976)). The Court has emphasized that the procedures which are due vary "according to specific factual contexts" (Hannah v. Larche, 363 U.S. 420, 442 (1960)) because "not all situations calling for procedural safeguards call for the same kind of procedure" (Morrissey v. Brewer, 408 U.S. 471, 481 (1972)).

The Supreme Court's application of the Due Process Clause to juvenile proceedings has focused on the adjudicatory hearing (see, e.g., Gault, supra; In re Winship, and McKeiver v. Pennsylvania, supra). Despite the juvenile justice system's traditional stance that juveniles have a right "not to liberty but to custody" (Gault, 387 U.S. 1, 17 (1967)), the Supreme Court has recognized that juveniles do indeed have a constitutional right to their liberty (Id. at 49-50) and that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone" (Id. at 13). In stopping short of granting to juveniles all of the procedural rights accorded to adults, the due process standard adopted by the Supreme Court to apply to juvenile proceedings is the requirement that such hearings "must measure up to the essentials of due process and fair treatment" (Id. at 30-31; Kent v. U.S., 383 U.S. 541, 562 (1966)).

The lower Federal courts have, however, been more generous in their holdings regarding the due process rights of juveniles once they are placed in institutional settings. In

applying the Fifth and Fourteenth Amendment due process requirements to cases involving juvenile incarceration, these courts have determined the following rights:

- INSTITUTIONAL RULES MUST BE WRITTEN AND DISTRIBUTED TO INCARCERATED JUVENILES, see, e.g., Santiago v. City of Philadelphia, No. 74-2589 (E.D. Pa., Dec. 22, 1978) (consent judgement) (each juvenile resident must receive, within 24 hours of admission, a handbook outlining the institution's services, rules and disciplinary procedures; juvenile's personal knowledge of the handbook's contents must be ensured by requiring that staff member explain contents); Inmates of John Connelly Youth Center v. Dukakis, No. 75-1786-G (D. Mass., April 2, 1976) (consent judgement) (Handbook must be distributed); Nelson v. Heyne, No. 72-S-98 (N.D. Ind., Feb. 1, 1976) (memorandum opinion) (student handbook must be distributed); Inmates of Boys' Training School v. Affleck, C.A. No. 4529 (D.R.I. Jan. 25, 1979) (final order) (resident's guide must be published and distributed).

- INSTITUTIONAL DISCIPLINARY PROCEDURES MUST CONFORM TO DUE PROCESS STANDARDS, INCLUDING THE RIGHT OF THE JUVENILE TO BE CONFRONTED WITH THE ACCUSATIONS AND EVIDENCE AGAINST HIM/HER AND AN OPPORTUNITY TO EXPLAIN HIS/HER ACTIONS, see, e.g., Nelson v. Heyne, 355 F. Supp. 451 (N.D. Ind. 1972); Inmates of Boys' Training School v. Affleck, No. 4529 (D.R.I. Jan. 25, 1979) (final order).

- DUE PROCESS STANDARDS MUST BE MET WHEN ISOLATION OR SOLITARY CONFINEMENT IS IMPOSED, see, e.g., Nelson v. Heyne, 355 F. Supp. 451 (N.D. Ind., 1972) (juvenile must have prior written notice of reasons why isolation may be imposed; must be provided with notice and expeditious hearing during which juvenile is informed of charges and given an opportunity to be heard; the hearing should be conducted by an impartial panel; and there shall be written findings, Id. at 456-457); Morgan v. Sproat, 432 F. Supp. 1130 (S.D. Miss. 1977) (decision to isolate a juvenile must be based upon 'substantial evidence,' Id. at 1140); Milonas v. Williams, No. 78-0352 (D. Utah, Aug. 27, 1980) (slip opinion), appeal docketed, No. 80-1569, 9th Cir. Sept. 15, 1980 (due process prohibits isolation for any reason other than to contain a juvenile who is physically violent and dangerous to himself or others, and can then be permitted only for that period during which the juvenile remains violent or dangerous, Id. at 59).

- INTERINSTITUTIONAL TRANSFERS OF JUVENILES MUST CONFORM TO DUE PROCESS STANDARDS, INCLUDING THE RIGHT OF THE JUVENILE TO RECEIVE NOTICE OF THE PROPOSED TRANSFER AND BE PROVIDED WITH A HEARING IN WHICH THE JUVENILE CAN PRESENT EVIDENCE ON HIS OR HER OWN BEHALF, see, e.g., Inmates of Boys' Training School v. Affleck, 346 F. Supp. 1354, 1367 (D.R.I. 1972), No. 4529 (D.R.I. Jan. 25, 1979) (final order at 2) (transfers from juvenile correctional to adult penal institutions); Morales v. Turman, 364 F. Supp. 166, 174, (E.D. Tex. 1973) (transfers from less secure to more secure juvenile correctional institutions).

- INCARCERATED JUVENILES HAVE A DUE PROCESS RIGHT OF ACCESS TO COUNSEL AND COURTS, see, e.g., Morales v. Turman, 325 F. Supp. 677 (E.D. Tex. 1971) (original order) (persons deprived of their liberty in State institutions have a fundamental due process right of access to the courts to challenge the validity of their confinement, Id. at 679, citing Johnson v. Avery, 393 U.S. 483 (1969)); Morgan v. Sproat, 432 F. Supp. 1130 (S.D. Miss. 1970)

(the right of incarcerated juveniles to have access to judicial relief includes the access of attorneys and legal services programs to confined juveniles).

Cruel and Unusual Punishment

The Eighth Amendment to the United States Constitution, binding upon the States under the Fourteenth Amendment Due Process Clause (Robinson v. California, 370 U.S. 660 (1962)), prohibits the infliction of "cruel and unusual punishments." While the Supreme Court has held that the substantive rights protected by this provision apply only to the punishment of persons convicted of criminal offenses (Ingraham v. Wright, 430 U.S. 651, 667 (1977)), the Court did suggest in the same decision that there may be some noncriminal punishments which are sufficiently comparable to criminal punishments to warrant the application of the Eighth Amendment; specifically, the Court suggested that the Eighth Amendment may apply to persons involuntarily confined in mental or juvenile institutions (Id. at 669, n. 37).

The substantive prohibitions which have been held by the Supreme Court to be protected by the Eighth Amendment include the following:

- excessive punishment, that is, punishment which is grossly disproportionate to the severity of the crime (see, e.g., Weems v. U.S., 217 U.S. 349 (1910)), or which is purposelessly imposed (see, e.g., Robinson v. California, supra);

- punishment which is itself "barbaric" regardless of the crime (see, e.g., Trop v. Dulles, 356 U.S. 86 (1958));

- punishment which is selectively or capriciously applied (see, e.g., Furman v. Georgia, 408 U.S. 238 (1972)); and

- the denial of medical care to prisoners (see, e.g., Estelle v. Gamble, 429 U.S. 97 (1976)).

The Eighth Amendment has been frequently applied by the lower Federal courts to conditions of juvenile confinement, and has been the legal basis for the recognition of several juvenile rights:

- THE EIGHTH AMENDMENT IS APPLICABLE TO CONDITIONS OF JUVENILE CONFINEMENT, see, e.g., Vann v. Scott, 467 F. 2d 1235 (7th Cir. 1979) (neither the label which a state places on its conduct nor even the legitimacy of its motivations can avoid the applicability of the Federal Constitution; well-intentioned attempts to rehabilitate a child could, in extreme circumstances, constitute cruel and unusual punishment proscribed by the Eighth Amendment, Id. at 1240); Pena v. New York State Division for Youth, 419 F. Supp. 203, 206-207 (S.D.N.Y. 1976); Martarella v. Kelley, 349 F. Supp. 575 (S.D.N.Y. 1972) (the Eighth Amendment does not come into play only if the facility in question is chamber of horrors, Id. at 598); Nelson v. Heyne, 491 F. 2d 352, 356 (7th Cir. 1974); Morales v. Turman, 562 F. 2d 993, 998, (5th Cir. 1977); Santiago v. City of Philadelphia, 435 F. Supp. 136, 149 (E.D. Penn. 1977); Morgan v. Sproat, 432 F. Supp. 1130, 1136-37 (S.D. Miss. 1977); Inmates of Boys' Training School v. Affleck, 346 F. Supp. 1354 (D.R.I. 1972) (the fact that juveniles are in theory not punished, but merely confined for rehabilitative purposes, does not preclude operation of the Eighth Amendment, Id. at 1366).

- PARTICULAR TYPES OF INSTITUTIONAL PRACTICES HAVE BEEN HELD TO BE IN VIOLATION OF THE EIGHTH AMENDMENT, INCLUDING:

  - THE INDISCRIMINATE INFLICTION OF CORPORATION PUNISHMENT, see, e.g., Nelson v. Heyne, 491 F. 2d 352 (7th Cir. 1974), cert. denied, 417 U.S. 976 (1974) (use of 'fraternity paddle' causing painful injuries held to be excessive punishment, disproportionate to the offenses and not measuring up to standards of decency, constituting nothing more than the pointless infliction of suffering, Id. at 355-56); Inmates of John Connelly Youth Center v. Dukakis, No. 75-1786-G (D. Mass., April 2, 1976) (consent judgement) (prohibits use of corporal punishment per se); Santiago v. City of Philadelphia, No. 74-2589 (E.D. Pa., Dec. 22, 1978) (stipulation in partial settlement) (use of inappropriate force by staff requires staff dismissal) Morales v. Turman, 383 F. Supp. 53 (E.D. Tex. 1974) (widespread practice of beating, slapping, kicking, and otherwise physically abusing juveniles in the absence of exigent circumstances violates the Eighth Amendment, Id. at 77).

  - THE USE OF TRANQUILIZING DRUGS FOR PURPOSES OF CONTROL, see, e.g., Nelson v. Heyne, 355 F. Supp. 451 (N.D. Ind., 1972), aff'd 491 F. 2d 352 (7th Cir. 1974), cert. denied, 417 U.S. 976 (1974) (drugs administered intramuscularly by staff, without trying medication short of drugs, and without adequate medical guidance and prescription violates the Eighth Amendment, Id. at 357) Santiago v. City of Philadelphia, No. 74-2589 (E.D. Pa., Dec. 22, 1978) (administration of tranquilizing drugs can only be upon order of physician); Gary W. v. Louisiana, 437 F. Supp. 1209 (E.D. La. 1976) (medication cannot be used as punishment, for the convenience of staff, or as a substitute for a treatment program, Id. at 1229).

  - THE EXCESSIVE OR INDISCRIMINATE USE OF ISOLATION OR SOLITARY CONFINEMENT, see, e.g., Morales v. Turman, 364 F. Supp. 166 (E.D. Tex., 1973) (solitary confinement of a child in a small cell is an extreme measure that should be used only in emergency situations to calm uncontrollably violent behavior, and should not last longer than necessary to calm the child, Id. at 172); Lollis v. New York Department of Social Services, 322 F. Supp. 473 (S.D.N.Y. 1970), modified, 328 F. Supp. 1115 (S.D.N.Y. 1971) (14-day period of isolation constituted cruel and unusual punishment, the court noting that the use of isolation as treatment is punitive, destructive, and defeats the purposes of any kind of rehabilitative efforts, Id. at 481); Inmates of Boys' Training School v. Affleck, 346 F. Supp. 1354 (D.R.I. 1972) (isolation in 'bug out' room, which contains only a sink, mattress, and toilet, constitutes cruel and unusual punishment); Inmates of John Connelly Youth Center v. Dukakis, No. 74-1786-G (D. Mass., April 2, 1976) (consent judgement) (maximum period of isolation is 3 hours); Santiago v. City of Philadelphia, No. 74-2589 (E.D. Pa., Dec. 22, 1978) (stipulation in partial settlement) (maximum period of isolation is 24 hours).

  - THE REQUIREMENT THAT JUVENILES PERFORM CERTAIN WORK, see, e.g., Morales v. Turman, 364 F. Supp. 166 (E.D. Tex. 1973) (requiring juveniles to perform repetitive, nonfunctional, degrading, and unnecessary tasks for many hours--the so-called make-work, such as pulling grass without bending the knees or ground not intended for cultivation, or moving dirt with

a shovel from one place and back again, or buffing a small area of the floor for an excessive period of time--constitutes cruel and unusual punishment, in violation of the Eighth Amendment, Id. at 174); Gary W. v. Louisiana, 437 F. Supp. 1209 (E.D. La. 1976) (no child shall be required to perform work of any kind that involves the operation and maintenance of an institution, nor shall privileges or release from an institution be conditioned, Id. at 1230, Standard 3.171).

- THE DISCIPLINARY REQUIREMENT THAT A JUVENILE REMAIN SILENT FOR A SPECIFIED PERIOD OF TIME, see, e.g., Morales v. Turman, 383 F. Supp. 53, 77 (E.D. Tex. 1974).

- THE DENIAL OF MEDICAL TREATMENT, see, e.g., Morgan v. Sproat, 432 F. Supp. 1130 (denial of minimally adequate medical treatment violates the Eighth Amendment, Id. at 1155-56).

- THE USE OF TEAR GAS OR MACE AS A CROWD-CONTROL DEVICE, see, e.g., Morales v. Turman, 383 F. Supp. 53 (E.D. Tex. 1974) (use of tear gas and other chemical crowd-control devices in situations not posing an imminent threat to human life or imminent and substantial threat to property violates the Eighth Amendment, Id. at 77).

- ADDITIONALLY, GENERAL INSTITUTIONAL CONDITIONS HAVE BEEN HELD TO BE IN VIOLATION OF THE EIGHTH AMENDMENT, see, e.g., Martarella v. Kelley, 349 F. Supp. 575 (S.D.N.Y. 1972) (confinement in a facility which is in a general state of decay, including falling plaster, peeling paint, cracked walls and ceilings, and showers in such disrepair as to be unuseable constitutes cruel and unusual punishment, Id. at 597); Inmates of Boys' Training School v. Affleck, 346 F. Supp. 1354 (D.R.I. 1972) (institutional conditions which are insidiously destructive of residents' humanity violates the Eighth Amendment); see also Morales v. Turman, 383 F. Supp. 53 (E.D. Tex. 1974) (the practice of housing up to 40 boys in an open dormitory, with the only correctional officer on duty locked in a 'cage' and prevented from assisting boys in an emergency violates the Eighth Amendment because of the 'high probability of harm,' Id. at 77); Nelson v. Heyne, 355 F. Supp. 451 (N.D. Ind. 1972), aff'd, 491 F. 2d 352 (7th Cir. 1974), cert. denied, 417 U.S. 976 (1974).

- EIGHTH AMENDMENT HAS ALSO BEEN RELIED UPON TO REQUIRE THE PROVISION OF CERTAIN SERVICES, see, e.g., Martarella v. Kelley, 349 F. Supp. 575 (S.D.N.Y 1972) (institutional confinement without recreation would be intolerably dreary and the sheer residual detention would clearly constitute cruel and unusual punishment, Id. at 590).

Thirteenth Amendment

The Thirteenth Amendment to the U.S. Constitution prohibits involuntary servitude except as applied to persons convicted of crimes:

> Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Since juvenile adjudications do not, however, constitute criminal convictions, the Thirteenth Amendment is applicable to them. While most of the legal challenges to institutional

make-work tasks have been based on the Eighth Amendment's prohibition against cruel and unusual punishment, some have been brought on the basis of the Thirteenth Amendment, see, e.g., Wheeler v. Glass, 473 F. 2d 983 (7th Cir. 1973) (requiring juveniles to scrub walls for 10-12 hours per day constitutes involuntary servitude in violation of the Thirteenth Amendment).

Equal Protection

The Fourteenth Amendment prohibits any State to "deny to any person within its jurisdiction the equal protection of the laws." Whenever the State acts differently toward two or more similarly situated classes of individuals, for example, on the basis of age, there exists a potential equal protection challenge.

The Supreme Court has developed two standards for testing claims that equal protection has been denied: strict scrutiny and rational basis. To ascertain which standard applies to a particular classification scheme, it is necessary to determine whether the classification:

> operates to the disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution, thereby requiring strict judicial scrutiny.... If not, the scheme must still be examined to determine whether it rationally furthers some legitimate, articulated state purpose and therefore does not constitute an invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment (San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 17 (1973)).

Under an equal protection analysis, classifications based upon racial differences or which "impinge upon a fundamental right" are considered "suspect" and can be upheld only if such classifications accomplish a "compelling state interest" (Loving v. Virginia, 388 U.S. 1 (1967)). Some classifications, such as those based on gender, are considered "quasi-suspect" and must bear a "substantial relationship" to an "important" governmental objective" (Craig v. Boren, 429 U.S. 190 (1976)). All other classifications, such as those based upon age, need only bear a "reasonable relationship" to a "permissible governmental purpose" to withstand an equal protection attack (Massachusetts Board of Retirement v. Murgia, 427 U.S. 307 (1976)).

Governmental distinctions based upon age, even if they impinge upon a fundamental right such as liberty, have been consistently upheld by the Court as nonviolative of equal protection. The rationale for such holdings lies in the judicial conviction that the liberty interest of minors is not coextensive with that of an adult:

> Even where there is an invasion of protected freedoms "the power of the state to control the conduct of children reaches beyond the scope of its authority over adults" (Ginsberg v. New York, 390 U.S. 629 (1968) at 638, quoting Prince v. Massachusetts, 321 U.S. 158 (1944) at 170).

Distinctions based upon age must meet only the lowest threshold of judicial scrutiny, that is, bear a "reasonable relationship" to a "permissible governmental objective." In the juvenile justice and adult criminal justice systems, age-based distinctions survive upon the rationale that they are "reasonably related" to the primary and permissible purpose of the juvenile justice system--the rehabilitation of juvenile offenders. As discussed earlier, this purpose is based upon the parens patriae doctrine and provides the quid pro quo for the State's intervention and the resulting deprivation of the juvenile's liberty interest.

It is interesting to note that Justice Black would have decided Gault on an equal protection basis:

> Where a person, infant or adult, can be seized by the State, charged, and convicted for violating a state criminal law, and then ordered by the State to be confined for six years, I think the Constitution requires that he be tried in accordance with the guarantees of all the provisions of the Bill of Rights made applicable to the States by the Fourteenth Amendment. Undoubtedly this would be true of an adult defendant, and it would be a plain denial of equal protection of the laws--an invidious discrimination--to hold that others subject to heavier punishments could, because they are children, be denied these same constitutional safeguards (Gault, supra, 387 U.S. 1, 61 (1967)).

Of the issues which have been discussed in this chapter, those which are particularly susceptible to equal protection challenges are the administrative interinstitutional transfers of juveniles from less secure to more secure juvenile institutions; from juvenile to adult institutions; and from juvenile or adult institutions to mental health, or other noncorrectional, institutions. The relevant comparisons to be made in each instance are the procedures by which juveniles are administratively transferred to a particular institution and the procedural safeguards which were accorded to all other residents of the institution.

Lower Federal courts have held, based on equal protection analyses, that the administrative transfer of a juvenile from a juvenile correctional institution to an adult penal institution, without notice or a hearing, was violative of both due process and equal protection, see, e.g., Inmates of Boys' Training School v. Affleck, 346 F. Supp. 1354, 1367 (D.R.I. 1972). Similarly, lower Federal courts have held that the administrative transfer from a less secure to a more secure juvenile institution, absent any attempt through a hearing that comports with minimal due process requirements to determine which juvenile offenders posed a danger to society, constitutes a violation of equal protections, see, e.g., Morales v. Turman, 364 F. Supp. 166, 174, (E.D. Tex. 1973).

First Amendment Freedoms

The First Amendment to the United States Constitution, as applied to the States through the Fourteenth Amendment Due Process Clause (Gitlow v. New York, 268 U.S. 652, 673 (1925), Cantwell v. Connecticut, 310 U.S. 296 (1940), Everson v. Board of Education, 330 U.S. 1, 15-16 (1947)), provides that government:

> shall make no law respecting an establishment of religion, or prohibiting the free exercise therof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

In addition to the rights specifically enumerated by the First Amendment, a personal right to privacy has been recognized as stemming in part from the First Amendment, as well as the liberty interest protected by the Fifth and Fourteenth Amendments (see, e.g., Griswold v. Connecticut, 381 U.S. 479 (1965)).

The First Amendment's rights pertaining to religion include the right of an individual to freely exercise the religion of his or her own choice, and the right of the individual to be free from government coercion to exercise a particular religion or no religion at all. The principle test for determining whether governmental actions impinge upon

either of these rights is the requirement that such actions constitute the least restrictive means for achieving a compelling governmental interest (see, e.g., Sherbert v. Verne 374 U.S. 398 (1963), Wisconsin v. Yoder, 406 U.S. 205 (1972)).

The First Amendment rights pertaining to the freedoms of speech, press, and association encompass certain expressive conduct other than verbal and written communications (see, e.g., Tinker v. Des Moines School District, 393 U.S. 503 (1969), Spence v. Washington, 418 U.S. 405 (1974)). This expressive conduct has been held to include personal choices of clothing or hairstyle. The Supreme Court has enunciated a number of tests for assessing the constitutionality of governmental interference or regulation of these First Amendment rights, depending upon the circumstances of each case. Two of these tests, for purposes of illustration, are that governmental action which is aimed at regulating communication is unconstitutional unless the government can show that the regulation is necessary to further a compelling State interest (Cleveland Board of Education v. LaFleur 414 U.S. 367 (1974), or that the communication which is sought to be suppressed poses some 'clear and present danger' (Schenck v. U.S., 249 U.S. 47 (1919), Brandenburg v. Ohio, 395 U.S. 444 (1969)).

The lawful scope of First Amendment expressions in the prison and juvenile institutional settings has not been fully litigated. However, the Supreme Court has held, at least with respect to the adult correctional system, that the expression of First Amendment rights must be determined in light of legitimate penological objectives (see, e.g., Jones v. North Carolina Prisoners' Labor Union, 97 S. Ct. 2532 (1977), Procunier v. Martinez, 416 U.S. 396 (1974)).

The scope of First Amendment rights in juvenile institutional settings has been determine by lower Federal courts to include the following:

- FREEDOM OF VERBAL EXPRESSION, see, e.g., Morales v. Turman, 364 F. Supp. 166 (E.D. Tex. 1973) (prohibiting or discouraging juveniles from conversing in languages other than English, under circumstances that would not give rise to similar prohibitions, is a violation of the First Amendment, Id. at 174), 383 F. Supp. 53 (E.D. Tex. 1974) (a constitutionally adequate treatment plan must provide for freedom of communication with persons outside of the institutions by mail and telephone, and permits juveniles to express--either verbally or nonverbally--the emotions that they feel, Id. at 100-101).

- FREEDOM OF WRITTEN COMMUNICATIONS, see, e.g., Morales v. Turman, 364 F. Supp. 166 (E.D. Tex. 1973) (official interference with correspondence is limited to the opening of incoming mail in the presence of the juvenile for the sole purpose of examining the material for contraband, Id. at 179-80); Inmates of Boys' Training School v. Affleck, No. 4529 (D.R.I., Jan. 15, 1979) (final order) (official interference with mail is limited to the opening and inspection of incoming mail for the sole purpose of searching for contraband and this must be done in the presence of the juvenile; no incoming letters can be read or delayed in their transmission to the juvenile, and all outgoing mail shall be transmitted without delay, unopened, uncensored and uninspected, Id. at 3).

- WITH PARTICULAR REFERENCE TO LEGAL MAIL, see, e.g., Manning v. Rose, No. NC-75-34 (N.D. Utah, June 30, 1979) (incoming legal mail, unlike all other incoming mail, need not be opened by the juvenile in the presence of a supervisor unless outward appearances of such mail indicate the probable presence

of contraband, Id. at 9); Harris v. Bell, 402 F. Supp. 469 (W.D. Mo. 1975) (attorney-client mail shall be neither opened nor inspected, Id. at 474).

- CENSORSHIP OF MAIL HAS BEEN PERMITTED IN LIMITED CIRCUMSTANCES, see, e.g., Gary W. v. Louisiana, 437 F. Supp. 1209 (E.D. La. 1976) (incoming mail may be censored when this is necessary to prevent serious harm to the child and when the restriction is prescribed in writing and limited to a maximum duration of one month, Id. at 1224); Inmates of Boys' Training School v. Affleck, No. 4529 (D.R.I. Jan. 15, 1979) (final order) (any limitation regarding the persons with whom a juvenile must correspond must be based upon good cause that such prohibition is necessary for treatment).

- FREEDOM OF ASSOCIATION, see, e.g., Nelson v. Heyne, No. 72-S-98 (N.D. Ind., Feb. 1, 1976) (memorandum opinion) (a constitutionally adequate treatment program includes association with family and friends, including those of the opposite sex); Morales v. Turman, 383 F. Supp. 53 (E.D. Tex. 1974) (a constitutionally adequate treatment plan must include a coeducational living environment which provides frequent and regular contacts with members of the opposite sex in a variety of settings, Id. at 100-101).

- FREEDOM OF RELIGION, see, e.g., Harris v. Bell, 402 F. Supp. 469 (D.C. Mo. 1975) (consent judgement) (incarcerated juveniles must be notified at the time of their confinement that they may see a minister or priest on request).

- RIGHT TO PRIVACY AND ONE'S PERSONAL POSSESSIONS, see, e.g., Morales v. Turman, 383 F. Supp. 53 (E.D. Tex. 1974) (minimum elements of an adequate professional treatment plan include a physical plant designed to maximize the juvenile's privacy and freedom from unnecessary or arbitrary invasions of privacy, Id. at 100); Inmates of John Connelly Youth Center v. Dukakis, No. 75-1786-G (D. Mass., April 2, 1976) (consent judgement) (mandating private or semi-private rooms of specified dimensions); Inmates of John Connelly Youth Center v. Dukakis, No. 75-1786-G (D. Mass., April 2, 1976) (consent judgement) (requires that each juvenile be provided with a locker within or without his or her room, in which to securely store personal belongings, and that provision be made for the purchase of personal items during the period of the juvenile's confinement, Id. at 15 and 19); Santiago v. City of Philadelphia, No. 74-2589 (E.D. Pa., Dec. 22, 1978) (stipulation in partial settlement) (lockers must be provided in individual sleeping rooms so that juveniles can keep personal possessions in safe keeping, Id. at 17).

- RIGHT TO CHOOSE ONE'S PERSONAL APPEARANCE, see, e.g., Morales v. Turman, 383 F. Supp. 53 (E.D. Tex. 1974) (a constitutionally adequate treatment plan requires the liberty to exercise freedom of choice in areas such as dress and hairstyle, Id. at 101); Thomas v. Mears, 474 F. Supp. 908 (E.D. Ark. 1972) (consent judgement) (juvenile detainees must be allowed to wear civilian clothing unless they pose a genuine suicide threat, Id. at 911).

Right to Treatment

Within the last 10 years, conditions of confinement in juvenile institutions have been increasingly challenged in State and lower Federal courts on the basis of a constitutional right to treatment. The right to treatment doctrine has provided a broad legal basis upon which to challenge such conditions since the doctrine encompasses other, better

recognized, constitutional considerations. While the judicial recognition of the right to treatment doctrine, particularly as applied to status offenders and nonoffenders, has occasionally rested on the Eighth Amendment's prohibition against cruel and unusual punishment (see, e.g., Martarella v. Kelley, 359 F. Supp. 478, 481 (1973); Inmates of Boys' Training School v. Affleck, 346 F. Supp. 1354, 1371-72 (D.R.I. 1972)), the more common basis for the doctrine is the constitutional right to due process.

The due process clause of the Fifth Amendment, as applied to the States by the Fourteenth Amendment, requires that an individual's liberty cannot be deprived by the State except pursuant to certain procedural protections. Standing alone, due process requires at a minimum "that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed" (Jackson v. Indiana, 406 U.S. 715, 738 (1972)). Applying this standard to State statutes which provide that the purpose of confining juveniles is to provide rehabilitative treatment, at least two Federal court have concluded that the dictates of due process thereby establish a constitutionally recognized right to treatment for juveniles who are thus incarcerated (Morgan v. Sproat, 432 F. Supp. 1130 (S.D. Miss. 1977), Morales v. Turman, 383 F. Supp. 53 (E.D. Tex 1974)). As the Federal court in Morales noted, "the juvenile must be given treatment lest the involuntary commitment amount to an arbitrary exercise of governmental power proscribed by the due process clause" (Id. at 71).

Even in the absence of such clear statutory applications, due process considerations have been applied to establish a constitutional right to treatment on the basis that treatment is viewed as the overall purpose of the juvenile justice system. This application of due process is strengthened by the theory that the State's provision of rehabilitative treatment to incarcerated juveniles provides the "quid pro quo" (legal exchange for depriving juveniles of many of the procedural rights available to adults in criminal proceedings. The quid pro quo theory was first noted in the context of juvenile cases by the Supreme Court in Gault, thereby giving considerable credence to the development and application of this theory in the lower Federal courts:

> While we are concerned only with procedure before the juvenile court in this case, it should be noted that to the extent that the special procedures for juveniles are thought to be justified by the special consideration and treatment afforded them, there is reason to doubt that juveniles always receive the benefits of such a quid pro quo.... In fact, some courts have recently indicated that appropriate treatment is essential to the validity of his custody on the ground that he is not receiving any special treatment (Gault, supra, at 22, fn. 30).

As relied upon in the lower Federal courts, the quid pro quo theory has been stated in the following ways:

> A new concept of substantive due process is evolving in the therapeutic realm. This concept is founded upon a recognition of the currency between the state's exercise of sanctioning powers and its assumption of the duties of social responsibility. Its implication is that effective treatment must be the quid pro quo for society's right to exercise its parens patriae controls. Whether specifically recognized by statutory enactment or implicitly derived from the constitutional requirements of due process, the right to treatment exists (Nelson v. Heyne, (7th Cir. 1974) 491 F. 352, 359; Martarella, supra, at 600).

and...

> The three central limitations on the government's power to detain are: (1) that detention be retribution for a specific offense; (2) that it be limited to a fixed term; and (3) that it be permitted only after a proceeding where fundamental procedural safeguards are observed. In their absence a quid pro quo must be extended by the government to justify confinement (Morales, supra, at 71).

The right to treatment doctrine was first applied to the mental health field, and the rights of involuntarily committed mental patients.* The subsequent application of this doctrine to the juvenile justice system is best understood by examining the similarities beteween the juvenile justice system and mental health systems. For example, courts traditionally have avoided providing the minimal procedural safeguards in both involuntary mental commitment and juvenile proceedings. By using a "civil" label of convenience, it is assumed that the State will maintain effective treatment programs for committed individuals and return them to society as productive citizens. This parens patriae-based justification for retributional deference assumes that these people are unable to care for themselves and that the State is obligated to exercise the power of guardianship over them. Such a promise of beneficial treatment and successful restoration to society as provided by juvenile and mental health laws was the legislative justification for depriving juveniles of liberty or due process.

The right to treatment doctrine, as applied to the juvenile justice system, has provided a broad legal basis upon which to challenge conditions of juvenile institutional confinement. The doctrine has been used, with varying degrees of success, to challenge: (1) conditions of preadjudicatory detention (e.g., in Creek v. Stone, 379 F. 2d 106 (D.C. Circ. 1967), one of the first cases involving a juvenile's right to treatment, a juvenile charged with armed robbery had challenged, pursuant to a petition for writ of habeas corpus, his detention for several months pending adjudication. In his petition, the juvenile alleged that the facility in which he was detained was not providing him with needed psychiatric services. The Federal court for the District of Columbia declined to hear evidence on the issue of available services since such allegations were not relevant to a habeas corpus challenge. The Circuit Court of Appeals, however, while dismissing the case as moot (the juvenile had already been adjudicated and committed to a juvenile correctional institution) stated that the juvenile court had an affirmative duty in its parens patriae capacity to provide a juvenile with an environment that is comparable to

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*The right to treatment doctrine was first articulated in 1960 by Morton Birnbaum (see Birnbaum, M., "The Right to Treatment," 46 A.B.A.J. 499 (1960)), who suggested that the doctrine should be legally recognized in order to secure adequate treatment services for persons involuntarily committed to State mental hospitals. The doctrine was first recognized judicially in Rouse v. Cameron, 373 F. Supp. 451 (D.C. Cir. 1967), and first recognized by a Federal court as having a constitutional basis in Wyatt v. Stickney, 325 F. Supp. 781 (M.D. Ala. 1971). The Supreme Court refused to address the issue of a constitutional right to treatment for involuntarily committed mental patients in O'connor v. Donaldson, 422 U.S. 563 (1975).

that which the juvenile would be receiving at home and, therefore, that the court was under an affirmative obligation to inquire into the services which are being provided whenever there is a claim that a need for treatment is not being met. It should be noted that a claim to a right to treatment is generally less useful at the detention stage of the juvenile justice process than at the commitment stage, since it is the dispositional powers of the juvenile court which represent the court's fullest responsibility to provide rehabilitative treatment; (2) transfers of jurisdiction to the criminal court;* the place and type of treatment ordered at the time of disposition;** and (3) the quality and quantity of services available once a juvenile has been committed to an institution. It is this last category of challenges including the actual conditions within such institutions, which has been the focus of juvenile right to treatment litigation and, as the following lower Federal court holdings demonstrate, the right to treatment has been held to grant juveniles a number of important legal rights:

THE RIGHT TO TREATMENT HAS BEEN HELD TO INCLUDE:

- THE RIGHT TO PLACEMENT IN THE LEAST RESTRICTIVE ALTERNATIVE, see, e.g., Morales v. Turman, 383 F. Supp. 53 (E.D. Tex. 1974) (an important incident of the right to treatment is the right of each individual to the least restrictive alternative treatment that is consistent with the purpose of his custody, Id. at 124).

- WHICH APPLIES TO THE CHOICE OF TREATMENT ALTERNATIVES WITHIN A PARTICULAR INSTITUTION, see, e.g., Morales v. Turman, 383 F. Supp. 53 (E.D. Tex. 1974) (the right to the least restrictive alternative includes the right to be free from unnecessary restrictions on movement or activity, Id. at 124).

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* For example, in In re Welfare of J.E.C., 225 N.W. 2d 245 (Minn. 1975), the Minnesota Supreme Court remanded to the juvenile court a case in which a juvenile had been transferred to the criminal court despite evidence indicating that the juvenile was amenable to treatment although not amenable to any treatment which was currently available. On remand, the State Supreme Court instructed the juvenile court to make the following inquiries:

> (1) whether there is presently any program available for treatment for this and other similar juveniles; (2) if no program is available, whether it is feasible and possible to put together an effective program which could treat this and other similar juveniles; (3) if so, why has the Department of Corrections failed to make such a program available? (Id. at 53).

The appellate court ultimately accepted the findings of the juvenile court that treatment of this juvenile would be uneffective and the juvenile was thereby transferred to the criminal court for trial.

**For example, in Janet D. v. Carros, 362 A. 2d 1060 (Pa. Super. 1976) the Superior Court of Pennsylvania reversed a juvenile court's contempt order demanding that the Director of the Allegheny Child Welfare Service provide for the individual preplacement assessment and appropriate placement of a 16-year-old juvenile who was both deprived and a chronic runaway. While the Court held that the contempt order was an improper exercise of the juvenile court's authority, it did hold that the requested demands be met in order to fulfill the juvenile's statutory right to treatment.

- THE RIGHT TO RECEIVE INDIVIDUALIZED CARE AND TREATMENT, see, e.g., Nelson v. Heyne, 491 F. 2d 352, 360 (7th Cir. 1974), cert. denied, 417 U.S. 976 (1974) (the juvenile's right to rehabilitation must include a program of individual treament, Id. at 360); Morgan v. Sproat, 432 F. Supp. 1130 (S.D. Miss. 1977) (the right to rehabilitation includes the constitutional right to receive individualized care and treatment sufficient to enable a juvenile to become a productive member of society, Id. at 1135); (the institution's entire program must be geared to meet the individual needs of each student, Id. at 1140); McEvoy v. Mitchell, C.A. No. 74-2769-T (D. Mass. 1979) (consent judgement) (individual treatment plans must be written and based upon an assessment of each individual's needs, Id. at 5-9).

- ALTHOUGH THE TREATMENT PROVIDED NEED NOT INCLUDE THE BEST AVAILABLE TREATMENT, see, e.g., Morales v. Turman, 383 F. Supp. 53 (E.D. Tex. 1974) (each juvenile has a right to receive effective and adequate treatment, Id. at 118); Martarella v. Kelley, 349 F. Supp. 575 (S.D.N.Y. 1972) (treatment must be adequate in light of present knowledge, Id. at 601); Gary W. v. State of Louisiana, 437 F. Supp. 1209 (E.D. La. 1976) (treatment must be based on expert advice, Id. at 1218).

- THE RIGHT TO RECEIVE AN ADEQUATE DIET, see, e.g., Morales v. Turman, 383 F. Supp. 53 (E.D. Tex. 1974) (a variety of nutritious foods must be available for the minimally adequate food program; it is also important that food be properly prepared and appealing, Id. at 97); Doe v. Lake County, No. H-74-49 (N.D. Ind. Oct. 25, 1977) (consent judgement) (meals cannot be restricted in amount or type for disciplinary purposes); Santiago v. City of Philadelphia, No. 74-2589 (E.D. Pa., Dec. 22, 1978) (stipulation in partial settlement) (fully qualified detention center dietician must approve all meals on a regular basis, and food consultant must make monthly evaluations of food services).

- THE RIGHT TO ADEQUATE EXERCISE AND RECREATION, see, e.g., Inmates of Boys' Training School v. Affleck, 346 F. Supp. 1354, (D.R.I. 1972) (juveniles confined in youth correctional facility entitled to a minimum of three hours outdoor exercise daily, weather permitting, Id. at 1369), No. 4529 (D.R.I., Jan. 15, 1979) (final order) (these three hours were clarified as referring to recreational activity and physical instruction, one-half of the time to be spent outside or in a gym, Id., Appendix D, at 47); Martarella v. Kelley, 359 F. Supp. 478 (S.D.N.Y. 1973) (juvenile detainees entitled to a minimum of two hours on school days and three hours on non-school days to participate in planned, structured recreational activities, Id. at 478); Nelson v. Heyne, No. 72-5-98 (N.D. Ind., Feb. 1, 1976) (memorandum opinion) (opportunity for exercise and recreation basic requisite of treatment); Santiago v. City of Philadelphia, No. 74-2589 (E.D. Pa., Dec. 22, 1978) (wide selection of art supplies and games and sufficient recreational equipment for large inside activity must be made available); Thomas v. Mears, 474 F. Supp. 908 (E.D. Ark. 1979) (juvenile detainees confined to their rooms for disciplinary purposes cannot be denied daily recreation and exercise outside of their rooms, Id. at 912).

- THE RIGHT TO RECEIVE EDUCATIONAL AND VOCATIONAL TRAINING SERVICES, see, e.g., Morgan v. Sproat, 432 F. Supp. 1130 (S.D. Miss. 1977) (juvenile's right to treatment includes sufficient programs, including education and vocational

training to enable juvenile to obtain necessary skills to return to society, Id. at 1140-41); Martarella v. Kelley, 359 F. Supp. 478 (S.D.N.Y 1973) (a therapeutic living situation includes educational services, Id. at 478); Inmates of Boys' Training School v. Affleck, 346 F. Supp. 1354 (D.R.I. 1972), C.A. No. 4529 (D.R.I. Jan. 25, 1979) (final order) (juveniles in solitary confinement are entitled to receive the same education provided other inmates in the training school); see also McRedmond v. Wilson, 533 F. 2d 757 (2nd Cir. 1976); Nelson v. Heyne, 491 F. 2d 352 (7th Cir. 1974); Santiago v. City of Philadelphia, No. 74-2589 (E.D. Pa., Dec. 22, 1978) (stipulation in partial settlement); Inmates of John Connelly Youth Center v. Dukakis, No. 75-1786-G (D. Mass. April 2, 1976) (consent judgement).

Statutory Bases for Legal Challenges

Federal Statutes

The most significant Federal statutes upon which to base challenges regarding the conditions of juvenile institutional confinement are those which provide funds to State detention and correctional institutions on the condition that such institutions comply with certain provisions of the statute. The Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq., Pub. L. No. 93-415) and its 1977 Amendments (91 Stat. 1048, Pub. L. No. 95-115) provide an example of such a statute.

There are two primary compliance provisions in the Juvenile Justice and Delinqency Prevention Act to which States receiving money under the Act must conform. These provisions are:

> s.223(a)(12)(A): juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult, or such non-offenders as dependent or neglected children, shall not be placed in juvenile detention or correctional facilities; and
>
> s.223(a)(13): juveniles alleged to be or found to be delinquent and youths within the purview of paragraph (12) shall not be detained or confined in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of crimes or are awaiting trial on criminal charges.

Hence, if a State or one of its detention or correctional institutions is receiving funds under this Act, but is not complying with the above provisions within a specific period of time, an individual or class action civil suit may be brought to compel such compliance, or in the alternative, to withdraw these allocated funds.

A second Federal statute which is particularly relevant to the present discussion is the Child Abuse Prevention and Treatment Act, 42 U.S.C. 5101 (1974). The Department of Health, Education, and Welfare (now the Department of Health and Social Services) has established regulations for State grants received under this Act which require participating States to establish procedures in children's institutions which facilitate the reporting of intra-institutional child abuse and neglect, and to provide for the investigation of such reports by a neutral agency (U.S. Senate, 1979:182).

Other Federal statutes which contribute to the fiscal support of institutionalized juveniles, and are therefore susceptible to the above challenges, are the Education of All

Handicapped Children Act of 1975, 20 U.S.C. s. 1401, et seq., (Pub. L. No. 94-142); Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. 6010, et seq., (Pub. L. No. 94-103); Rehabilitation Act of 1973, 29 U.S.C. s. 794 et seq., (Pub. L. No. 93-112); Vocational Education Act, 20 U.S.C. 2301 et seq., as well as several programs under various welfare, education, and nutrition acts.

State Statutes

Three types of State statutes are particularly likely bases for legal challenges to conditions of juvenile confinement. These are statutes which explicitly recognize the juvenile's right to treatment; statutes which set forth an enumerated bill of legal rights for incarcerated juveniles, and statutes which establish institutional child abuse and neglect reporting procedures. States which explicitly provide that incarcerated juveniles have a right to receive rehabilitative treatment strengthen the legal challenges based on the constitutional right to treatment doctrine, discussed earlier. Similarly, statutes which establish specific legal rights for incarcerated juveniles enhance the previously discussed constitutional challenges by providing an unequivocal State statutory basis for such rights.

The third type of State statute which provides a credible basis for challenges to conditions of juvenile incarceration are those which establish child abuse and neglect reporting laws. The State of New Jersey's Department of Human Services has devoted considerable resources to the development of reporting procedures to be followed in public and private facilities for children. Administrative Order 3:05, Deparment of Institutions and Agencies (effective 9-30-76), in accordance with New Jersey Statutes Annotated s. 9:6-8:10, outlines the procedures for reporting, investigating, and seeking to eliminate institutional child abuse and neglect. This Order informs institutional staff that the Division of Youth and Family Services, Office of Child Abuse Control, operates a toll-free, 24-hour hotline to receive reported incidents of institutional abuse or neglect. Institutional staff who make such reports are provided immunity from any civil or criminal liability. The Division's District Offices are required to investigate such reports immediately if a juvenile appears to be in imminent danger, and within 72 hours if the situation appears less serious. The District Offices are then required to refer to the local public prosecutor any cases that would precipitate such a referral if the child had been in the custody of his or her parents or guardian.

CONCLUSION

This chapter has attempted to present to the reader an overview of the legal rights of juveniles who are processed through the juvenile justice and, to a limited extent, criminal justice systems, and the rights of juveniles who are ultimately incarcerated in detention and correctional institutions. This chapter has also presented many of the historical influences which have led to the recognition of these rights.

The current legal rights of juveniles who become enmeshed in the juvenile justice system have been achieved in piecemeal fashion, each successive judicial decision granting specified rights to juveniles within a limited geographical area. This Nation's juvenile justice system is largely the product of State legislation, and the practices within this system's institutions and the institutions of the criminal justice system have been traditionally shielded from judicial scrutiny. However, the participation of State and Federal courts in recognizing and defining the nature and parameters of juvenile legal rights appears to be at a zenith, particularly by lower Federal courts with respect to conditions of juvenile institutional confinement.

The acceptance of Federal court intervention as a means for monitoring the conditions within State detention and correctional institutions is particularly apparent since the recent Congressional enactment of the "Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997 et seq., 94 Stat. 349, Pub. L. No. 9-247, enacted 5-23-80. This Act authorizes the United States Attorney General to institute civil actions for equitable relief in Federal district courts on behalf of institutionalized persons who are "subjected to conditions which deprive them of rights, privileges, or immunities secured or protected by the Constitution of the United States" (42. U.S.C. 1997a). For these actions to be valid, such persons must "suffer grievous harm...pursuant to a pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities" (Ibid.). Such actions may be filed against "any State or political subdivision of a State, official, employee, or agent thereof, or other person acting on behalf of a State or political subdivision of a State" whom the Attorney General has reasonable cause to believe "is subjecting persons residing in or confined to an institution" to the abuses listed above (Ibid.). The Act further authorizes the Attorney General to intervene in any such actions which have been commenced by others "in any court of the United States" (42 U.S.C. 1997c).

Prior to the enactment of the "Civil Rights of Institutionalized Persons Act," the Attorney General, through the Department of Justice's Civil Rights Division, Special Litigation Section, proceeding as a litigating amicus curiae or as a plaintiff intervenor in a number of lower Federal court cases involving abusive juvenile institutional conditions. However, the proper role of the Justice Department in such litigation was a frequently litigated issue in itself, and proved to be one of the reasons why such cases have extended for a significant number of years. Perhaps the best example of this prolonged litigation is Morales v. Turman, 364 F. Supp. 116 (E.D. Tex. 1973), 383 F. Supp. 53 (E.D. Tex. 1974); rev'd for absence of a three-judge court; 535 F. 2d 864 (5th Cir. 1976), judgement of Court of Appeals rev'd and remanded, 430 U.S. 322 (1977), final order still pending. However, with passage of the "Civil Rights of Institutionalized Persons Act," the active role of the Justice Department will be an accepted component of institutional litigation. As Congressional Members have noted:

> A number of factors make the contribution of the Attorney General a unique and invaluable one. First...private litigants, even with the assistance of legal services and public interest groups, cannot marshal the resources necessary to mount a full-scale response to systemwide institutional abuse. The Department of Justice, however, does possess such resources. The Department can call upon the FBI to conduct thorough investigations of institutions, taking photographs and collecting relevant data on institutional conditions. It has ready access to the expertise of other Federal agencies, including the Department of Health, Education, and Welfare, the Bureau of Prisons, and the Law Enforcement Assistance Administration, whose experts can evaluate the data collected by the FBI or make independent inspections. From its past experience in the field, the Department of Justice is familiar with and has access to nationally recognized experts in mental health, mental retardation, penology, and public health, and can rely upon such experts for accurate and responsible assessments of the adequacy of institutional conditions. All of these factors contribute to the Department's unique ability to develop a full and fair factual record for the court.
>
> A second important contribution of the Justice Department to litigation on behalf of the institutionalized, is its staff of highly skilled attorneys. Their familiarity with the substantive and procedural issues involved in such litigation gives them a unique expertise.

> ...In addition to its superior resources and skill, the Department of Justice brings credibility to the proceedings. The mere presence of the Department alerts a court that conditions in a given institution are sufficiently serious and pervasive to warrant the attention of the Attorney General (Report together with Supplemental and Dissenting Views, Report No. 96-80, House of Representatives, April 3, 1979:15-16).

Litigation to one side, from an historical and theoretical perspective, the time appears right to systematically re-evaluate the purpose for having a separate juvenile justice system. Critics must examine the current viability of the system's traditional rehabilitative rationale, particularly the extent and degree of official discretion which this theory has sanctioned and the abuses which have transpired in the name of rehabilitation. Some commentators have already suggested that juveniles should be accorded a recognized legal right not to be treated,* that is, provided with certain services only on a voluntary basis. Certainly, the rehabilitative and paternalistic ideals which provided the impetus for the creation of the juvenile justice system over 80 years ago must be re-evaluated in the context of today's society and juveniles.

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*See, e.g., Fox, 1974 and Levine, 1980.

Chapter VI

SUMMARY, ISSUES, AND POLICY RECOMMENDATIONS

THE MOVEMENT TO institutionalize juveniles was an outgrowth of the emergence of the State as protector of young people and arbiter of their best interest. Social reformers in the nineteenth century advocated for special juvenile institutions in order to remove juveniles from adult jails and prisons and to shield impressionable young people from the negative influences of rapidly growing cities. These institutions were idealized as a reasonable replacement for families in which parents were not "properly" raising their children. The so-called child-saving movement, with its belief that children were particularly amenable to change or rehabilitation, ultimately provided the rationale and impetus for the development of the juvenile court and a separate system of juvenile justice.

The newly established juvenile courts perceived little difference between children who committed criminal acts and those who were neglected by or beyond the control of their parents. All were to be treated in an informal, nonadversarial manner, with the child's "best interest" as the guiding principle. As the new juvenile court was evolving, the medical model of juvenile deviance was popularized in juvenile institutions. This model underscored the goal of the juvenile court to provide individualized rehabilitative services.

With respect to legal rights, the most significant aspect of the juvenile justice system was the denial of procedural protections in exchange for individualized treatment. Based on the English principle of parens patriae, the State exercised its protective jurisdiction over all juveniles, giving juveniles the "right" to custody rather than liberty. Furthermore, the State assumed the authority to confine young people in institutions until they reached the age of majority, ostensibly to provide rehabilitative services.

Declining faith in the rehabilitative model has led to concern about the effectiveness of institutionalization and to efforts to keep juveniles out of long-term facilities. It also provided the background against which the United States Supreme Court, in the 1960's and 1970's, took a critical look at the juvenile justice system and held that the institutional commitment of juveniles constitutes a deprivation of liberty which is recognized by the Federal constitution and cannot be curtailed without certain procedural protections.

The juvenile justice system viewed from the perspective of its historical development, especially considering these most recent trends toward due process and legal protections for juvenile defendants, suggests significant dilemmas and perils associated with a fundamental redefinition of justice American style. As evidenced time and again, at each stage of its historical development, the juvenile justice system has substituted one abuse for another, through labeling and relabeling, and by creating alternative processes for the handling of juveniles so often that it becomes soon forgotten that today's abuse may have been yesterday's remedy. The establishment of the first juvenile court was in fact prompted by an explicit dissatisfaction with

the agencies of criminal law. The remedies taken in response were intended to be radical and fundamental. The concept of crime was deemed inapplicable to juvenile misconduct; instead, a new label, delinquency, was devised. The changes which followed were not superficial; they established a new kind of tribunal, non-punitive in orientation, and designed to help rather than punish. However, as pointed out by Allen, the endeavors of "socialized justice" created a trap for the unwary. According to Allen:

> Whatever one's motivations, however elevated one's objective, if the measures taken result in the compulsory loss of the child's liberty, the involuntary separation of a child from his family, or even the supervision of a child's activities by a probation officer, the impact on the affected individuals is essentially a punitive one. Good intensions and a flexible vocabulary do not alter this reality. This is particularly so when the child is committed, in fact, to a penocustodial establishment. We shall escape much confusion here if we are willing to give candid recognition to the fact that the business of the juvenile court inevitably consists, to a considerable degree, in dispensation of punishment. If this is true, we can no more avoid the problem of unjust punishment in the juvenile court than in the criminal court (Allen, 1964:18).

Some would argue that semantical changes continue in the juvenile justice system without real changes in substance. Note the recent distinctions between delinquents from status offenders, serious from less-serious, and reformatories or training schools from privately operated juvenile institutions with names suggestive of academies and boarding schools.

Against the background of this historical perspective, this chapter will summarize some of the findings of this report regarding the procedures for the institutionalization of juveniles, the numbers of juveniles institutionalized, the victimization of juveniles in institutions, and legal challenges to juvenile institutionalization. These findings reflect trends that prevailed in the late 1970's. Following this, major issues regarding institutionalization of juveniles will be discussed, and policy reccomendations will be offered.

SUMMARY OF FINDINGS

Procedures for Institutionalization

- As juveniles move through the juvenile justice system, social, economic, and behavioral information is accumulated. This is used in combination with legal criteria to make decisions regarding detention and commitment. The result of this process is that decisions may too often be dependent on the subjective impressions and wide discretion of authorities.

- The absence of objectivity and dependence on discretion may lead to discrimination against juveniles on the basis of such factors as race and socioeconomic status.

- Too often juveniles are institutionalized unnecessarily and in facilities inappropriate to their needs.

Numbers of Juveniles Institutionalized

- The number of institutions, both public and private, is increasing; the number of juveniles in institutions is declining; but the number of juveniles in secure institutions is increasing.

- The increase and maintenance of private facilities does not indicate a trend toward changing from public to private facilities for the juvenile justice system.

- More than half the States operate at least half of their juvenile institutions as secure facilities.

- There may be a trend toward institutionalizing adjudicated delinquents in larger and more secure facilities.

- While there is a slight decrease in the number of nonoffenders committed to juvenile institutions, over 22,000 nonoffenders were committed to juvenile facilities in 1979.

- There appears to be little agreement on the number of juveniles lodged in adult facilities.

- Over 40,000 juveniles are institutionalized in facilities other than those that come under the jurisdiction of either the juvenile or criminal justice systems, including orphanages, group homes, and foster homes.

- There is little evidence that institutions of any kind recreate the atmosphere of even the most humble home.

Victimization of Juveniles in Institutions

- Victimization of juveniles in institutions is an area where little research has been done, although more attention has been given to the topic recently.

- Available research indicates that juveniles in institutions are victimized in various ways, ranging from neglect and indifference to violent assaults and sexual abuses. The extent of victimization is not known.

- Multifaceted forms of victimization in institutions affect both juveniles and staff so as to create a milieu in which victimizing others is a pervasive element of institutional life.

- Short of closing down all institutions, it is probably only realistic to consider reducing the dependency of the juvenile justice system on institutions, and to monitor the incidence of victimization in them.

- Only violent juveniles should be considered for institutionalization, and secure institutionalization only if they cannot cope with nonsecure facilities.

- More field research and observation is needed in order to form specific procedural, operational, and policy recommendations.

Legal Challenges to Juvenile Incarceration

- The three primary methods for legal challenge to the fact or conditions of a juvenile's institutional confinement are:

  - Appeal, which provides for judicial review of a lower court decision. If successful, this results in reversal of the prior adjudication or criminal conviction, and the release of the juvenile from institutional confinement.

- Petition for a writ of habeas corpus, which provides for immediate judicial inquiry into the legality of a juvenile's confinement. If successful, this results in the immediate release of the juvenile. Habeas corpus may also be used for an inquiry into conditions of confinement, and, if successful, results in an injunction to remedy the challenged conditions.

- Civil suit, usually based on the Civil Rights Act of 1871, challenges the conditions of a juvenile's institutional confinement. If successful, this results in an injunction to remedy the challenged conditions or in money damages to the juvenile.

- Legal challenges to conditions of institutional confinement are based primarily on the U.S. Constitution. Constitutional bases for such legal challenges include:

  - The right to procedural due process, derived from the Fifth and Fourteenth Amendments. The due process clause has been used to achieve:

    - notification of institutional rules
    - procedural safeguards regarding institutional disciplinary actions such as solitary confinement and interinstitutional transfers
    - access by incarcerated juveniles to counsel and to the courts

  - The prohibition against cruel and unusual punishment, derived from the Eighth Amendment. Eighth Amendment challenges have been used to achieve:

    - improvement in conditions of confinement, such as unsafe facilities or practices
    - prohibition of certain practices, such as corporal punishment, inappropriate use of tranquilizing drugs, solitary confinement, make-work tasks
    - the provision of certain institutional services, such as recreation.

  - The prohibition against involuntary servitude, derived from the Thirteenth Amendment, which has been used to achieve the prohibition of extended or meaningless work required by juveniles.

  - The requirement of equal protection of the law, derived from the Fourteenth Amendment, which has been used to achieve the application of procedural safeguards to juveniles where similarly situated adults or other juveniles would receive such safeguards.

  - Freedom of expression, assembly, and religion, derived from the First Amendment, which has been used to achieve:

    - freedom of verbal expression
    - freedom of written communication (mail)
    - freedom of association, including coeducational activities
    - freedom to exercise one's own religion or no religion at all
    - right to privacy and to choose one's personal appearance.

- The right to treatment, derived from various aspects of the U.S. Constitution, which has been used to achieve:

  - placement in the least restrictive placement
  - the right to receive individualized care and treatment
  - the right to receive an adequate diet
  - the right to adequate exercise and recreation
  - the right to receive educational and vocational training services.

- Legal challenges to both the fact of confinement and the conditions of confinement may also be based on State or Federal statutes. The most important Federal statutes for this purpose are the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, the Child Abuse Prevention and Treatment Act, and the Rights of Institutionalized Persons Act of 1980. State statutes are most commonly used for challenging the conditions and procedures of a juvenile's confinement. Such statutes include those granting the right to treatment, provisions for reporting institutional abuse, and required procedures for institutionalization.

DISCUSSION OF ISSUES AND POLICY IMPLICATIONS

One thing that has become clear from this assessment of the victimization of juveniles in institutions is that it is a very complex problem. There is a lack of sufficient statistical and empirical data on the extent of institutionalization, prevalence of victimizations within differing institutional settings, as well as its impact upon individual juveniles. Basically, more information is needed on the extent and dimensions of the problem before significant progress can be made. At the present time, enough is known to be able to suggest some of the major issues regarding juveniles being victimized in and by institutions. The following discussion will focus upon four of the most significant issues and their policy implications.

Reducing Juvenile Justice System Dependency on Institutions

Discussion of the Issue

One of the best ways of reducing victimization of juveniles in institutions is to reduce the juvenile justice system's dependency upon institutions. In other words, institutionalize fewer juveniles and reduce the time of institutionalization for those few that must be institutionalized. Historically, the juvenile justice system has depended upon institutions of various kinds ranging from detention facilities to large secure reformatory type institutions, and more recently to privately operated "alternative" residences as settings for the protection, care, and treatment of juveniles who are deemed in need of "rehabilitation," control, or substitute families. Except for the few juveniles who may be dangerous to themselves and the community as evidenced by their commission of serious acts of violence and crime, for most juveniles institutions of any kind are poor substitutes for families. To send a juvenile to an institution is often likely to compound the juvenile's difficulty to adjust to the outside world both now and in the future. Therefore, while the placement of a juvenile in an institution may resolve the immediate problem of determining what to do with a particular juvenile, it must be also realized that it does not resolve the juvenile's problems nor is it likely to protect society in the long run.

Unfortunately, much of the literature and discussion regarding the institutionalization of juveniles is clouded by uncritical thinking and shallow research. It would help clear the air if decisions to place a juvenile even temporarily in an institution were based on clearly defined goals and objectives. For example, is the juvenile being placed in a secure facility as punishment? Then, let's consider the punishment. What is fair and reasonable punishment? Is it effective or does it raise the likelihood that the juvenile will become worse? On the other hand, when a juvenile is placed for treatment, the issues to be addressed should be, which type of treatment and why? Can this facility provide effective treatment for this kind of juvenile? If the juvenile is being placed because there are no other alternatives and the family is presently unable to deal with the juvenile's needs and problems, then what can be done to assist the family so that it can fulfill its role and responsibilities for the juvenile, either now or in the near future?

Policy Implications of the Issue

Essentially, it must be recognized by those who decide whether or not to place a juvenile in an institution, that institutionalization is the last resort, it is temporary, and it is likely to create additional problems for the juvenile in making an adjustment to society. Juveniles should never be placed by the court and forgotten. The court has a responsibility to maintain a continued interest in the juvenile's development and problems. Therefore, the juvenile court should consider every possibility for strengthening the family capability to deal with the juvenile before considering placement in an institution, and if, after all alternatives are considered and eliminated, should the juvenile require short-term placement, then the court should clearly articulate the justification for placement and the intended objectives. Furthermore, judges and court officials should intimately know the facility they are referring juveniles to and continue to follow the progress of all their referrals. It should be mandatory for all institutions receiving juveniles from the juvenile court that they routinely report the progress and problems of each juvenile back to the court.

The Need for a Viable Federal Policy on Institutionalization

Discussion of the Issue

Although the Federal government expends large amounts of money yearly to support institutions for juveniles, both public and private, there has been little detailed analysis of the impact of government dollars, programs, and administration in this area. Without such analysis it is difficult to evaluate the effectiveness of government policy upon institutionalized juveniles and their families. For example, in spite of various pieces of Federal legislation which discourage the institutionalization of juveniles, States and local governments continue to institutionalize juveniles in facilities which are harmful to their development and which increase their risk of being victimized. While it must be recognized that decisions to institutionalize juveniles and efforts to prevent or reduce their risk of victimization are State and local in nature, an effective national effort with clearly articulated policy which discourages the use of institutions and encourages local efforts toward reducing the risk of victimization in institutions is necessary. Federal policy and dollars can influence State and local governments by providing incentives and discentives. To some extent, this has occurred with regard to the deinstitutionalization of status offenders; however, so far, only a beginning has been made.

The Children's Defense Fund (CDF) conducted a 3-year national study to examine the problem of children placed out of their homes, including children and youth placed in juvenile justice institutions and facilities. The results of this important study were published in a report entitled Children Without Homes (Knitzer, Allen, and McGowan, 1978), and will be cited at some length in the present discussion. The CDF study found that Federal policy and funding have been inadequate in supporting the family and in preventing unnecessary institutionalization. Reasons for this inadequacy include the following:

- Federal funding patterns act as disincentives to the development of strong family support programs (p. 123).
- Current Federal policies fail to insure adequate procedural and substantive protections to children at risk of removal and in placement, or to their families (p. 125).
- Federal programs have not been coordinated to insure the deinstitutionalization of juveniles and therefore legislative, regulatory, and fiscal provisions are often inconsistent with regard to discouraging institutionalization (p. 128).
- There has been insufficient Federal attention to the quality and comprehensiveness of care for children in facilities that receive Federal funds (p. 130).
- There has been a striking absence of Federal compliance efforts with regard to children at risk of removal or in out-of-home placement. Federal agencies have done little to insure that existing program requirements are met. They have also failed to monitor and take action against discriminatory treatment to minority children (p. 133).
- Administrative responsibility for Federal programs affecting children without homes is fragmented. Adequate policy planning and coordination to insure administrative linkages among programs and among their service, training, and research components are virtually nonexistent (p. 135).
- The absence of useful national information about children out of their homes and about the impact of relevant Federal programs preventing meaningful planning, monitoring, and evaluation efforts (p. 137).

These deficiencies need to be addressed on a national level because the problem of overdependency on institutions as solutions for juvenile problems and the resulting victimizations that take place in these institutions are national in scope and perpetuated with Federal dollars.

Policy Implications of the Issue

The Children's Defense Fund believes and our assessment confirms that the Federal government has a crucial leadership role to play by insuring that:

- appropriate substantive and procedural protections accompany the use of Federal funds
- Federal resources are used to prevent unnecessary and inappropriate out-of-home placements
- quality care is provided to juveniles placed in out-of-home care

- timely decisions are made about which juveniles can be reunited with families and which must be provided alternative permanent settings

- Federal initiatives and financing are used to enable States to improve their child-placing systems so as to provide necessary services, reviews, protections, and data (Knitzer, Allen, and McGowan, 1978:140).

The Need for States to Take a More Critical Role in Protecting the Rights and Addressing the Problems of Juveniles Placed Outside the Home

Discussion of the Issue

It is at the State level that the major responsiblility for juveniles placed in institutions rests. Guided by a juvenile court philosophy of parens patriae, and through the vehicle of State statutes, administrative guidelines, and regulations, the procedures, protections, and quality of services are translated into action. Unfortunately, from a national perspective, many States have failed to take an active role in addressing the problems of juveniles placed in institutions and at risk of victimization.

The Children's Defense Fund study found that States have given too little attention to:

- services which might eliminate the need for placement in an institution

- the quality of care and services juveniles and their families receive

- defining who has ultimate responsibility for juveniles out of their homes in the face of a complex delivery system that often involves courts, one or more public agencies, private agencies from whom public agencies purchase services, and State and county political divisions (Knitzer, Allen, and McGowan, 1978:77).

The detailed findings of the Children's Defense Fund point out the dismal condition of State efforts to care for and protect juveniles placed out-of-home across all agencies: mental health, juvenile justice, and child welfare (Knitzer, Allen, and McGowan, 1978: 78-99).

Policy Implications of the Issue

Although it is beyond the scope of this report to discuss each of the CDF findings in detail, it is important to note that in total their findings strongly indicate that States are not adequately meeting their responsibilities in protecting and carying for the juveniles under their jurisdiction. The following recommendations are directed toward the States: (It is suggested that the reader see Children Without Homes for more details.) (Knitzer, Allen, and McGowan, 1978:100-103).

1. Each State should review promptly the plans for every child currently in out-of-home care to insure the child permanence. Priority should be given to children out of their homes for more than 18 months.

2. Each State should analyze the extent to which its children are banished to other States. Children inappropriately placed out-of-state must be returned to their own families or provided appropriate in-State placements. New procedures to prevent inappropriate future out-of-State placements should be devised and new in-State services created as necessary.

3. Each State should take concrete steps to insure that no child is removed from his natural family unnecessarily.

4. Each State should take concrete steps to reverse anti-family practices and policies affecting children who are removed from their homes.

5. Every State should take concrete steps to end the abandonment by public systems of children in placement and to insure quality care to them.

6. Each State should take concrete steps to increase and qualize the statutory and administrative protections afforded to children by public systems having major responsibility for them.

7. Each State should develop data collection systems that provide up-to-date information on the status of individual and groups of children at risk of removal and in placement, the amount of funds expended on their behalf, and the effectiveness of these expenditures.

8. Each State should eliminate patterns of discriminatory treatment of children at risk of or in out-of-home care by virtue of race, ethnic background, or handicapping conditions.

9. Each State should review the adequacy of its licensing statutes, program evaluations, and purchase-of-service contracts, as well as its enforcement capacity.

10. Each State should monitor local compliance with existing State policies more vigorously.

11. Each State should develop specific strategies to eliminate fragmentation both within and across systems in the administration and delivery of services to children (Knitzer, Allen, and McGowan, 1978:100-103).

In addition to the above recommendations, each State should establish an independent agency responsible for the enforcement of standards and statutes directly toward the mandatory reporting, investigating, and taking of appropriate action in cases of suspected child abuse and neglect in public and private institutions. The pilot program operated by the New Jersey Division of Youth and Family Services could serve as a model. Under New Jersey law (N.J.S.A. 9:6), a special Office of Child Abuse Control was set up to receive reports 24 hours a day on a tollfree number. This division investigates all reports immediately if a child appears to be in immediate or imminent danger, and no later than 72 hours in less-serious situations. If the juvenile is in an institution and the Office determines that the child is in danger, it can remove the child and place the child back home or in an alternative placement (New Jersey Department of Institutions and Agencies, Administrative Order 3:05, September 15, 1976, Reporting of Suspected Child Abuse or Neglect in a Public or Private Facility). Furthermore, once the imminent danger to the child is removed, the division advises the local prosecutor's office for appropriate legal action against the facility or the parties involved. The division even has authority to "take action as it seems necessary to investigate the circumstances of the reported incident, to ascertain the child's present condition, and to determine the necessity of removal of the child in order to insure the child's safety" in facilities outside the State (New Jersey Department of Institutions and Agencies, 1976:5).

In 1978, the New Jersey Division of Youth and Family Services received a 3-year demonstration grant from the National Center on Child Abuse and Neglect (NCCAN) to establish an Institutional Child Abuse Project to be responsible for coordinating all investigations of alleged institutional abuse, supervising facility corrective or preventive measures, as well as conducting a public awareness campaign of institutional abuse. Based upon a draft of their first statistical report, 186 cases of institutional abuse were reported in 1978. The following year (1979) it had increased to 339 reported cases, an 82 percent increase (New Jersey Department of Human Services, 1980).

The experience, instruments (e.g., training and investigation manuals), and findings of the New Jersey demonstration should provide useful information for other States considering the establishment of such a program.

The Need for Local Agencies and Institutions to Take Action to Prevent Institutional Abuse

Discussion of the Issue

Although Federal and State policies and programs can be effective in preventing and dealing with institutional abuse, it is important to focus attention at the level of local agencies and institutions.

The San Francisco Child Abuse Council and the San Francisco Department of Social Services under a grant from the California Office of Child Abuse Prevention established a pilot project in 1978 directed toward the prevention of abuse and neglect in out-of-home care. This project had three specific goals:

1. To provide training on child abuse/neglect prevention, identification, care management, and reporting.

2. To increase awareness of the problem of abuse and neglect of children in out-of-home care.

3. To establish a system for data collection so that the extent of the problem could be identified.

In addition to developing an excellent Handbook for Understanding and Preventing Abuse and Neglect of Children in Out-of-Home Care (Gil, 1979), the project as of September 1979 has conducted 140 training sessions for personnel involved in the care of children in placement. The Handbook would be useful to any agency or facility concerned with preventing institutional abuse and reducing the risk of juvenile victimizations.

The Youth Policy and Law Center in Madison, Wisconsin, brought a class action suit in late 1978 against the Lincoln Hills School on behalf of juveniles committed to this correctional institution. The suit challenged the use of solitary confinement and psychotropic drugs for purposes of control, and further charged that youths were denied their rights of due process in disciplinary hearings, and that they had not received adequate medical or psychological treatment. Pending the conclusion of the litigation, juvenile correctional officials have moved to correct the conditions at the institution (Youth Policy and Law Center, 1979:7).

Policy Implications of the Issue

The following are some of the key factors to be considered in reducing juvenile victimization in institutions:

- Address environment factors which may contribute to victimization (e.g., overcrowding, fearful and hostile atmosphere).
- Develop clearly written regulations, procedures, and rules pertaining to control and discipline of juveniles' State allowable sanctions.
- Develop well articulated rights of juveniles.
- Develop better selection and training of staff; more staff support, less overwork.
- Incidents of victimization should be reported to and investigated by outside agency.
- Develop realistic measures for safety of juvenile's person and property.
- Observe policy of proper medical authorization for drugs and medications.
- Develop individualized treatment plans which involve the family as much as possible.
- Plan grouping of juveniles in institutions to minimize victimization.
- Provide for community review and involvement in institutional programs.

CONCLUSION

This report has dealt with several aspects of the institutionalization and victimization of children and youth under the age of 18 in the juvenile justice system, and has also presented some data on juveniles in criminal justice institutions. This assessment has provided a historical perspective, reviewed procedures for institutionalizing juveniles, presented detailed information on the numbers of juveniles in institutions, explored what is known about the victimization of juveniles in institutions, and carefully described the alternatives for legal challenges to institutionalization of juveniles. The assessment has also pointed out that there are major gaps in the information available in such matters as the population of private facilities and the extent and nature of victimization of children and youth in institutions. Further research and investigation is greatly needed in these and other areas. Finally, it is clear that even after extensive efforts to implement deinstitutionalization, the reliance of the juvenile justice system on institutions still far exceeds what is appropriate and helpful, either to the children and youth involved, or to the community at large. It is hoped that the information gathered in this report will be of use to those who continue to work on the problem of institutional overuse and the victimization of juveniles in and by institutions.

APPENDIX A

NATIONAL JUVENILE JUSTICE SYSTEM ASSESSMENT CENTER

PERSONNEL

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APPENDIX B

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REFERENCES

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* Indicates a report of the National Juvenile Justice Assessment Centers.

APPENDIX C

TABLES

Table C-1

THE NUMBER OF PUBLIC AND PRIVATE DETENTION AND CORRECTIONAL FACILITIES 1975, 1977, AND 1979 AND THE PERCENTAGE CHANGE BETWEEN 1974 and 1979 BY STATE

	PUBLIC FACILITIES					PRIVATE FACILITIES				
STATE	1974	1975	1977	1979	Percent Change 1974-1979	1974	1975	1977	1979	Percent Change 1974-1979
Alabama	11	16	21	22	+100	9	8	15	20	+122
Alaska	2	3	2	2	0	8	13	15	16	+100
Arizona	15	15	17	18	+20	46	45	38	28	-39
Arkansas	9	7	10	9	0	11	20	19	27	+145
California	111	113	114	113	+2	243	249	286	250	+3
Colorado	11	10	13	14	+27	33	32	32	27	-18
Connecticut	5	5	4	4	-20	28	24	27	21	-25
Delaware	6	6	5	5	-17	0	0	0	0	0
District of Columbia	11	12	13	14	+27	3	3	ND[1]	ND	ND
Florida	49	51	50	52	+6	20	16	36	30	+50
Georgia	22	24	26	23	+5	16	13	12	10	-38
Hawaii	3	3	3	4	+33	4	5	5	ND	
Idaho	6	2	2	2	+100	9	9	9	6	-33
Illinois	25	23	25	24	-4	29	26	20	12	-59
Indiana	13	14	17	16	+23	28	22	29	44	+57
Iowa	10	9	14	11	+10	23	25	30	44	+91
Kansas	15	15	14	13	-13	29	36	55	64	+121
Kentucky	16	16	23	34	+113	11	8	11	12	+9
Louisiana	14	13	13	13	-7	16	18	16	17	+6
Maine	2	2	1	1	-50	14	18	17	18	+29
Maryland	13	13	15	14	+8	40	31	44	41	+3
Massachusetts	7	6	9	10	+43	61	45	40	44	-28
Michigan	48	46	49	49	+2	45	42	49	36	-20
Minnesota	12	12	21	21	+75	50	46	85	60	+20
Mississippi	8	8	7	9	+13	6	6	6	5	-17
Missouri	39	44	55	50	+28	30	26	26	22	-27
Montana	3	5	8	7	+133	5	8	8	9	+80
Nebraska	4	4	4	5	+25	10	11	11	11	+10
Nevada	6	6	6	7	+17	4	4	4	7	+75
New Hampshire	1	1	1	1	0	13	13	6	9	-31
New Jersey	28	30	43	50	+79	8	11	20	17	+113
New Mexico	4	4	4	7	+75	9	7	16	14	+56
New York	58	74	95	55	-5	96	84	111	149	+55
North Carolina	14	15	15	22	+57	10	8	31	44	+340
North Dakota	6	7	6	6	0	4	5	5	6	+50
Ohio	39	46	49	50	+28	35	31	76	66	+89
Oklahoma	10	10	10	11	+10	24	17	39	35	+46
Oregon	10	11	11	13	+30	41	46	39	33	-20
Pennsylvania	29	31	31	27	-7	50	42	57	69	+38
Rhode Island	3	2	2	2	-33	7	7	7	11	+57
South Carolina	6	8	8	9	+50	6	7	7	8	+33
South Dakota	3	3	5	5	+67	13	13	19	17	+31
Tennessee	11	11	17	27	+145	15	9	9	24	+60
Texas	22	21	30	30	+36	50	54	47	39	-22
Utah	11	9	9	10	-9	13	11	16	15	+15
Vermont	1	1	1	0	-100	6	9	9	13	+117
Virginia	34	37	40	51	+50	11	6	6	6	-45
Washington	26	27	32	30	+15	64	57	ND	46	-28
West Virginia	9	9	10	9	0	4	6	ND	6	+50
Wisconsin	11	12	10	10	-9	25	24	ND	45	+80
Wyoming	2	2	2	2	0	2	1	ND	1	-50
TOTAL	829	874	992	993	+19.8	1337	1277	1465	1554	+16.2

[1] ND = no data available.

Sources: U.S. Department of Justice. Law Enforcement Assistance Administration. National Criminal Justice Information and Statistics Service. Children in Custody: A Report on the Juvenile Detention and Correctional Facility Census of 1974. (Washington: Government Printing Office, 1974), p. 109, Table C-1; U.S. Department of Justice. Law Enforcement Assistance Administration. Children in Custody: A Report on the Juvenile Detention and Correctional Facility Census of 1975. (Washington: Government Printing Office, 1979), p. 92, Table II-8; U.S. Bureau of the Census, Center for Demographic Studies. Preliminary Results of 1979 Census of Public Juvenile Detention, Correctional, and Shelter Facilities. (Washington: U.S. Bureau of the Census, 1980), Tables 19 and 20.

Table constructed by the NATIONAL JUVENILE JUSTICE SYSTEM ASSESSMENT CENTER (Sacramento, Calif.: American Justice Institute, 1981).

Table C-2

THE NUMBER OF JUVENILE RESIDENTS IN PUBLIC INSTITUTIONS
AND PERCENTAGE CHANGES FOR THE YEARS
1971, 1973, 1974, 1975, 1977, and 1979

YEARS	1971	1973	1974	1975	1977	1979
NUMBER OF JUVENILES	54,729	45,694	44,922	46,980	44,096	43,089
PERCENT CHANGE						
1971 to		(-16.5)	(-1.7*)	(+4.6*)	(-2.3*)	(-6.2*)
1971 to			-17.9			
1971 to				-14.1		
1971 to					-19.4	
1971 to						-21.3

*Figures in parentheses represent year-to-year changes.

Source: U.S. Department of Justice. Office of Juvenile Justice and Delinquency Prevention. "Children in Custody: Advance Report on the 1979 Census of Public Juvenile Facilities." (Washington: U.S. Department of Justice, 1980), Table 1.

Table constructed by the NATIONAL JUVENILE JUSTICE SYSTEM ASSESSMENT CENTER (Sacramento, Calif.: American Justice Institute, 1981).

Table C-3

NUMBER OF RESIDENTS AGES 5-17 IN PRIVATE JUVENILE CUSTODY FACILITIES FOR 1974, 1975, 1977, 1979, BY STATE

STATE	YEAR							
	1974		1975		1977		1979	
	Number of Residents	Rate of Commitment Per 100,000	Number of Residents	Rate of Commitment Per 100,000	Number of Residents	Rate of Commitment Per 100,000	Number of Residents	Rate of Commitment Per 100,000
Alabama	81	9.1	67	7.6	147	17.0	132	15.7
Alaska	119	122.78	121	114.2	163	149.5	231	224.3
Arizona	824	152.0	955	177.2	731	136.6	644	119.7
Arkansas	369	74.8	528	106.5	373	77.1	588	124.8
California	4,639	95.4	3,888	80.4	3,917	82.6	3,932	85.8
Colorado	636	103.6	634	104.3	665	111.6	564	96.7
Connecticut	507	68.5	431	59.1	395	56.9	369	57.2
Delaware	0	--	0	--	0	0	0	0
District of Columbia	18	11.9	NDC	--	82	58.6	NDC	--
Florida	874	49.8	761	43.6	724	42.6	728	43.9
Georgia	577	47.2	294	24.3	301	25.2	263	22.7
Hawaii	51	24.4	42	20.2	58	28.3	21	10.6
Idaho	113	55.7	110	53.9	106	52.0	112	55.2
Illinois	989	36.6	902	34.0	944	36.8	516	21.3
Indiana	919	69.7	726	56.2	822	65.6	954	79.4
Iowa	273	38.9	252	36.4	319	47.9	434	70.1
Kansas	378	71.6	413	79.6	646	128.7	761	160.2
Kentucky	245	30.0	170	21.0	283	35.5	234	30.4
Louisiana	481	47.8	428	42.8	331	33.5	407	42.8
Maine	316	122.5	316	123.4	327	129.8	285	118.3
Maryland	630	61.4	431	42.7	688	71.4	570	63.8
Massacnusetts	1,049	76.5	781	58.1	688	53.8	690	57.8
Michigan	1,379	59.2	1,254	55.0	1,092	49.7	919	44.1
Minnesota	765	76.7	687	69.7	917	97.2	704	79.7
Mississippi	191	31.0	119	19.5	169	28.0	89	15.1
Missouri	738	65.8	523	47.5	587	55.2	514	50.9
Montana	NDC	--	131	70.1	152	84.0	115	66.5
Nebraska	648	173.7	592	162.2	489	138.5	514	154.4
Nevada	111	77.6	60	41.7	NDC	--	91	59.9
New Hampshire	221	111.6	311	157.9	177	91.7	218	113.0
New Jersey	186	10.6	179	10.4	255	15.5	427	27.6
New Mexico	189	61.4	155	50.5	324	106.6	240	81.6
New York	4,165	100.2	3,397	82.9	3,459	88.2	3,319	90.6
North Carolina	229	17.8	213	16.7	403	32.1	472	38.9
North Dakota	115	70.6	111	69.4	115	75.2	91	63.2
Ohio	827	31.4	813	31.6	1,259	51.0	1,193	51.0
Oklahoma	600	97.2	575	94.0	572	94.4	648	109.1
Oregon	599	114.5	487	93.7	443	85.9	414	81.3
Pennsylvania	1,835	67.2	1,549	57.8	1,680	65.7	2,144	89.5
Rhode Island	90	41.3	58	27.2	76	36.9	121	62.7
South Carolina	77	10.9	107	15.3	121	17.6	144	21.4
South Dakota	228	133.3	244	146.1	287	178.3	235	156.7
Tennessee	268	27.4	135	13.9	209	21.7	421	45.1
Texas	1,755	59.1	1,417	47.6	1,564	52.3	1,405	47.3
Utah	210	67.1	120	38.2	163	50.9	211	63.7
Vermont	45	38.8	97	83.6	112	99.1	142	130.3
Virginia	351	29.5	164	13.9	310	26.9	213	
Washington	1,037	123.3	866	103.2	941	113.8	606	74.4
West Virginia	50	12.1	28	6.8	20	4.9	30	7.6
Wisconsin	588	50.6	606	52.9	628	57.3	597	58.1
Wyoming	NDC	--	NDC	--	NDC	--	NDC	--
TOTAL	31,749	62.3 (Average)	27,290	55.4 (Average)	29,070	59.3 (Average)	28,678	61.1 (Average)

NDC = Data not available due to guarantees of confidentiality.

Sources: U.S. Department of Commerce. Bureau of the Census. Current Population Reports: Population Estimates and Projections, Series P-25, No. 875. (Washington: Government Printing Office, 1980), p. 6, Table 3; U.S. Department of Justice, Law Enforcement Assistance Administration. National Criminal Justice Information and Statistics Service. Children in Custody: A Report on the Juvenile Detention and Correctional Facility Census of 1974. (Washington: Government Printing Office, 1974), p. 149, Table C-30: U.S. Department of Justice. Law Enforcement Assistance Administration. National Criminal Justice Information and Statistics Service. Children in Custody: A Report on the Juvenile Detention and Correctional Facility Census of 1975. (Washington: Government Printing Office, 1979), pp. 148-149, Table II-49.

Table constructed by the NATIONAL JUVENILE JUSTICE SYSTEM ASSESSMENT CENTER (Sacramento, Calif.: American Justice Institute, 1981).

Table C-4

NUMBER OF RESIDENTS IN PUBLIC JUVENILE FACILITIES[1] FOR YEARS 1974, 1975, 1977 AND 1979 AND THE PERCENTAGE CHANGE IN THE NUMBER OF JUVENILES AND PUBLIC INSTITUTIONS BETWEEN 1974 AND 1979, BY STATE

STATE	NUMBER OF JUVENILES				PERCENTAGE CHANGE 1974-1979	
	1974	1975	1977	1979	Juveniles	Institutions
Alabama	507	478	474	638	26	100
Alaska	107	122	131	142	33	0
Arizona	544	637	653	574	6	20
Arkansas	460	335	423	313	-32	0
California	8,935	8,720	10,031	10,927	22	2
Colorado	512	527	779	627	22	27
Connecticut	140	176	235	245	75	-20
Delaware	204	209	213	206	1	-17
District of Columbia	637	654	567	434	-32	27
Florida	2,075	2,937	2,026	2,012	-3	6
Georgia	1,422	1,425	1,194	1,156	-19	5
Hawaii	113	128	103	124	10	33
Idaho	135	193	128	195	44	100
Illinois	1,410	1,197	1,208	1,175	-17	-4
Indiana	928	1,028	1,008	1,094	18	23
Iowa	371	369	409	380	2	10
Kansas	524	592	627	664	27	-13
Kentucky	471	569	635	691	47	113
Louisiana	1,170	1,228	923	1,017	-13	7
Maine	187	245	157	181	-3	-50
Maryland	1,148	1,058	972	977	-15	8
Massachusetts	161	130	180	114	-29	43
Michigan	1,711	1,655	1,884	1,795	5	2
Minnesota	721	619	626	746	3	75
Mississippi	601	632	364	353	-41	13
Missouri	1,083	1,124	1,130	1,002	-7	28
Montana	231	231	264	176	-24	133
Nebraska	187	290	242	231	23	25
Nevada	363	375	347	361	<+1	17
New Hampshire	212	204	164	182	-14	0
New Jersey	936	1,102	1,094	1,388	48	78
New Mexico	351	353	373	332	-5	75
New York	1,950	1,950	1,545	1,397	-28	-5
North Carolina	1,089	996	868	729	-33	57
North Dakota	112	117	116	102	-9	0
Ohio	3,168	3,529	2,717	2,541	-20	28
Oklahoma	411	464	918	617	50	10
Oregon	448	543	769	825	84	30
Pennsylvania	1,290	1,441	1,087	1,128	13	-7
Rhode Island	127	124	91	86	-32	-33
South Carolina	789	788	595	623	-21	50
South Dakota	98	141	183	147	50	67
Tennessee	1,256	1,233	1,323	1,125	-10	145
Texas	1,332	1,520	1,952	1,713	29	36
Utah	311	292	233	227	-27	-9
Vermont	100	110	98	0	-100	-100
Virginia	1,369	1,434	1,348	1,400	2	50
Washington	1,228	1,302	1,117	1,025	-17	15
West Virginia	398	437	369	256	-36	0
Wisconsin	757	878	887	676	-11	-9
Wyoming	132	139	140	182	38	0
TOTAL	44,922	46,980	45,920	45,251	<+1	19.8

[1] 1977 and 1979 data include adults in juvenile institutions.

Sources: U.S. Department of Justice. Law Enforcement Assistance Administration. National Criminal Justice Information and Statistics Service. Children in Custody: A Report on the Juvenile Detention and Correctional Facility Census of 1975. (Washington: Government Printing Office, 1979), p. 122, Table II-32; U.S. Department of Justice. Office of Juvenile Justice and Delinquency Prevention. "Children in Custody: Advance Report on the 1979 Census of Public Juvenile Facilities." (Washington: U.S. Department of Justice, 1980), Table 3.

Table constructed by the NATIONAL JUVENILE JUSTICE SYSTEM ASSESSMENT CENTER (Sacramento, Calif.: American Justice Institute, 1981).

Table C-5

TOTAL POPULATION AT RISK, NUMBER OF JUVENILES IN PUBLIC JUVENILE FACILITIES, AND RATE OF COMMITMENT PER 100,000, BY STATE, FOR 1974 AND 1979

STATE	1974			1979		
	Total Population Ages 5-17 (in Thousands)	Number of Juveniles in Public Juvenile Facilities	Rate of Commitment (per 100,000)	Total Population Ages 5-17 (in Thousands)	Number of Juveniles in Public Juvenile Facilities	Rate of Commitment (per 100,000)
Alabama	889	507	57.0	841	638	75.9
Alaska	97	107	110.3	103	142	137.9
Arizona	542	544	100.4	538	574	106.7
Arkansas	493	460	93.3	471	313	66.5
California	4,861	8,935	183.8	4,583	10,927	238.4
Colorado	614	512	83.4	583	627	107.5
Connecticut	740	140	18.9	645	245	38.0
Delaware	144	204	141.7	125	206	164.8
District of Columbia	151	637	421.9	129	434	336.4
Florida	1,754	2,075	118.3	1,660	2,012	121.2
Georgia	1,222	1,422	116.4	1,160	1,156	99.7
Hawaii	209	113	54.1	198	124	62.6
Idaho	203	135	66.5	203	195	96.1
Illinois	2,703	1,410	52.2	2,426	1,175	48.4
Indiana	1,318	928	70.4	1,201	1,094	91.1
Iowa	702	371	52.8	619	308	49.8
Kansas	528	524	99.2	475	664	139.8
Kentucky	816	471	57.7	770	691	89.7
Louisiana	1,007	1,170	116.2	952	1,017	106.8
Maine	258	187	72.5	241	181	75.1
Maryland	1,026	1,148	111.9	893	977	109.4
Massachusetts	1,371	161	11.7	1,193	144	12.1
Michigan	2,329	1,711	73.5	2,086	1,795	86.0
Minnesota	998	721	72.2	883	746	84.5
Mississippi	617	601	97.4	591	353	59.7
Missouri	1,121	1,083	96.6	1,009	1,002	99.3
Montana	189	231	122.2	173	176	101.7
Nebraska	373	187	50.1	333	231	69.4
Nevada	143	363	253.8	152	361	237.5
New Hampshire	198	212	107.1	193	182	94.3
New Jersey	1,751	936	53.5	1,548	1,388	89.7
New Mexico	308	351	114.0	294	332	112.9
New York	4,155	1,950	46.9	3,663	1,397	38.1
North Carolina	1,289	1,089	84.5	1,214	729	60.0
North Dakota	163	112	68.7	144	102	70.8
Ohio	2,631	3,168	120.4	2,339	2,541	108.6
Oklahoma	617	411	66.6	594	614	103.4
Oregon	523	448	85.7	509	825	162.1
Pennsylvania	2,731	1,290	47.2	2,395	1,128	47.1
Rhode Island	218	127	58.3	193	86	44.6
South Carolina	705	789	111.9	672	623	92.7
South Dakota	171	98	57.3	150	147	98.0
Tennessee	977	1,256	128.5	933	1,125	120.6
Texas	2,972	1,332	44.8	2,971	1,713	57.7
Utah	313	311	99.4	331	227	68.6
Vermont	116	100	86.2	109	0	--
Virginia	1,188	1,369	115.2	1,097	1,400	127.6
Washington	841	1,228	146.0	815	1,025	125.8
West Virgnia	413	398	96.4	397	256	64.5
Wisconsin	1,161	757	65.2	1,027	676	65.8
Wyoming	90	132	146.7	97	182	187.6
TOTAL	50,950	44,922	88.2	46,922	45,206	96.3

Sources: U.S. Department of Commerce. Bureau of the Census. Current Population Reports: Population Estimates and Projections, Series P-25, No. 875. (Washington: Government Printing Office, 1980), Tables 1 and 2; U.S. Department of Justice. Law Enforcement Assistance Administration. National Criminal Justice Information and Statistics Service. Children in Custody: A Report on the Juvenile Detention and Correctional Facility Census of 1975. (Washington: Government Printing Office, 1979), p. 122, Table II-32; U.S. Department of Justice. Office of Juvenile Justice and Delinquency Prevention. "Children in Custody: Advance Report on the 1979 Census of Public Juvenile Facilities." (Washington: Department of Justice, 1980), Table 1.

Table constructed by the NATIONAL JUVENILE JUSTICE SYSTEM ASSESSMENT CENTER (Sacramento, Calif.: American Justice Institute, 1981).

Table C-6

PUBLIC INSTITUTIONS BY DESIGN CAPACITY FOR 1974-1975

STATE	PUBLIC INSTITUTIONS					
	1-49		50-199		200+	
	1974	1975	1974	1975	1974	1975
Alabama	54.5	68.8	36.4	31.3	9.1	0
Alaska	50.0	66.7	50.0	33.3	0	0
Arizona	66.7	66.7	33.3	33.3	0	0
Arkansas	66.7	57.1	22.2	42.9	11.1	0
California	35.1	33.6	50.5	51.3	14.4	15.0
Colorado	72.7	70.0	27.3	30.0	0	0
Connecticut	80.0	80.0	20.0	20.0	0	0
Delaware	66.7	66.7	33.3	33.3	0	0
District of Columbia	72.7	75.0	18.2	16.7	9.1	8.3
Florida	77.6	82.4	18.3	15.7	4.1	3.9
Georgia	68.2	70.8	22.7	20.8	9.1	8.3
Hawaii	33.3	33.3	66.7	33.3	0	33.3
Idaho	0	50.0	100.0	50.0	0	0
Illinois	56.0	60.9	36.0	30.4	8.0	8.7
Indiana	53.8	57.2	30.8	28.6	15.4	14.3
Iowa	60.0	66.7	30.0	22.2	10.0	11.1
Kansas	73.3	73.3	26.7	26.7	0	0
Kentucky	50.0	50.0	50.0	50.0	0	0
Louisiana	42.9	38.5	42.9	46.2	14.3	15.4
Maine	0	0	50.0	50.0	50.0	50.0
Maryland	69.2	69.2	7.7	15.4	23.1	15.4
Massachusetts	100.0	100.0	0	0	0	0
Michigan	77.1	78.3	16.7	15.2	6.3	6.5
Minnesota	41.7	50.0	50.0	50.0	8.3	--
Mississippi	75.0	75.0	0	0	25.0	25.0
Missouri	79.5	81.8	20.5	18.2	0	0
Montana	0	40.0	100.0	60.0	0	0
Nebraska	50.0	50.0	25.0	25.0	25.0	25.0
Nevada	33.3	33.3	66.7	66.7	0	0
New Hampshire	0	0	100.0	100.0	0	0
New Jersey	71.4	76.7	21.4	20.0	7.1	3.3
New Mexico	25.0	25.0	50.0	50.0	25.0	25.0
New York	69.0	71.6	27.6	25.7	3.4	2.7
North Carolina	50.0	53.4	21.4	33.3	28.6	13.3
North Dakota	66.7	85.7	33.3	14.3	0	0
Ohio	51.3	58.7	38.5	32.6	10.3	8.7
Oklahoma	70.0	70.0	30.0	30.0	0	0
Oregon	80.0	81.9	10.0	9.1	10.0	9.1
Pennsylvania	62.1	64.5	34.5	32.3	3.4	3.2
Rhode Island	66.7	50.0	33.3	50.0	0	0
South Carolina	33.3	50.0	0	25.0	66.7	25.0
South Dakota	66.7	66.7	33.3	33.3	0	0
Tennessee	27.3	27.3	45.5	45.5	27.3	27.3
Texas	54.5	57.1	22.7	23.8	22.7	19.0
Utah	81.8	77.8	18.2	22.2	0	0
Vermont	0	0	100.0	100.0	0	0
Virginia	70.6	73.0	23.5	21.6	5.9	5.4
Washington	69.2	66.7	26.9	29.6	3.8	3.7
West Virginia	44.4	55.6	44.4	44.4	11.1	0
Wisconsin	54.5	58.3	27.3	25.0	18.2	16.7
Wyoming	0	0	100.0	100.0	0	0

Sources: U.S. Department of Justice. Law Enforcement Assistance Administration. National Criminal Justice Information and Statistics Service. Children in Custody: A Report on the Juvenile Detention and Correctional Facility Census of 1974. (Washington: Government Printing Office, 1974), p. 122, Table C-8; U.S. Department of Justice. Law Enforcement Assistance Administration. National Criminal Justice Information and Statistics Service. Children in Custody: A Report on the Juvenile Detention and Correctional Facility Census of 1975. (Washington: Government Printing Office, 1979), p. 90, Table II-6.

Table constructed by the NATIONAL JUVENILE JUSTICE SYSTEM ASSESSMENT CENTER (Sacramento, Calif.: American Justice Institute, 1981).

Table C-7

STATES LISTED BY INCREASES OR DECREASES IN NUMBER OF LARGE AND SMALL PUBLIC FACILITIES

Closed Large Facilities, Open Small Facilities (N=25)	Remained the Same (N=19)	Number of Increased Large Facilities With Some Increase of Number of Small Facilities (N=7)
Alabama	Arizona	California
Alaska	Connecticut	Colorado
Arkansas	Delaware	Hawaii
District of Columbia	Kansas	Illinois
Florida	Kentucky	Iowa
Georgia	Maine	Louisiana
Idaho	Massachusetts	Rhode Island
Indiana	Michigan	
Maryland	Mississippi	
Minnesota	Nebraska	
Missouri	Nevada	
Montana	New Hampshire	
New Jersey	New Mexico	
New York	Oklahoma	
North Carolina	South Dakota	
North Dakota	Tennessee	
Ohio	Vermont	
Oregon	Washington	
Pennsylvania	Wyoming	
South Carolina		
Texas		
Utah		
Virginia		
West Virginia		
Wisconsin		

Sources: U.S. Department of Justice. Law Enforcement Assistance Administration. National Criminal Justice Information and Statistics Service. Children in Custody: A Report on the Juvenile Detention and Correctional Facility Census of 1974. (Washington: Government Printing Office, 1974), p. 122, Table C-8; U.S. Department of Justice. Law Enforcement Assistance Administration. National Criminal Justice Information and Statistics Service. Children in Custody: A Report on the Juvenile Detention and Correctional Facility Census of 1975. (Washington: Government Printing Office, 1979), p. 90, Table II-6.

Table constructed by the NATIONAL JUVENILE JUSTICE SYSTEM ASSESSMENT CENTER (Sacramento, Calif.: American Justice Institute, 1981).

Table C-8

PERCENTAGE OF PRIVATE INSTITUTIONS BY DESIGN CAPACITY
1974 AND 1975

STATE	PERCENTAGE OF DESIGN CAPACITY										
	1974					1975					
	TOTAL NUMBER of INSTITUTIONS	LESS THAN 10	10 - 24	25 -49	50 +	TOTAL NUMBER of INSTITUTIONS	LESS THAN 10	10 - 24	25 - 49	50 - 99	100 +
Alabama	9	ND	44.4	0	ND	8	ND	37.5	0	ND	0
Alaska	8	ND	ND	ND	ND	13	46.2	ND	ND	0	0
Arizona	46	39.1	ND	ND	ND	45	ND	42.2	13.3	8.9	ND
Arkansas	11	ND	ND	ND	ND	20	55.0	ND	ND	ND	ND
California	243	43.6	30.9	ND	13.2	249	51.0	32.1	8.0	7.6	1.2
Colorado	33	24.2	ND	ND	9.1	32	21.9	56.3	ND	ND	0
Connecticut	28	35.7	ND	0	ND	24	25.0	62.5	0	12.5	0
Delaware	0	0	0	0	0	0	0	0	0	0	0
District of Columbia	3	ND	ND	0	0	3	100.0	0	0	0	0
Florida	20	0	ND	ND	30.0	16	0	ND	ND	37.5	ND
Georgia	16	18.7	ND	ND	37.5	13	ND	ND	ND	ND	0
Hawaii	4	ND	0	0	ND	5	ND	0	ND	0	0
Idaho	9	ND	ND	ND	ND	9	55.6	ND	ND	0	0
Illinois	29	17.2	ND	ND	31.0	26	19.2	ND	34.6	19.2	ND
Indiana	28	17.9	ND	ND	39.3	22	31.8	ND	27.3	13.6	ND
Iowa	23	60.9	ND	ND	0	25	ND	ND	ND	0	0
Kansas	29	58.6	ND	ND	ND	36	ND	ND	11.1	ND	0
Kentucky	11	ND	ND	ND	27.3	8	ND	ND	ND	ND	0
Louisiana	16	25.0	ND	ND	31.3	18	ND	ND	38.9	16.7	0
Maine	14	ND	ND	ND	ND	18	33.3	ND	27.8	ND	0
Maryland	40	35.0	47.5	ND	ND	31	35.5	48.4	ND	ND	0
Massachusetts	61	23.0	54.1	11.6	9.8	45	ND	60.0	11.1	ND	0
Michigan	45	22.2	ND	ND	17.8	42	19.0	35.7	26.2	9.5	9.5
Minnesota	50	26.0	ND	ND	ND	46	ND	54.3	15.2	ND	0
Mississippi	6	0	ND	ND	ND	6	ND	ND	ND	ND	0
Missouri	30	23.3	ND	ND	23.3	26	30.8	34.6	23.1	ND	ND
Montana	5	ND	0	ND	0	8	ND	ND	ND	ND	0
Nebraska	10	0	ND	ND	ND	11	0	ND	27.3	0	ND
Nevada	4	ND	ND	0	ND	4	0	100.0	0	0	0
New Hampshire	13	30.8	ND	ND	ND	13	23.1	ND	23.1	ND	0
New Jersey	8	0	ND	ND	ND	11	ND	54.5	ND	ND	0
New Mexico	9	ND	ND	ND	ND	7	ND	ND	ND	ND	0
New York	96	37.5	ND	ND	ND	84	ND	ND	15.5	11.9	11.9
North Carolina	10	60.0	0	ND	ND	8	62.5	0	ND	0	ND
North Dakota	4	0	ND	ND	0	5	ND	0	ND	0	0
Ohio	35	28.6	ND	ND	17.1	31	29.0	ND	9.7	19.4	ND
Oklahoma	24	16.7	ND	ND	25.0	17	ND	ND	29.4	23.5	0
Oregon	41	29.3	ND	ND	7.3	46	60.9	ND	ND	ND	0
Pennsylvania	50	22.0	ND	ND	24.0	42	21.4	26.2	28.6	14.3	9.5
Rhode Island	7	57.1	ND	0	ND	7	ND	ND	0	0	0
South Carolina	6	ND	ND	ND	0	7	ND	ND	ND	0	0
South Dakota	13	46.2	ND	0	23.1	13	ND	ND	ND	ND	0
Tennessee	15	26.7	ND	ND	ND	9	ND	ND	11.1	ND	0
Texas	50	24.0	ND	ND	28.0	54	22.2	38.9	18.5	13.0	7.4
Utah	13	ND	ND	0	ND	11	0	ND	ND	0	0
Vermont	6	ND	ND	0	0	9	66.7	ND	ND	0	0
Virginia	11	27.3	ND	0	45.5	6	ND	ND	0	ND	0
Washington	64	25.0	ND	ND	6.3	57	31.6	45.6	17.5	5.3	0
West Virginia	4	ND	0	ND	ND	6	100.0	0	0	0	0
Wisconsin	25	44.0	ND	ND	ND	24	45.8	ND	25.0	16.7	0
Wyoming	2	ND	ND	ND	ND	1	ND	0	ND	0	0

ND = No data available.

Sources: U.S. Department of Justice. Office of Juvenile Justice and Delinquency Prevention. "Children in Custody: Advance Report on the 1979 Census of Public Juvenile Facilities." (Washington: Department of Justice, 1980), p. 128, Table C-14; U.S. Department of Justice. Law Enforcement Assistance Administration. National Criminal Justice Information and Statistics Service. Children in Custody: A Report on the Juvenile Detention and Correctional Facility Census of 1975. (Washington: Government Printing Office, 1979), p. 91, Table II-7.

Table constructed by the NATIONAL JUVENILE JUSTICE SYSTEM ASSESSMENT CENTER (Sacramento, Calif.: American Justice Institute, 1981).

TABLE C-9

JUVENILES DETAINED IN AND COMMITTED TO SECURE JUVENILE FACILITIES
BY TYPE OF FACILITY FOR 1977 AND 1979

1977 SECURE FACILITIES BY TYPE	TOTAL NUMBER OF JUVENILES IN SECURE JUVENILE FACILITIES	PERCENT	DETAINED								COMMITTED					
			TOTAL	PERCENT**	DELINQUENT	PERCENT	NONDELINQUENT	PERCENT	VOLUNTARILY ADMITTED	PERCENT	TOTAL	PERCENT	DELINQUENT	PERCENT	NONDELINQUENT	PERCENT
TRAINING SCHOOLS	13,211 (50.9)	100.1	114 (1.1)	0.9	113 (1.3)	0.9	1 (0.1)	<0.1	0 (0)	0	13,097 (83.5)	99.2	12,452 (84.0)	94.3	645 (73.9)	4.9
RANCHES, CAMPS, AND FARMS	1,141 (4.4)	100.0	0 (0)	0	0 (0)	0	0 (0)	0	0 (0)	0	1,141 (7.3)	100.0	1,037 (7.0)	90.9	104 (11.9)	9.1
RECEPTION AND DIAGNOSTIC CENTERS	1,412 (5.4)	99.9	373 (3.6)	26.4	298 (3.4)	21.1	75 (5.4)	5.3	0 (0)	0	1,039 (6.6)	73.5	1,006 (6.8)	71.2	33 (3.8)	2.3
DETENTION CENTERS	9,895 (38.1)	99.9	9,622 (93.8)	97.2	8,381 (94.7)	84.7	1,241 (89.7)	12.5	0 (0)	0	273 (1.7)	2.7	210 (1.4)	2.1	63 (7.2)	0.6
SHELTER FACILITIES*	112 (0.4)	100.0	112 (1.1)	100.0	46 (0.5)	41.1	66 (4.8)	58.9	0 (0)	0	0 (0)	0	0 (0)	0	0 (0)	0
HALFWAY HOUSES,* GROUP AND FOSTER HOMES	180 (0.7)	100.0	37 (0.4)	20.5	15 (0.2)	8.3	0 (0)	0	22 (100.0)	12.2	143 (0.9)	79.5	115 (0.8)	63.9	28 (3.2)	15.6
TOTAL FOR 1977	25,951 (99.9)	99.9	10,258 (100.0)	39.4	8,853 (100.1)	34.1	1,383 (100.0)	5.3	22 (100.0)	<0.1	15,693 (100.0)	60.5	14,820 (100.0)	57.1	873 (100.0)	3.4
1979																
TRAINING SCHOOLS	15,932 (54.2)	100.0	335 (3.1)	2.1	326 (3.3)	2.0	1 (0.1)	0.1	8 (10.0)	<0.1	15,597 (84.0)	97.9	15,355 (84.7)	96.4	242 (54.4)	1.5
RANCHES, CAMPS, AND FARMS	1,658 (5.6)	100.0	15 (0.1)	0.9	0 (0)	0	0 (0)	0	15 (18.8)	0.9	1,643 (8.8)	99.1	1,591 (8.8)	96.0	52 (11.7)	3.1
RECEPTION AND DIAGNOSTIC CENTERS	1,042 (3.5)	100.0	319 (2.9)	30.6	298 (3.0)	28.6	21 (2.4)	2.0	0 (0)	0	723 (3.9)	69.4	696 (3.8)	66.8	27 (6.1)	2.6
DETENTION CENTERS	10,308 (35.1)	100.0	10,059 (92.8)	97.6	9,235 (93.5)	89.6	816 (93.5)	7.9	8 (10.0)	<0.1	249 (1.3)	2.4	233 (1.3)	2.3	16 (3.6)	0.2
SHELTER FACILITIES*	58 (0.2)	100.0	54 (0.5)	93.1	20 (0.2)	34.5	32 (3.7)	55.2	2 (2.5)	3.4	4 (0.1)	6.9	0 (0)	0	4 (0.9)	6.9
HALFWAY HOUSES,* GROUP AND FOSTER HOMES	404 (1.4)	100.0	53 (0.5)	13.1	3 (<0.1)	0.7	3 (0.3)	0.7	47 (58.8)	11.6	351 (1.9)	86.9	247 (1.4)	61.1	104 (23.4)	25.7
TOTAL FOR 1979	29,402 (100.0)	100.0	10,835 (100.0)	36.9	9,882 (100.0)	33.6	873 (100.0)	3.0	80 (100.0)	0.3	18,567 (100.0)	63.1	18,122 (100.0)	63.1	445 (100.0)	1.5

*Shelter facilities, halfway houses, group homes, and foster homes are not usually secure, but a small number of them are secure.

**Percentages may not total 100.0 due to rounding.

Note: Two percentages are presented; the horizontal percentage (column) and the vertical percentage (row in parentheses).

Source: U.S. Bureau of the Census. Preliminary Results of the 1979 Census of Public Juvenile Detention, Correctional and Shelter Facilities, Tables 19 and 20. (U.S. Bureau of the Census. Center for Demographic Studies, 1980).

Table constructed by the NATIONAL JUVENILE JUSTICE SYSTEM ASSESSMENT CENTER (Sacramento, Calif.: American Justice Institute, 1981).

Table C-10

THE NUMBER OF JUVENILES IN ADULT JAILS AND THE RATE OF COMMITMENT BY STATE, 1970 AND 1978*

	1970		1978	
STATE	Number of Juveniles in Adult Jails	Rate of Commitment Per 100,000 Ages 5-17	Number of Juveniles in Adult Jails	Rate of Commitment Per 100,000 Ages 5-17
Alabama	87	9.3	22	2.6
Alaska	2	2.3	1	1.0
Arizona	33	6.8	17	3.2
Arkansas	45	9.1	57	11.8
California	186	3.7	113	2.4
Colorado	47	8.0	23	3.9
Connecticut	NA	--	NA	--
Delaware	NA	--	NA	--
District of Columbia	2	1.2	0	--
Florida	142	8.8	42	2.5
Georgia	132	10.8	9	0.8
Hawaii	0	--	NA	--
Idaho	40	20.0	41	20.2
Illinois	106	3.7	23	0.9
Indiana	249	18.0	152	12.3
Iowa	41	5.5	10	1.5
Kansas	75	13.1	64	13.0
Kentucky	78	9.2	60	7.7
Louisiana	61	5.9	15	1.5
Maine	2	0.8	6	2.4
Maryland	106	10.2	0	--
Massachusetts	0	0	0	--
Michigan	29	1.2	21	1.0
Minnesota	73	6.9	13	1.4
Mississippi	73	11.5	68	11.4
Missouri	52	4.4	20	1.9
Montana	53	27.0	20	11.2
Nebraska	44	11.3	38	11.1
Nevada	15	11.9	16	10.8
New Hampshire	0	--	8	4.1
New Jersey	126	7.0	0	--
New Mexico	46	14.8	39	13.1
New York	4,550	104.4	84	2.2
North Carolina	37	2.8	32	2.6
North Dakota	3	1.7	1	0.7
Ohio	203	7.2	88	3.6
Oklahoma	48	7.5	28	4.6
Oregon	59	11.0	17	3.3
Pennsylvania	254	8.7	1	<0.1
Rhode Island	NA	--	NA	--
South Carolina	41	5.7	34	5.0
South Dakota	26	13.9	23	14.8
Tennessee	79	7.9	61	6.4
Texas	169	5.6	64	2.2
Utah	10	3.2	1	0.3
Vermont	0		NA	--
Virginia	172	14.4	155	13.8
Washington	40	4.5	16	2.0
West Virginia	52	11.8	22	5.5
Wisconsin	79	6.6	62	5.8
Wyoming	25	27.2	24	25.5
TOTAL	7,792	14.8	1,611	3.3

*States with data not available (NA) are those identified by the National Jail Census as having an integrated, State-administered jail-prison system.

Sources: U.S. Department of Justice. Law Enforcement Assistance Administration. National Criminal Justice Information and Statistics Service. Local Jails: A Report Presenting Data for Individual County and City Jails from the 1970 National Census, Series SC-1A. (Washington: Government Printing Office, 1973); U.S. Department of Justice. Law Enforcement Assistance Administration. National Criminal Justice Information and Statistics Service. Bureau of the Census. National Prisoner Statistics Bulletin, SD-NPS-JS-6P. (Washington: Government Printing Office, 1979); U.S. Department of Commerce. Bureau of the Census. General Population Characteristics, Final Report, PC (1)-B. (Washington: Government Printing Office, 1973), Parts 2-52, Table 20; U.S. Department of Commerce. Bureau of the Census. Population Estimates and Projections, Series P-25, No. 794. (Washington: Government Printing Office, 1979), p. 2, Table 1.

Table constructed by the NATIONAL JUVENILE JUSTICE SYSTEM ASSESSMENT CENTER (Sacramento, Calif.: American Justice Institute, 1981).

Table C-11

NUMBER OF JUVENILES IN ADULT JAILS AND ADULT DETENTION FACILITIES BASED ON SURVEY AND PROJECTIONS, BY STATE, 1978

STATE	Number of Juveniles in Jails According to Limited Sample	Projections of the Number of Juveniles in Jails for the U.S.	Rate of Commitment Per 100,000 Population Ages 5-17
Alabama	8	23	2.7
Alaska	NA	--	--
Arizona	2	38	7.1
Arkansas	17	265	55.3
California	1	3	<0.1
Colorado	70	255	43.2
Connecticut	NA	--	--
Delaware	NA	--	--
District of Columbia	NA	--	--
Florida	34	56	3.3
Georgia	10	36	3.1
Hawaii	NA	--	--
Idaho	7	21	10.3
Illinois	47	1,052	42.0
Indiana	36	93	7.5
Iowa	2	6	0.9
Kansas	40	136	27.7
Kentucky	0	0	0
Louisiana	5	179	18.4
Maine	0	0	0
Maryland	7	16	1.7
Massachusetts	3	38	3.1
Michigan	50	107	5.0
Minnesota	10	26	2.9
Mississippi	0	0	0
Missouri	5	15	1.4
Montana	21	130	73.0
Nebraska	27	121	35.2
Nevada	9	15	10.0
New Hampshire	4	40	20.4
New Jersey	10	28	1.8
New Mexico	3	19	6.4
New York	63	143	3.8
North Carolina	81	325	26.3
North Dakota	3	29	19.6
Ohio	27	147	6.1
Oklahoma	12	205	34.2
Oregon	1	5	1.0
Pennsylvania	2	8	0.3
Rhode Island	NA	--	--
South Carolina	0	0	0
South Dakota	12	45	29.0
Tennessee	17	82	8.6
Texas	28	104	3.5
Utah	0	0	0
Vermont	NA	--	--
Virginia	32	93	8.2
Washington	10	75	9.2
West Virginia	7	24	6.0
Wisconsin	9	23	2.2
Wyoming	9	35	37.2
TOTAL	741	4,061	8.5

NA = No data available.

Sources: Lowell, Harvey D.; and McNabb, Margaret. Sentenced Prisoners Under 18 Years of Age in Adult Correctional Facilities: A National Survey. (Washington: The National Center on Institutions and Alternatives, 1980), p. 57, Appendix H; U.S. Department of Commerce. Bureau of the Census. Population Estimates and Projections, Series P-25, No. 875. (Washington: Government Printing Office, 1980), Table 2.

Table constructed by the NATIONAL JUVENILE JUSTICE SYSTEM ASSESSMENT CENTER (Sacramento, Calif.: American Justice Institute, 1981).

Table C-12

TOTAL NUMBER OF JUVENILES IN ADULT JAILS[1] AND RATE OF COMMITMENT, BY STATE, FOR VARIOUS YEARS RANGING FROM 1972-1977

STATE	Number of Juveniles in Adult Jails	Rate of Commitment Per 100,000 Ages 5-17
Alabama[6]	4,172	473.5
Alaska[4]	988	923.4
Arizona[4]	0	0
Arkansas[4]	5,106	1029.4
California[7]	2,837	58.7
Colorado[4]	4,750	782.5
Connecticut[4]	0	0
Delaware[4]	0	0
District of Columbia[4]	0	0
Florida	NA	--
Georgia[4]	1,769	145.9
Hawaii[3]	47	22.6
Idaho[8]	5,548	2733.0
Illinois[4]	4,785	179.8
Indiana	NA	--
Iowa[5]	4,445	643.3
Kansas[3]	1,783	344.2
Kentucky[3]	6,214	769.1
Louisiana[5]	2,352	236.6
Maine[4]	1,054	411.7
Maryland[4]	785	78.4
Massachusetts[4]	0	0
Michigan[4]	1,177	51.4
Minnesota[4]	5,701	587.7
Mississippi[4]	1,675	276.6
Missouri[4]	2,075	187.5
Montana[4]	3,434	1846.2
Nebraska[4]	290	79.4
Nevada	NA	--
New Hampshire[4]	130	66.3
New Jersey[4]	0	0
New Mexico[4]	5,940	1934.8
New York[4]	7	0.2
North Carolina[4]	2,706	211.6
North Dakota[4]	415	261.0
Ohio[4]	7,031	272.5
Oklahoma[2]	2,880	472.9
Oregon[4]	5,075	977.8
Pennsylvania[4]	3,196	118.8
Rhode Island[4]	0	0
South Carolina	NA	--
South Dakota[4]	1,882	1126.9
Tennessee[4]	3,220	333.0
Texas[6]	5,196	174.4
Utah[4]	1,100	350.3
Vermont[4]	0	--
Virginia[5]	5,584	474.8
West Virginia[4]	2,003	492.1
Wisconsin[3]	10,688	934.3
Wyoming[4]	2,074	2279.1

[1]Rates of commitment based on population at risk for
[2]the year data was reported.
[3]For year 1972.
[4]For year 1974.
[5]For year 1975.
[6]For year 1975-76.
[7]For year 1976.
[8]For year 1976-77.
For year 1977.

NA = No data available.

Source: Poulin, John E.; Levitt, John L.; Young, Thomas M.; and Pappenfort, Donnell M. Reports of the National Juvenile Justice Assessment Centers. (Washington: National Institute for Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, U.S. Department of Justice, 1980), pp. 13 and 18, Tables 3 and 5.

Table constructed by the NATIONAL JUVENILE JUSTICE SYSTEM ASSESSMENT CENTER (Sacramento, Calif.: American Justice Institute, 1981).

Table C-13

THE RATE OF COMMITMENT TO JAIL PER 100,000 POPULATION AGES 5-17, THE TOTAL NUMBER OF JUVENILE FACILITIES OPERATED AS HIGHLY OR MODERATELY RESTRICTIVE, AND THE AGE OF JURISDICTION, BY STATE

STATE	1979 Rate of Commitment to Jail Per 100,000 Ages 5-17	1979 Percentage of Total Juvenile Facilities Highly or Moderately Restrictive	Age of Jurisdiction (Under)
Wyoming	25.5	0	18
Idaho	20.2	44	18
South Dakota	14.8	66	18
Virginia	13.8	51	18
New Mexico	13.1	35	18
Kansas	13.0	39	18
Indiana	12.3	37	18
Arkansas	11.8	45	18
Mississippi	11.4	63	18
Montana	11.2	22	18
Nebraska	11.1	47	18
Nevada	10.8	75	18
Kentucky	7.7	40	18
Tennessee	6.4	42	18
Wisconsin	5.8	29	18
West Virginia	5.5	44	18
South Carolina	5.0	29	17
Oklahoma	4.6	32	18
New Hampshire	4.1	0	18
Colorado	3.9	36	18
Ohio	3.6	50	18
Oregon	3.3	50	18
Arizona	3.2	38	18
Alabama	2.6	37	18
North Carolina	2.6	32	16
Florida	2.5	47	18
California	2.4	49	18
Maine	2.4	28	18
Texas	2.2	39	17
New York	2.2	29	16
Washington	2.0	40	18
Missouri	1.9	43	17
Louisiana	1.5	44	17
Iowa	1.5	27	18
Minnesota	1.4	35	18
Michigan	1.0	44	17
Alaska	1.0	41	18
Illinois	0.9	42	17
Georgia	0.8	68	17
North Dakota	0.7	38	18
Utah	0.3	44	18
Pennsylvania	0.1	46	18
Delware	--	100	18
Hawaii	--	50	18
Massachusetts	--	45	17
New Jersey	--	43	18
Connecticut	--	39	16
Rhode Island	--	38	18
District of Columbia	--	31	18
Maryland	--	29	18
Vermont	--	18	16

Sources: U.S. Department of Justice. Law Enforcement Assistance Administration. National Criminal Justice Information and Statistics Service. Bureau of the Census. National Prisoner Statistics Bulletin, SD-NPS-JS-6P. (Washington: Government Printing Office, 1979); U.S. Department of Commerce. Bureau of the Census. General Population Characteristics Final Report, PC(1)-B. (Washington: Government Printing Office, 1973), Parts 2-52, Table 20 (Corrected); U.S. Department of Commerce. Bureau of the Census. Population Estimates and Projections, Series P-25, No. 794. (Washington: Government Printing Office), Table 1.

Table constructed by the NATIONAL JUVENILE JUSTICE SYSTEM ASSESSMENT CENTER (Sacramento, Calif.: American Justice Institute, 1981).

Table C-14

THE POPULATION UNDER 18 IN STATE PRISONS AND RATES OF COMMITMENT BY STATE FOR 1973, 1978, AND 1979

STATE	1973		1978		1979	
	Population Under 18 in State Prisons	Rate of Commitment Per 100,000 Age 14-17	Population Under 18 in State Prisons	Rate of Commitment Age 14-17	Population Under 18 in State Prisons	Rate of Commitment Per 100,000 Age 14-17
Alabama	143	48.0	--	--	58	20.1
Alaska	0	--	4	17.4	0	--
Arizona	8	4.6	8	5.5	7	3.9
Arkansas	31	19.0	190	123.3	59	36.0
California	1	<0.1	19	1.3	14	0.9
Colorado	5	2.5	0	--	8	4.0
Connecticut	1	0.4	779	343.2	271	116.3
Delaware	0	--	0	--	0	--
District of Columbia	9	18.4	7	14.6	4	9.3
Florida	54	9.4	135	27.7	198	33.8
Georgia	90	23.0	122	33.2	115	29.9
Hawaii	0	--	0	--	0	--
Idaho	0	--	0	--	1	1.4
Illinois	26	2.9	197	23.3	52	6.2
Indiana	26	6.0	83	19.9	44	10.7
Iowa	4	1.7	39	17.2	9	4.0
Kansas	4	2.2	3	1.7	20	11.9
Kentucky	31	11.5	102	39.4	4	1.5
Louisiana	18	5.5	10	3.2	24	7.3
Maine	11	13.0	0	--	6	7.1
Maryland	105	31.8	79	26.1	89	27.9
Massachusetts	28	6.3	14	3.4	6	1.4
Michigan	73	9.4	400	54.3	92	12.9
Minnesota	9	2.7	13	4.2	6	1.9
Mississippi	16	7.8	14	7.2	43	21.8
Missouri	58	15.4	570	160.1	17	4.8
Montana	0	--	8	13.1	0	--
Nebraska	15	12.1	19	16.2	6	5.0
Nevada	1	2.3	3	8.6	5	9.1
New Hampshire	2	3.3	3	5.5	3	4.4
New Jersey	8	1.4	285	53.7	13	2.4
New Mexico	2	2.0	2	2.2	4	3.9
New York	258	19.1	2,038	156.6	321	25.1
North Carolina	453	106.8	299	72.6	596	146.1
North Dakota	0	--	1	1.8	2	3.8
Ohio	21	2.4	380	447.1	196	24.7
Oklahoma	18	8.7	32	16.1	18	8.8
Oregon	5	2.9	82	75.2	13	7.4
Pennsylvania	136	14.7	38	4.2	30	2.2
Rhode Island	0	--	0	--	0	--
South Carolina	148	64.1	369	164.0	51	22.4
South Dakota	0	--	--	--	5	9.3
Tennessee	7	2.2	59	19.1	8	2.5
Texas	20	2.1	126	13.9	144	14.5
Utah	2	2.0	2	2.1	2	2.0
Vermont	6	16.2	1	2.9	19	51.3
Virginia	80	20.5	134	37.2	58	15.0
Washington	6	2.2	21	7.7	34	11.8
West Virginia	3	2.1	116	81.7	0	--
Wisconsin	10	2.6	17	4.7	16	4.2
Wyoming	1	3.3	28	96.5	2	6.1
TOTAL	1,953[1]	11.7	6,851[2]	45.6	2,693	16.5

[1] Column total differs from that in Lowell and McNabb (1980, Appendix A, p. 50). Addition error may be the cause.

[2] Federal data excluded.

Sources: U.S. Department of Justice. Law Enforcement Assistance Administration. National Criminal Justice Information and Statistics Service. The Census of Prisoners in State Correctional Facilities, NPS Special Report, No. SD-NPS-SR-3. (Washington: Government Printing Office, 1973); Lowell, Harvey D.; and McNabb, Margaret. Sentenced Prisoners Under 18 Years of Age in Adult Correctional Facilities: A National Survey. (Washington: The National Center on Institutions and Alternatives, 1980), Appendix A; U.S. Department of Commerce. Bureau of the Census. Current Population Reports, Population Estimates and Projections, Series P-25, No. 875. (Washington: Government Printing Office, 1980), Tables I and 3; U.S. Department of Commerce. Bureau of the Census. Survey of State and Federal Adult Correctional Facilities, PC-2. (Washington: Government Printing Office, 1978).

Table constructed by the NATIONAL JUVENILE JUSTICE SYSTEM ASSESSMENT CENTER (Sacramento, Calif.: American Justice Institute, 1981).

Table C-15

RATE OF COMMITMENT OF PERSONS UNDER 18 TO STATE ADULT CORRECTIONAL FACILITIES AND BY THE AGE OF JURISDICTION, 1978

STATE	Rate of Commitment to State Adult Correctional Facilities Per 100,000 Ages 14-17	Maximum Age of Jurisdiction
Ohio	447.1	18
Connecticut	343.2	16
South Carolina	164.0	17
Missouri	160.1	17
New York	156.6	16
Arkansas	123.3	18
Wyoming	96.5	18
West Virginia	81.7	18
Oregon	75.2	18
North Carolina	72.6	16
Michigan	54.3	17
New Jersey	53.7	18
Kentucky	39.4	18
Virginia	37.2	18
Georgia	33.2	17
Florida	27.7	18
Maryland	26.1	18
Illinois	23.3	17
Indiana	19.9	18
Tennessee	19.1	18
Alabama	17.4	18
Iowa	17.2	18
Nebraska	16.2	18
Oklahoma	16.1	18
District of Columbia	14.6	18
Texas	13.9	17
Montana	13.1	18
Nevada	8.6	18
Washington	7.7	18
Mississippi	7.2	18
New Hampshire	5.5	18
Arizona	5.5	18
Wisconsin	4.7	18
Minnesota	4.2	18
Pennsylvania	4.2	18
Massachusetts	3.4	17
Louisiana	3.2	17
Vermont	2.9	16
New Mexico	2.2	18
Utah	2.1	18
North Dakota	1.8	18
Kansas	1.7	18
California	1.3	18
Colorado	0	18
Delaware	0	18
Hawaii	0	18
Idaho	0	18
Maine	0	18
Rhode Island	0	18
South Dakota	0	18

Sources: U.S. Department of Justice. Law Enforcement Assistance Administration. National Criminal Justice Information and Statistics Service. The Census of Prisoners in State Correctional Facilities, NPS Special Report, No. SD-NPS-SR-3. (Washington: Government Printing Office, 1973); The Academy for the Study of Contemporary Problems. "Juveniles in Criminal Courts," Working Papers. (The Academy for the Study of Contemporary Problems, n.d.), Appendix B, Table 4.

Table constructed by the NATIONAL JUVENILE JUSTICE SYSTEM ASSESSMENT CENTER (Sacramento, Calif.: American Justice Institute, 1981).

Table C-16

NUMBER OF JUVENILES WAIVED TO ADULT COURT, NUMBER AND PERCENT SENTENCED TO JAIL AND ADULT CORRECTIONS, AND RATE OF COMMITMENT TO JAILS AND ADULT CORRECTIONS BY STATE

STATE	Number of Juveniles Waived to Adult Court	Number Sentenced to Jail	Percent of Total Sentenced to Jail	Rate of Commitment Per 100,000 Ages 14-17	Number Sentenced to Adult Corrections	Percent of Total Sentenced to Adult Corrections	Rate of Commitment Per 100,000 Ages 14-17
Alabama	118	25	21.2		42	36	14.5
Alaska	NA	--	--	--	NA	--	--
Arizona	45	26	57.7	18.0	16	35	11.1
Arkansas	NA	--	--	--	NA	--	--
California	NA	--	--	--	NA	--	--
Colorado	14	0	0	0	8	57	4.6
Connecticut	5	0	0	0	1	20	0.4
Delaware	9	2	22	4.7	2	22	4.7
District of Columbia	58	0	0	0	0	0	0
Florida	NA	--	--	--	NA	--	--
Georgia	21	0	0	0	17	81	4.6
Hawaii	13	0	0	0	5	39	8.3
Idaho	7	0	0	0	7	100	11.1
Illinois	37	0	0	0	8	22	0.9
Indiana	128	4	3	1.0	91	71	21.8
Iowa	263	15	6	6.6	21	10	11.5
Kansas	25	0	0	0	10	40	5.6
Kentucky	16	6	7	2.3	8	50	3.1
Louisiana	NA	--	--	--	NA	--	--
Maine	28	2	7	2.6	7	25	9.0
Maryland	NA	--	--	--	NA	--	--
Massachusetts	NA	--	--	--	NA	--	--
Michigan	44	0	0	0	31	71	4.2
Minnesota	199	61	31	19.5	17	9	5.4
Mississippi	240	32	13	16.4	33	14	16.9
Missouri	10	0	0	0	1	10	0.3
Montana	NA	--	--	--	NA	--	--
Nebraska	NA	--	--	--	NA	--	--
Nevada	NA	--	--	--	NA	--	--
New Hampshire	11	0	0	0	0	0	0
New Jersey	43	1	2.3	0.2	25	58	4.7
New Mexico	8	0	0	0	7	87	7.7
New York	NA	--	--	--	NA	--	--
North Carolina	NA	--	--	--	37	50	9.0
North Dakota	45	0	0	0.1	1	2	1.8
Ohio	84	6	7	7	66	79	77.6
Oklahoma	96	4	4	2.0	51	53	25.6
Oregon	378	45	12	41.3	42	11	38.5
Pennsylvania	118	31	26	3.4	66	56	7.3
Rhode Island	2	0	0	0	2	100	3.0
South Carolina	8	1	13	0.4	6	75	2.7
South Dakota	9	0	0	0	3	33	5.1
Tennessee	89	0	0	0	68	76	22.0
Texas	132	0	0	0	57	43	6.3
Utah	2	0	0	0	2	100	2.1
Vermont	NA	--	--	--	NA	--	--
Virginia	NA	--	--	--	NA	--	--
Washington	379	49	13	18.1	22	6	8.1
West Virginia	20	6	30	4.2	4	20	2.8
Wisconsin	63	2	3	0.5	6	9	1.7
Wyoming	NA	--	--	--	NA	--	--

NA = Not available.

Source: The Academy for Contemporary Problems. "Juveniles in Criminal Courts," Working Papers. (The Academy for Contemporary Problems, 1980), p. 25, Table 6.

Table constructed by the NATIONAL JUVENILE JUSTICE SYSTEM ASSESSMENT CENTER (Sacramento, Calif.: American Justice Institute, 1981).