

SPECIAL REPORT

National Council on Crime and Delinquency

Breaking the Cycle of Abuse in Juvenile Facilities

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The founding of the American juvenile court in 1899 was based on the urgent need to stop the exploitation and abuse of children in adult prisons and jails. The National Council on Crime and Delinquency (NCCD) was created in 1907 in part to promote this crucial reform agenda. The struggle for justice for children continues today.

Accurate national data on the problem of sexual assault in juvenile corrections facilities are difficult to assemble. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is soon to release the final version of the Survey of Youth in Residential Placement (SYRP). The survey was conducted in 2003 to provide important national-level information on many aspects of the conditions of confinement in juvenile facilities. It provides the first ever nationally representative estimates of victimization of youth in custody as reported by the young people themselves (Sedlak, 2008). The sample for the SYRP was approximately 7,000 incarcerated youth. These data have not yet been fully published by OJJDP;

however, the preliminary SYRP data¹ show that 4% of confined youth (4% of males and 5% of females) reported being the victim of sexual assault while in custody. Most of those reporting sexual assault had been victimized multiple times: 41% reported one or two assaults; 56% reported three or more assaults.

Nearly half of those reporting sexual assault (49%) said they had been assaulted by a staff member (54%, for males; 30%, for females); over half said they had been assaulted by another youth resident, usually someone they knew. Almost a quarter (24%) reported that a weapon, usually a knife, was used in one or more of their sexual assaults.

More recent work by the Bureau of Justice Statistics (BJS) offers a glimpse at officially reported sexual abuse in state juvenile facilities, and BJS is currently planning another survey of incarcerated young people (Beck & Hughes, 2005).

1 SYRP Advisory Board Meeting, December 10-11, 2003.

The following observations are primarily based on a comprehensive investigation of the California Youth Authority (CYA),² which was requested by the California Attorney General in 2003 in response to a lawsuit (*Farrell v. Cate*) filed by the Prison Law Office (Krisberg, 2003). The lawsuit led to a consent decree to rectify problems in the system, which are still being monitored by the court-appointed monitoring team.³ The CYA (now the Division of Juvenile Justice or DJJ) operates six large facilities that house approximately 1,800 young people convicted of very serious offenses. Ten years ago California youth prisons held nearly 10,000 inmates, but the state has closed five large training schools since the litigation began.

All youth in the California DJJ are housed in antiquated and decrepit facilities that most observers agree must be replaced. Some youth continue to live in open barracks or dorms. In these dorms, staff are usually stationed in a caged security post with a limited ability to visually observe the behavior in the living units.

Other states have serious problems as well. The Texas Youth Commission has come near to collapsing under the weight of the exposure of widespread sexual abuse in its facilities. The Florida DJJ has closed many of its residential programs over the past five years due to allegations of abusive practices. In Marion County, Indiana, the local prosecutor indicted several staff from the county's detention facility for girls.

The California investigation covered all sorts of violence in state juvenile facilities. It included a review of thousands of pages of official documents and all DJJ statistics that were pertinent to youth safety and welfare issues. Site visits were conducted at six DJJ facilities. Highest in importance were confidential interviews with a cross section of over 100 youth and additional interviews with dozens of staff members, all of which continues as part of the court monitoring work.

2 In July, 2005, the CYA was merged into the California Department of Corrections and Rehabilitation as the Division of Juvenile Justice (DJJ).

3 The DJJ submitted a remedial plan that was reviewed by the court on June 30, 2006. At that time, the Governor and the Legislature appeared willing to commit nearly \$110 million to start the reforms. Since 2003, little changed to reduce the violence and conditions described in this testimony.

The California DJJ is still plagued with high levels of violence and fear, especially at its larger institutions. Fights, assaults on staff, and riots are common occurrences. Incidents of violence, gang and racial conflicts, and staff fears have led to reliance on extended periods of lockdown, with many youth spending an average of 21 hours per day in their cells. There is virtually daily use of chemical and mechanical restraints, and many correctional staff wear equipment such as security vests and helmets—trappings more typical of maximum security adult prisons than juvenile correctional institutions. In the past, some of the facilities have employed guard dogs to maintain order, although this practice has been recently abandoned. Suicide attempts are not uncommon events; four institutionalized youths took their own lives in the last two years. Sexual assaults are part of these horrific conditions.

Official California DJJ Data on Violence and Sexual Assaults

The California DJJ possesses little reliable data on violence in its institutions. Addressing this absence of management information is a key part of the proposed reform agenda. The best, albeit incomplete, data on DJJ violence come from the Disciplinary Decision Making System (DDMS).⁴ This information system covers allegations of youth misconduct. A review of sustained serious disciplinary infractions at six DJJ facilities allows for a very conservative measure of violence, because it does not count incidents in which the assaults were not observed by staff, cases that could not be proved to agency fact finders, or situations in which less severe sanctions were employed. However, even this conservative measurement documented over 4,000 serious infractions for youth-on-youth assaults and batteries at six DJJ institutions—over ten per day.⁵ It would require an in-depth analysis of these instances to determine how many of these violent events included sexual violence. But, in addition to these assaults, there were another nine sustained disciplinary infractions for sexual assaults and 56 sustained charges for sexual acts. DJJ staff dis-

4 Information on staff sexual assault is closely protected by state personnel and union agreements and is very difficult to obtain.

5 In 2002, these facilities housed 3,820 youth on average.

tinguish between these categories based on their judgments of whether they believe the acts were consensual. In practice these staff judgments are extremely subjective and somewhat arbitrary. In the same year, there were also 925 sustained serious infractions for sexual harassment, which cover a very wide range of behaviors including sexual gestures, provocative language, public masturbation, and other activities defined broadly as sexual horseplay directed at either other youth or staff. It is difficult to determine without inspection of detailed incident reports how many of these disciplinary charges actually include sexual assaults.

California Youth Interviews

Few of the interviewed youth felt safe in DJJ facilities. A typical response was, “This is a jail filled with dangerous people.” Some youth, especially youth who openly identified as gay, bisexual, lesbian, or transgender, told of being sexually assaulted in the barracks or dorms. These youth also reported that staff did not take these violent victimizations seriously. The youth reported that staff believed that most sexual behavior in the dorms was consensual. Staff tended to downplay reports of rape as coming from youths who had consented to sex, but then regretted their actions. In general, facility superintendents took this problem more seriously than living unit staff, and DJJ central office staff reviewed a small number of the incidents that were investigated at the institutional level.⁶ The only recourse that most victimized youth had was to file a grievance, which did require a subsequent administrative review. However, grievances were routinely processed by other youth inmates who acted as grievance clerks. Many of these youth had little faith in the grievance procedure and often discouraged victims from reporting assaults.⁷ A few youth wrote letters to the DJJ director complaining of their victimization, but they generally received a response drafted by facility staff.

6 DJJ headquarters is attempting to review a larger proportion of incidents involving the use of force. The proposal to fund reforms would increase the number of staff dedicated to monitoring activities at the institutions.

7 The DJJ has recently reduced the responsibilities of the youth grievance clerks and replaced them with paid staff.

Other youth who were avowedly heterosexual also described sexual assaults, including group rapes. Youth tended to categorize this behavior as sexual “horseplay.” Almost none of these assaults were reported to authorities. Most youth felt that fighting back was the way to fend off sexual assaults. Gang affiliations provided allies to protect youth from these situations. Youth who were not gang members were especially vulnerable.

To escape repeated victimization, some youth deliberately assaulted other youth or staff to be placed in single rooms in temporary detention units or other restricted housing units. Many staff reported that a significant number of youth in these lockup units were essentially protective custody cases, not particularly violent youth. Even though this meant being confined for at least 21 hours a day, these youth described being locked up as a respite from “always having to watch your back” in the barracks. Also, especially vulnerable youth engaged in abnormal behavior such as suicidal gestures, smearing feces on themselves or their beds, or claiming they were having psychotic episodes. Such behaviors resulted in reviews by DJJ psychologists or psychiatrists and potential placement in a mental health unit where the youth resided in single rooms. Both custody and clinical staff often discounted these outward signs of mental illness as attempts by some youths to manipulate their living unit assignments.

There seemed to be little focus on sexual victimization. The dominant focus of DJJ staff was to prevent gang-related violence and assaults on staff. Due to a concern about sexual harassment in the workplace, sexual behavior or language that might otherwise be overlooked is defined as harassment if it is directed at or observed by female correctional officers or counselors. In these cases, the behavior may be punished with as serious a sanction as a 90-day time add. Training of staff on the topic of reducing sexual assaults among youth was rare. As noted earlier, few data were routinely collected or reviewed by DJJ managers. Investigations of allegations of staff sexual misconduct with DJJ youth, especially young women, surfaced periodically. These allegations were investigated in highly confidential forums. During my investigation, I encountered a few youth grievances that alleged that staff had engaged in inappropriate

sexual conduct with the youth inmates. In these cases, the accused staff were permitted to resign, were placed on limited duty, or the charges were dropped. Even in cases in which the DJJ management fired staff for a range of allegations of excessive use of force or other proscribed behavior, the State Personnel Board restored these staff to regular employee status. There were no criminal prosecutions of DJJ staff despite allegations of felony law violations.

By any measure, sexual assault was a significant problem in DJJ facilities and was inextricably tied to an overarching climate of violence and fear. Sexual assaults were part of patterns of physical intimidation and threats that some youth use to establish their power within an extremely violent institutional culture. Moreover, a large number of DJJ residents suffer from severe mental illness. Health care for these troubled youngsters is woefully inadequate, creating an even more chaotic atmosphere. The use of the DDMS or the youth grievance system is not effective to stem the problem of sexual assaults. Current California DJJ facilities are dangerous and not designed to promote the safety of youth or staff. Staff training to prevent unwanted sexual behavior in DJJ facilities is insufficient. Although responses for many of these safety deficiencies are included in the DJJ remedial plans, it remains to be seen how quickly these needed reforms can be implemented.

Sexual Abuse in Texas Juvenile Facilities

In 2007, systematic abuse of youth in the west Texas facility at Pyote began to come to light. An investigation into the Texas Youth Commission (TYC) revealed unchecked sexual abuse of youth wards by high-level facility staff (Swanson, 2007a). TYC executive leadership denied knowledge of frequent abuse at the Pyote facility, as did the facility's superintendents. However, caseworkers reported multiple attempts to bring the intolerable situation to light many months prior. A former assistant facility superintendent and school principal allegedly engaged in repeated sexual activity with wards, under the threat of time adds or other punishments or enticements (Swanson, 2007a).

As the investigation unfolded, over 750 wards from every Texas youth facility began to come forward with allegations of sexual misconduct ranging from flirtation to rape (Swanson, 2007b). Clearly, widespread lack of appropriate response at all levels of authority and a culture of tolerance for such behavior were key factors. Even the US Department of Justice was unable to take action, despite knowing for four years of allegations of staff abuse; as many as 2,000 such offenses were confirmed from 2003 to 2006.

In many instances of confirmed allegations, staff were eventually fired. However, even in cases where offenses were classified as felonies, no TYC staff member served prison time (Hoppe & Swanson, 2007).

Multiple factors helped to lead the TYC into its recent crisis. To begin with, straying from its mission of treating the most serious cases, the TYC tripled its bed space from 1995 to 2005, filling those beds with mostly nonviolent youth who would be far better served in their home communities. Furthermore, the practices involved in this overincarceration have had a disproportionate, negative impact on youth of color; as much as 75% of the TYC population is youth of color (TCAJJ, no date). The facilities are some of the largest in the nation, leading to inherent problems of adequate supervision and an atmosphere all too akin to adult prison. Add to all of that the lack of any meaningful oversight in facilities that may benefit local economies, but whose isolation is immensely problematic for the youth and families in question.

In the wake of the widespread scandal, the Texas Senate ordered the overhaul of the agency and required that all misdemeanor cases be handled by local authorities, signaling a return to the Commission's original mandate of detaining the most serious and chronic youth offenders. To its credit, the legislative body attempted to respond to a desperately corrupt situation by ordering a progressive list of reforms, including extensive training for guards, criminal history checks for prospective employees, and a grievance process for youth that has integrity.

However, as investigations continued, the agency appeared more and more beleaguered by political infighting, abuses of authority toward subordinates, intimidation of whistleblowers, and other indicators of a system in collapse.

Even after being turned over to a conservator, TYC's problems have not been resolved. Five executive directors came and went in the course of a year. There is some motivation in the Legislature to abolish TYC and merge its programs with those of the counties. Recently, TYC has recruited a nationally respected juvenile justice leader, Cheryl Townsend, to lead the agency.

Abuse in Florida Juvenile Facilities

In 2000, NCCD warned Florida lawmakers about the potential victimization and abuse of girls in a maximum security correctional environment (Acoca, 2000). Since its opening in 2000 under Premier Behavioral Solutions, the Florida Institute for Girls (FIG) was plagued by hundreds of allegations of physical abuse, neglect, sexual misbehavior, and management problems. These allegations prompted a grand jury investigation in June, 2003. According to a well publicized Grand Jury Report, the facility had over 150 allegations of criminal activity including excessive force, sexual misconduct, and inadequate supervision (Palm Beach County Grand Jury, 2004; Gruskin, 2004-2005). The investigation found a lack of training, persistent staff shortages, and a general sense of unrest at the facility. Many media headlines painted gruesome conditions for girls.

Within five years (by October, 2005), all 67 girls were transferred from FIG, and the maximum security prison was officially closed. But even in its last month, a long-time guard was arrested for sexual assault against a 15 year-old girl.

At another program for girls, Sawmill Academy, a supervisor was charged with eight felony counts involving sexual contact with girls in his custody. Investigators said three girls reported having sex with him and that he solicited sex or made plans to have relations with girls on four other occasions (Tallahassee Democrat, 2002).

The problems in Florida extend to boys' juvenile justice programs and detention centers as well. In 2003, Omar Paisley's death in the Miami-Dade juvenile detention center became a symbol of the problems. His case involved medical neglect. Omar complained of severe abdominal pain for three days, but staff ignored his pleas because they thought he was faking. They provided no medical attention. The boy died of a ruptured appendix that could have been treated. The grand jury investigation found an "utter lack of humanity" within the detention center. In 2006, there was another high profile death. Martin Lee Anderson, age 14, was beaten by seven guards and suffocated through the use of ammonia capsules at a boot camp operated by the Bay County Sheriff's Department in Panama City, Florida. A local jury acquitted the staff of criminal charges.

In the 2000-01 budget year, there were 2,285 allegations of abuse from juvenile offenders, up from 1,237 allegations in 1997-98 (Hurtibise, 2002). In the first six months of 2004 alone, 80 youths attempted suicide in Florida detention facilities. Since 2004, 25 residential juvenile justice programs for girls and 56 programs for boys have been closed.

Issues needing immediate attention in Florida include overall safety, excessive and unnecessary use of force on youth by staff, unreported incidents of abuse, workers falsifying log books, failure to perform preliminary background checks on nine out of ten workers hired, failure to provide pregnant girls with prenatal care, and accusations of staff giving drugs to youth.

Abuse in Marion County, Indiana

A Civil Rights of Institutionalized Persons Act (CRIPA) review in Marion County, Indiana, revealed issues similar to those in Texas and Florida. Policies covering prohibited sexual misconduct were often lacking or overly vague. Youth grievance systems were less than fully effective, and background checks for employees were handled inconsistently. Staff training was woefully inadequate. Policies and practices for fairly and completely investigating sexual misconduct in the facility were not sufficient. The Girls Detention Facility suffered from a range of poor conditions, including too limited mental health services and physically, verbally, and sexually abusive practices. There was breakdown in the “culture of care,” which created an unhealthy organizational climate in which many abuses were overlooked or rationalized. County officials and the juvenile court are moving aggressively to rectify many of these concerns. With support from the Annie E. Casey Foundation, Marion County has made significant progress in diverting inappropriate youth from detention and in improving the levels of care. Although the local jury acquitted all the indicted staff members (similar to events in Florida), the US Department of Justice has continued to pursue civil rights violations.

Recommendations for Reforms

Key recommendations to reduce youth violence and sexual assaults in troubled youth corrections systems are as follows:

- Youth corrections systems must implement research-based risk and needs assessment classification systems to identify those youth most likely to be victims and victimizers. Living unit assignments and staffing should be guided by objective classification information. An excellent example of a system that can reduce institutional violence is the Juvenile Intervention and Assessment System (JAIS), developed by the NCCD.
- Living unit sizes must be no larger than 20 youth. Barracks-style dorms should be phased out and staff-youth ratios should be less than 1 to 8. Antiquated and unsafe institutions must be replaced with “state-of-the-art” facility designs that permit greater monitoring of youth behavior and that encourage more staff and youth communication and interaction.
- Staff need training in techniques such as Normative Culture, which was developed by the North American Family Institute (see Krisberg, 1992). Normative Culture creates “communities of dignity and respect” in juvenile correctional programs. It teaches staff to enlist youth residents in the common goal of ensuring safety of all those who live or work in these facilities.
- Training in gender-responsive adolescent psychological development must be required of all staff working in juvenile corrections facilities. In particular, staff need a better understanding of the victimization of gay, bisexual, lesbian, and transgender youth.
- There must be adequate numbers of medical and mental health professionals assigned to juvenile facilities, and these clinical staff should be trained in recognizing and responding appropriately to instances of sexual victimization. Health and mental health staff need better information on the links between histories of maltreatment, sexual victimization, and violent behavior (Widom, 1992).
- Institutionalized youth need access to reporting and grievance systems that result in genuine and thorough investigations of their alleged victimization.
- Youth facilities should be open to regular inspections by bona fide outside groups that can conduct confidential interviews with youth to identify potential problems of sexual victimization.
- Juvenile facilities need to create adolescent living environments that are as normal as possible. Youth facilities should not embrace the trappings and methods of prisons. Harsh custodial tactics breed institutional violence. Juvenile corrections systems need to rediscover the importance of the concepts of treatment and rehabilitation that are central to their missions.

Concluding Observations

The horrid conditions of confinement found in the California DJJ are not an anomaly. The media has reported many examples of abusive treatment of youth in jurisdictions such as Arkansas, Arizona, Connecticut, Georgia, Florida, Hawai'i, Indiana, Louisiana, the Mariana Islands, Maryland, Mississippi, Nevada, New Jersey, Oklahoma, Puerto Rico, and South Dakota, to name a few. In the last several years, the US Department of Justice has initiated an unprecedented number of investigations of juvenile facilities under the Civil Rights of Institutionalized Persons Act. Youth advocates in many states have challenged the conditions of confinement in federal and state courts as unconstitutional. The National Institute of Corrections and the Office of Juvenile Justice and Delinquency Prevention have continued their training, publications, and technical assistance to improve the circumstances confronting youth in confinement. Nongovernmental groups such as Human Rights Watch and Amnesty International have brought these issues to the public's attention.

To begin stimulating positive action on this issue, Congress should amend the federal Juvenile Justice and Delinquency Prevention Act (JJDP) to require that all states receiving federal funds must 1) conduct a comprehensive study of the nature, extent, and causes of rape

in juvenile institutions; and 2) present "good faith" plans to OJJDP to remedy this problem. OJJDP should be required to produce an annual report to Congress on rape in juvenile facilities and to present effective methods to eliminate it. This same approach was put forth by advocates that were concerned with the disproportionate numbers of minority youth in the juvenile justice system. Similar to eliminating rape in juvenile correctional facilities, reducing disproportionate minority confinement is a complex issue and is not likely to be resolved very quickly. But, a new amendment to the JJDP would give great impetus to those looking for solutions and assistance to victims.

We ignore the problem of violence and sexual victimization in juvenile corrections at our own peril. All the youth presently incarcerated will return to our communities in a very short time. They will return home either better or worse for their experience in juvenile corrections. Unchecked violence and sexual assault in juvenile facilities will lead to more tragedies and victims in the community. Moreover, the failure to protect the troubled and vulnerable young people that are now in juvenile corrections calls into question the legitimacy of our child welfare and juvenile court laws and the humanity of our civilization. The recommendations presented above could make measurable improvements to this situation.

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