A Report by the
CHILDREN’S DEFENSE FUND
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SO

Children's Defense Fund
CHILDREN

IN ADULT JAILS

Rochelle Beek
Gary Bellow
Jean M. Bellow
Thomas J. Cottle
Michael David
Fronza Diamond
Elizabeth Dollard
Jean FiczGerald
Jane Knitzer
William Knutz
Liuba Lysich
Sally Makaryan
Brenda McGowan
Fern Nerson
Marilyn Rash
Mary Kathleen Reynolds
Charlene Sanders
Janet Shur
Paul V. Smith
Richard Sobol
Jerry Schreverman
Tom Sliford
Phyllis Zuckerman

This report was written and made available to the
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W. W. Morrow, M.E., Chair (optional)
We wish to thank the following agencies who helped collect local data:
(09-19-94) (116)

El Paso Section, National Council of
Jewish Women, El Paso, Texas
Maryland Public Affairs, NCJW
Glen Burnie, Maryland
Columbus Section, NCJW
Columbus, Ohio
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Indianapolis, Indiana
Monroe County — Bloomington, ICU
Bloomington, Indiana

Tippecanoe County — Lafayette, Indiana Civil
Liberties Union
Putnam County, Indiana

A Report by the
CHILDREN’S DEFENSE FUND
of the Washington Research Project, Inc.
People Who Worked on This Report

Project Directors
Justine Wise Polier
Donald Rademacher

CDF Staff
Rochelle Beck
Gary Bellow
Jean M. Bellow
Thomas J. Cottle
Michael David
Franna Diamond
Elizabeth Dollard
Joan FitzGerald
Jane Knitzer
William Kuntz
Luba Lynch
Sally Makacynas

Brenda McGowan
Fern Nesson
Marilyn Rash
Mary Kathleen Reynolds
Charlene Sanders
Janet Shur
Paul V. Smith
Richard Sobol
Jerry Schenkman
Tim Spofford
Philip Zuckerman

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El Paso Section, National Council of Jewish Women, El Paso, Texas

Maryland Public Affairs, NCJW
Glen Burnie, Maryland

Columbus Section, NCJW
Columbus, Ohio

Indiana Public Affairs, NCJW
Indianapolis, Indiana

Monroe County — Bloomington, ICLU
Bloomington, Indiana

Tippecanoe County — Lafayette, Indiana Civil Liberties Union
West Lafayette, Indiana

David R. Eis, Area Director, Public Action in
Correctional Effort — North Manchester, Indiana

David Stringer, AFL/CIO Education to Action Project
National Council on Crime and Delinquency
Terre Haute, Indiana
The photographs in this book are for illustrative purposes. They are meant to imply no direct relationship between any particular child and the text.

Cover
Permission to use "Blue Face," by Paul Tsepe­linsky, was given to us by Henry and Ludmilla Shapiro. It comes from their collection of modern Russian paintings.
Foreword

The Juvenile Justice Division of the Children’s Defense Fund is concerned with the limitation and fragmentation of services which are available to help children in trouble. It has been over three-quarters of a century since states began to legislate that children should be treated as children, with the unique capacity for responding to appropriate care and treatment. Yet throughout this long period, children have been denied appropriate services.

*Children in Adult Jails* focuses on a large number of children subjected to violation of their rights and well-being through jail incarceration. Children have been put in jails by orders of the police, administrative agencies and the juvenile courts. Children are jailed on charges prior to trial, after adjudication, while awaiting disposition, and even to serve sentences. Neither federal court decisions nor legislative efforts have proven effective to sop the jailing of children, except in individual cases.

The jailing of children is not a new story. It has been intermittently condemned for nearly a century. The questions raised by this study confront the disparity between the pretensions and the realities of juvenile justice as it is administered: Why, despite the vaunted management and technical skills available, is it that juvenile courts, correctional systems, state and federal agencies have all failed to go behind statistical data (whether accurate or not) to learn about the children within the jurisdiction of juvenile courts incarcerated in jails?

In view of the justification or rationale offered for the continuing and increasing use of jails to hold children — as a protection for the community — CDF examined information (where available) on the offenses charged against children held in jails at the time of our site visits. The facts as we found them do not lend credence to the assumption that the jailing of children is necessary to protect the community. Few of the children found in adult jails had even been charged, let alone convicted, of violent or serious offenses against a person. Jails are used to hold children in haphazard fashion, sometimes for the convenience of the arresting officer or a judge, sometimes to frighten a child, and, at times, because there is “no other place for shelter.”

Before we undertook this study, we learned that no federal agency had done any recent studies on children in jail. We found that the National Jail Census did not provide full or accurate data on children in jail. Despite official pronouncements by representatives of the Department of Justice against placing children in jail, its Bureau of Prisons had contracts with local jails in all but four states to hold children charged with federal offenses. When questioned, the Bureau acknowledged it could not tell how many children were confined in jails under such contracts.

This study proves that even the question of how many children are held in jail throughout the country will not be truly answered until communities, states and the federal government become committed to finding out why children are jailed, which children are placed behind bars, and what happens to children in jails. Accurate information is a necessary first step toward end-
ing the jail abuse of tens of thousands of children within the juvenile justice system, including the disproportionate number of non-white children.

In view of the vacuum of knowledge about children held in jails, another question concerned the conditions to which such children were subjected. We asked ourselves and others concerned with the welfare of children, why more and more children were held in such abominable conditions. As in responses to the question about the numbers of children held in jails, it became clear that jail conditions would be corrected only as the ignorance or indifference of citizens, community groups, professionals and government officials were transformed into concern, advocacy and community action.

The absence of knowledge and the misconceptions about children held in jail caused CDF to seek to learn more about children who were or had been in jail. We have presented what we learned in the words the children spoke. No summaries or statistics could portray the depth of anguish, fear and terror when children feel abandoned, are subjected to abuse or fear of abuse and are uncertain as to how long they will be locked up or what will happen to them in jail. These children found no adult to whom they could turn during long hours of loneliness, boredom and even terror. Many seemed especially vulnerable, not only because of their immaturity, but because of past hurts and their uncertainty as to what might happen to them or whether there was anyone who cared and would want to help them.

The Children's Defense Fund hopes that Children in Adult Jails will lead from the examination of jail incarceration to a broader examination of the unmet needs of many children within the juvenile justice system, since children in jail represent a far larger group of children who are denied the right to appropriate care and treatment by reason of the devastating limitation of services provided by local, state and federal governments. For all these children, the Children's Defense Fund urges increased community concern and active child advocacy to correct the ongoing denials of justice, and presents specific recommendations for action. The present flawed juvenile justice system cannot change effectively without strong community support.

We also urge a more active role for bar and bench to end jail abuse of children and youth within the jurisdiction of the juvenile courts.

In these days when there is a sharp conflict between those seeking greater procedural protections for children, as protection against harmful governmental intervention, and those who seek harsher punitive measures against children, communities must be helped to realize that temporary and harmful jail incarceration of children provides no answer. The children subjected to jails will return to the same communities from which they come, more hostile, more alienated and more damaged.

Both the protection of children and services to children are essential to rather than antagonistic to community protection. We are convinced that a new beginning for establishing meaningful preventive and substantive services for children brought within the jurisdiction of the law (whether dependent, neglected, abused or delinquent) must be based on the understanding that the healthy future of children and the healthy future of communities are indivisible.

Hon. Justine Wise Polier, Director
Juvenile Justice Division
I want to extend great thanks to Justine Wise Polier, director of our Juvenile Justice program, whose wisdom and vast knowledge of the field of juvenile justice has informed and guided our activities in this area. Special thanks are also due Don Rademacher, who has spent many years in the pursuit of improving the juvenile justice system.

Marian Wright Edelman, Director
Children’s Defense Fund
ing the legal abuse of tens of thousands of children within the juvenile justice system, including the disproportionately minor of non-white children.

In view of the vacuum of knowledge about children held in jail, another question concerned the lack of representation for the larger group of children who are denied the right to appropriate care and treatment by reason of the devastating limitation of services provided by local, state and federal governments. For all these children, the

are the concern of past hurts and their uncertainty as to what might happen to them or whether there was anyone who cared and would want to help them.

The Children's Defense Fund hopes that *Children in Adult Jails* will lead from the examination of self-incarceration to a broader examination of the whole need of many children within the juvenile justice system, since children brought within the jurisdiction of the law (whether dependent, neglected, abused or delinquent) must be based on the understanding that the healthy future of children and the healthy future of communities are indivisible.

Mon. Justice Wire Peters, Director
Juvenile Justice Division
## CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreword</td>
<td>v</td>
</tr>
<tr>
<td>Acknowledgments</td>
<td>vii</td>
</tr>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td><strong>Chapter 1</strong> Who Are the Children in Jail and What Does It Mean to Them?</td>
<td>7</td>
</tr>
<tr>
<td>Who Are the Children?</td>
<td>7</td>
</tr>
<tr>
<td>Faces Behind Numbers, Faces Behind Bars</td>
<td>11</td>
</tr>
<tr>
<td><strong>Chapter 2</strong> Why Are Children Jailed?</td>
<td>19</td>
</tr>
<tr>
<td>&quot;The Community Must Be Protected&quot;</td>
<td>19</td>
</tr>
<tr>
<td>&quot;Tough Children Are Jailed&quot;</td>
<td>20</td>
</tr>
<tr>
<td>&quot;To Protect Them From Themselves or Their Environment&quot;</td>
<td>20</td>
</tr>
<tr>
<td>&quot;To Teach Them a Lesson&quot;</td>
<td>21</td>
</tr>
<tr>
<td>&quot;Juvenile Facilities Are Unavailable, Overcrowded or Inappropriate&quot;</td>
<td>24</td>
</tr>
<tr>
<td>&quot;They Have Been Waived to Adult Court&quot;</td>
<td>25</td>
</tr>
<tr>
<td><strong>Chapter 3</strong> What Are Jails Like for Children?</td>
<td>27</td>
</tr>
<tr>
<td>&quot;Warehouses of Human Flesh&quot;</td>
<td>30</td>
</tr>
<tr>
<td>No One to Help</td>
<td>31</td>
</tr>
<tr>
<td>Dangerously Exposed or Dangerously Alone</td>
<td>32</td>
</tr>
<tr>
<td>Who Sees to Children at Risk?</td>
<td>35</td>
</tr>
<tr>
<td>Alone With Nothing to Do</td>
<td>36</td>
</tr>
<tr>
<td><strong>Chapter 4</strong> Is Jailing Children Legal?</td>
<td>39</td>
</tr>
<tr>
<td>State Laws Concerning Jailing Children</td>
<td>39</td>
</tr>
<tr>
<td>Federal Laws Concerning Jailing Children</td>
<td>41</td>
</tr>
<tr>
<td>The Role of the Constitution and the Courts</td>
<td>44</td>
</tr>
<tr>
<td>How Lawyers Can Help</td>
<td>50</td>
</tr>
<tr>
<td><strong>Chapter 5</strong> How Can We Stop the Jailing of Children?</td>
<td>55</td>
</tr>
<tr>
<td>The Need for Child Advocacy</td>
<td>56</td>
</tr>
<tr>
<td>What Needs to Be Done?</td>
<td>57</td>
</tr>
<tr>
<td>A Program for Action</td>
<td>58</td>
</tr>
<tr>
<td>Recommendations</td>
<td>59</td>
</tr>
<tr>
<td><strong>Appendix A</strong> List of Jails Visited Which Held Children</td>
<td>66</td>
</tr>
<tr>
<td><strong>Appendix B</strong> Consent Decree in <em>Escamilla and All Others Similarly Situated v. Santos et al.</em></td>
<td>72</td>
</tr>
</tbody>
</table>
“This ain’t no place for a kid, man,” a 15-year-old boy told one of our staff members visiting him in an adult jail. And most of us, in principle at least, agree. The juvenile justice system created at the turn of this century is premised on the notion that a totally separate set of assumptions, institutions and procedures is warranted when children break the law or need to be detained. Many states have statutes prohibiting the jailing of youths with adults, giving further legal recognition to how dangerous such a practice is.

Yet we learned about what happens to children in jail when we were asked to represent three brothers, Billy, age 12, Brian, age 13 and Dan, age 14, who were suspected of stealing some coins from a local store. The deputy sheriff found the three boys at school, put them in his car and drove to their father’s place of employment to inform him that he was taking the three to jail. The deputy talked with the boys’ father alone while they waited in the police car. After a short time the deputy came out and took the boys to the county jail. There he had a trusty place the three in a cell, one of four on the top floor of the jail. It had four beds and three other prisoners: one older boy and two men. Billy and Brian shared one bunk; Dan slept on a mattress on the floor.

The first night, the men decided to have a little fun. As Billy and Brian lay sleeping, the men placed matches between Billy’s toes and in Brian’s hands, lit them, and watched them burn, laughing as the boys awoke in pain and horror. The second night, the boys, too afraid to fall asleep, lay awake listening to the men talk about how they hadn’t had a woman in a long time and how these boys would do just fine. After the lights were out in the jail, the men ordered the boys to take off their clothes. When they refused, the men attacked, punching Brian when he struggled to fight back. The men tore off the boys’ clothing and then, one by one, each of the men forcibly raped the three brothers. Pointing to a long electric cord hanging in the cell, one of the men warned the boys that if they uttered a sound or told anyone what had happened, he would choke them to death. For emphasis, he threw one end of the cord over the shower nozzle, wrapped the other around Billy’s neck and pulled hard. The boys obeyed the command and were silent.

Two nights later the abuse was repeated: the men poured water on Dan’s mattress, filled Billy’s and Brian’s mouth with shaving cream, stripped the boys naked and raped them. Finally, after five days of terror in jail, the boys were brought before a judge. As the boys left their cell on their way to court, one of the men threatened menacingly, “You tell the judge or anyone about this and I’ll kill you for sure.” The judge allowed Dan to go home after the court hearing. But Billy and Brian, awaiting transfer to the Department of Youth Services, were sent back to the county jail. Upon their return to the jail, the boys begged not to be put back in a cell with adults. But the trusty ignored their pleas and led them back to the same cell they had been in before, where the same men waited to greet them.

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1 For purposes of this report, a jail or a police lockup is defined as a locked facility, administered by local law enforcement and correctional agencies. Its primary purpose is to detain persons charged with violating the law who are unable to post bail or are denied it by a court pending trial. It is also used to hold offenders convicted of crimes, who are sentenced to serve sentences of usually less than one year.

In practice, jails have become catch-alls which confine dangerous offenders, petty offenders, drunks, mentally ill, mentally retarded adults, and persons who need a place to stay.

2 The names of these three boys and other children described throughout this report have been changed to protect their confidentiality; all the facts and quotations are unchanged.

3 A trusty is an inmate who is given extra responsibilities while he is serving time in an institution, such as locking up others, distributing meals, and so on, to aid the institution’s staff.
Were Billy, Brian and Dan's nightmarish experiences unusual, or were other children running the same risks? How many children, indeed, were held in adult jails? Was the jailing of children a common practice or a measure of last resort? Were other jails as lax about their separation of children from adult inmates? What were the laws about such things? What were the practices?

As we began to search for the answers to these questions, we discovered that information was difficult to find. Only bits and pieces existed. For example, state statutes could be scrutinized for their language about jailing juveniles, but did law enforcement officials know and heed the laws? No one could say.

Finding out how many children were in jails was further complicated by not being able to find the jails themselves. There was no complete listing of all the jails and police lockups in this country. Most studies of jails relied on the 1970 National Jail Census, but the Census did not include jails or lockups which report holding persons for under 48 hours, nor did it list any jails in Connecticut, Rhode Island or Delaware since they are state-operated. Individual states had no more complete listings than did the federal government about the jails and lockups within their borders. Jails are local institutions. They are scattered throughout cities, counties and townships; there is no central agency to which they report and no map on which to find them all. Unlike the use of stocks in former days, which they report and no map on which to find them all. Unlike the use of stocks in former days, jails are hidden from public view—which makes them and the human beings inside them a subject of continuing ignorance.

Most studies about the detention of children totally ignored the extent to which they were jailed. Those that raised the subject at all usually confined their inquiries to whether it was possible to separate juveniles from adults adequately in jail facilities. The few studies which took the problem of children in adult jails seriously still had to rely on these inadequate sources of information for their baseline statistics.

CDF attorneys represented these three boys, and others in South Carolina similarly situated, and recently entered into a consent decree awarding damages to the three individual children described here. Pending is a CDF motion to enjoin future detention of juveniles in adult jails throughout the state of South Carolina. Also pending is a damage claim against officials in another South Carolina county where two white truant boys were raped in an adult jail.


What about the children incarcerated in jails? It was almost impossible to obtain any data about them. We wrote to the Secretary of HEW requesting information about the use of jails for children. His response read:

You inquired about studies of the use of jail in place of detention facilities for children.

The Department of Justice and the Youth Development and Delinquency Prevention Administration (DHEW) inform me that no studies have been made on this matter in recent years.

The Children’s Bureau has not conducted a study on this matter either.

Most studies about the detention of children totally ignored the extent to which they were jailed. Those that raised the subject at all usually confined their inquiries to whether it was possible to separate juveniles from adults adequately in jail facilities. The few studies which took the problem of children in adult jails seriously still had to rely on these inadequate sources of information for their baseline statistics.


Not regularly required to submit a summary or individual numbers on their inmates to federal or state agencies, the information kept by local jails on detained children was scarce. In one state we were told that no jail records were kept on juveniles, except if they were waived to the criminal justice system. In another state, not a single state agency could supply us with even the number of children referred to the juvenile courts. Out of frustration, one of our staff called that state's agency for fish and game to see if all accounting systems were in similarly bad shape. That agency told him, however, that it could provide not only the number but the species of fish found in every body of water in each county of the state. It appeared, as the President's Crime Commission had noted, that especially with regard to children, "... the United States is today, in the era of the high speed computer, trying to keep track of crime and criminals with a system that was less than adequate in the days of the horse and buggy." 11

CDF's Study

To obtain information about the number of children held in adult jails and the conditions in which they were confined we visited 449 jails in 126 counties and 9 independent cities, almost all of which had a population of over 50,000, in the states of Florida, Georgia, Indiana, Maryland, New Jersey, Ohio, South Carolina, Texas and Virginia. We asked basic identifying information — including type of jail, the administrator and the jurisdiction covered — of all 449 jails. We also asked whether or not they held children.

10 Letter from Shannon Ferguson, Jackson, Mississippi office, Children's Defense Fund, 10 October 1975.
12 Our study was not meant to be a comprehensive survey of the nation's jails, but was shaped by our resources and manpower. While we tried to cover areas with major population concentrations, we did not go to every jail in all the counties and cities we visited. While no jail was intentionally excluded, some jails were omitted because of time and the unavailability of information about the location of all jails and lock-ups. We did, however, visit 190 jails that were not included in the 1970 National Jail Census, which leads us to believe that there are still other jails not included in this or other studies of children in jail. We believe that the number of children we found in jail grossly understates the true extent of the problem.
13 All of our data on the numbers and characteristics of children in jail therefore constitute a one-day "slice" of the picture and do not indicate the numbers of children passing through these jails over the course of a year.
14 Juveniles were detained in adult jails in all but seven states at the time of the most recent national survey. See, National Jail Census, 1970, p. 10.

If they answered "yes," we asked additional questions about the separation of children from adult inmates; the medical services made available to the children; the number of children in jail at the time of our visit; the type of offense for which children were in jail; their length of stay; their race, age and sex. We asked whether the juvenile court sentenced children to jail. Some children are waived to adult court, and we asked how many of these were in jail; whether they were in jail awaiting a hearing; awaiting transfer to another facility; whether they were serving their sentence in jail; and so on. In addition to our on-site appraisals of the physical conditions of these jails, we analyzed the 1970 National Jail Census for information about the jails and their programs in our study states. We also talked to dozens of corrections officials and sheriffs, child psychologists and criminal corrections' experts, concerned citizens, and children who had been or were currently in jail.

Our Findings

First, we found that children are in adult jails in every state we visited. Of the 449 jails visited, 171 or 38.1 percent answered yes, they held children regularly as a matter of policy. Of the 278 that answered no, 41 or 14.7 percent acknowledged that they occasionally held children. While the states varied in how commonly adult jails were used to house children, no state was immune from the practice.

Second, the overwhelming majority of children we found in adult jails were not detained for violent crimes and could not be considered a threat to themselves or to the community. Only 11.7 percent were charged with serious offenses... the United States is...
against persons. The rest — 88.3 percent — were charged with property or minor offenses. What is most alarming is that 17.9 percent of jailed children we found had committed "status offenses," i.e., actions which would not be crimes if done by adults, such as running away or truancy. And an additional 4.3 percent of the jailed children had committed no offense at all. One boy was being held because "he had no place to go." Another boy was fingerprinted and held in jail because his mother had been hospitalized and there was no other adult at home. One child was in jail for protection from her father, who was accused of committing incest. Some children were held because they were mentally ill or retarded and there were no appropriate mental facilities available.

Third, while the majority of jailed children were white, a disproportionate number — 31.8 percent — were minority. Almost four out of every five jailed children were male. Most were 16 and 17 years old, but it is a mistake to think that only older, tougher youths are jailed; 34.2 percent were 14 and 15 years old and over 9 percent were 13 years old or younger.

Fourth, the length of time and the reason children were in jail were often in violation of state laws. The average length of stay on the day of our visit had been 6 days, but almost 18 percent of the children had been incarcerated for more than 10 days on the day of the CDF visit. Children were jailed awaiting juvenile court hearings, pending disposition, and serving their time in jails (a practice prohibited by many states).

Fifth, the conditions of most of the jails in which we found children are abysmal, subjecting them to cruel and unusual punishment through physical neglect and abuse. Most jails are old and dirty, with insufficient sanitary, food or medical facilities. Only 9.8 percent of the jails in our study states had any educational facilities; only 12.4 percent reported any recreational facilities. With insufficient, poorly trained and poorly supervised staff, there is often no one suitable to deal with children or to assess their needs. Often adult inmates serving as trustees are in control of jailed children. Often, too, the physical layout and size of the jail makes it impossible to separate children from adult inmates, although such separation is required by most state laws. Children regularly come into total, or visual or aural contact with adult prisoners. Even if a jailer is careful about obeying the law requiring separation of children from adults, the result can be equally terrifying. Solitary confinement or confinement in a dank basement or closet-like enclosure for the sole child in an adult jail removes him or her from other inmates, but also from the attention of caretakers and can have severe traumatic effects on an already troubled and frightened youngster.

Conclusions and Recommendations

The guiding principles which have shaped the juvenile justice system are that: (1) children are not set in their ways and their behavior can be changed if proper attention is given them; (2) therefore, when children misbehave, their problems need to be assessed to determine the causes; (3) because they have their whole lives in front of them and because their personalities are still forming, children should be helped rather than merely punished, so they will grow into decent, responsible adults.

The guiding principles which have shaped adult jails are: (1) they are temporary, secure holding facilities for three kinds of prisoners: those too dangerous to be released awaiting trial, those awaiting transfer to more appropriate facilities, and those needing only brief periods of punishment for minor misdeeds; and (2) because jail populations are temporary, good facilities, quality services and remediation programs are too costly and impractical to provide.
Clearly these two sets of principles do not match. Jails are totally inappropriate for children. They cannot nor were they ever intended to assess, understand or respond to the needs children have. Despite the sensational headlines, few of the children in jail are dangerous; few warrant such extreme conditions of security. Though there are a small minority of children who need secure detention, these few do not justify the wholesale jailing of youthful offenders. And even the dangerous children may be harmed by the fetid conditions and adult criminals they encounter in jails. Jailing children is illegal. It exposes children unnecessarily to threats and harms inflicted by adults against whom they cannot possibly defend themselves. It leaves their problems and their needs totally ignored. Further, it intensifies whatever antisocial inclinations children may have, making it even harder to fulfill the long-term hopes we hold for them.

We therefore recommend that:

1. State legislatures should immediately and completely prohibit the admission or holding of any person under 18 years of age in adult jails. Recognizing that there may be a brief period of time for phasing in new laws which completely prohibit jailing children, interim action should be taken by state and local correctional agencies to provide measures for complete visual and aural separation of juveniles from adults. Such measures, however, must not permit the isolation of children or their removal from continuing care and supervision by responsible adults. So long as jails are used to hold children, they must be required to provide clean, adequate facilities with decent educational, medical, nutritional and recreational care.

3. Careful and regular reporting on the number of children detained in jails should be required by state law, and these requirements should be monitored and enforced by state agencies. Such reports should include the age, sex, race, length of detention, the offense with which each child is charged, and the disposition of every child detained.

Information should be collected through regular inspection of the conditions in every jail, including its age and physical condition, its staffing, and its provision of medical, nutritional, educational, and recreational services for children. Minimum state standards should be mandated, monitored, and enforced. Regular reports based on jail inspections should be published and made a matter of public record.

4. The federal government should prohibit the use of jails by any state or federal agency, including the Department of Justice, the Bureau of Prisons, and the Bureau of Indian Affairs. All federal law enforcement funds should be withheld from states found to house juveniles in adult jails.

5. Alternatives to jails should be funded and developed. Group homes and foster placements must be found for those children who are not dangerous but who, for a variety of reasons, cannot go home. The majority of youngsters should be released into their parents’ or guardians’ supervision or placed in an appropriate facility for young people. No child should be placed with adult offenders; no child should ever be institutionalized with offenders because she or he “had no other place to go.” Secure detention facilities holding no more than 25 youths each should be available for those charged with violent delinquent acts. But these facilities should be limited to holding such youths for a preliminary court hearing with counsel within twenty-four hours to determine whether further detention is needed pending a trial.

6. Parents and child advocates should challenge the continuing use of adult jails for children as unconstitutional, as violating state laws, and as violating constitutional requirements for juvenile justice legislation. Damage actions should be filed against adults responsible for violating state laws requiring separation of juveniles, for injurious conditions in the jails, or for practices harmful to children when their actions are intentional or the result of negligence.

7. Parents and citizen groups should inform themselves about the use and conditions of jails in their communities. They should visit jails

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13 The Constitutional and supporting statutory evidence for the illegality of jailing children is discussed more fully in Chapter 4.

19 A more complete discussion of recommendations for federal, state and local agencies, officials and advocates is found in Chapter 5.
unannounced and inspect them. They should take political and legal action to end the use of jails for children and they should become an effective force to support the establishment of alternatives to jails and the provision of appropriate services for all children who need care outside their homes.

Until the public takes action on behalf of the thousands of children in adult jails, it is unlikely that their plight will change. Experts on the causes of violence have long noted how inappropriate jails are for children:

"...it should be noted that jails...are often the most appalling shame in the criminal justice system...Even more than the prisons, jails have been indicted as crime breeding institutions."21

Many of the sheriffs and other law enforcement officials we met regretted using their jails for children. They worried about their inability to protect their young inmates, but felt they had no alternatives. Shocking revelations of the destruction and self-destruction of children in jails have been published. Yet, the population of children 17 years old and under in jails nearly doubled from 1950 to 1960 and increased an additional 23.5 percent from 1960 to 1970.22 Further, juvenile arrests have increased from 466,174 persons under 18 in 1960 to 1,135,046 in 1973, an increase of 144.1 percent.23 This increase in juvenile arrests inevitably means that the number of children detained in both juvenile detention facilities and adult jails has grown substantially. In 1965, the National Council on Crime and Delinquency estimated that 87,951 boys and girls under juvenile court jurisdiction were held in county jails and lock-ups.24 In 1974, Rosemary Sarri estimated that up to half a million children are held in adult jails each year.25 These startling numbers and grim reports have not changed the reality of placement for the youthful offender. No more investigations or commissions are warranted. The time has come to end the jailing of children and ensure that alternatives exist for their care.

Chapter 1 of this report describes who the children in jail are: both their numbers and their feelings. Chapter 2 examines why these children were in jail: the reported, official reasons and the myths justifying using jails for children. Chapter 3 portrays for those who have never been in them what jails are like: their general conditions and specifically how they appear to children. Chapters 4 and 5 are for advocates who want to end this terrible abuse. Chapter 4 focuses on the statutory and constitutional handles to end jailing children and Chapter 5 addresses the broader range of political and organizing efforts needed to pressure officials to find better ways of treating our youth.


25 Under Lock and Key: Juveniles in Jails and Detention, p. 64.
Who Are the Children in Jail and What Does It Mean to Them?

The children we found in jail defy any neat classifications or stereotypes about such youngsters. Regardless of a state's laws, correctional policies or administrative practices, children were found in its adult jails. No region of the country was immune from the practice. Children were found in jails in cities, medium size counties, and sparsely populated rural areas. White, Black, Chicano and Native American children were found held in jail. So were upper-middle class and dirt poor children. Academically motivated and failing in school. Tough talking and helpless. Adolescents or younger than 13 years old. On serious charges and for no reason at all. Held by police with no formal charges filed, awaiting a juvenile court hearing, pending a court disposition, waiting to be transferred to a juvenile facility to serve a sentence or serving their sentence in jail — children with all these characteristics were found in jail.

There are many points at which a child in trouble may find him or herself placed in a jail: (1) When picked up by the police, if the child is to be released into the custody of his or her parents, the child may be held in jail to await his or her parents arrival. (2) If the police decide not to release the child to his or her parents, the child may wait in jail until a probation officer comes. (3) A child may spend several days pending an initial appearance before a juvenile court judge. (4) If a formal hearing is set at the initial appearance, the child may remain in jail pending that hearing. (5) After a factfinding hearing, the child may remain in jail pending a probation investigation or a diagnostic study and until a dispositional placement is ordered by the court. (6) In some instances, a child may be sentenced to serve time in jail. (7) If at the hearing, the juvenile court decides it does not have jurisdiction or that it cannot provide appropriate services, and the child is waived to adult court, the child may wait in jail for a hearing in criminal court. (Similarly, a juvenile who has come before a criminal court, and who is asking to be treated as a juvenile, may wait in jail while the court decides his or her status.) (8) After disposition, a child may be transferred either to an institution specified by the court or to the custody of another state agency such as the Division of Youth Services or the Department of Welfare. Children may wait in jail for such transfers to take place. (9) If placement of a juvenile in another institution does not work out for any number of reasons, the child may be sent back to jail before another placement is made or to finish serving the sentence in jail. (10) Finally a child may again be returned to jail after a sentence has been served (presumably in a juvenile facility) but before being discharged. The child may be brought back to court for a pre-release appearance and may wait in jail pending this final hearing.

Who Are the Children?

We found 350 children in jail on the day of the CDF site visits. Of these children, 93 had been waived to criminal court jurisdiction. While some information concerning the waived children will be presented later in this report, the following information relates only to the 257 children who were detained while under the jurisdiction of the juvenile court.

Sex

The only information generally available on children in jail was their sex. The sex of 245 (95.3 percent) of the 257 children in jail was known from jail records: 200 (81.6 percent) were male and 45 (18.4 percent) were female. This reflects the ratio of male and female children referred to juvenile court.

1 There are many points at which a child in trouble may find him or herself placed in a jail: (1) When picked up by the police, if the child is to be released into the custody of his or parents, the child may be held in jail to await his or her parents arrival. (2) If the police decide not to release the child to his or her parents, the child may wait in jail until a probation officer comes. (3) A child may spend several days pending an initial appearance before a juvenile court judge. (4) If a formal hearing is set at the initial appearance, the child may remain in jail pending that hearing. (5) After a factfinding hearing, the child may remain in jail pending a probation investigation or a diagnostic study and until a dispositional placement is ordered by the court. (6) In some instances, a child may be sentenced to serve time in jail. (7) If at the hearing, the juvenile court decides it does not have jurisdiction or that it cannot provide appropriate services, and the child
TABLE 1
Children Under Juvenile Court Jurisdiction
In Jail By Age and Sex
Day of CDF Visit

<table>
<thead>
<tr>
<th>Age Grouping</th>
<th>Boys</th>
<th>Girls</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>10-11</td>
<td>1</td>
<td>.7</td>
<td>0</td>
</tr>
<tr>
<td>12-13</td>
<td>11</td>
<td>7.6</td>
<td>5</td>
</tr>
<tr>
<td>14-15</td>
<td>38</td>
<td>26.4</td>
<td>25</td>
</tr>
<tr>
<td>16-17</td>
<td>94</td>
<td>65.3</td>
<td>10</td>
</tr>
<tr>
<td>Total Known</td>
<td>144</td>
<td>100.0</td>
<td>40</td>
</tr>
</tbody>
</table>

1 Percentage totals may not add to 100.0% due to rounding.

Age

Since all state juvenile codes define court jurisdiction by age, we assumed that law enforcement officers would have asked the age of every child they brought to jail. But jail personnel could provide this information for only 184 (71.6 percent) of the 257 children under the jurisdiction of the juvenile court. They had no knowledge of the age of 73 (28.4 percent) of the children in their jails at the time of our visit.

The majority of the 184 children whose ages were known (56.5 percent) were 16 years of age or older, but almost one-third of all the inmate children were 14 or 15 years old, and over 9 percent were 13 or younger. One child was 11 years old. It is interesting that while most of the boys found in jail were older (65.3 percent of them were 16 or over), most of the girls found in jail were younger (75.0 percent were 15 or younger). Little information was known about these girls or the reasons for their jail detention.

Race

Race was recorded for 217 (84.4 percent) of the 257 children found in jail. The majority (86.2 percent) were white; 24.8 percent were Black and 7.0 percent were recorded as “other” races. Minority children therefore are over-represented in the jail population, making up 31.8 percent of the total juvenile inmate population. In a number of communities, CDF staff observed a definite bias against the largest minority group in the area. Depending on the location of the jail, Blacks, Native Americans or Chicanos were disproportionately jailed.

Length of Stay

We learned that jails only had records on how long 151 (58.6 percent) of the 257 children had been in jail. Those in charge did not know how long almost half the children in their custody had been in jail. A little over half (54.9 percent) of the 151 children for whom records had been kept had been there 72 hours or less on the day of our staff visit.2 Sixty-eight children (45.1 percent) had been in jail anywhere from 4 to 30 days or more. Court dispositional delays and failure to carry out court orders promptly often caused extended jail incarceration. One boy who had been found mentally ill had already spent over six months in jail awaiting court-ordered admission to a state mental hospital when CDF staff visited the jail.

Even when we could discover during our site visits how long a child had been in jail, the answer did not tell us how long that child would remain in jail or the average length of stay for children held in that jail. For example, children reported as having been in jail less than one day included children who were arrested that day and who would be detained a few hours until their families appeared, but also children who had just been

2 A few police departments reported that when it was necessary to hold children for brief periods (a few hours or less than a day), they did not use the jail but placed children in vacant offices in the juvenile or detective divisions of the department. This sensible practice was found in a dozen of the police departments, including Dallas, some medium size departments in Indiana and Ohio, and a few small departments in Georgia.
admitted to jail and would be held for much longer periods. Most jailers did not have records on the amount of time all children remained in jail, so that the average length of incarceration could not be determined. Only 7 jails out of 171 which reported holding children had information about length of stay.

Seven jails is really too small a sample from which to generalize, except on the woeful absence of information. But when we calculated the average length of stay from the actual number of days 151 children had been detained on the day of our visit (found in Table 2), we found the average to be 6 days. Unfortunately, this 6-day average tells us only how long these children had already been in jail, not how long some of them would continue to be there.

It was interesting that when we asked the jailers which did not keep records on the length of stay for children inmates to estimate the length of stay for children, the jailers' estimates were consistently lower than the numbers we got from actual records. They estimated fewer children had been kept long times, and the length of each stay was less than we found from records. This may mean that for jailers — like most citizens — children in jail are out of sight and out of mind — even for their caretakers who underestimate their existence in jail.

To calculate this average, we took the midpoint of each of the categories and assumed 30 days for the over 30-day category.

### Table 2

<table>
<thead>
<tr>
<th>Length of Stay</th>
<th>Number of Children</th>
<th>Percent of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>One Day or Less</td>
<td>47</td>
<td>31.1</td>
</tr>
<tr>
<td>Two to Three Days</td>
<td>36</td>
<td>23.8</td>
</tr>
<tr>
<td>Four Days</td>
<td>11</td>
<td>7.3</td>
</tr>
<tr>
<td>Five to Ten Days</td>
<td>30</td>
<td>19.9</td>
</tr>
<tr>
<td>Eleven to Twenty Days</td>
<td>19</td>
<td>12.6</td>
</tr>
<tr>
<td>Twenty-one to Thirty Days</td>
<td>5</td>
<td>3.3</td>
</tr>
<tr>
<td>Over Thirty Days</td>
<td>3</td>
<td>2.0</td>
</tr>
<tr>
<td>Total</td>
<td>151</td>
<td>100.0</td>
</tr>
</tbody>
</table>

### Location

Out of 449 jails in nine states that CDF staff visited, 171 (38.1 percent) acknowledged holding children as a matter of policy. While these jails were scattered throughout all the study states, the incidence varied from state to state. As many as 92.9 percent of the jails in Virginia, 87.2 percent in South Carolina and 72.2 percent in Maryland said they held children as a matter of policy. Other states like Florida and New Jersey

Of the 276 jails which answered "no" to this question, 15 percent of them acknowledged that while it was not their policy, they did occasionally hold children.

### Table 3

<table>
<thead>
<tr>
<th>State</th>
<th>County Jails Holding Children</th>
<th>City Jails Holding Children</th>
<th>Total Jails Holding Children</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Surveyed No.</td>
<td>%</td>
<td>Surveyed No.</td>
</tr>
<tr>
<td>Florida</td>
<td>15</td>
<td>4</td>
<td>26.7</td>
</tr>
<tr>
<td>Georgia</td>
<td>13</td>
<td>8</td>
<td>61.5</td>
</tr>
<tr>
<td>Indiana</td>
<td>20</td>
<td>17</td>
<td>85.0</td>
</tr>
<tr>
<td>Maryland</td>
<td>9</td>
<td>7</td>
<td>77.8</td>
</tr>
<tr>
<td>New Jersey</td>
<td>12</td>
<td>4</td>
<td>33.3</td>
</tr>
<tr>
<td>Ohio</td>
<td>22</td>
<td>9</td>
<td>40.9</td>
</tr>
<tr>
<td>South Carolina</td>
<td>17</td>
<td>16</td>
<td>94.1</td>
</tr>
<tr>
<td>Texas</td>
<td>18</td>
<td>9</td>
<td>50.0</td>
</tr>
<tr>
<td>Virginia</td>
<td>5</td>
<td>4</td>
<td>80.0</td>
</tr>
<tr>
<td>Total</td>
<td>131</td>
<td>78</td>
<td>59.5</td>
</tr>
</tbody>
</table>

Of the 276 jails which answered "no" to this question, 15 percent of them acknowledged that while it was not their policy, they did occasionally hold children.
had relatively few jails holding children: 7.5 and 15.0 percent, respectively. A greater number of city jails we visited held children (93) than county jails (78), but proportionately, a child is more than twice as likely to be found in a county jail (59.5 percent of them held children) than in a city jail (29.2 percent).

**Faces Behind Numbers — Faces Behind Bars**

Statistics cannot measure what being placed in jail means to a child. Even if jails' statistics were accurate, as they often are not, they would only give numbers and categories. They would not tell what happens to children when they are thrust behind bars, surrounded by adult offenders. From the moment children enter a jail, the way they are treated while being processed, the physical conditions of the cell in which they are locked, the cellmates and contacts with other offenders or jail personnel, how the days and nights are spent — all these become the children's world.

Since "the crippling idleness, anonymous brutality and destructive impact" described as the worst attributes of prisons are pervasive in jails, children are forced to survive such conditions as best they can. Some of them are resilient and lucky: their stay may be brief; they may not be abused; they may get out of jail without permanent scars to their personality and emotional development.

Many are not so fortunate. The indifference of controlling adults to their needs; their cries for help that are not answered; the feeling of total abandonment, helplessness; the rage; the terror of isolation or abuse; the fear that their parents can no longer help them; the disillusionment of being unjustly treated by the justice system; the influence of adult offenders; the utter desperation that they could be left in their wretched cell forever — all take their toll on youngsters and make a mockery of any plans society may have for helping them grow up into decent adults.

What does it mean to a child to be in jail? Here are some of their stories.

**GUMPY**

Gumpy was arrested for burglary with two older youths one week before his fifteenth birthday. The neighborhood police had first gotten to know about him when he was nine. They considered him a follower who got into trouble. If his friends stayed clean, he would stay clean. If his friends decided to break the law, he would go along with that too. Although Gumpy had once been picked up by the police, he had never been booked or fingerprinted. But now the arresting officers listed Gumpy as an accessory to the burglary. The older youths had prior police records. No bail was set for any of the three. All were placed in the same county jail pending their appearance before a judge.

On the morning of his tenth day in jail, Gumpy was told the judge was ill, and that his case would be continued, but probably for no more than two weeks. He was still not released on bail. He waited a total of 41 days before trial.

Gumpy was bewildered, angry and scared. As the days wore on, his terror and outrage mounted. Several days before his trial finally took place (at that time he did not know that a date had been set), he said to a CDF staff member, "Promise one favor. Get me out of here. They're driving me crazy in here, man. I mean, nobody should be in here: these guys are off the wall, man. They're off the wall. They ought to be in a hospital.

"They got this one guy in there, he really thinks I am his son. Something happened to the guy's real son, I think. Anyway, the first week I was here he decided I was his son. So he keeps yelling at me. This other guy, he says I ought to yell at him, tell him I'm not his son, or walk past him one day and kick him in the nuts. I can't do that, man. I just want out of here. If I'm guilty and have to go to prison, then let them send me with guys my age.

"They got queers in here, man. Lot of 'em.

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1 All the facts and quotations in these vignettes were obtained from interviews by CDF staff with children who had been in jail. The children's names have been changed to protect their confidentiality.
Guys must have been straight once but not now. At night, everybody's yelling, whispering. This morning, a guy started to come at me from the back. It was a little ugly guy. He must have been 70 years old. And he was standing there holding on to himself looking up at me like I was some chick. This guy was ready to poke it in me. I think that's why they want me here. I think it turns these guys on. They don't have no women coming to see them so they put some kids in there like me. I'm the goddamn whore for this jail.

"This ain't no place for a kid, man. This ain't no place for anybody but an animal and I ain't no animal. I still like girls, man. I ain't ready yet to have no guard molesting me. You got to get me out of here. Can't you find out if there's a kid's prison some place? I'd rather be in with nine-year-old kids than have to go back in there with those guys. You know damn well each person has a breaking point. They're going to break me in there, man. There's no one in there to look out for me."

When the case went to trial, the judge ruled that Gumpy was guilty but suspended his sentence. This, however, did not wipe out what happened to Gumpy during his 41 days in jail.

FLOSSIE

Flossie is a small, black, 12-year-old child, wide-eyed and shy. One day she, her 13-year-old brother and some of his friends broke into a washing machine at a local laundromat and took out some quarters and dimes. The children were arrested.

"My brother told the judge I didn't have nothing to do with it. I told him too." But the judge ordered that she and her brother be held in the Youth Services Evaluation Center 60 miles away for 30 days.

Flossie's mother took her and her brother to the county jail from which they were supposed to be driven to the Youth Services facility. But as soon as their mother left, the children were locked up in the county jail. Flossie didn't really understand there was a difference between the Youth Services Center and the jail, so "I didn't ask them nothing.

"I thought they were letting me stay in jail for 30 days. It felt crazy to be locked up. I didn't want to get locked up. You couldn't get out. It was all locked and it had an iron door. That door stayed closed."

Flossie wanted someone to talk to. She was afraid, fearful that someone might come into her cell and bother her, and she wanted protection. Finally, she went to sleep in the cell.

"In the morning, I got up feeling sick. My arms hurt and my head hurt. I get dizzy sometimes, when I stand too long. If I sit down I get dizzy. I told the man, did he have anything for a headache? He didn't answer." Flossie was supposed to take some kind of "liquid medicine," but she did not have any in jail.

"In that jail, you stay in the room all day long. You feel like you want to go outside and do something." Mostly, Flossie stared at the walls. "Reading them things that was written on the walls. Stuff like they'd be glad when they got out of jail. And they'd have a calendar written on the wall. Thirty days, that's how long I thought I was going to be staying. On the wall it had 'I came in May the 29th and I hope to God I leave July the 2nd.' I thought, I hope I get out before the 4th of July. They had scratched up on the wall how many days they'd been there. I wrote one day and a half on the wall, with my name and 'I was here.'"

After a day and half, Flossie was taken out of her cell. She thought she was going home. No one told her any different. "We started driving, then I knew I wasn't going home."

WILLIAM

The police came to William's school to arrest him when he was 11 years old. The teachers and the other kids saw him because he was called out of class to meet the police in the hallway. He was taken to the County Jail for questioning about a robbery. After the interrogation, William was put in a cell. He could hear "the men in the next cell talking about how they felt about going to the pen the next day. It was a strange feeling. When you get locked up it makes you think about the past, all the things you did. Makes you think about the future. All the things you could have done if you didn't get in trouble. I had heard people talking about how bad it was in jail. I thought I was going to have to stay in jail a long
time, that I’d probably be old when I got out.”

William stayed in the jail for three days. “I did nothing. Did nothing all the time. There was nothing to do in there. It made it worse. When I was home I was used to doing most of the things I like to do. Like get up and go outside, look outside. Like see the sky. When you’re in jail you can’t see nothing. Nothing but bars and brick walls.”

The worst moment came when William’s mother came to see him. The visit took place with the mother and son separated by a glass window, talking on a phone. “When she left I just felt like crying.”

When William was 13 years old, he went to jail for a second time, for breaking and entering. When he asked to call home, he was told that the police had to question him first. “They never got around to letting me call.”

William was brought to a cell “farther back” in the jail and was confined alone. “It was lonely. I just laid down on the bunk and started crying. I laid there all day. Thinking about coming back here. Feeling lonely. I couldn’t explain the feeling.

“The jailer was mean to everybody. Like if I called him to ask him a question. We had to holler in a loud voice to get him. He came back and told me not to be hollering in the jail. He told me to shut up or he’d put me in the drunk tank. I didn’t ask to call home again.”

TERRI

Terri, aged 13, was arrested in an abandoned house with a girl friend and two boys on the night she first ran away from home. When the police arrived to arrest her, she was wearing a nightgown. Her request to have the police leave the room while she dressed was greeted with ridicule. “They said I’d shown my body to other people, so they’d stand right there. I took my clothes into the closet, closed the door, and got dressed.”

Terri was taken to the County Jail, forced to strip and shower. Disinfectant was applied to her hair. When she asked to make a phone call, “They said I couldn’t make any phone calls, that juveniles weren’t allowed to use the phone.”

Terri was put in a cell that had a dirty toilet, without toilet paper. There were no towels. One small, bare light bulb was left on all night.

It was very hot in the jail and there was no way to cool off. The cell was full of roaches, so many roaches that Terri was afraid to go to sleep. She still has nightmares of roaches crawling all over her.

For Terri, the worst part of being in jail was the feeling that nobody else knew where she was. “God, it seemed so long. I was nervous and I never knew what they’d do to me. No kids should be with adults, adults are too powerful . . . You feel lonely, wondering how could this be happening to me?”

Terri had no idea of how long she would be held or how to tell her family where she was. At 5 a.m. her mother arrived and Terri was released. She was never charged with any offense, but she had spent her first night in a jail cell.
BOBBY

The first time Bobby was held in a county jail he was nearly 15. "I was having an argument with my parents. Some nosy neighbors called the cops. They asked my parents if they should take me to the station and talk to me. My parents said, 'Okay.'"

The police took Bobby to the county jail instead of the police station. Right away, "They started calling me names. They said I was an animal, that I wasn't any good. That the neighborhood I came from suits my family. I started yelling and swearing at them. That's probably why they locked me up, but they had no right to do that. I hadn't done anything."

The police took Bobby's cigarettes, matches and his belt and threw him in a cell. "They called it a juvenile cell, but there was no difference." There was a one-inch mattress on a metal bed, no sheets. There was a toilet and a sink, but no toilet paper, no towels, no soap, no cup. "I asked for a cup so I could get a drink and they told me to use my hands." The cell was very small. There was one small window.

"It really stunk. They had me by this padded cell. I could hear men hollering, calling names. They were fighting with the cops and the cops were throwing water on them."

As soon as the door to Bobby’s cell was locked, "I laid down on the bed and stared at the ceiling. I thought I'd be out in no time, but the longer I stayed in, the madder I got. Did you ever wonder what it would be like to be an animal, to be all caged up? Then I started thinking I’d never get out. I wasn’t sure of myself. Wasn’t sure of what was going on."

"I never did get to sleep. There was a yellow bulb, really bright, on all night. I asked them to turn it off but they said they couldn't. The doors were clanging. I was thinking a lot. I was thinking of a way to get back at them. I had some crazy ideas that I'd kill one of them, but I never did."

"No one came to talk to me. Every now and then someone would walk by and I'd ask for my cigarettes but they said I didn't deserve anything. I wanted to call home. They said I'd get a phone call later, but I never did. About midnight I really started to be afraid they weren't going to come to get me. All night I laid back with my arm over my eyes."

When Bobby's parents arrived to arrange his release, Bobby told them about his night in jail, "but they didn’t believe my story."

After a second complaint a year later, the juvenile court committed Bobby, not yet 16 years old, to the Boys Training Center. Again he was placed in jail. "They said there was paper work and that I was to be held in jail until there was room at the Boys Training Center." Bobby was put back in the same cell he had been in earlier. "I felt like an animal. I felt nuts. I wanted to rip the paint chips off the wall and cut my wrists when they wouldn't allow me out of that cell even once.

"I could hear people whistling, talking, laughing. The sounds bothered me. It was all echoes. I couldn't make out what they were saying. Also, there were doors slamming. And I could hear the elevator banging. I was too mad to eat. Once I asked for some aspirin and they said they couldn’t give me any drugs."

When Bobby was transferred to the Boys Training Center he was brought out of the jail in handcuffs. "My hands hurt and I asked them to loosen up. They said 'No'. So I tried to run away. I broke loose and ran. But the cops grabbed me and brought me back to the jail and threw me into the padded cell. They closed the door and left me in there alone. After about ten minutes, five cops came in, stood around me. They told me to strip to make sure I didn't have any drugs. I got dressed and then they put me in a brown truck with a cage in the back and brought me to the Boys Training Center."

RABBIT

Rabbit, 14, was sleeping over at her friend Judy’s house. Late that night, Judy wanted to talk to her boyfriend and both girls quietly climbed out of the window for the rendezvous. But "Judy’s father caught us. He thought we was going to run away or something. He called the law. They came and said they was going to take me to the courthouse and call my mother."

Instead, the police took Rabbit to the county jail. She was placed in a barred cell. There were four cells in a line. Next to Rabbit’s was a cell with adult men. Some boys were in another cell and several adult women were in the last.
The two beds in Rabbit's cell were "steel, hard, narrow and not very long. The mattress was about two inches thick. Looked nasty. It didn't look like it had been washed for twenty years. I slept on the floor. That cell was smelly. Your commode's right at your bed, facing you. The toilet was a rusty-looking color green. The man could walk up and down the hall and I didn't use the toilet. I held it when I had to go to the bathroom."

As the door of her cell closed, Rabbit "started crying laying on the floor. No one came. I didn't understand why I was there — that's when I'd cry."

"I was scared. In that room, nobody in there, thinking what am I doing here. The boys were saying that this man hung himself in that cell. I knew they were right cause I had heard about it myself. There was blood on the floor."

The four men in the cell next to Rabbit's harassed her. "They talk nasty to little kids. They asked me to stick my finger up me and rub it around and rub it on them so they could lick it off. They asked me did I want to go to bed. They want my phone number and address. I thought they could get into my cell. I thought maybe the man who walked by might let them in." Another man did not make advances toward Rabbit, but frightened her nonetheless. "One was crazy. He was singing and all. He acted like he was a lawyer. He was talking to his secretary. He sit there and have her write notes. They took him out. I'm scared of crazy people."

After two days, Rabbit was transferred to the city jail. "I didn't know how long I'd have to stay." A visit from a court worker did nothing to clear things up for Rabbit. "I asked what am I here for. She said she couldn't tell me because she didn't know."

**JANICE**

Janice, aged 16, was sentenced to jail for selling drugs. She got violently ill within minutes after being placed in her cell. She felt her head getting warm, as if the blood in her neck was being heated and was rising into her brain. Then her head was suddenly very heavy, too heavy for her body to support. Her heart raced and perspiration poured all over her body. She vomited violently. Her fingers and toes tingled as though someone were sticking small needles into them. She was losing her sense of touch. Images became blurred; a strange arc appeared alongside everything she focused on, as though lighted by electricity. She was afraid.

"I can't say I really love my old lady, but when I got sick like that I really wanted her. I was calling for her too and everybody was telling me to shut up. I was begging for her to come and take care of me. That's all I wanted. All I wanted was my old lady to come and take care of me."

"See, the thing is, I didn't know how sick I was or why I got sick like that 'cause I'd never been sick like that. I thought I was going blind or maybe having a heart attack. If you never had those things happen to you, you don't know what's going on. But those people in the jail, they know what's going on 'cause they told me later that lots of girls go in there and get sick the same way I did."

"This guard there, the matron, she walked past my cell I'll bet fifteen times while I was in there sick and crying. But you think she stopped to look after me? She didn't even slow down. Just walked right on past me. All they care about is whether you're in your cell like you're supposed to be. If you get sick in there, they don't care. That ain't their problem. It's yours."

**TIMMY**

Timmy, at age 15, is the youngest of five sisters and one brother, none of whom ever have been in jail. But Timmy has. As he tells it, a friend of his gave him a gun, which he put in his pants. But in his nervousness the gun fell, hit the floor and went off, accidentally hitting and killing a girl standing nearby.

The police arrived on the scene shortly after the gun went off. "As they was taking me to jail I told them what happened. I was so upset. But they didn't believe me. They told me I was going to the electric chair."

Upon arriving at the jail, the police "put me in a little cell behind the desk. Made me take off all my clothes. I kept telling them what happened. They kept cursing me."

"Then they put me in another cell with a guy bigger than me. I felt bad. I was thinking about what happened. And my mama didn't know nothing about it. I was all upset and crying. No
one called my mama and told her till the next morning."

From his cell, Timmy could hear "men talking down the hall. Men in the next cell talking almost all day. I tried not to pay that much attention."

Timmy was held in jail for two days before going to court and for seventeen days afterwards. The sheriff and deputies repeatedly questioned him. "One of these sheriffs, he was trying to brainwash me. He thought I was dumb. I kept telling him the same story over and over and he said someone had done something to make me lie.

"I did nothing but sleep all day. Sometimes talked to a trusty. He'd come in there and I used to mess with him a lot. I never used to talk to the sheriff or jailer because they treated me so nasty. Cussing me. I used to ask them if I could make a phone call, they wouldn't let me call.

"The jail started getting crowded so they put a big boy, maybe 18 or 19, in with me. He told me he was going to get my ass if I went to sleep. He kept telling me what he was going to do to me. If I go to sleep, he was going to pee in my face. He was going to jump on me. I didn't go to sleep hardly at all. I was scared and I was thinking about my mama.

"I asked the jailer to put me in a cell alone. They paid me no attention. Told me I wasn't going to move. I was going to stay right there. They took it as a joke.

"The big guy bothered me for two days. Until I showed him I wasn't scared. I started fighting with him. Bare-handed with my fists. I had to show him I wasn't scared. Cause no one else was going to do anything."

In a jail, Timmy "felt funny. It made me feel bad. It was my first time ever being in jail. I ain't never got in any trouble. There's nothing good about being locked up in a little room. I couldn't see my mama but for ten or fifteen minutes. They wouldn't let me take no shower. They wouldn't let me brush my teeth. They told my mama that she couldn't give me no underclothes. I had to wear the same ones for seventeen days.

"I slept all day. Couldn't do nothing else. I couldn't even look outside. I couldn't see nothing but the walls. I felt bad in a little room like that everyday, except for one day when they let us go outside."

The worst thing about jail for Timmy "was the way they was treating me. I felt real bad because I ain't never been locked up. They shouldn't put kids in with adults because adults try to take advantage of you 'cause you're little and they're bigger than you and older than you."

After seventeen days, Timmy was transported to a juvenile detention center. Several inmates were being transferred, and Timmy went in a van, handcuffed to an older prisoner.

ANGELA

Soon after her 15th birthday, Angela was arrested for breaking and entering. She had broken into the same food store three times before to get groceries for which she couldn't pay, but this time, however, she had stolen money from one of the registers as well as two shopping bags of food. Calling her "hopeless" and blaming her parents, and society, the judge sentenced her to a term of no less than one year in the state correctional institution for girls. Angela told him she was glad to go, at least she'd be warm during the winter.

But instead of being sent to the girls' correctional institution, Angela was mistakenly placed in the county jail for women. "Lots of the women there," she said, "were real decent to me. Some of 'em even liked me. They pretended like I was one of their own kids. So they'd make things for me or give me presents people had brought to them. They'd tell me someone brought in some food to them, but they wanted me to have it. Or maybe they'd give me cigarettes or clothes. Me and my family, we never had no money. So when these women in there gave me presents, you better believe I took them.

"I knew what these women wanted. Guard told me the first night to look out for some of them. So like this first night a bunch of us are sitting around, and this woman, Pokey they called her, comes up behind me and pulls up my hair and give me this big wet kiss on the back of my neck. Everybody saw her do it. They saw her coming at me too, but none of 'em said nothing, like to warn me. So I swung around and rapped her right alongside her head. She falls on top of me and we're going at it, hitting and pulling each other's hair, and all of a sudden, I feel someone
feeling me up. Right in the middle of this fight, I look down, and I see this other freak, this Elaine, touching me down there and kissing me.

"I start to yell for help but none of them does nothing. They're just watching and clapping and making sure we ain't making too much noise. So pretty soon I figure what the hell, there's nothing else to do in here so I let this Elaine get off on me and when she was done I let a few others do, you know, like she done. That's all. Nobody said nothing. I ain't about to yell 'cause when they caught you messing around like that they'd put you both in solitary for three, four, maybe five days. And when you've been in there, you know you'll do anything, including getting raped, before you'll go back.

"The name of the game in there is survival. Hell, I was the youngest there. Sometime you fight, sometime you lie, and sometimes you just say to yourself, all right Angela, baby, settle down."

After about three months in the women's jail, Angela found out that her assignment there had been a mistake. "First, one of the inmates told me. Then this one guard told me the same thing. Even when they told me it still didn't make a helluva lot of difference. Just 'cause they say you're in the wrong place don't mean they're going to move you right away. Like with me, they told me in February and I was still there in May. I figured, they're giving me clean clothes, they're giving me food, I'm only getting raped once every couple of weeks, what I got to complain about? I never said nothing.

"I wonder a lot about why they put me in the wrong place. I heard they put a lot of kids my age in these places. I figured in my case it was either a mistake or they were trying to tell me something. Like, maybe they thought that if I saw what the worst place was like I'd stay out of trouble. You know, if you let the kid see the worst punishment maybe he'll stay clean. But I ain't going to stay clean. Seein' all these different prisons don't make a person decide whether they're going to break the law. You can make every promise in the book, swear on your life, and it don't mean nothing. One night you ain't got money or any place to go, and nobody in the world's got a job for you, and maybe you got a lot of people you owe money to, you know, and you'll get into a lot of trouble if you don't pay 'em back, you better believe you'll do something like break into some place or grab somebody's purse in the street. You got to do it. You don't decide these things, you're forced to do 'em. So I'll be back, only next time, if they send me to the old ladies home, I'm going in there with a chastity belt, 'cause I've got to be protected when those maniacs come at me.

"Maybe a lawyer could figure this out for me, but it seems like with all the smart people they got walking around someone ought to be able to figure out a better way to help kids. There's always going to be kids like me getting into trouble. Right? Seein' lousy prisons ain't going to stop nobody like I say. Electric chair and gassing people don't stop 'em from murdering people. So you'd think they'd find a better way somehow. I lost my education in the jail. That shouldn't have been. That was maybe the only good thing I had going for me. So now I ain't got that either."
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open my room door for ten or fifteen minutes. They
wouldn't let me take a shower. They wouldn't
let me brush my teeth. They told my parents that
she couldn't give me my underclothes. I had to
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her right alongside her head. She talks up and
me and we're going at it, brouh, and pulling each
other's hair, and all of a sudden, I feel somethin.
Why Are Children Jailed?

We found that the reasons or explanations given for jailing children were as vague and as contradictory as the information on the numbers of children held in jails. As we examined records, interviewed children and spoke to those responsible for placing or holding them in jails, the jailing of children seemed haphazard, determined largely by accident of geography, or time of day, the lack of separate facilities for children, public unawareness about what happens to children when jailed, and the ignorance of law enforcement officials of the laws in their own states restricting or prohibiting the use of jails for juveniles.

Children are jailed to await hearings and are held unduly despite code provisions for an early hearing. Children are returned to jails while awaiting dispositional decisions and when no dispositional placement is available to the juvenile court. Children are sentenced to serve time in jails in violation of law. Dependent and neglected children are jailed for shelter in the absence of appropriate foster care facilities. If a child is picked up at night and the nearest juvenile facility is hours away, the sheriff may simply drive to the nearest secure facility, usually a jail or police lockup, and leave the child there until the next morning or for several days until a judge can hear the case or until personnel are available to transport the youth to another facility.

These reasons, however, do not really explain why children are jailed. They explain something about a system that holds children wherever there is a place to put them. But that place should not be a jail. Why then are they jailed? We believe the real answers lie submerged in several prevailing myths about children, the law and jails.

The Conventional Wisdoms and the Harsh Realities

One of the first rationales people use to justify jailing children is: “The community must be protected.” No one can argue with the goal of community protection. We all want to feel secure on our streets and in our homes. As crime statistics escalate, and as reports show increasing arrests of juveniles, the pressure on and by law enforcement officers to crack down on and lock up offenders — not matter what their age — is intensified. Too little distinction, however is made between the number of arrests and the far smaller number of juveniles found involved in reported offenses.

But are the children we found in jail serious threats to the community? Are they in jail because of dangerous misdeeds or behavior?

A look at the offenses for which children were being held in the jails we visited does not support the notion of jailing juveniles to protect the community. Only 19 (11.7 percent) of the 162 children for whom jails had recorded charges were in jail for allegedly committing a dangerous act. The overwhelming majority of the youngsters were charged with nonviolent offenses — crimes against property (34.6 percent); behavioral offenses hurting only themselves (12.3 percent) and status offenses which would not even be criminal if the offender had been an adult (17.9 percent).
TABLE 1
Offenses of Juveniles Found in Jail on Day of CDF Site Visit

<table>
<thead>
<tr>
<th>Charge</th>
<th>Number</th>
<th>Percent of Known</th>
</tr>
</thead>
<tbody>
<tr>
<td>Serious Crimes Against the Person(^a)</td>
<td>19</td>
<td>11.7</td>
</tr>
<tr>
<td>Property Crimes(^b)</td>
<td>45</td>
<td>27.8</td>
</tr>
<tr>
<td>Minor Assaults</td>
<td>6</td>
<td>3.7</td>
</tr>
<tr>
<td>Minor Property Crimes</td>
<td>11</td>
<td>6.8</td>
</tr>
<tr>
<td>Behavior Crimes(^c)</td>
<td>20</td>
<td>12.3</td>
</tr>
<tr>
<td>Children's Status Offenses (Non-Criminal)</td>
<td>29</td>
<td>17.9</td>
</tr>
<tr>
<td>Runaway</td>
<td>17</td>
<td></td>
</tr>
<tr>
<td>Delinquent</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Truant</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Protective Custody</td>
<td>7</td>
<td>4.3</td>
</tr>
<tr>
<td>Hold for Transfer</td>
<td>25</td>
<td>15.5</td>
</tr>
<tr>
<td>Total Offenses Known</td>
<td>162</td>
<td>100.0</td>
</tr>
</tbody>
</table>

\(^a\)FBI Index of Violent Crimes: Murder, Rape, Robbery
\(^b\)FBI Index of Property Crimes: Burglary, Larceny, Auto Theft
\(^c\)Prostitution, Drugs, Drunkenness, Vagrancy

Some of these children may have needed a temporary shelter or detention (for example, for children with histories of running away), but protection of the community surely did not require their incarceration in jails. If the “dangerousness” of the child is not the determining factor for jailing children, what is? A judgment based on the age, size, appearance or mannerisms of the youth? These are not reliable indicators for predicting whether a child is a threat to the community. The room for error is too great, and police or other law enforcement officers (who generally decide whether to hold or release a child) are not trained to evaluate children and are in no position to do so. Even if psychologists or psychiatrists could more reliably predict what sort of child is likely to be violent or a menace to the community, such diagnostic services are not available in jails.

In sum, the majority of children arrested do not need to be locked away in maximum secure settings. For the relatively small number of children who do, jails are inappropriate because they lack the ability to screen and to help children with serious behavioral problems. Finally, these few very troubled children should not be placed at the mercy of adults in jail, and they should not be used as an excuse to jail the far larger number of children who pose no danger to the community.

A second argument related to community protection contends: “Tough children are jailed to protect other children held in custody.”

Almost every juvenile detention supervisor I interviewed, even the most progressive and reform minded, admitted sending some of their tough cases to local jails.

Here, too, we found that the facts belie the theory. Small, quiet, shy, vulnerable and terrified children were in the jails we visited along with those who were big, street-wise, or who were charged with serious offenses. And even the “tough” ones face conditions and threats in adult jails which are beyond their ability to handle.

If protection of the community is not cited as the reason children are jailed, the converse is: “To protect children from themselves or from dangerous home environments.” But in the

name of protecting children, we found many youngsters in the filthiest, most neglected and understaffed institutions in the entire correctional system. One child was in jail because her father was suspected of raping her. Since the incest could not be proven, the adult was not held. The child, however, was put in jail for protective custody.

Putting a child in jail to protect against harmful home environments can have contrary and unwanted effects. As Dr. Rosemary Sarri commented:

Besides being terrifying and lonely...the kids perceive being jailed as totally unnecessary...A truant and a curfew violator and a runaway...if they're jailed with people who have committed robbery, homicide...the word "justice" becomes ridiculous. Especially if they, say, ran away from an intolerable situation.²

Jailing children charged with self-destructive behavior for their own protection is a hollow effort. Without sufficient staff to supervise inmates and without adequate medical and psychological support services, jails are the worst possible place for such children to be.

It is terribly terrifying being locked up. The door slamming behind you...a lot of kids have talked about the trauma of really being locked up. The feeling of being caged...In addition to being terrifying, it's also a very lonely experience. That's why there is suicide...the probability of a kid being able to commit suicide when...held for 4 days is not high. But, if a child is put in total isolation the chances are greater. Some children just totally panic. They can't stand it. They hallucinate...An adult learns it is not the end of the world; but a kid is, a lot of times, just not enough experienced to know.³

Finally, it is a cruel hoax to confine children in jail in the name of protection when jails contain motley and dangerous offenders, with inadequate facilities or staff to provide adequate security. As a prominent criminologist told us:

³ Interview with Dr. Rosemary Sarri, Co-director, National Assessment of Juvenile Corrections Project, School of Social Work, University of Michigan, Ann Arbor, Michigan, 16 April 1975.

...when I was the assistant warden of the Cook County Jail, they tried to commit an eleven year old to the jail. I said I would not accept him. They said, "We have a valid minimum [age] and you will accept him." I said, "I will not. You will give him to somebody else because I will resign and I will go across to the press room and tell them why I resigned." So, they took him back...The reason, among others, that I did this, was because I knew it would be a miracle if I could protect that child inside the institution...⁴

Children are also put in jails, "To teach them a good lesson." Some police and some parents believe that a brief encounter with the horrors of jail will scare a youngster so much that he or she will never again behave badly. An informal trip to the local jail does not have to be recorded if no charges have been brought, and so some parents therefore feel that no lasting harm will come to the child. They do not realize what may happen to their child in jail or that the experience of having been jailed may haunt a child even if there is no formal "record" to be used against the child.

The myth of jail "therapy" was condemned by Albert Deutsch a quarter of a century ago, when he said that it was

² Interview with Hans W. Mattick, Director, Center for Research in Criminal Justice, University of Illinois at Chicago Circle, Chicago, Illinois, 14 April 1975.

That category referred to by the Juvenile Detention Committee of the 1946 Conference in these words: "In so many communities the jailing of children continues because it is believed in...The myth that to jail is to reform still has a firm grip on some authorities and on large segments of the population."³

The myth, however, clings fast. One juvenile court judge committed juveniles "to the jail on the theory that a few days confinement would constitute shock treatment which would be of value to them"⁵ A higher court reversed his decision and prohibited him from continuing to do so, holding that such action violated children's constitutional rights.⁶ However, scaring chil-
dren into behaving well by subjecting them to jail persists.

In addition to using jails to scare children as a deterrent, some judges believe jailing children is a suitable punishment. We found that jails in five of the nine states we visited held juveniles who had been sentenced there by juvenile courts. Jailers we visited told us (for the most recent year data was available) that 41 children had served jail sentences in Indiana; 39 children had served jail sentences in Ohio; 34 children had served jail sentences in Virginia; 5 had served jail sentences in Maryland; and one child had served a jail sentence in New Jersey. These figures are not the total for any of these states, but are based only on information from some of the jails we visited during our study. The 1970 National Jail Census reported that of the nation’s jails surveyed 2,218 juveniles were serving their sentences in jail: 1,365 were serving sentences of one year or less; 853 were serving sentences of more than one year.

Some of the children serving time in jail were held illegally. For example, Florida and Maryland had statutory provisions in their juvenile codes which prohibited sentencing children to jails, yet we learned that children had served sentences in jails in both these states.

Morgan County and Porter County Juvenile Courts in Indiana ordered weekend jail sentences as a condition of probation, even though the state law authorized jailing only if a child was found to be a “menace.” If a child’s behavior is such that he or she can safely be placed on probation in the community during the week, what is gained by weekend confinement?

Do these scare and punishment tactics work? Indeed, children are frightened by being jailed.

Kids in correctional programs...say the worst experience in their lives has been in jail. They say it’s worse than training schools. They associate jails with abuse — homosexual abuse, abuse by guards, abuse by other prisoners — they’re scared to death about the kinds of things that happen to them in jails. But what do the frightening experiences really teach jailed children? According to experts whom we consulted, the lessons they learn in jail will not be good ones.

Children learn they cannot trust their parents:

There’s also a loss of trust in adults...for most adolescent kids...for whom this is a first experience, being in jail more than a day would start them thinking...my parents are trying and are helpless or my parents are not trying — either way has to make you feel helpless, has to produce a loss of trust...and a resentment against parents and the authority they represent, which means resentment against society.

Children learn they cannot trust adults charged with carrying out the law:

Calling for help and not getting it...can really do much to develop basic mistrust of adults. Nightmarish experiences in nightmarish conditions can tremendously intensify the sense of unreality, of fantasies, and further distort reality. They can further reduce the rather tenuous hold on reality that some of the kids may have.

Children learn to hate:

If you take a child and put him in a situation where he feels absolutely impotent to do anything about his situation, and on top of that you heap abuse...you are producing an enraged child who is eminently susceptible to committing an act of violence with the right stimulus. Now this is something which is clini-
Children learn to be like the adult offenders with whom they come into contact:

In the teens, problems of identification are probably most acute... And teenagers are enormously vulnerable... Their sense of their goodness, badness, conscience, social identity, psychological identities... are still in a great state of flux. You have a very vulnerable group in terms of precisely some of those things that are going to decide whether a person is going to be "a good citizen" or an "offender."14

Jailing may accentuate identification with the aggressor, and result in a pattern either of submissiveness to a brutal type of adult or taking it out on younger victims.15

There are those law enforcement officials and judges who do not justify the jailing of children, who regret it, but who feel "forced" to do so: "Children are jailed because juvenile detention facilities are unavailable, overcrowded or inappropriate," they say. Each of these assumptions should be examined carefully.

First, does the unavailability of juvenile detention facilities force police to jail youngsters? To ask the question another way: Where there are detention centers readily available, are children still found in jail? The answer is yes. Over 58 percent of the counties and independent cities we visited had juvenile detention centers. Yet, 83 jails in these same jurisdictions with detention centers reported that they held children. Indeed, on the day of our staff visits, there were 120 children in these jails and these jails estimated they held over 9,000 children annually. Dallas County, Texas, has a large detention center. The Dallas City Jail and most other city jails in the county do not detain children, but three city jails were still used by police to detain children. Two of these jails detained an estimated 1,000 children each in 1973. Therefore, one cannot assume that the availability of a detention center eliminates the use of jails for children.16

Second, does overcrowding of juvenile facilities force the jailing of children? There seems to be general agreement that this does in fact happen. As many have observed,

Even where specific non-jail detention facilities exist they frequently become over-crowded so that the excess overflows into the local county jail. This is true even when existing legislation prohibits the jailing of juveniles.17

Is this spillover necessary? Are jails used only occasionally, at peak periods, when the demand for secure settings is excessive? It appears not. As long as jails are permitted (either legally or through lack of enforcement of statutory prohibitions) to hold children, jails and detention facilities are both seen as available options for placement. overcrowding should not be allowed to "force" the use of jails. The total number of detained children doubtless could be reduced (since most could be released or held in a community-based setting pending trial), thus making room in juvenile centers for the children who need detention temporarily. And if the population is still too large, law enforcement officials and the public ought to demand that sufficient places be made available in separate juvenile facilities.

Third, if a juvenile detention center is inappropriate for holding a child because of mental or emotional illness or retardation, should jails

14 Other national and local studies bear out this point. After reviewing several studies and conducting her own analysis, Dr. Sarri concluded, "The existence of a juvenile detention facility does not in itself preclude youth from being placed in jail..." (Under Lock and Key: Juveniles in Jails and Detention, p. 65.)

15 Sid Ross, Editorial Consultant, Parade Magazine, "Pre-adjudication Jailing of Juveniles," Statement before the U.S. Senate Committee on the Judiciary, Subcommittee to Investigate Juvenile Delinquency, 11 September 1973. Ross spent almost six months looking into local and county jails all over the country in 1963 and reported on his findings in Parade, 7 November 1963. In the spring of 1973 he looked at jails once more and testified, "I found little had changed." His conclusions were confirmed again in 1974 by Ronald Goldfarb, who reported the use of jails "in some jurisdictions to relieve overcrowding in juvenile facilities." (Jails: The Ultimate Ghetto, p. 293.)
be used instead? Clearly jails are even less appropriate places for such children, yet we found numerous children in jail who were mentally ill or seriously retarded for whom placements were difficult to find or who were on waiting lists of mental hospitals. In a visit to a jail in Selma, Alabama, we learned that when youths seemed mentally retarded or disturbed they might be held in jail for many weeks while efforts were made to find appropriate placements. A juvenile court judge in South Carolina expressed his great unhappiness about being forced to send mentally retarded children to jail because the state schools had long waiting lists.

We also found children who simply had no place to go. One boy’s mother had been hospitalized, and because no relative or neighbors had been able to take him, the sheriff took him to jail. Too often dependent and neglected children are housed in jail cells. Having no place else to go should never be a reason for jailing a child. More humane alternatives must be provided.

Some people believe that while jailing children generally is not a wise practice, it is appropriate to jail children who have been waived from juvenile court to adult criminal court. They contend that if a child is to be tried in court as an adult, it is logical that the child be held in an adult jail prior to trial.

The increased waiving of children from the juvenile justice to the criminal justice system is an alarming trend. We found children waived to adult status when we visited jails in all our study states, except those in New Jersey.

While the reasons for this trend are complicated, we believe there is no sound basis for holding waived children in jail while awaiting trial any more than for children considered juveniles by the courts. The need for assessment and help, the emotional harm resulting from the awful conditions of jails, and threat of serious harm by adult inmates are just as real to waived children as they are to unwaived ones. The harms to these children are also just as real. We learned of one 16-year-old boy in Seminole County, Florida, who was waived to adult court for purse-snatching. He spent 201 days in jail, between October, 1974 and June, 1975, while his case in adult court was repeatedly continued. Although he became increasingly disturbed, nothing was done in jail to help him. On the 202nd day of his incarceration in jail, he set a fire in which eleven people, including the boy himself, died.

None of the reasons given above for jailing children can offset or compensate for the lasting injury inflicted on youngsters who are jailed. Nor do the reasons offset the risk that those youngsters will become an even greater risk to the community as a result of being jailed with adults.

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**TABLE 2**

<table>
<thead>
<tr>
<th>State</th>
<th>Number Waived</th>
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</thead>
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<tr>
<td>Florida</td>
<td>1</td>
</tr>
<tr>
<td>Georgia</td>
<td>8</td>
</tr>
<tr>
<td>Indiana</td>
<td>30</td>
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<td>Maryland</td>
<td>16</td>
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<tr>
<td>Ohio</td>
<td>10</td>
</tr>
<tr>
<td>South Carolina</td>
<td>1</td>
</tr>
<tr>
<td>Texas</td>
<td>3</td>
</tr>
<tr>
<td>Virginia</td>
<td>24</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>93</strong></td>
</tr>
</tbody>
</table>

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11 By waiver or transfer, children whose age places them within the jurisdiction of the juvenile court are subjected to adult criminal jurisdiction and thus are treated as adults, by court order, for the purpose of prosecution, trial and sentence. Further, it is reported that 48 states have provisions in their laws which permit selected children to be transferred to adult court jurisdiction. New York and New Hampshire do not have waiver provisions. In 12 states other procedures allow the criminal court to take jurisdiction over a juvenile. In some states the prosecutor is "empowered to weigh the competing policies and make the initial decision about which court will try certain juveniles." See, Mark M. Levin and Rosemary C. Sarri, Juvenile Delinquency: A Comparative Analysis of Legal Codes in the United States (Ann Arbor, Michigan: National Assessment of Juvenile Corrections, 1974).
Chapter 3

What Are Jails Like For Children?

Even though I have passed through steel jail doors hundreds of times, the sound created by their closing still sends a shiver through my body. I know the doors will open again. Yet, that sound always triggers the question: "But what if they do not?"

The most forceful, lasting impression on CDF staff as they visited jails across the country was that jails, relics of many decades, were fetid places in which punishment by neglect and indifference were so pervasive as to corrode every aspect of life for the children held in them. While they varied in their physical plants from place to place — a particularly ancient, dirty one here or a spankingly sterile-clean, new one there — there was always a sameness about them. The walls, the bars, the hard-surfaced floors, and the clanging of steel on steel as doors were locked and unlocked created sounds and hollow echoes peculiar to jails, inhuman and terrifying. Barren of normal activity, like tombs, jails seem uninhabited by human beings despite cells crowded with inmates. The forced coming and going of prisoners did not lessen the sense that no one lives in these jails.

A County Jail in a Large City

This jail is in a new four-story stone structure in the downtown area and is operated by uniformed deputies and inmates chosen as trustees. The first floor contains the office for admitting and booking persons on arrest and two "tanks" to hold people, including those who must be "sobered up" before being processed.

Male juveniles are placed in a large dormitory unit on the second floor that has over 30 double-deck bunks adjacent to the section for adult males. Both the juvenile and adult male units are manned by a uniformed deputy in a closed booth from which the electronic units to all cells are controlled. This modern equipment did not provide for visual control of what occurred within the units, or of auditory control unless the noise level becomes extreme. Within each unit every inmate had full access to all others.

Memorandum from Don Rademacher, Austin, Texas office, Children's Defense Fund, 15 June 1975.
**A County Jail in a Medium-Size Town**

This jail is old, dismal, and dark. The section for boys consists of three barred cells surrounded on all sides by a walkway. Each cell contains only a steel bunk. The section for girls is in the basement adjacent to the furnace and a storage room. It is dark, dirty and so far removed from other sections of the jail that no one is within shouting distance of the girls held there, except on rare occasions. The dirty walls of the section were covered by layers of juvenile graffiti. A twin metal bedframe held two dirty, uncovered mattresses. Stacks of old magazines lay scattered on an old table and the floor. No light fixture could be seen.

Before going through the jail, the sheriff spoke at length about his concern that children were held in this jail. Yet, when we got to the girls’ section, he opened the door without warning and walked in. No matron was present.

**A Small City Jail in the Midwest**

An old, three-story building built around the turn of the century houses the local police department, and in the dank basement was the jail, consisting of three barred cells, each with two steel bunks. The only light came from barred windows placed high on the walls.

The cells were dirty, covered with dust and cobwebs. Uncovered pipes ran across the cells, and some were broken. There were holes in the ceiling, and there were no toilet facilities in the cells.

This jail looked like a place that both people and time had forgotten. It brought to mind stories of child suicides in jails.
There were no separate facilities for children in this jail. One large room held two rows of four cells with an aisle running between them. The four cells on each side were separated by bars, and each cell contained one or more cots with dirty, uncovered mattresses. No toilet facilities were visible.

The room was so badly lighted, that one’s eyes had to become accustomed before one could make out what was within. But the dank smell of a cellar combined with the smells of urine and accumulated filth struck one without any waiting.

Report after report, investigation after investigation have found that these descriptions are not isolated examples of unusually decrepit jails. Jails are the lowest priority when law enforcement resources are allocated. Historically used as depositories for the village drunkard, the vagrant, the insane — and now used for traffic violators and transient offenders presumably on their way somewhere else — jails never have commanded the attention or resources to provide even minimally decent environments. As noted criminologist Hans Mattick has commented,

One of the problems with jails and their inmates is that they have gotten the reputation of being unimportant, and that unimportance rubs off on everything that is associated with the jail. The people who are in the jails, whether they are inmates or staff, are very easy to neglect since they have no political sex appeal. You can’t run for office on a jail. 2

Some officials excuse the niggardly funding of jails by arguing that it is impractical to improve places where the inmate population is supposed to stay for only 48 to 72 hours and then moves on. But as we have already seen, the average length of time a child is in jail is at least 6 days, and some children are sentenced to jail for a year or more. Not all jail populations, therefore, are transient. Furthermore, even if they were, the subhuman conditions of sanitation, safety, lack of medical and psychological help and inadequate security from those with whom cells and showers are shared cannot be tolerated, even for a short time, for children.

These wretched conditions persist in jails today, despite the scandals and disclosures, despite the courts which have ruled that certain jail systems constitute cruel and unusual punishment in violation of the Constitution. There are no agreed on national standards for minimally necessary conditions, even for jails receiving federal funds. Indeed, the lack of national leadership has meant that millions of dollars spent to improve local jails have not produced adequate results. 3 Left unmonitored, without guidance, resources, reporting requirements or supervision, local jails manage on their own to exist — barely.

For the children locked inside them, the desperate conditions of jails have special significance. First, children do not have the experience or psychological maturity to endure jail conditions even temporarily. For them the age, filth, stench and unpleasantness of the jail itself can be horrifying.

Second, children regularly depend on adults for their safety and protection. In jail, the inadequate number of any staff, the lack of anyone specifically trained to take care of children, and the probability that inmate trusties will be their caretakers endanger rather than protect children.

Third, children are weaker than adults. The inability to separate completely adult criminals from juvenile inmates presents real danger to them.

Fourth, children are not mature enough or are often afraid even to ask for needed medical, psychiatric or other services. The total lack of diagnostic services in jail places children in trouble at extreme risk.

Fifth and finally, children do not have the same ability as adults to put the passing of time in perspective. Locked in a barren cell — perhaps in solitary confinement — with nothing to do for hours and days, jail may seem interminable and

2 For an excellent discussion of the results of LEAA-funded jail improvement projects and the need for federal leadership in this area, see Report to the Congress by the Comptroller General: Conditions in Local Jails Remain Inadequate Despite Federal Funding for Improvements.
TABLE 1
Age of Cells in Jails of Cities and Counties with Population over 25,000
1970 National Jail Census — For CDF Study States

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 day to 25 years old</td>
<td>81.7</td>
<td>46.2</td>
<td>43.6</td>
<td>75.5</td>
<td>15.1</td>
<td>32.3</td>
<td>54.7</td>
<td>54.8</td>
<td>74.9</td>
</tr>
<tr>
<td>26-50 years old</td>
<td>12.8</td>
<td>30.8</td>
<td>10.7</td>
<td>4.4</td>
<td>44.7</td>
<td>18.5</td>
<td>27.4</td>
<td>31.5</td>
<td>14.9</td>
</tr>
<tr>
<td>51-75 years old</td>
<td>2.9</td>
<td>14.5</td>
<td>9.7</td>
<td>7.1</td>
<td>20.8</td>
<td>10.2</td>
<td>14.6</td>
<td>10.0</td>
<td>6.5</td>
</tr>
<tr>
<td>76-100 years old</td>
<td>2.7</td>
<td>3.3</td>
<td>29.4</td>
<td>9.1</td>
<td>8.9</td>
<td>15.6</td>
<td>2.1</td>
<td>3.7</td>
<td>1.3</td>
</tr>
<tr>
<td>over 100 years old</td>
<td>—</td>
<td>5.1</td>
<td>6.6</td>
<td>3.9</td>
<td>10.5</td>
<td>23.4</td>
<td>1.2</td>
<td>—</td>
<td>2.5</td>
</tr>
</tbody>
</table>

Most jails are very old, deteriorating and unsafe. In one state we visited, only 11 of 62 jails used for children could pass minimal standards even for sewage disposal, plumbing and cleanliness. Many lack toilet facilities in each cell; others have toilets but no privacy. Old jails do not have fire extinguishers. They do not provide inmates with such basic things as soap, toothpaste, toilet paper. The list of horrors can go on. But what do these mean to children?

Jon was put in a cell alone. There was no sink and nothing to drink. No pillow. The sheets were sandy and dirty. There were two bunk-beds with a toilet between them. "Rusty, grungy. I wouldn’t use it. Anyway, everyone could see in. There were bars on two sides. I could see other cells. Could see a bunch of crazy-looking people. They looked mean. I just wasn’t used to seeing people like that. One was beating on the bars to get attention. There was a lot of yelling. It took a long time to get to sleep."

Fred, not yet 13, was placed in a concrete cell with two small barred windows looking out on the street. There was a mattress and one blanket, a sink, toilet, shower. There was one old dirty cup, too soiled to drink from. Fred slept badly: "The beds were mangy, with big stains on them. I felt kind of scared. I kept..."

"Warehouses of Human Flesh"

As you enter this forbidding two-story jail you realize it is very old. The jailer took me to the section reserved for juveniles and women. The first room is a cell about 6 by 8 feet enclosed by old strap steel rather than bars. This cage was used to detain male juveniles. Resembling a woven reed basket, it is hard to see in or out of this cell. It contained two steel bunks and no toilet facilities. The inside of the cell was dirty. I smelled rather than saw the dirt. This cell served as an ante room through which women prisoners had to pass to reach their section, which contained three beds, a toilet, and a single cell, also enclosed by strap steel.

Some of the male juveniles were held in the adult male section of the jail, which contained six cells with four metal bunks in each. These cells fronted on a walkway and the inmates gathered behind the doors to the walkway. I could not enter the cells as they were locked, but I could see filthy mattresses on the bunks, and water stood about a half-inch deep on the floors.

Drive a child to despair. The utter inadequacy of recreational, educational and visitation opportunities in jail makes days and nights seem endless.

* This quote is taken from one state’s assessment of its local jails. See, Report to the Congress by the Comptroller General: Conditions in Local Jails Remain Inadequate Despite Federal Funding for Improvements, p. 6.
walking around the cell. There was just a big thick steel door and a little round window. The light was left on all night. When Fred asked to have it turned off, they said ‘no.’ They said they were afraid that I’d kill myself if it is dark. Once I threw a blanket over the light. It caught on fire.”

No One to Help

There are two tiers of authority and control for children in jail. First are the administrative officials in charge of the jails. These are primarily the officials of local law enforcement agencies. The second and far more direct authority and control for children lies with the actual adults in whose hands they are placed and who are responsible for monitoring their safety and for providing services while they are in jail. These people are by far the worst-paid, most ill-trained and over-extended personnel associated with corrections. Like the physical neglect of jails, the people charged with control and care of inmates have been neglected in terms of their education, training, salaries, hiring criteria, supervision and the assistance they need to function decently. In large jails, a child may be booked by a uniformed officer. But from then on — and in smaller jails from the very start — overworked custodial staff on the lowest rung of the corrections ladder are the principal people to whom children can turn for help. They often are not sympathetic:

Fred’s cell had a wooden bench and some chairs. There was no sink and no toilet. “You have to ask permission to go to the bathroom but there’s never anyone around. So you have to sit around and wait for someone to come. A lot of times I’d ask and they wouldn’t let me. “If I yelled for the cops and they didn’t come, I’d just have to sit there. The only time they come is in the daytime. In the daytime, there are people from the outside who are around so they try to keep you quiet. At night they wouldn’t come in. If you had to go to the bathroom, tough luck.”
James had not eaten for a day and half after he was locked up. "They don't care whether you eat or not. All they do is bring the tray back. "The jailer was mean to everybody. We had to holler in a loud voice to get him. He came back and told me not to be hollering in the jail. I was going to ask him to make a phone call. He told me to shut up or he'd put me in the drunk tank. I didn't ask nothing.

"They were worse to me because I was a kid. It was easier to push me around. They called me names and threw me against the wall. The cops scared me. They threatened me. They'd tell me I was to be there for a month. They said the Boys’ Training Center was bad. It kept getting worse. They kept hitting us a little harder every time."

When custodial staff are in short supply, they designate adult inmates to serve as trustees to help them with their chores. In some of the jails we visited, the regular staff was outnumbered four to one by trustees. In several instances of abuse of children in jails, the trustees were directly responsible, though the system that gave them power over the lives of children must ultimately be held accountable. In one case, when two boys were repeatedly sexually abused and burned with cigarettes by older inmates, the trusty in charge did not respond to their cries for help. In another case, the trusty regularly accepted bribes from adult inmates to permit them to enter the cells of teenage girls to have sexual relations.

While these are not isolated events, the trustees, jailers and police officers are not the sole villains. They too were victims of the indifference and neglect meted out to jails and their occupants.

### Dangerously Exposed or Dangerously Alone

The ability to separate various kinds of inmates in jail — men from women, persons accused of violent crimes from minor offenders — is crucial in the case of juveniles held in jails. All of the states we visited had laws requiring that children be kept separate from adult inmates. The states thus officially recognized that children need protection from incarcerated adults.

The definition of separation varies, however, depending on the wording of state law and on its application at the local level. We defined the degree of separation we found in the jails we visited in three ways: (1) Substantial separation, where serious efforts are made by jail personnel to prevent any contact between children and adult inmates, either verbal or visual, except at the time of initial admission or during release. This would require a separate juvenile unit. (2) Partial separation, where there is the potential for verbal and/or visual contact with adult inmates in passage to the juvenile unit, through use of portions of adult cellblocks to house children, or by contact with inmate trustees. (3) No separation meant that children are regularly placed in adult cellblocks, pens or tanks.

Of the 139 jails for which information on separation was secured, slightly more than one-third (35.9 percent) were able to assure substantial separation of children from adults. Another 42.3 percent had only partial separation. Finally,

<table>
<thead>
<tr>
<th>Person Administratively Responsible for Jails which House Juveniles</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrator</td>
</tr>
<tr>
<td>----------------</td>
</tr>
<tr>
<td>Chief of Police</td>
</tr>
<tr>
<td>County Sheriff</td>
</tr>
<tr>
<td>Sub-station Captain</td>
</tr>
<tr>
<td>Jail Administrator</td>
</tr>
<tr>
<td>Director Public Safety</td>
</tr>
<tr>
<td>County Corrections Administrator</td>
</tr>
<tr>
<td>City Council</td>
</tr>
<tr>
<td>Director Juvenile Probation</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

*Includes 2 wardens and 1 county jail administrator*
over one-fifth (21.8 percent) of the jails provided no separation at all. In some instances, separation was impossible due to physical constraints and overcrowding. One Florida jail, for example, held 200 inmates but had only eight individual cells; the rest of the space was divided into 17-bed dormitories. In another county, the sheriff explained as he led us through his four-cell jail which could not separate children from adults, “You may be surprised that the cells have no locks. This county is poor. I cannot get funds for locks.” In other jails, however, it would have been possible to separate children, but no attempt was made to do so.

What does lack of substantial separation mean? It can mean that children are placed in cells with adults charged with violent crimes. We learned that:

A 15-year-old girl was confined with a 35-year-old woman jailed for murder.

A 16-year-old boy was confined with a man charged with murder, who raped the boy on three occasions.

A 16-year-old boy, arrested for shoplifting, was confined in a cell with a man charged with shooting another man.

A 16-year-old boy was confined with five men. One was AWOL from the military, one was charged with assault and battery, one was an escaped prisoner from another state, one was in jail charged with murder of his wife, and one was charged with molesting three boys on the street.

A 14-year-old girl was confined in a cell with two women charged with drug use, who constantly cut themselves with pieces of glass.

A 16-year-old boy was confined in a cell with a man charged with murder.

A 15-year-old boy was confined with three adults, two were charged with drunkenness and one with murder.

Inadequate separation also means that children are held in cells with the mentally disabled. We learned that juveniles are regularly mingled with inmates who are mentally ill or retarded or with inmates awaiting competency hearings. In the words of Gumpy, held with ill and senile men:
They're driving me crazy in here, man. They got guys locked up in there, man, who shouldn't be in here. I mean nobody should be in here but these guys are off the wall, man. They're off the wall. They ought to be in a hospital. All night long I hear 'em talking to each other. They're whispering back and forth, man, they don't even make any sense. They're just talking. You can't believe it. There are old guys, too. Everybody calls me son. Hey son, do this, son, do that. It give me the creeps, man. They're going to drive me crazy.

Sometimes the only way to separate juveniles from adults in the absence of separate juvenile facilities is to place the children far away, in some closet or basement or tiny cell reserved for solitary confinement. What starts as a well-intentioned, last resort effort to protect children in jail turns into a living nightmare for the children so placed. As one juvenile corrections expert testified:

[I]n my opinion extended isolation of a youngster exposes him to conditions equivalent to "sensory deprivation." This is a state of affairs which will cause a normal adult to begin experiencing psychotic-like symptoms, and will push a troubled person in the direction of serious emotional illness.

What is true in this case for adults is of even greater concern with children and adolescents. Youngsters are in general more vulnerable to emotional pressures than mature adults; isolation is a condition of extraordinarily severe psychic stress; the resultant impact on the mental health of the individual exposed to such stress will always be serious, and can occasionally be disastrous.3

And in the words of a child:

Nick went to jail for a week. He was locked in a converted conference room on the third floor. He was the only prisoner up there. It was all right during the day but at night there was no light. The only person Nick saw during the entire week was the inmate trusty who brought his meals. "He was allowed to stay for about five minutes and he would talk to me. I was so lonely. But I wasn't going to cry — I was going to be strong. You know, they weren't going to break me."

The 48 hours during which Johnny was held in solitary still haunt him two years later. "I can barely think about those two days. Those tall walls coming in on me, one standing there looking up and that ceiling like it was going down on top of me real slow. Inch by inch. And it was so wet in there; like I was sweating, and there wasn't anywhere for the sweat to go, so it just stayed in there with me. Then it got hot, and then it got cold. Holy God, it was the worst thing I ever knew about. I'd touch the walls and they'd be cold a minute and maybe hot the next.

"I can still see that room, man. They wouldn't put a sick dog in one of those and still they had no problems sticking me in there. I kept thinking, somewhere in here I'm going to find a body of some kid just like me who they stuck in there once and he never got out..."

Who Sees to Children at Risk?

If a diabetic adult is jailed, he can tell the jailer exactly what he needs to eat (or not eat) and what kinds of medical attention he must receive. If a woman in jail is experiencing severe pain or a high fever, she knows enough about her body to request aid. If an adult inmate is in psychological distress, the chances are he will call out for help.

But what about children in these circumstances? As we talked to jailers and others who deal with children in trouble, they reported that children are usually too frightened to ask for help, afraid to call attention to themselves for fear something worse will happen to them. Or they may not know what is wrong with them, or what information is important to tell someone, or what medication they have been taking. For children, the abysmal absence of regular diagnostic medical and psychological personnel can be disastrous.

A newly appointed probation officer visited jails in three Texas counties in an effort to become familiar with the children being held. In Starr County, he noticed a 14-year-old boy who appeared to be ill. He asked the jailer if there was a problem, but the jailer said the boy hadn't said anything so he guessed everything was all right. But when the probation officer asked in Spanish, the boy said he was in a lot of pain. A doctor was called. He examined the youth, who apparently had been suffering for days from diphtheria. He took the boy to the clinic for isolation and care.

But no one had told the boy in Spanish what was happening. Frightened and alone, the boy escaped that night and swam the Rio Grande to return home to Mexico. Only when the probation officer convinced the boy's parents of his concern for getting the boy medical help and not in arresting him was the child produced and medical care begun.

We found that unless a child is visibly acutely ill, no medical attention is given. When we asked whether children are given a medical examination upon admission to jail (even if it was done by someone other than a physician), only 27 (15.8 percent) of the 171 jails holding children answered yes. Of these, 14 said trained medical personnel did the examining; the rest were "eye-ball" examinations performed by the guards.

The absence of medical examination on jail admission involves many health risks for children. In testimony before the Senate Subcommittee to Investigate Juvenile Delinquency, Dr. Iris Litt, a distinguished pediatrician, testified that the incidence of medical problems found at the time of admission among juvenile delinquents remanded to detention facilities in New York City during a five-year period was very high. Nearly 50 percent of these youths were found to require some kind of medical care.

The absence of medical screening and medical supervision of juveniles in jails can have serious consequences. In contrast to the absence of medical examination in jails, it is reported that 80 percent of juveniles admitted to separate juvenile detention facilities receive some type of physical examination at the time of their admission. (See, Donnell M. Pappenfort, Lee Morgan Kilpatrick, et al., A Census of Children's Residential Institutions in the United States, Puerto Rico, and the Virgin Islands: 1966 (Chicago, University of Chicago, Social Service Monographs, 1970) Vol. 7, "Detention Facilities," p. 145.)

The low incidence of medical examinations we found was also found by other investigators. In 1,108 responses by jails to a questionnaire sent out by the American Medical Association, only 75 or 6.8 percent reported that they provided medical examinations for all inmates on admission.


See, Dr. Iris F. Litt, Medical Director, Juvenile Center Service, Division of Adolescent Medicine, Montefiore Hospital and Medical Center, Statement before the U.S. Senate Committee on the Judiciary, Subcommittee to Investigate Juvenile Delinquency, 17 September 1973. During a five-year period (1968-1973), 31,323 youth remanded by the Family Court were examined on admission in the program under Dr. Litt's direction. Of this number, 14,976 (47 percent) required some kind of medical care; 1,935 required infirmary care, and 369 required hospitalization. Serious medical problems, previously unidentified, were found and referred for treatment.
TABLE 3
Responses to 1972 Survey by American Medical Association

<table>
<thead>
<tr>
<th>Facility Type</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>No medical facilities</td>
<td>194</td>
</tr>
<tr>
<td>First aid only</td>
<td>759</td>
</tr>
<tr>
<td>Examining rooms only</td>
<td>161</td>
</tr>
<tr>
<td>Clinics/ dispensaries</td>
<td>91</td>
</tr>
<tr>
<td>Infirmaries</td>
<td>78</td>
</tr>
<tr>
<td>Other facilities</td>
<td>72</td>
</tr>
<tr>
<td>No answer</td>
<td>76</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1,431</td>
</tr>
</tbody>
</table>


consequences. A noted professor of psychiatry and law said,

I’ve been very concerned about medical care in jails... Statistically when you’re dealing with aberrant behavior, you’re going to have some kids who are diabetic, who are in a drug psychosis, who are undergoing all sorts of stress... and if you don’t have legitimate screening, predictably you’re going to have a certain number of unnecessary deaths when behavior, even that [which] caused the lock-up, might be masking a medical condition... It’s outrageous... that there’s no medical screening at all particularly [for]... acting out adolescents.8

Our findings confirm those of other studies of medical care in jails. For example, the 1970 National Jail Census found that only 51 percent of jails replying to its questionnaire reported having medical facilities.9 Subsequently, when the American Medical Association sought information on the types of medical facilities available in or to jails, many of the medical facilities reported by jails turned out to consist of only first-aid kits.10

Alone With Nothing to Do

The lack of decent medical services in jails was out-distanced by the all but complete lack of educational, recreational or visiting facilities, or indeed any services or programs for children in jails. Boredom, frustration, idleness and pent-up energy, like the impersonal processing of admissions and the physical conditions of the jails, create a nightmarish world from which escape seems unsure or distant.

When Fred was 12, he was confined in a jail cell in the men’s section, “all steel and you can’t see nothing. There was nothing to read, nothing to do at all. I did nothing. I screamed at the cops. It’s the only thing to do. Then sometimes they’d push me around. The worst thing — it was boring. You could be dying in there and they wouldn’t even know. Once I ripped a handle off the wall. There was a camera on the wall. I wanted to see if they would see me in the camera. But no one came. Another time I smashed a great big hole in the wall and they didn’t know.”

James was not allowed out of his cell for three days; he found the night-time the hardest. “In the daytime you could see and hear more. At night you couldn’t see or hear nothing. Night-time would be dark and silent. Make you feel like you’re all alone. In a place where there’s nothing.”

In most jails, children and adults were forced to stay in their cells or cellblocks without interruptions — most of the time with nothing to do. After many jail visits a CDF staff member described the usual day in one county jail and likened it to what he had observed in other county jails:

Breakfast, sit, talk, play cards, read old magazines, sleep if permitted, watch T.V., if there is one, lunch, then repeat the morning schedule. Then the evening meal and the same morning schedule once more till lights out. The only break in the routine is when law officers want to question you or you have a court appearance, need a doctor or have a visitor. But visitor privileges are at set times and can be used only if someone knows you are in jail and cares enough to visit.

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8 Interview with Dr. Willard Gaylin, 18 June 1975.
10 Medical Care in U.S. Jails - A 1972 AMA Survey.
The interminable boredom or unrelieved anxiety is commonplace among jail inmates. According to the 1970 National Jail Census, only 9.8 percent of the jails in our survey states reported any educational facilities, and 25.2 percent said they had no visiting facilities whatsoever. While there is considerable variation among our nine study states, none provides adequate facilities for children locked in jail. Statistical reports can be misleading: CDF found that a "recreation facility" might be nothing more than a yard fenced in by walls or barbed wire with no equipment. In one jail we found "educational facilities" consisted of a blackboard, a few chairs, no books and a guard. Provision of services seemed to be absent from the minds of those who plan, fund and administer jails.

During a visit to one new jail for juveniles, we learned it had been built through a grant from LEAA. The plumbing, the tiled bathrooms and the paint colors chosen were excellent. But juveniles were lying behind bars on metal frames looking forlorn and with nothing to do. Funds for educational supplies, recreational equipment and even for toothbrushes and towels had not been included in the budget.

Other constructive social or rehabilitative services, such as counseling, vocational training or guidance, or job placement are virtually nonexistent in jails. Again, the rationale is that it is too costly and impractical to provide such services to a short-term, transient population. Yet to a child in trouble, personal counseling could do much to relieve fear, anxiety and the sense of helplessness. Since jails cannot provide such services, they should not hold children.

<table>
<thead>
<tr>
<th>State</th>
<th>Number of Institutions</th>
<th>Recreational Facilities</th>
<th>Educational Facilities</th>
<th>Medical Facilities</th>
<th>Visiting Facilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Florida</td>
<td>101</td>
<td>24.8</td>
<td>11.9</td>
<td>64.4</td>
<td>90.1</td>
</tr>
<tr>
<td>Georgia</td>
<td>205</td>
<td>20.5</td>
<td>17.1</td>
<td>42.9</td>
<td>77.6</td>
</tr>
<tr>
<td>Indiana</td>
<td>94</td>
<td>7.4</td>
<td>4.3</td>
<td>54.3</td>
<td>75.5</td>
</tr>
<tr>
<td>Maryland</td>
<td>23</td>
<td>21.7</td>
<td>26.1</td>
<td>73.9</td>
<td>87.0</td>
</tr>
<tr>
<td>New Jersey</td>
<td>31</td>
<td>32.3</td>
<td>51.6</td>
<td>80.6</td>
<td>83.9</td>
</tr>
<tr>
<td>Ohio</td>
<td>112</td>
<td>8.0</td>
<td>2.7</td>
<td>57.1</td>
<td>71.4</td>
</tr>
<tr>
<td>South Carolina</td>
<td>101</td>
<td>14.9</td>
<td>9.9</td>
<td>38.6</td>
<td>71.3</td>
</tr>
<tr>
<td>Texas</td>
<td>265</td>
<td>2.6</td>
<td>3.0</td>
<td>37.7</td>
<td>68.3</td>
</tr>
<tr>
<td>Virginia</td>
<td>89</td>
<td>7.9</td>
<td>6.7</td>
<td>74.2</td>
<td>74.8</td>
</tr>
</tbody>
</table>

Total: 1,021   12.4   9.7   50.4   74.8

Along with Nothing to Do

The demand for mental health services in this institution was acute. The lack of adequate facilities and the high turnover rate of staff members led to a constant state of chaos and confusion. The staff was overworked, and the patients were frustrated and restless. The lack of proper facilities and the constant noise and commotion in the institution made it difficult for patients to receive adequate care. The physical conditions of the institution were also poor, with many rooms not suitable for long-term stays.

In these conditions, the staff and patients were ill-equipped to handle the demands of the institution. The lack of resources and the high turnover rate of staff members made it impossible to provide adequate care for the patients. The institution was in need of immediate attention and resources to improve the living conditions of the patients and provide adequate care.
Chapter 4

Is Jailing Children Legal?

A case can be made on humane grounds that conditions in adult jails make them absolutely unfit places for children. Based on what we know about rehabilitation and the negative psychological impact jails have on children, a case can be made against using jails for children on these grounds as well. But what does the law say in this area? What are the legal grounds for removing children from adult jails?

There are several legal avenues to explore: state and federal statutory mandates and their enforcement; constitutional and other legal bases for court actions; and a range of advocacy activities through which lawyers can have a critical impact.

State Laws Concerning Jailing Children

While every state has statutes or a juvenile code and regulations defining how children should be treated under the law, state legislatures have enacted an incredibly varied set of statutory approaches in an attempt to control the placement of juveniles in jails and other adult correctional facilities. There are at least nine different ways in which these laws vary. The result in most states is a patchwork quilt scheme that fails to offer comprehensive protection to juveniles taken into custody.

First, states have made a variety of distinctions between different types of children. Few states completely prohibit the placement of all children in jails. Children generally are grouped into several classes based on (1) age; (2) the offense with which they have been charged (i.e., status offenses, delinquent acts, or serious felonies); and (3) whether they are handled through the juvenile court system or have been transferred to the adult court system. Each of these classes of children is then treated differently from one another.

Second, state statutes distinguish among children at varying stages of custody. Prohibitions are different for a child who only has been charged with an offense, one who has been adjudicated, one where a dispositional order has been made and one who is awaiting transfer to a long-term facility. For example, in Ohio, an alleged juvenile delinquent may be placed in an adult jail while awaiting trial, but once adjudicated delinquent, must be placed in a juvenile facility. This legislative practice of permitting short-term detention in jails but prohibiting jail placement for a child’s sentence overlooks the serious consequences that any time held in an adult jail may have for a child.

Third, state statutes permit several different types of public officials to initiate and continue the placement of children in jails. Some indicate that any person taking a child into custody has

1 None of our survey states have such a clear and comprehensive policy on this issue.

2 See Va. Code Ann. §6.1-196 which prohibits jailing for those under 15 years of age but allows it to occur under certain conditions for those 15 years of age or older; Ga. Code Ann. §24A-1403 (1976 Rev. Ed.) which allows placement of alleged delinquents in jails but prohibits children alleged to be deprived or unruly from being held there.

the authority to bring that child to a jail for detention. This includes the police or other enforcement officers. In other states such action can only be taken by a juvenile court judge. Even in these states, however, a decision need not always be based upon evidence adduced at a hearing at which the child is represented by his parents and/or counsel.4

Fourth, in some states jail detention is listed as only one of a long list of possible detention places. Even if a statute takes this approach and indicates that jailing is to be considered a last resort, a public official may have few actual placement options in a particular jurisdiction. The fact that a decision maker must examine alternative placements before authorizing jail detention for a child is only significant if state statutes also require that separate juvenile detention facilities and alternatives to secure detention (foster care, group homes, etc.) be established either by the state or local government in sufficient numbers and locations. Such a requirement provides a fifth level upon which state statutes vary considerably.5

For example, following legislation in Florida, a statewide system of regionally located, state-run juvenile detention homes — both secure and non-secure — was established. The Division of Youth Services is responsible for making sure that the needs of each child placed is being met. In Ohio, by contrast, each board of county commissioners is authorized but not required to provide for separate juvenile detention homes. As a result, citizens in one county had to sue in order to get a home established. They were unsuccessful since the court held that while their claim was valid, the law did not compel counties to build such facilities.6 Strong statutory language fixing responsibility for implementation is essential.

Sixth, once a state sanctions the placement of children in jail, for whatever reasons, an attempt is often made to require that juveniles be handled differently from adult inmates. One standard approach is to require that children be separated from adult prisoners. Separation, however, is not always defined in precise terms — sometimes a statute may specify that a different room, dormitory or section is necessary, in other cases statutes provide that no visual, auditory or physical contact will be permitted. In still other states the language is unexplained and vague.7 Although we have seen that one response to implementing this separation requirement is to place children in solitary confinement, legislatures seem not to have realized this would result, and a separation requirement is not usually accompanied by a prohibition on placing children in isolation. In fact, none of our study states' statutes prohibit isolating children in jail.

Seventh, it is important to note that a clear and strongly worded separation requirement is no guarantee that children held in jails will receive services particularly geared to their special needs, i.e., educational programs, counseling, medical examinations, and so on. While many separate juvenile detention facilities are required by state statute to have a full range of such services, including sufficient personnel trained in handling and working with children, children in these same states who find themselves in adult jails are not required to be provided with a similar set of services.8

Eighth, some states at least appear to recognize that the longer a child is detained in jail the greater the possibility of harm. As a consequence, their statutes establish time limitations on the period that children can be held in jail; in some states a time limit is tied to a detention hearing.9 Even where time limitations exist, however,

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4 Compare Ohio Rev. Code Ann. §2151.314 (1976 Supp.) providing for a detention hearing with representation for the child within 72 hours of the child's being taken into custody by any public official in the county or state with Va. Code Ann. §16.1-197(3) which does not require that a hearing be held before a judge makes a detention decision.


6 Fla. Stat. Ann. §959.022; State ex rel. Johns v. County Commissioners, 29 OS2d 6, 58 002d 65, 278 N.E.2d 19(____).

7 The following definitions were found in some of our survey states: (1) "A room separate and removed from those for adults" so that the child cannot "come into contact or communication with any adult convicted of crime, under arrest or charged with crime." (Ohio); (2) "A separate cell apart from criminals or vicious or disolute persons" (Virginia); (3) to be held "apart" from adults (New Jersey); (4) "separate confinement" (South Carolina).

8 See, for example, Florida and Virginia state statutory law.

extensions of indefinite duration are often sanctioned upon court order. 10

Ninth, even the best state statutes with complete detailed and clear prohibitions on jailing of children may result in little actual protection unless the state also provides for an efficient monitoring program for its jails. 11 Standard setting, frequent unannounced inspections and enforcement power to assure that violations are corrected (fines, revocation of operating licenses, etc.) would be necessary in order to have an adequate enforcement program. Only a few states come close to meeting such a description.

Federal Laws Concerning Jailing Children

Since responsibility for the care and treatment of juvenile offenders historically has rested with state and local authorities, until recently the federal government’s role has been extremely limited. In 1974, however, Congress passed two pieces of legislation which, if they are aggressively enforced, could greatly reduce the extent to which children throughout the country are incarcerated in adult jails.

The Federal Juvenile Delinquency Act

Most children who are charged with offenses and placed in jail are prosecuted by local authorities acting under state laws. Other children, however, are charged with offenses which violate federal law. These children are prosecuted by United States Attorneys in federal district courts under the general supervision of the United States Department of Justice. The Federal Juvenile Delinquency Act (FJDA) 12 regulates the conditions under which these children may be incarcerated, both prior to their trial and after disposition.

As amended in 1974, the FJDA provides that when a juvenile is taken into custody for an alleged act of juvenile delinquency, and when a magistrate finds that the juvenile must be detained in order to insure his or her appearance at trial or "to insure his safety or that of others," the juvenile "may be detained only in a juvenile facility or such other suitable place as the Attorney General may designate." 13 Furthermore, the FJDA provides:

Whenever possible, detention shall be in a foster home or community-based facility located in or near his home community. The Attorney General shall not cause any juvenile alleged to be delinquent to be detained or confined in any institution in which the juvenile has regular contact with adult persons convicted of a crime or awaiting trial on criminal charges. Insofar as possible, alleged delinquents shall be kept separated from adjudicated delinquents. Every juvenile in custody shall be provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, education, and medical care, including necessary psychiatric, psychological, or other care and treatment. 14

Children who are adjudicated delinquent and committed to the custody of the Attorney General may not be "placed or detained in any adult jail or correctional institution in which they have regular contact with adults incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges," and they must be provided the same services and treatment which are guaranteed prior to disposition. 15

While the vague language prohibiting "regular contact with adults" is a loophole in the legislation and must be corrected legislatively, the intent in the FJDA suggests the outlook of some Department of Justice officials, one of whom has stated that he was opposed to jailing children because "anyone not a criminal will be one when he gets out of jail." 16 It is also a step toward complying with Bureau of Prisons findings and policy. "Juveniles do not belong in a jail," a Bureau report states, and it continues:

11 Texas Family Code, Title 3, §51.12 (1973) and Vernon’s Ann. Civil Stat., §5115.1 (1976 Supp.).
However, when detaining a juvenile in a jail is unavoidable, it becomes the jailor's responsibility to make certain that he is provided every possible protection, and that an effort is made to help him avoid any experiences that might be harmful. This means that the juvenile must always be separated as completely as possible from adults so that there can be no communication by sight or sound. Exposure to jailhouse chatter or even to the daily activities of adult prisoners may have a harmful effect on the juvenile. Under no circumstances should a juvenile be housed with adults. When this occurs, the jailor must check with the jail administrator to make certain that the administrator understands the kinds of problems that may arise. There is always a possibility of sexual assault by older and physically stronger prisoners, with great damage to the juvenile.

Keeping juveniles in separate quarters is not all that is required. Juveniles present special supervisory problems because they are more impulsive and often more emotional than older prisoners. Their behavior may therefore be more difficult to control, and more patience and understanding are required in supervising them. Constant supervision would be ideal for this group and would eliminate numerous problems.

Juveniles in close confinement are likely to become restless, mischievous, and on occasion destructive. Their tendency to act without thinking can turn a joke into a tragedy. Sometimes their attempts to manipulate jail staff can have serious consequences. A fake suicide attempt, for example, may result in death because the juvenile goes too far; no one is around to interfere. 17

Unfortunately, the intention to the FJDA to limit the use of jails for children, the stance of the Department of Justice, and the policies of the Bureau of Prisons are contradicted by the Bureau's own practices. CDF found that, according to the Bureau's own records, during 1974 it contracted to have available cells in adult jails for the incarceration of juveniles in all but four states (Delaware, Illinois, New Hampshire and Vermont). Some 378 jails had contracts to detain males under 18 charged with federal offenses; 249 jails had contracts to detain juvenile females charged with federal offenses. In addition, 189 local jails had contracts to house juveniles serving federal sentences of six months or less, and 49 jails had contracts to house federal juvenile prisoners for more than six months. 18 It should be noted that contracts with local jails reserve the right to place juveniles — they do not reflect the actual number of juveniles placed. When we asked the Bureau of Prisons how many children charged with federal offenses actually had been placed in jails, they said that there was no information at the federal level on that question. To get such information, the Bureau of Prisons informed us we would have to call all the marshals in the country who actually pay the bills for services purchased from local jails in each state.

Jails are one of a number of types of facilities that the Bureau of Prisons uses, including half-way houses, approved foster homes and selected juvenile detention centers, but the Bureau does not have information on the total number or proportion of juveniles sent to jails as opposed to the other alternatives. It is difficult, therefore, to see how the Bureau can monitor whether serious efforts are being made at the local level to reduce or end the use of jails for juveniles.

The material accompanying Bureau of Prisons contracts with local jails describing the policies and regulations governing the confinement of federal offenders in non-federal facilities gives no specific guidance for how juveniles are to be treated or how the Bureau interprets the FJDA prohibition against "regular contact with adults." 19 Thus, the practices of one agency and the lack of 14

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15 U.S. Bureau of Prisons, The Jail: Its Operation and Management, Nick Pappas, Editor (Washington, D.C.: U.S. Bureau of Prisons, 1971) p. 71. Note that even when jail is recognized as totally inappropriate for children, as in the first line of this quotation, it is not ruled out as a possibility. Such lack of standards and leadership on the part of the Bureau of Prisons is inexcusable.
17 U.S. Department of Justice, Bureau of Prisons, Washington, D.C. contract for service by/in a nonfederal facility, June 15, 1974. (Mimeograph) and Exhibit A. "Policies and Regulations Covering the Confinement of Federal Offenders in Nonfederal Facilities" (Mimeograph — attached to above mentioned contact).
vigorous leadership by others to discourage the jailing of juveniles severely undercuts the intent of federal legislation and policies toward juvenile federal offenders.

The Juvenile Justice and Delinquency Prevention Act

The federal government provides millions of dollars annually to states and local governments for their law enforcement programs and facilities for juveniles under the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA). As a condition of receiving these funds, Congress has required the states to improve conditions for juvenile offenders by ordering them to: (1) within two years of submission of their annual plans remove status offenders from juvenile detention or correctional facilities and place these children in "sheltered facilities," and (2) insure that juveniles who are adjudicated delinquent are not "detained or confined in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges." Furthermore, states are required to establish "an adequate system" to monitor jails and other detention facilities to insure that these requirements are being met.

In spite of its weak language which, like the FDJA's, permits the placement of children with or near adults so long as there are no "regular contacts," the JJDPA could become a significant force in changing the practices of local law enforcement officials if it were aggressively enforced by the federal agency which administers the program, LEAA. Advocates should begin to put sustained pressure to make LEAA enforce the law. To date, however, LEAA has unfortunately not been sympathetic to the requirements of the JJDPA or to the needs of the children who might benefit from it. For example, if states removed juvenile status offenders from juvenile detention or correctional facilities, as they must do within two years under the Act, they would reduce significantly the number of children placed in adult jails, and many of the juveniles for whom jails are least appropriate and most dangerous. However, LEAA has ruled that states will be in compliance with the requirement of deinstitutionalizing status offenders if they have removed only 75 percent of these children within the required two years. This blanket relaxation of the statutory mandate was made without specific Congressional authorization and without a showing by individual states that they would not be able to comply with the statute if they made reasonable efforts.

LEAA also has failed to enforce the separation requirements of the JJDPA in an effective manner. First, LEAA guidelines issued to the states do not prevent children from being placed in isolated areas of jails without regular supervision and attention. As we have seen, this solitary confinement can seriously harm already frightened youngsters in jail. Second, the guidelines fail to specify that juveniles must not have verbal or visual contact with adult inmates, although verbal and visual contacts with adult prisoners often result in the same emotional and psychological harm to juveniles as physical contact. Third, LEAA has permitted the states to determine their own timetables for complying with the separation requirement, without any deadline set by the federal agency.

As a result of these actions on the part of LEAA, together with an Administration which has cared more about the rhetoric of law and order than the appropriate treatment of juveniles, federal leadership in this area is woefully lacking. Until the Administration issues an executive order giving the Justice Department the authority to coordinate the actions of various federal agencies dealing with juveniles in trouble, and until LEAA takes its responsibility toward the children who come within its purview seriously, the laws passed by Congress in this area will have limited impact.

Another major barrier to the effective implementation of the JJDPA is that states found in


TABLE 1
LEAA Grant Authority Requested for 1977

<table>
<thead>
<tr>
<th>Recipient</th>
<th>Purpose</th>
<th>Amount (millions)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>States</td>
<td>Comprehensive planning</td>
<td>60</td>
<td>9.0</td>
</tr>
<tr>
<td>States</td>
<td>Population grants</td>
<td>346</td>
<td>52.1</td>
</tr>
<tr>
<td>States &amp; Others</td>
<td>High Crime Areas and Discretionary grants</td>
<td>111</td>
<td>16.7</td>
</tr>
<tr>
<td>States &amp; Others</td>
<td>Aid to Corrections, Research, Technical Assistance, misc.</td>
<td>137</td>
<td>20.6</td>
</tr>
<tr>
<td>States</td>
<td>Juvenile Justice and Delinquency Prevention</td>
<td>10</td>
<td>1.5</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>664</td>
<td>100.0</td>
</tr>
</tbody>
</table>


noncompliance stand to lose only the receipt of funds provided under the JJOPA, which makes up only about 1.5 percent of all other federal law enforcement assistance to the states.

As a result, a number of states, including several in which reforms are needed the most, initially decided not to apply for JJOPA money rather than comply with the Act’s requirements. These same states, however, continued to receive the far larger grants from LEAA under other programs which do not contain the required protections for status offenders and children placed in jails. Until funding for JJOPA reaches significant levels, or until the receipt of all LEAA funds are tied to compliance with standards and supervision, the federal government will not fulfill its obligations to remove children from adult jails.

The Role of the Constitution and the Courts

In the face of weak state and federal laws banning the jailing of children, and in the face of even weaker enforcement of the laws which do exist, the federal courts have been resorted to for relief. Jailing of children violates the United States Constitution in two critical ways. First, placement of children in jails constitutes punishment, a direct contradiction of the rehabilitative purposes of the juvenile court system and the due process requirements of the Fourteenth Amendment. Second, conditions in jails are so abusive and harmful to children that they constitute cruel and unusual punishment which is prohibited by the Eighth and Fourteenth Amendments.

The Quid Pro Quo of Juvenile Justice

The juvenile court system in the United States was created to supplant the adult criminal justice system for children who engage in criminal behavior and for children who otherwise need the assistance of the state, i.e., status offenders and neglected children. In its treatment of adult offenders, the concern of the state is punishment, deterrence and retribution. Because of the serious consequences to the individual convicted of a crime, the due process clause of the Fourteenth Amendment to the United States Constitution guarantees a wide variety of procedural protections to guard against an erroneous determination of guilt.

The nature of the state’s role in the juvenile court system is totally different. Here, intervention by the state is based on the assumption that either by reason of the child’s behavior, or the parents’ neglect, it must step in to replace or supplement the parents’ role, acting as a “wise parent” to help a delinquent child. This doctrine is known as parens patriae, the state as parent. Because of the benevolent purpose of juvenile proceedings, the states have been permitted to relax some of the usual requirements of adult criminal procedure in order to function not in the role of the child’s adversary, but in the role of parent.

The reasons we have such a different system of justice for adults and juveniles was summarized eloquently by Mr. Justice Fortas: “The early reformers,” he said,

were appalled by adult procedures and penalties, and by the fact that children could be
given long prison sentences and mixed in jails with hardened criminals. They were profoundly convinced that society's duty to the child could not be confined by the concept of justice alone. They believed that society's role was not to ascertain whether the child was "guilty" or "innocent," 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." The child — essentially good, as they saw it — was to be made "to feel that he is the object of [the state's] care and solicitude," not that he was under arrest or on trial. The rules of criminal procedure were therefore altogether inapplicable. The apparent rigidities, technicalities, and harshness which they observed in both substantive and procedural criminal law were therefore to be discarded. The idea of crime and punishment was to be abandoned. The child was to be "treated" and "rehabilitated" and the procedures, from apprehension through institutionalization, were to be "clinical" rather than punitive.

These results were to be achieved, without coming to conceptual and constitutional grief, by insisting that the proceedings were not adversary, but that the state was proceeding as parens patriae.33

This is the quid pro quo theory of the juvenile justice system: Certain basic due process protections such as trial by jury and public trial were dispensed with in exchange for the commitment of the state to help rather than to punish the child in trouble.24 If a child is deprived of liberty by the juvenile courts without receiving the quid pro quo of treatment, or if a child is subjected to conditions which are punitive, the state has not kept its end of the bargain and the child's confinement is illegal.

The incarceration of juveniles in adult jails under the conditions which we have described in the previous chapters clearly does not satisfy the constitutional obligations which the states have assumed in creating the juvenile justice system.24

In Application of Gault, 387 U.S. 1 at 15 (1967). From the inception of the juvenile court system, wide differences have been tolerated — indeed insisted upon — between the procedural rights accorded to adults and those of juveniles. In practically all jurisdictions, there are rights granted to adults which are withheld from juveniles.

Whenever the Supreme Court has ruled that a procedure required by due process of law in adult courts must be followed in juvenile courts, it has emphasized that the particular procedure would not interfere with the non-adversarial

"In upholding the constitutionality of juvenile court acts, the courts have emphasized not only that the proceedings are non-criminal, but also that the institution to which that delinquent is committed is not of a penal character."27 Adult jails are by their very nature punitive and are part of the penal system. Thus, in one of the earliest cases challenging the placement of a juvenile in an adult prison, the court stated:

Unless the institution is one whose primary concern is the individual's moral and physical well being, unless its facilities are intended for and adapted to guidance, care, education, and training rather than punishment, unless its supervision is that of a guardian, not of a prison guard or jailor, it seems clear a commitment [of a juvenile] to such institution is by reason of conviction of crime and cannot withstand an assault for violation of fundamental Constitutional safeguards.28

Similarly, in a more recent case the court held that incarceration of children in facilities which nature of juvenile court proceedings. The Gault decision, for example, which afforded juveniles the right to counsel, underscored that the features of the juvenile court system which its proponents have asserted are of unique benefit will not be impaired by constitutional domestication. For example, the commendable principles relating to the processing and treatment of juveniles separately from adults are in no way involved or affected by the procedural issues under discussion. 387 U.S. 1 at 22.

Similarly, in holding that proof beyond a reasonable doubt is required for a finding of delinquency, the Court in In re Winship, 397 U.S. 358 (1970) noted that its ruling: will not disturb New York's policies that a finding that a child has violated a criminal law does not constitute a criminal conviction, [and] that such a finding does not deprive the child of his civil rights... And the opportunity during the post-adjudicatory or dispositional hearing for a wide-ranging review of the child's social history and for his individualized treatment will remain unimpaired. 397 U.S. 358 at 366.

And in McKeiver v. Pennsylvania, 403 U.S. 528 (1971) in holding that juveniles do not have a right to a jury trial, the court emphasized the juvenile court's commitment to treatment and rehabilitation:

The imposition of the jury trial...[would] provide an attribution of the juvenile court's assumed ability to function in a unique manner...We are reluctant to say that, despite disappointments of grave dimensions, it still does not hold promise, and we are particularly reluctant to say...that the system cannot accomplish its rehabilitative goals.

403 U.S. 528 at 547.

are intended for punishment by definition violates the juvenile's constitutional rights:

Placement of... juveniles in [a jail] in predispositional matters and... as a dispositional matter, even though these commitments be for limited periods of time, constitutes a violation of the Fourteenth Amendment in that it is treating for punitive purposes the juveniles as adults and not yet according them for due process purposes the right accorded to adults. No matter how well intentioned [these] acts are, ...they cannot be upheld where they constitute a violation of the Fourteenth Amendment. 29

Second, jails do not provide treatment and rehabilitative services directed to the needs of the child, as the state is obligated to do under the

29 Baker v. Hamilton, 345 F. Supp. 345, 352 (W.S. Ky. 1972). The analogy to the situation of an adult who is confined prior to trial is compelling. Such adults, like all children in the juvenile system, have been convicted of no crime. Absent judicial determination of guilt in a due process procedure, courts have uniformly held that there is no justification for the imposition of any punishment upon adult detainees. See Brenneman v. Madigan, 343 F. Supp. 128, 136 (N.D. Calif. 1972), “punishment before conviction is anathema to American law”; Inmates of Suffolk County Jail v. Eisenstadt, 360 F. Supp. 676, 686 (D. Mass. 1973), aff’d 494 F.2d 1196 (1st Cir. 1974), cert. denied, Hall v. Inmates of Suffolk County Jail, 419 U.S. 977 (1974), supplemental remedy aff’d, 518 F.2d 1241 (1st Cir. 1975), “‘Punishment’ cannot be justified without a judicially-determined finding of guilt”; Jones v. Wittenberg, 323 F. Supp. 93, 100 (N.D. Ohio 1971), aff’d sub nom., Jones v. Metzger, 456 F.2d 854 (6th Cir. 1972), “For centuries, under our law, punishment before conviction has been forbidden”; Collins v. Schoonfield, 344 F. Supp. 257 (D. Md. 1972); Hamilton v. Love, 328 F. Supp. 1182, 1191, 1193 (E.D. Ark. 1971), “Having been convicted of no crime, the detainees should not have to suffer any ‘punishment’, as such, whether ‘cruel and unusual’ or not... If the conditions of detainment are such that they can only be considered punitive, or as punishment, then, of course, the subjecting of such detainees to such conditions would violate the due process requirements of the Fifth and Fourteenth Amendments...” (emphases in original); Anderson v. Nosser, 438 F.2d 183, 190 (5th Cir. 1971), “where incarceration is imposed prior to conviction, deterrence, punishment and retribution are not legitimate functions of the incarcerating officials.”
the Family Court of New York, and confined for more than 30 days were entitled to bona fide treatment services which they were not receiving.

Where the State, as parens patriae, imposes such detention, it can meet the Constitution's requirement of due process and prohibition of cruel and unusual punishment if, and only if, it furnished adequate treatment to the detainee...31

In Morales v. Turman,12 the court held that where children were placed in long-term facilities by order of the juvenile court, the state agency that received them had violated their right to treatment because the state agency had failed to provide them with adequate medical, educational, recreational, vocational and support services.

One could argue that children confined for short periods in local jails and lockups may require less comprehensive services than those who are confined to juvenile facilities for longer periods. However, children taken into custody are entitled to receive certain minimal services, such as a medical examination, counseling, psychological assessments and the supervision of a caring adult, which should not be delayed for even a day. Thus, in Martarella, while the court imposed higher standards of treatment for children detained for longer periods, it required that information concerning every child must be sent by the juvenile court on the day a child was committed, that a caseworker be promptly assigned and that individual treatment planning at least should begin soon after commitment.

The court also established minimum qualifications for the staffing of the educational, recreational and counseling programs.

Not a single jail visited by CDF staff provides or could provide the immediate treatment services required by the courts for juveniles who are placed in them.

The Eighth Amendment

Conditions in many of the jails which CDF staff inspected are so harmful to the health and welfare of the children incarcerated in them that the jails also violate the Eighth Amendment to the United States Constitution.32

The Eighth Amendment prohibits "cruel and unusual punishment," either because of general confinement conditions imposed upon an entire inmate population or because of punishment inflicted on individual prisoners. Essentially, the definition of cruel and unusual punishment is treatment which is "shocking to the conscience of reasonably civilized people" measured by the "broad and idealistic concepts of dignity, civilized standards, humanity and decency."

In cases involving adult prisoners, courts have found cruel and unusual such common jail conditions as excessive over-crowding, poor sanitation, the presence of insects and rodents, faulty or inadequate plumbing, filth, systematic deprivation of all contact with the outside world, failure to provide any opportunity or facilities for exercise, inadequate medical care, poor ventilation. These same conditions constitute cruel and unusual punishment for young inmates incarcerated in adult jails.14

But CDF believes that even the "normal" jail conditions that might not amount to cruel and unusual punishment for adult prisoners are "shocking to the conscience" when applied to children. Children are more vulnerable than adults. They have fewer resources to deal with strange or threatening situations. They need by the appeal, and it remanded the case for the convening of a 3-judge panel pursuant to 28 U.S.C. §2284.

13 The parens patriae doctrine is not applied to children tried in adult courts. The incarcerated child, however, should not be left unprotected in violation of the prohibitions of the due process clause of the Fourteenth Amendment and the "cruel and unusual punishment" clause of the Eighth Amendment.

the security of familiar surroundings and are more easily overwhelmed when removed from their usual environments. As we have seen from previous chapters in this report, a cold, forbidding, barren jail cell is a nightmare for a child. Under these circumstances, incarceration of children in jails where they are cut off from their normal surroundings and have no trusted adult to turn to, subjects many children to such emotional and psychological harm as to constitute cruel and unusual punishment. Even those children considered adults by waiver to adult courts are, by virtue of their youth, protected by a higher Eighth Amendment standard.

Since the plaintiffs have been transferred to adult authority, they will receive the full panoply of criminal constitutional rights to which any adult would be entitled. Defendants thus argue that plaintiffs are entitled to no higher standard of care than any other detainee in the criminal justice system. The Court cannot agree with this proposition. Children between the ages of 13 and 16 are not merely smaller versions of the adults incarcerated in Cook County jail. As noted, the effect of incarceration in Cook County jail on juveniles can be devastating. At present these juveniles remain unconvicted of any crime and therefore must be presumed innocent . . . Under the Eighth Amendment children who remain unconvicted of any crime may not be subjected to devastating psychological and reprehensible physical conditions, and while other juvenile law cases are not strictly on point, they recognize that juveniles are different and should be treated differently. Thus, the evolving standards of decency that mark the progress of a maturing society require that a more adequate standard of care be provided for pre-trial juvenile detainees. Plaintiffs therefore have demonstrated that there is a likelihood of success on their Eighth Amendment claim.

In addition to the trauma caused by the harsh conditions and absence of services in most jails, two other common practices make jail confinement of children cruel and unusual punishment.

First, there is a pervasive risk from the exposure of children to harm from adult inmates. In a lengthy and authoritative series of cases, the federal courts have held that it is the responsibility of the state to insure every prisoner’s physical safety by providing adequate protection from assault by other prisoners:

Both actual assaults by other inmates and the constant fear of such assaults add immeasurably to the burden that must be borne by inmates. If security in a prison reaches such a degree of laxness that such assaults become the rule rather than the exception, then conditions have developed that are intolerable to accepted notions of decency. In short, there exists a constitutional right of inmates to be afforded at least some degree of protection from attacks by fellow inmates.

The Eighth Amendment mandates protection not only from actual harm, but from the threat of harm as well:

A prisoner has a right, secured by the Eighth and Fourteenth Amendments to be reasonably protected from constant threat of violence and . . . assault by his fellow inmates. He need not wait until he is actually assaulted to obtain relief [against the jailer].

It is undisputed that assaults by adults upon children often do occur in jail. Frightened children, physically and mentally incapable of standing up to stronger and more experienced fellow inmates, are obvious targets of abuse.


“An inmate who is physically attractive to other men may be, and frequently is, raped in the barracks by other inmates . . . Such confinement is inherently dangerous. A convict, however cooperative and inoffensive he may be, has no assurance that he will not be killed, seriously injured, or sexually abused. Under the present system the state cannot protect him,” 309 F. Supp. at 377 and 381; Gates v. Collier, 349 F. Supp. 881, 894 (N.D. Miss. 1972). “The defendants have subjected the inmates at Parchman to cruel and unusual punishment by failing to provide adequate protection against physical assaults, abuses, indignities and cruelties of other inmates,” Brown v. United States, 486 F.2d 284 (8th Cir. 1973); Woodhous v. Virginia, 487 F.2d 889 (4th Cir. 1973); Bethea v. Crouse, 417 F.2d 504 (10th Cir. 1969); Roberts v. Williams, 456 F.2d 819 (5th Cir. 1971), cert. denied, 404 U.S. 866 (1971); Kish v. Milwaukee, 48 F.R.P. 102 (E.D. Wis. 1969) a/f’d., 441 F.2d 901 (7th Cir. 1971).


Obviously, the risk of harm to children increases drastically when children are confined in the same cells with, or within proximity to, adult prisoners. If they are in the same facility, whether or not in the same cell, they face grave risks. There are countless occasions—meals, recreation, showers, chapel, sick call, visiting—in which prisoners from various parts of the jail co-mingle. Total separation can be seldom achieved when children are held in the same facilities as adults.

Second, as we have seen, children are frequently placed in small faraway rooms or basements to separate them from adults which amounts to "solitary confinement." Although this form of isolation may sometimes be intended to protect the child, its psychological effects may be as harmful as direct exposure to adult prisoners. For this reason, the courts have held that although solitary confinement per se does not violate the Eighth Amendment for adult prisoners, isolation of children is unconstitutional. In Lollis v. New York State Department of Social Services,²⁸


for example, the court found that the isolation of a 14-year-old girl in a bare room without reading materials or other recreation constituted cruel and unusual punishment and was illegal. The court relied on the affidavits of seven experts who unanimously agreed that extended isolation as imposed on children is "not only cruel and inhuman, but counterproductive to the development of the child."²⁹ Hearing the evidence, the court was convinced that

²⁹ Lollis v. New York State Dept. of Social Services, 322 F. Supp. at 480.

...it is not necessary to present evidence of beatings or starvation to state a §1983 [Civil Rights] claim. It is sufficient, for example, to show, as here, that plaintiff was held for two weeks in isolation which, according to a Family Court Judge of New York inspecting the institution, was "augmented by surroundings so oppressive as to destroy the integrity and the identity of the child...." Quite obviously, the conditions in which plaintiff was held shocked the conscience...
Theoretically, it could be argued that a juvenile under adult court jurisdiction could be held in an adult jail facility that meets acceptable standards of cleanliness, space, food, access to family, friends and recreation, and in which there was no contact or threat of contact whatsoever with adult prisoners. However, the jails we visited have convinced us that such circumstances are, in fact, only theoretical. Under conditions which actually exist in adult jails in this country today, the incarceration of juveniles in them violates the Eighth Amendment.

How Lawyers Can Help

The gap between the significant rights and entitlements we have just outlined and the realities confronting children in jail is large. It is not enough to identify the legal claims these children have. Their rights must be translated into realistic, enforceable remedies. This will take more than legal theories. It will require pursuing solutions to the problems in legislatures, before regulatory bodies, within the executive branch and with the county and local officials responsible for the conditions. It will require concerted effort by groups and advocates concerned and committed to ending the jailing of children.

Nevertheless, court action and lawyers can help. Lawyers along with parents and other groups concerned with the problem can be part of a process which:

- exposes the extent and character of practices in particular communities;
- builds knowledge, experience and continuing relationships among individuals and groups seeking change;
- contributes to the pressure on existing institutions to bring jailing of children to an end.

In the next chapter we will present the specific content and character of our recommendations for change. What follows is only a brief overview of the ways lawyers and litigation may be enlisted in these efforts.41

Getting the Lawyers Involved

Although the availability of lawyers willing to do pro bono work varies greatly from community to community, the number nationally is increasing.42 A parent or local advocacy group interested in possible legal challenges to the practice of jailing children might contact (a) the local bar association; (b) the community's lawyers reference service; (c) the legal services program; (d) the public defender office in their community, as well as lawyers who regularly are appointed to represent indigents in the juvenile and criminal courts.

In addition, lawyers interested in this problem can visit and interview children currently in the jails.43 Despite general restrictions of soliciting and advertising by lawyers, the new Code of Professional Responsibility of the American Bar Association makes it clear that lawyers working for nonprofit organizations can contact prospective claimants to advise them of their rights, even if the advice results in the lawyer becoming counsel for the litigants.44 In the District of Columbia, form (reviewing existing laws and regulations, drafting new provisions, negotiating changes in regulations); (ii) assisting in documenting the scope and nature of present abuses; and (iii) participating directly in other efforts to publicize the problem. The law suit is one of several advocacy tools.

The private bar has not always been as responsive as it might be to requests for legal services by those who cannot afford usual fees. In 1975, the American Bar Association House of Delegates took a step towards resolving this problem by passing a resolution making it "the professional responsibility of each lawyer engaged in the practice of law to provide public interest legal services..." which include providing assistance to clients who cannot afford counsel, or whose civil rights are at stake. Substantially similar resolutions have been passed by the Chicago Council of Lawyers, Beverly Hills Bar Association, and the Arizona, Philadelphia, Boston and District of Columbia Bar Associations. Lawyers, parents and community groups should not hesitate to call upon members of the bar to meet their obligations under these resolutions by providing counsel (or funds to support counsel) to children facing court proceedings or already being held in adult jails.

The interviews themselves and subsequent contact with parents, community groups or officials should, of course, be initiated only with the permission of the child (or the child's parent(s) or guardian depending on the child's age, maturity, etc.).

The lawyers must be associated with a nonprofit organization or otherwise be engaged in non-commercial activity.

41 Although the discussion here focuses on court strategies, we do not mean lawyers cannot also play an important role in (i) helping groups in legislative or administrative re-
the Bar Association upheld leafletting and advertising designed to advise prospective claimants of their rights against the city’s welfare department. Such publicity might identify families of formerly jailed children who were unaware that they might have been treated differently. It would also begin a more general process of public education on the legal status of jailed children in a particular community.

**Getting the Attention of a Court**

Developing a cadre of attorneys interested in handling individual cases on behalf of jailed children is important, but it is not a prerequisite to legal action. There is authority in some states for members of a concerned group to seek review of questioned governmental practices as litigants themselves. Parents in the group might similarly be able to bring suit on behalf of their children. The court would have to be convinced, however, that a statutory or constitutional standard has been violated, and that it has authority to remedy it. The following are some of the sources of judicial power available to respond to the jailing of children.

**The Supervisory Jurisdiction of the Juvenile Court.** The juvenile court can exercise jurisdiction to (a) systematically inquire into the detention and incarceration of children in jails; (b) prohibit such placements in all cases brought to the attention of the court and (c) transfer all children so placed to facilities which would provide suitable services and protection. The juvenile courts themselves have the responsibility for making a major contribution to solving the problem of children in jails. Judges who are frustrated by the lack of juvenile facilities but who are passive in their absence become unwitting conduits to

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See, Disciplinary Rules 2-103 (D), 2-104(a) (2) (3). Informal Opinion 1234 says that such lawyers may not go so far as deciding “... in the abstract what legal propositions should be placed before the courts, and then seek out litigants who are willing to have issues raised.” However, so long as (a) the purpose of the contact with potential litigants is to advise them of their rights or (b) any litigation that results is responsive to the grievances the client presents, the ABA would find no ethical problem.

It is very important, however, to find out whether the ABA provisions permitting legal services and other “public interest” lawyers to actively seek out clients have been adopted by the state in which such activities are contemplated. In the absence of similar provisions in the code of conduct that governs law practice in a State, advocates must rely on a series of Supreme Court opinions that have carved an exception to the general ban on lawyer solicitation and advertising that is at least as broad as the one in the ABA Canons. See NAACP v. Button, 371 U.S. 415 (1963) (NAACP activities that involved advising black families of their civil rights, and referring those who wanted to pursue legal claims to NAACP-funded or affiliated attorneys is protected by first amendment); United Transportation Union v. State Bar of Michigan, 401 U.S. 576 (1971) (Union’s referral of members with claims under federal statutes to panel of attorneys who would handle cases at pre-arranged fees as a “collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment”). See also Virginia Citizens Consumers Council v. Virginia State Board of Pharmacy, 96 S.Ct. 1817 (1976).

**For example, if it can be shown** that tax revenues are involved in supporting children in adult jails, taxpayers in many states would have a basis for suing to challenge the legality of the expenditure. For a discussion of this possibility see Annot., 58 A. L. R. 588 (1929); Annot., 131 A.L.R. 1230 (1941). Also see Blair v. Pitchess 5 Cal. 3d 258, 96 Cal. Rptr. 42 (1971).

“The question for the court would be whether children who are not yet but might be held in adult jails have sufficient interest in this issue to bring a lawsuit. Some states have entertained suits in similar situations. See, e.g., American Friends Service Committee v. Procunier, 33 Cal. App. 3d 252, 109 Cal. Rptr. 22 (1973); Díaz v. Quintiano, 268 Cal. App. 2d 807, 74 Cal. Rptr. 358 (1969). In most jurisdictions, a specific statute would be necessary. For a discussion of this issue under federal law, see Note, “Administrative Law — Standing to Sue,” 53 J. Urban L. 355 (1975).

Courts in several states have interpreted juvenile statutes to give judges the power to enforce their orders subsequent to commitment of the child. See Gault v. Board of Directors of State Institutions for Juveniles, 103 Ariz. 397, 442 P.2d 844 (1968); In re M 76 Misc. 2d 781, 351 N.Y.S.2d 601 (Fam. Ct. 1974); City and County of Denver v. Juvenile Court, 182 Colo. 157, 511 P.2d 898 (1973). For contrary authority, see, In Interest of J.N., 279 So. 2d 50 (Fla. App. 1973); Carter v. Montoya, 75 N.M. 730, 410 P.2d 951 (1966).


For the extension of this authority beyond the territorial limits of the court, see Interstate Compact on Juveniles (1957).
punitive facilities which violate the rights of the children they are charged with protecting.

In criticizing the juvenile courts, it must be recognized that they have been burdened and plagued in their day-to-day work, confronted by responsibility to make dispositions that might reasonably be expected to help children in the absence of facilities appropriate to meet this responsibility. In fairness to many juvenile court judges, the endless search for the best facilities available generally goes unrecorded and unreported. But there are exceptions. In D.C. Family Welfare Rights Organization v. Thompson, for example, after extended hearings and a personal visit to an agency to which children were committed, Judge Green ordered their removal on a finding of a "neglectful environment." The court held that, "In the final analysis, the duty of determining the suitability of placement facilities for these children rests upon the court." Children in jails deserve no less.

Actions in State Court for Damages and Other Relief. In addition to the juvenile courts' power to act on behalf of children under their jurisdiction, there is the general authority of state courts to provide a remedy for injury or violation of a child's rights. If specific violations of state, federal or constitutional law can be identified, children who have been or are threatened with placement in a jail can seek relief directly in state court for themselves and others in similar situations. A state court clearly has the power to define and enforce remedies for actual and threatened violations of a child's civil rights. Similarly, state court judges have the power to award damages when a child is injured as a result of the negligent or intentional conduct of government officials. Although the precise contours of state laws may vary, a child is entitled to damages resulting from the mistreatment and neglect of judges, jailers and other public officials who have failed to meet their responsibility under the law.

Actions in Federal Court for Damages and Other Relief. There is also the possibility that the particular circumstances which result in jailing children in a community are reviewable by a federal court. Although the power of the federal courts generally extend only to violations of constitutional rights or federal statutes, the conditions confronted by children in jails raise a number of constitutional claims. There are already on the books federal decisions restricting or prohibiting placing children in jail. Such decisions provide a basis for asking a federal court to grant remedies through injunctive relief and damages when a child is subjected to jailing.

Habeas Corpus. Review of the intolerable conditions jails present to children can also be obtained by writs of habeas corpus. Over a

49 Where the Court itself is committing juveniles to jail, it is part of the problem rather than the solution. Commitments by Juvenile Courts are themselves appealable to a reviewing court, although the scope of review is still unclear. See, generally, National Conference of Commissioners on Uniform State Law, Uniform Juvenile Court Act, 359a; Standard Juvenile Court Act §28, National Probation and Parole Association.


51 Id.

52 These are often referred to as "class actions." The court has the power, when a class is certified as the petitioner, to grant relief to all persons who are or may be in circumstances similar to those who actually bring suit.

53 See generally Restatement (Second) of Torts §320 (1965). Claims for damages might also be heard by a jury; in some states, actions of this nature are cognizable in a separate court of claims.

54 See, e.g., Bartlett v. Commonwealth, 418 S.W.2d 225, 228 (Ky. 1967): ... It is well-settled law in this and most other jurisdictions that the keeper of the prison must exercise ordinary care for the protection of his prisoner if there is reasonable ground to apprehend the danger to the prisoner ... The liability of state employees and departments of state government is recognized and provided for by KRS 44.070. All the cases we have examined involve injury or death to adults. Instances in which infants are involved would certainly demand no less duty than the general rule requires as to adults. Indeed the duty may be greater in the case of an infant, for in the final analysis in the present case the keeper of the prison (Kentucky Village) stands in loco parentis of the infant prisoner. (Citations omitted).

55 The most likely basis for a federal suit would be under the Civil Rights Acts, 42 U.S.C. §§1983, 1985, and the accompanying jurisdictional statute, 28 U.S.C. §1343, or the Fourteenth Amendment itself. See, e.g., Note, "Federal Jurisdiction: Federal Constitutional Cause of Action Against a Municipality," 42 Brooklyn L. Rev. 1103 (1976). There are, however, a number of limiting doctrines complicating this general statement about the accessibility of the federal courts which would have to be discussed with counsel. A suit on behalf of children who are, were, or might be placed in jail, for example, might encounter problems relating to (a) whether the State courts should hear such a claim first; (b) whether the action might interfere with the state's judicial
hundred years ago, years before the enactment of the first juvenile court law, the court in People ex rel O'Connell v. Turner granted a writ of habeas corpus brought by a father to secure release of his son from commitment to what was then described as the Chicago Reform School. The court, noting the absence of facts to sustain the claim of humanitarian purposes presented on behalf of the school, granted the writ.

Writs of habeas corpus have been used and have provoked a number of decisions which helped individual children escape being jailed but also developed law in this area. We believe such writs should be used more often. While individual writs alone will not solve the rampant jailing of children, they can begin to (a) identify the nature and extent of the problem; (b) clarify ambiguous or improperly interpreted statutes and regulations; (c) develop expertise and knowledge in lawyers and advocates concerned with the problem. Most important, they can immediately relieve the plight of children languishing in such facilities. Counsel for children in the juvenile courts have the duty to inform parents or anyone concerned with the welfare of a child of the right to institute a habeas corpus proceeding for the release of any child held or placed in jail by a juvenile court judge.

Defining What Is Wanted

It is important to remember that, even when litigation is not successful, it can have a beneficial impact on efforts to solve problems. Officials are required to give justification for their actions. Long accepted patterns and practices come under scrutiny. If the lawyers are active and systematic in the ways they investigate the cases, a good deal of information, previously uncollected or unknown, can come to light. Very often, litigation, if it is linked to local advocacy efforts, adds leverage and legitimacy to the negotiations and debate which almost invariably accompany challenges to long established institutional practices.

A court order can have similar effects. It can also clarify and establish the standards that will govern resolution of the problem.

It is important, therefore, in considering the specific recommendations in the next chapter, to consider whether any of them might be appropriately sought from a court. In a number of cases courts have issued detailed orders concerning the rules, procedures, conditions and services which must be afforded to institutionalized children. Although total removal from jails should not be compromised as an objective, such interim relief would at least minimize the worst deprivations and dangers facing jailed children.

process; (c) the immunity of the governmental entity being challenged to certain kinds of relief; and (d) the effect of the "good faith" of the challenged officials. See generally Nahmod, "Section 83 and the 'Background' or Tort Liability," 50 Ind. L. J. 5 (1974); McCormack, "Federalism and Section 83: Limitations on Judicial Enforcement of Constitutional Protections, Part I," 60 Va. L. Rev. 1 (1974).

It would be far more difficult to develop a private right to sue under the federal statutes and regulations we've identified. Such a basis for federal judicial action has been found under other federal statutory schemes. See Note, "Imposing Civil Remedies from Federal Regulatory Statutes," 77 Harv. L. Rev. 285 (1963). However, none of these have related to the kind of federal regulations involved here.


For an example of the sort of equitable relief a federal court can offer in this area, see Morales v. Turman, 364 F. Supp. 166 (E.D. Tex. 1973), 383 F. Supp. 53 (E.D. Tex. 1974). Damages have been less frequently ordered but are clearly authorized under the Civil Rights Acts. See Generally Note, "Damage Remedies Against Municipalities for Constitutional Violations," 89 Harv. L. Rev. 922 (1976).

Such suits may be brought either in state or federal court, although particular procedures and requirements differ. See generally "Developments in the Law - Federal Habeas Corpus, 83 Harv. L. Rev. 1038 (1970); Note, "State Habeas Corpus for Juvenile Delinquency in Texas," 12 Houston L. Rev. 1126 (1974). There is now authority for federal habeas corpus petitions to be brought on behalf of a group of prisoners as well as by particular individuals. See United States ex rel. Sero v. Preiser, 506 F.2d 1115 (2d Cir. 1974), cert. denied, ___ U.S. ___, 95 S.Ct. 1587 (1975).

55 Ill. 280, 8 A. 645 (1870).

Other extraordinary writs are also often available, particularly when appeal of the juvenile court's actions might be ineffective. For example, the writ of prohibition has been used in a number of states to present transfer of juveniles to adult courts pending appeal. See, e.g., Leach v. Superior Court For County of Los Angeles, 21 Cal. App. 3d 596, 98 Cal. Rptr. 687 (1971).
Chapter 5

How Can We Stop the Jailing of Children?

[T]rue justice can only be obtained through the actions of committed individuals, individuals acting both independently and through organized groups.¹

No one who has studied the jails of this country believes they can be readily reformed.

The jails...are giant crucibles of crime. Into them are thrown helter-skelter the old, the young, the guilty, the innocent, the diseased, the healthy, the hardened, and the susceptible, there to be mixed with the further ingredients of filth, vermin, cold, darkness, stagnant air, overcrowding, and bad plumbing, and all brought to a boil by the fires of complete idleness.²

This description of jails, written in 1923, describes with utter accuracy what we found — over 50 years later — during our site visits to jails. Yet, children, most of whom are under the jurisdiction of the juvenile court, continue to be thrust into such jails in increasing numbers, and continue to be held under conditions far worse than those provided in prisons for adults convicted of crimes.


The absence of information concerning the number of children in adult jails and what happens to them must be remedied.³ In community after community, CDF staff found that professionals and citizens concerned with child welfare problems had never visited local jails where children were held. They did not even know where the jails in their county were located. Although we asked at a meeting of over 60 directors of child care agencies from all over the country how many of them had visited jails where children were held, not a single hand was raised. And yet, who, if not these people, will challenge this harmful practice? Who can reason with the jailers who excuse placing children in adult jails with ready — if not accurate — answers, like:

³ A survey conducted by Louis Harris and Associates pointed up the absence of factual information about corrections: “The findings of this survey point unmistakably to the failure of corrections as a public service field to acquaint the public with its goals, its problems, its successes, about its very existence.” Joint Commission on Correctional Manpower and Training, The Public Looks at Crime and Corrections (Washington, D.C.: U.S. Government Printing Office, 1968), p. 34.
"The law allows it."
"We have no other place."
"The juvenile detention center is overcrowded."

And those who make excuses for the awful conditions of jails:

"We have no money for medical services."
"Our staff is so small, we have to use trusties."
"We can't provide education or recreation for everyone."
"There is no way we can separate children and adults."

The Need for Child Advocacy

Community advocates are essential to shed light on a subject too long kept in the shadows. They must compel the courts, Congress, state legislatures and the appropriate administrative agencies responsible for children and jails to take swift and sufficient action to end the practice. Professional child caretakers cannot do the task alone. As one professional consultant told us bluntly:

When they get into prisons, something happens to psychiatrists; they all become guards out of uniform . . . What is needed is a sterner watchdog: more public access, newspaper people, lawyers and others able to get in.4

Advocates who seek the removal of children from adult jails will have to face the growing public hostility and anger toward juvenile delinquents. The current sentiment is often to "lock them up and throw the key away." But precisely because of these responses, which are made without knowledge and understanding of what happens to children in crime-breeding jails, advocacy based on fact-finding is imperative.

The issues raised by the jailing of children go far beyond debates about how best to handle juvenile delinquents. They reach two of the core problems of the juvenile justice system.

First, the use of jails for children cannot be reconciled with the basic purposes of juvenile court legislation: to remove children from penal institutions and all contact with or contamination by adult offenders, and to provide the benefits of rehabilitative services in place of punishment. As we have shown in Chapter 4, the constitutional basis for upholding the legitimacy of the juvenile court rests on compliance with these purposes.

Second, the warehousing of children in jails reflects the tragic failure of government to provide adequate services needed to protect and rehabilitate children within the jurisdiction of the juvenile courts. A range of services to meet the individual needs of children removed from their homes by the juvenile justice system — from the most dangerous juveniles to the most helpless — are possible and should be developed and funded.

It will take hard work by all of us if these entitlements are to be honored. Statistics or reports submitted by one government agency to another thus far have proved ineffective to end the jailing of children or to improve the conditions of jails. Traditional ways of challenging violations of law and reliance on governmental agencies to fulfill their responsibilities are not enough. Legislative prohibitions against the confinement of children in adult jails have been circumvented by language loopholes and will require amendments, regulations and careful monitoring by citizens if they are to become effective. The few federal court decisions which have held that jailing children violates their constitutional rights have failed to have a significant impact on ending the use of jails, except in limited geographical areas. Special advocacy groups for mentally retarded children and other handicapped children have not challenged the broader abuse against all children subjected to adult jails, and such fragmented advocacy cannot muster sufficient support to stop this practice.

Advocacy does not lessen the need for ongoing efforts to secure legislation and judicial decisions to prohibit jailing. Rather, it can provide necessary support for such efforts and can help monitor compliance with state and federal laws. Advocates and the enormous volunteer man and woman power available can and should work to secure alternative, separate facilities and services for children in trouble. Without these, both good laws and court decisions will fail for lack of implementation.

4 Interview with Dr. Willard Gaylin, 18 June 1975.
What Needs to Be Done?

Child advocates at the local level, committed to the goal of complete removal of children from jails, face the necessity of undertaking three major tasks.

Fact-finding by Child Advocates

The first task requires advocates to investigate the facts concerning the use of jails within their state and county. They will have to find out where the jails are, visit them and learn first-hand to what extent they are being used to contain children. They will have to find out to what extent children are in fact separated from adult offenders, how long children are held in jail, and by whose authority they are contained.

**Practices of the police will have to be questioned:**

- How often are children jailed by the police “to teach them a lesson” and subsequently released without lodging any charge?
- Do the police notify parents promptly when they arrest children and advise children and parents of the right to counsel?
- Do the police notify probation or the juvenile judge before locking up a child overnight?
- Do the police discriminate in deciding which children to hold or release to parents?

**Practices of the juvenile court will have to be questioned:**

- Do the judges by telephone authorize the police to hold a child in jail?
- Do they require that a probation officer interview the child at the police station before a decision is reached to hold him?
- Do judges arrange for prompt hearings on notice that a child is held in jail?
- Do judges advise the child and parents of the right to counsel when they are unable to engage private counsel?
- Do the judges observe laws that permit detention only if the child is unlikely to appear at the date set for trial or there is a substantial danger he will commit another offense if released pending trial?
- Are judges showing evidence of discrimination in holding or releasing children on the basis of economic, social or ethnic factors?
- Do judges follow legislative mandates requiring prompt trials when children are held pending trials?
- Do different judges in a state show wide variations in use of jails to hold children?
- Are such variations rational or justifiable?
- Do the judges visit and report on jail conditions?
- Have the judges taken any action to end the jailing of children by police in violation of law?
- Have judges shown any leadership in seeking appropriate alternative services or facilities to end the jailing of children?

Child advocates need to familiarize themselves with state laws to determine whether children are jailed in violation of existing laws, or whether such jailing is in fact permissible because of loopholes in the legislation.

**State legislation and rules of the court will have to be questioned:**

- Does the statute purport to absolutely prohibit the use of jails for children of juvenile court age?
- Are “weasel words” included in prohibitions such as “except where necessary” or “except on order of the juvenile court judge”?
- Does the statute require absolute separation or partial separation of juveniles from all adult offenders? Does it permit the loophole of allowing juveniles to be placed with adult inmates “with no regular contact”? Is it silent on this subject altogether?
- Does the statute impose responsibility for monitoring jail conditions on any state or other public agency?
- Is there a specific prohibition against holding a child in jail who is charged with an offense that would not be a crime if committed by an adult?
- Does the law require that a child held by the police is entitled to a court hearing in 24 hours, in 48 hours, in 72 hours or is no maximum time fixed? Is the law obeyed?

Finally, child advocates have to find out about
the actual conditions of the jails in their areas and what alternative services exist or need to be created in order to eliminate both the necessity and the excuses for jailing children.

The specific facilities and circumstances in jails will have to be questioned:

- What is their physical layout: the cleanliness, the plumbing, the heating, the ventilation, and the lighting?
- What provisions are made for emergency admissions, regular medical services, and mental health services?
- What, if any, arrangements are made for keeping inmates occupied?
- Is there provision for regular out-of-door exercise, education or other recreation?
- How long are children held in the local jails?
- Are the jails used to hold mentally ill, mentally retarded or emotionally disturbed children?
- Are the jails used to "shelter" neglected or abused children in the absence of appropriate foster care facilities?
- Are the jails used to hold children charged with status offenses, including truancy, disobedience to parents, violations of curfew?
- Does the state plan required by the 1974 Juvenile Justice Act as a condition to receiving federal grants provide for the establishment of alternative facilities, and how have they been implemented?

Child advocates will have to discover which of the absent services for children should be delivered by other agencies of government such as Welfare and Mental Hygiene, and why the children entitled to these services have been placed in jails.

Presentation of Findings

The second major task for child advocates committed to ending jail abuses of children is to present the facts as they find them. Strategies or tactics for doing so will vary from place to place. Advocates will have to learn how to cut through the apathy concerning the rights of children who are generally poor, disproportionately members of minority groups and targets for anger because they are charged with breaking the law. Advocates will have to learn how best to pierce the barriers which have protected citizens and public officials from knowing about the jails in their communities. What actually happens to children in jails will have to be conveyed to citizen groups and the public, generally through the media, to professional groups, legislators, Governors and judges. These findings will also have to be presented to whoever is directly responsible for jailing children and to the legislative and executive bodies whose failure to provide or fund alternative facilities or services makes them ultimately responsible for jailing children.

A Program for Action

The third task facing child advocates is to set forth clearly the specific goal of ending the use of jails for children, and not allowing for compromise. In presenting the goal, both the harms done to children in adult jails and the right of children not to be jailed must be set forth. The target for efforts must therefore include not only jails and jailers, but the system which involves all who use jails or who, by inaction, allow their continuance. For the limited number of children whose offenses require secure detention, the response of advocates should be to press for small, secure detention centers with decent services, and not accede to demands that such children be placed in adult jails.

In order to become an effective force, child advocates will need to reach out to many inter-

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1 Courts have held that juveniles placed in detention facilities are entitled to educational instruction comparable to that provided for children in the community, to indoor recreational facilities, to counseling and to daily review of all youth placed in isolation. In re Savoy, No. 70-4808, (D.D.C. Nov. 6, 1970). See also, Lollis v. New York Department of Social Services, supra, fn. 5, where the court held that conditions in detention must not constitute cruel and unusual punishment, and that detention facilities must provide appropriate care, including mental health services, for any child detained over 30 days.

There is surely no basis in law for having lower requirements in a jail because the community has failed to provide a separate detention facility for children within the jurisdiction of the juvenile court.
ested groups of people, including parents of children who have been held in jails. These parents may be poor and fearful of the police and the courts. Without assistance, they may not know or be able to assert the rights of their children. They will need support from child advocates, including lawyers willing to challenge the violation of children’s rights, whenever they are subjected to jails. Public officers must be forced to recognize that they will be held responsible for harms done to children in jail and that there are legal remedies for such harms.

Child advocates should seek to involve professionals from many fields in this effort. There are certainly professionals — in child welfare, medicine, mental health, and other allied fields — who have knowledge about the children who have been jailed, why they were not placed in less restrictive facilities, and of the resulting harm that is done to children in jails or in other custodial institutions. They also have knowledge and therefore special responsibility for correcting classification systems which are all too often based on paper referrals that exclude children from potentially helpful services. These people have a moral responsibility to make sure that agencies with which they are affiliated do not cloak discriminatory practices that exclude children from appropriate services. Findings by federal courts of practices in institutions that impose cruel and unusual punishment on children should cause the teachers, social workers and physicians in these institutions to ask why they were silent in the face of such conditions. And further, they should resist being coopted by any institution or agency that harms children.6

Professionals must cease resorting to excuses for nonintervention on behalf of children, such as: We have tried, you must be patient; jailing happens everywhere; we are studying the problem; the problem is too big for us; or, this is a political issue and we are professionals, not politicians. If enlisted as child advocates, professionals can provide important facts and present the facts to citizen, professional, and public bodies. They can give expert testimony when needed in court cases and before legislative bodies. Their expertise can also be invaluable in the planning of alternative facilities to jails and in projecting what will be needed for staffing and services.

In addition to reaching out to parents and to professionals, child advocates should seek to involve a cross section of the community in opposing the jailing of children. Physicians concerned with health problems of children or adolescents, professional and citizen groups concerned with preventive and child care services, members of the bar and members of public law groups concerned with the rights of children should be brought together in a common effort. Public officers, including legislators and judges concerned with the welfare of children, should also be urged to participate. In the long run, it is citizens, as represented by their legislators, who determine what price to put on the health and welfare of children and how much the state is ready to do for the rehabilitation of children deprived of their liberty.

In summary, child advocates — as an instrumentality to end the jailing of children, unlike cyclical or occasional interest in response to the suicide of a child held in jail — will have to engage in hard and persistent efforts in order to be effective. Unlike many broad social problems that affect vast numbers of children, the jailing of children is one that can be targeted, tackled and remedied. It is a cruel and mindless way of dealing with children, in violation of constitutional rights. If the harm it does to large numbers of children is challenged at the community level, it can be ended.

Recommendations for Action

Federal Action

The federal government can and must play a key leadership role in the elimination of jail incarceration of children. The federal government should prohibit the use of jails for juveniles charged or convicted of federal offenses.

The federal government should vigorously enforce the legislation it has enacted which substantially curbs the use of jails for juveniles under 18 years of age charged with violations of

federal law and subject to federal jurisdiction. All federal departments and agencies should be prohibited from entering into or continuing agreements or contracts with local jails to hold juveniles subject to federal jurisdiction, either for detention awaiting trial, in jail after adjudication pending disposition, or to serve time in jail.

The Department of Justice should issue strong regulations prohibiting the Bureau of Prisons from negotiating or extending contracts with local, state, county or city jails to hold juveniles under 18 years of age charged with or convicted of federal offenses. The Congress should prohibit completely the incarceration of children in jails by eliminating the language of "regular contacts."

The federal government should be required by law to secure accurate and current information on the location of all jails and lockups where persons are incarcerated.

1. The federal government should develop, or cause every state to develop and submit, a central registry of all jails and lockups.
2. The federal government should require the collection of the following information from all jails and lockups:
   - About juveniles in custody: their age, sex, race, date of admission, date of discharge, agency or authority by which they were taken into custody; agency or authority by which they were released; official reason given for custody; court(s) exercising custody and what actions were taken; legal status of custody and a record of all changes of that status; what medical and other services were provided.
   - About jails holding juveniles: their age, size and/or capacity; physical condition; services provided on intake; services generally provided; staffing patterns; the degree to which juveniles are separated from adult offenders.
3. The federal government should use the information it collects to trigger site visits to jails and monitor the use of all jails holding juveniles.
4. Federal requirements for information should apply to local authorities, and require the submission of data to each state for compilation. In turn, such data should be made available at the federal level.

The federal government should set a date after which no federal law enforcement aid will be granted to any state that continues to hold children of juvenile court age in any adult correctional facility, including jails or lockups.

As a condition to approving the state plans which are submitted to LEAA for funding each year, the federal government should:

1. Strengthen Title II of the Juvenile Justice and Delinquency Prevention Act of 1974 by adding an amendment to require that state plans shall include provisions for ending the incarceration of children in jails within 12 months. We have seen how the present requirement (subdivision 14), which only restricts the use of jails for juvenile delinquents to where they have "no regular contacts" with adult offenders, cannot protect children from physical or sexual abuse any more than state laws with similar provisions have protected children in the past. Children who have not been charged with any offense or who are mentally disabled, mentally ill or retarded, should be removed from jails and lockups immediately.

2. Require that all state and local governments, as part of state plans for juvenile justice, submit monthly reports on all juveniles held in their jails or lockups for any time whatsoever.

3. Require LEAA to maintain current information on the progress made by each state to end jail incarceration of children and on the progress made to provide adequate and appropriate alternatives. On the basis of such information, LEAA should give priority to the support of state and local efforts to remove children from adult jails and to the development of alternative appropriate programs for children who require detention.

As an interim step, until all jailing of all children is ended, the federal government should adopt minimum standards for all jails that hold juveniles as a condition to federal grants or assistance.

Standards should include requirements for decent physical conditions, for complete separation of juveniles from adult offenders, and for provision of educational, recreational and medical services.7

Having adopted minimum standards, LEAA should be given the authority and responsibility
to monitor the enforcement of such standards in any state where juveniles continue to be held in jails or lockups. Sanctions should be established under which federal law enforcement funds will be withheld after notice and hearing when the state or local correctional systems are found not to be in compliance with either federal standards or the state plan.

The federal government has responsibility to investigate and take action against the disproportionate use of jails for minority children.

The Department of Justice should investigate whether the disproportionate jailing of minority group children results from discriminatory admission policies by alternative facilities (public or private) which receive LEAA funds or are licensed by the states. Appropriate actions to correct discriminatory practices should be taken immediately.

State Action

The states have the primary responsibility for ending jail incarceration of children, regardless of whether jails are operated under the immediate sponsorship of counties, townships or independent cities within their borders.

To achieve the goal of ending jail incarceration of children, states should review their laws to prohibit absolutely the holding of children of juvenile court age in jails or lockups used for adult offenders. Such legislation should impose a cut-off date within 12 months and eliminate all loopholes that permit the admission of any juvenile.¹


⁶ Such legislation should prohibit the jailing of children prior to trial, following adjudication, and to serve sentences.
As an interim step, states should enact emergency measures to provide maximum protection for children held in adult jails pending the effective and absolute ending of the use of jails or lockups for children.

States should enact legislation to close the loopholes that permit mingling of children with adult offenders in jails or lockups. All visual or aural contact between children and adult offenders, including trustees, should be prohibited. States should create a special division (within the appropriate state-wide agency) to adopt and enforce written minimum standards for the care and custody of children held in jails or lockups.

1. The state agency authorized to supervise and protect children in jail should be given authority and staffing to locate and inspect all jails and lockups within the state, and report regularly on those that continue to hold children.

2. States should require that any jail or lockup which admits children have adequate staffing, twenty-four hours a day, seven days a week.

3. States should require that any jail or lockup which admits children shall provide for medical examination on admission and for medical services for the care of children while held in detention.

4. States should require that mental health facilities be available for children in detention and that provision be made with proper safeguards for due process for children found to have mental disabilities to be transferred to appropriate facilities.

5. States should provide authority to juvenile courts to secure prompt diagnostic studies by a hospital or out-patient facility in any case where the child is alleged to be dangerous to self or others or where there is evidence of any mental disability.

6. States should require that educational and recreational services, including out-of-doors recreation, be made available for any child held in jail for more than 48 hours.

7. States should prohibit the isolation of children in locked cells or in any other part of a jail.

The effectiveness of a state-wide agency charged with the responsibility to diminish abuses of children still held in jails, will depend on the extent to which it is given the power and resources needed to meet such responsibility. For this purpose, the following recommendations are proposed:

1. The agency must be given authority to set standards and staffing competent to inspect all jails that hold children.

2. The agency should be authorized to bar the use of any jail which fails to provide: the minimum services required by the division, the separation of children from adults, and protection of children from cruel and unusual punishment.º

3. The agency should be authorized to review and investigate all grievances and take action to correct violations of standards established by it. The agency should concern itself with any factual information or grievances which allege disproportionate use of jails for minority group children.

4. The state agency should be required to submit written reports on its findings and actions to the governor and state legislature at least quarterly.

A state-wide agency charged with responsibility for ending the abuses of children in jail and for adopting minimum standards of care will be confronted by general ignorance and apathy concerning jails and a lack of child advocacy for delinquent children who are incarcerated in jails. To help overcome these difficulties, it is recommended that:

A Board of Visitors should be appointed by the Governor composed of citizens, including youth, professionals knowledgeable in the fields of juvenile justice, child care, and mental health. This Board should be given authority to visit all jails and lockups where children are held. It should be given responsibility to report its findings and recommendations to the state agency, the Governor, and the legislature, with authority to make public its findings and recommendations.

º Such authority must include the power to close jails where they are so physically deteriorated as to have no capacity to meet minimum standards. To be effective, authority will be needed to transfer children found in such jails to the most appropriate facilities available.
State legislation should mandate the improvement of its detention programs. Legislation authorizing but failing to mandate such action has proven inadequate to effect the needed improvements, including the ending of jail abuses against children.

States should join the goal of ending the jailing of children with the development of appropriate alternative services and facilities.

The widespread use of jails for children and the over-use of secure detention result from: (1) the absence of sound detention criteria, (2) the absence of adequate screening, (3) the reluctance of persons in authority, including law enforcement officers, probation and judges, to establish sound criteria as to who should be detained; and (4) periodic public demands for the use of incarceration. It also results in large part from the lack of alternative services and facilities for children removed from their own homes. Temporary detention pending court action is needed for only a comparatively small number of juvenile delinquents. The vast majority of those who cannot be released to their families require care and supervision in foster homes, group homes, and other open community facilities. States have responsibility to provide such alternatives so that the least restrictive placements needed to benefit a child and protect the community are made available. To meet this responsibility, states must establish state-wide agencies capable of transforming such goals into reality.

1. States should develop a state-wide agency with responsibility and authority to provide a variety of facilities through programs under its own auspices, under the auspices of local governmental agencies or by purchase of services.
2. Such a state agency should have authority to set standards for all detention facilities, to monitor and enforce compliance with its standards.
3. Such a state agency should develop plans for facilities that will meet the needs of children in sparsely populated as well as metropolitan areas, through the development of regional facilities.

4. Metropolitan areas should provide small secure detention centers for not more than 20 to 25 juveniles charged with serious offenses supplemented by foster and group homes.
5. In less populous areas, regional programs may be needed for small detention units that can serve a large number of communities. The need for such units will be minimized where provision is made for non-secure facilities.

Juvenile Court Action

Juvenile courts carry heavy responsibility and unique opportunities for ending the jailing of children. They have responsibility for developing rules and procedures consistent with their obligation under the constitution and state laws to secure appropriate care of juveniles separate and apart from the adult correctional system. They can play a significant role by refusing to order jail detention in violation of state laws and the constitutional rights of children. Their insistence on protecting such rights would do much to force the legislative and executive branches of state governments to provide alternatives to jail incarceration of children.

Until states have outlawed the jailing of children effectively, the juvenile courts must provide leadership to restrict the use of jails to the maximum extent possible.

11 Ten states had no facilities primarily designated for juveniles and four out of five such juvenile facilities were located in metropolitan areas. A majority of states had four or less detention facilities designated primarily for juveniles. See, Under Lock and Key: Juveniles in Jails and Detention, pp. 38-40.

sponsible adults. When this is not possible, children should be released to the least restrictive kind of facility.¹³

Juvenile courts should require screening by a probation officer of every child arrested, who is not released pending court hearing.¹⁴

Juvenile courts should require by court rules, if not by legislation, that detention hearings be held within 24 hours, regardless of the day of the week, after a child is arrested if the child is not released by the police pending a court hearing.

The juvenile court or the highest judicial officer of the state in consultation with the state's department of youth services, should determine the facilities to be used for detention; law enforcement officers should be restricted to using such facilities. Juvenile court judges should be responsible for visiting and inspecting all detention facilities used for children and prepare written reports on their findings and recommendations for the highest judicial officer of the state.

The juvenile courts should review any complaints that juveniles are mingled with or have contact with adult offenders in jail. On a finding of the lack of separation, the court should order the removal of the child and direct full compliance with statutory requirements by those responsible for the operation of the jail. Any public official responsible for violations of such orders should be held subject to contempt proceedings.

In the absence of legislation, rules of court should prohibit the commitment of juveniles to serve time in an adult jail or any facility which holds adult offenders.

Juvenile courts should collect information on the unmet need for services for children coming before the court, including the need for both non-secure and secure detention facilities. They should present their findings promptly to the legislative, executive and judicial branches of government together with recommendations for filling these needs. These findings should be treated as public record so that advocacy groups will have the opportunity to examine them and seek the corrective actions needed so the reports do not simply gather dust.

¹³ The exception to release should be limited to when the alleged offense or the child's behavior is such that release might reasonably be expected to constitute a danger to the juvenile or the community, or where there is reason to believe the child would not appear for the court hearing. The reasons for holding a child should be submitted in writing to the court within 24 hours of arrest. It should state the charged offense, the general physical condition of the child, and the reasons for not releasing the child to parents or other responsible adults. In New Jersey, the requirement of such written explanations was reported to lead to a substantial decrease in the number of children held in jails.

¹⁴ To make such screening effective would require availability of probation staff on a 24-hour basis. In Florida, when a 24-hour screening service was provided by law in each of the 67 counties, the use of jails for children was practically ended. This result was especially noteworthy in view of previous practices of holding juveniles in jails in some Florida counties for an average period of two and a half months.
Essex Sub Station
216 N. Marlyn Avenue
Essex, Maryland

Frederick County Jail
South Street
Frederick, Maryland

Garrison Sub Station
Reishertown Road
Garrison, Maryland

Parkville Sub Station
Parkville, Maryland

Washington County Jail
201 N. Jonathan Street
Hagerstown, Maryland

Wicomico County Jail
Main Street
Salisbury, Maryland

Wilkins Police Station
Wilkins Avenue
Catonsville, Maryland

NEW JERSEY

Asbury Police Department
708 Bangs Avenue
Asbury Park, NJ

Bellmawr Police Department
Lews Avenue
Bellmawr, NJ

Bergen County Jail
Hackensack, NJ

Cape May County Jail
Cape May Courthouse
Cape May, NJ

Ocean City Jail
835 Central Avenue
Ocean City, NJ

Rutherford Police Department
176 Park Avenue
Rutherford, NJ

Salem County Probation Department
94 Market Street
Salem, NJ

Sussex County Courthouse
3 High Street
Newton, NJ

Westfield Police Department
425 E. Broad Street
Westfield, NJ

OHIO

Allen County Jail
W. North Street
Lima, Ohio

Ashtabula Police Department
Main Avenue
Ashtabula, Ohio

Brook Park Police Department
17401 Holland Road
Brookpark, Ohio

Clermont County Jail
Batavia, Ohio

Crawford County Jail
Courthouse
Bucyrus, Ohio

Delphos Police Department
W. Second Street
Delphos, Ohio

Erie County Jail
204 W. Adams Street
Sandusky, Ohio

Fairview Park Police Department
20777 Lorain
Fairview Park, Ohio

Fostoria Police Department
S. Main Street
Fostoria, Ohio

Franklin County Jail
370 S. Front Street
Columbus, Ohio

Franklin Police Department
45 E. 4th Street
Franklin, Ohio

Fremont Police Department
Fremont, Ohio
| Mahoning County Jail          | 30 Boardman  |
|                             | Youngstown, Ohio |
| Middleburg Heights Police Department | Bagley Road |
|                             | Middleburg Heights, Ohio |
| Milford Police Department   | 18 Main Street  |
|                             | Milford, Ohio |
| Montgomery County Jail      | 330 W. 2nd Street  |
|                             | Dayton, Ohio |
| Niles Police Department     | Franklin Alley  |
|                             | Niles, Ohio |
| North Canton Police Department | Main Street  |
|                             | North Canton, Ohio |
| North Royalton Police Depart | 13843 Ridge  |
| ment                                | North Royalton, Ohio |
| Perrysburg Township Police Department | Eckel Junction Road  |
|                             | Perrysburg, Ohio |
| Richland County Jail         | Courthouse  |
|                             | Mansfield, Ohio |
| Sandusky Police Department   | E. Washington Street  |
|                             | Sandusky, Ohio |
| Stark County Jail            | Hwy. 62  |
|                             | Canton, Ohio |
| Tiffin Police Department     | S. Monroe  |
|                             | Tiffin, Ohio |
| Warren Police Department     | Warren, Ohio |
| Willoughby Police Department | 31816 2nd Avenue  |
|                             | Willoughby, Ohio |
| Wooster Police Department    | Wooster, Ohio |
|                             | |

**SOUTH CAROLINA**

| Aiken County Law Enforcement Center          | Aiken, SC |
| Aiken Police Department                      | Aiken, SC |
| Anderson County Jail                         | Anderson, SC |
| County Home Road                              | Anderson, SC |
| Anderson Police Department                    | Markets Street  |
|                                             | Anderson, SC |
| Bamberg County Jail                           | Hwy. 601 |
|                                             | Bamberg, SC |
| Berkeley County Jail                          | Moncks Corner, SC |
| Cayce Police Department                       | Cayce, SC |
| Charleston County Jail                        | Charleston, SC |
| Charleston Police Department                  | Charleston, SC |
| Clover Police Department                      | Clover, SC |
| Columbia Police Department                    | Columbia, SC |
| Darlington County Jail                        | Darlington, SC |
| Darlington Police Department                  | Darlington, SC |
| Easley Police Department                      | Easley, SC |
| Florence Detention Center                     | Florence, SC |
| Fort Mill City Jail                           | Fort Mill, SC |
| Greenville County Women’s Stockade            | S. Hudson Street  |
|                                             | Greenville, SC |

69
Greenville Police Department
W. Broad
Greenville, SC

Greer Police Department
312 Randall Street
Greer, SC

Hartsville Police Department
Hartsville, SC

Honea Path Police Department
Honea Path, SC

Horry County Jail
2nd Avenue
Conway, SC

Lexington County Jail
Lexington, SC

Myrtle Beach Police Department
Myrtle Beach, SC

N. Augusta Police Department
N. Augusta, SC

Orangeburg County Jail
Orangeburg, SC

Pickens County Jail
Pickens, SC

Richland County Jail
Columbia, SC

Rock Hill Police Department
Rock Hill, SC

Spartanburg County Jail
Spartanburg, SC

Spartanburg Police Department
Spartanburg, SC

Sumter County Jail
Sumter, SC

W. Columbia Police Department
W. Columbia, SC

York County Jail
York, SC

TEXAS

Abilene Police Department
City Hall
Abilene, Texas

Alamo Police Department
Alamo, Texas

Arlington Police Department
Main Street
Arlington, Texas

Belton Juvenile Probation Office
Bell County, Texas

Cameron County Jail
400 Van Buren
Brownsville, Texas

Carrollton Police Department
1002 Broadway
Carrollton, Texas

Dallas County Jail
Dallas, Texas

Denison Police Department
Denison, Texas

Denton Police Department
Denton, Texas

Edinburgh Police Department
117 N. 10th Street
Edinburgh, Texas

El Paso County Jail
El Paso, Texas

Farmers Branch Police Department
3723 Valley View Lane
Farmers Branch, Texas

Ford Bend County Jail
4th & Fort
Fort Bend, Texas

Galveston County Jail
715 19th
Galveston, Texas

Garland Police Department
217 N. 5th Street
Garland, Texas

Grayson County Jail
Sherman, Texas

Harlingen Police Department
1102 S. Commerce
Harlingen, Texas
Hays County Jail
183 S. Guadalupe
San Marcos, Texas

Hurst Police Department
Precinct Road
Hurst, Texas

Killeen Police Department
Killeen, Texas

La Marque Police Department
322 Laurel
La Marque, Texas

McAllen Police Department
1503 Pecan
McAllen, Texas

McKinney Police Department
303 Davis
McKinney, Texas

Mesquite Police Department
711 N. Galloway
Mesquite, Texas

North Richland Hills Police Department
North Richland Hills, Texas

Plano Police Department
Plano, Texas

Port Isabel Police Department
100 Maxam Point
Port Isabel, Texas

San Benito Police Department
143 S. Reagen
San Benito, Texas

Sherman Police Department
Sherman, Texas

Taylor County Jail
Taylor, Texas

Temple Police Department
112 W. 5th Street
Temple, Texas

Weslaco Police Department
500 S. Kansas
Weslaco, Texas

VIRGINIA

Alexandria Police Department
Alexandria, Virginia

Arlington County Jail
Court House Road
Arlington, Virginia

Chesapeake City Jail
Chesapeake, Virginia

Chesterfield County Jail
Chesterfield, Virginia

Fairfax County Jail
Fairfax, Virginia

Garfield Sub-Station
Woodbridge, Virginia

Hampton Police Department
Lincoln Street
Hampton, Virginia

Newport News Department of Public Safety
229 25th Street
Newport News, Virginia

Norfolk City Jail
Cith Hall Avenue
Norfolk, Virginia

Portsmouth Police Department
Portsmouth, Virginia

Richmond City Police Department
Richmond, Virginia

Roanoke Police Department
300 3rd Street, NE
Roanoke, Virginia

Virginia Beach Jail
Virginia Beach, Virginia
Appendix B

Consent Decree in Escamilla v. Santos

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

ESCAMILLA, et al,
Plaintiffs

VS
CIVIL ACTION NO. 74-L29

SANTOS, et al,
Defendants

CONSENT DECREE

1. WHEREAS, this class action was commenced on July 29, 1974, by prisoners confined to the Webb County Jail, against the Sheriff of Webb County, the members of the Webb County Commissioners Court, and the Webb County Jail doctors;

2. WHEREAS, the Sheriff of Webb County and the members of the Webb County Commissioners Court are the defendants entering into this decree, and are hereafter referred to as the "defendants";

3. WHEREAS, defendants acknowledge that plaintiffs and their class have rights under 42 U.S.C. §1983 and Article 5115 of the Civil Statutes of the State of Texas; and defendants acknowledge their duty to implement those rights and to secure the enjoyment thereof;

4. WHEREAS, the most pressing problem at the Webb County Jail is that of overcrowding; the incarceration of large numbers of prisoners at a given time strain the physical capabilities of the Jail to provide a safe and suitable place of confinement as required by the Eighth Amend-
of prisoners, and the use of said solitary confinement units fails to conform with Article 5115 of the Civil Statutes of the State of Texas and the Cruel and Unusual Punishment Provision of the Eighth Amendment to the United States Constitution;

8. WHEREAS, Webb County has no provisions for the release of pre-trial detainees on their personal recognizance, and this contributes greatly to the overcrowding of Webb County Jail;

9. WHEREAS, indigent pre-trial detainees at the Webb County Jail in many cases are not brought before a magistrate following their arrest and must wait in Jail until arraignment, not infrequently for periods over sixty days, before seeing a judge and having counsel appointed for their defense; and this also contributes greatly to the overcrowding at Webb County Jail and violates Article 14.06 of the Texas Code of Criminal Procedure and the rights to effective assistance of counsel guaranteed by the Sixth Amendment to the United States Constitution;

10. WHEREAS, state prisoners who are suspected of insanity and state prisoners who have been legally adjudged insane are at times confined in Webb County Jail in violation of Article 5115 of the Civil Statutes of the State of Texas;

11. WHEREAS, prisoners accused of violating the rules and regulations of the Webb County Jail are placed in segregated quarters and punished without adequate notice of the alleged violation and without a hearing, in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution;

12. WHEREAS, the Webb County Jail currently lacks the medical personnel and the medical facilities to provide proper and adequate medical care for the prisoners confined therein;

13. WHEREAS, the plumbing facilities in the Webb County Jail are in general disrepair and in need of extensive improvements in violation of Article 5115 of the Civil Statutes of Texas, and the present number of toilets, showers, sinks, and drinking fountains cannot adequately meet the needs of prisoners confined to the Jail;

14. WHEREAS, no laundry facilities exist in the Jail, and prisoners must resort to outside assistance or use of the sinks in the tanks to wash and dry their clothes, creating unsanitary conditions;

15. WHEREAS, pre-trial detainees at the Webb County Jail are subject to the same punishments, restrictions and deprivations imposed upon prisoners convicted of violation of law; and pre-trial detainees are not segregated in any manner from those convicted of crime;

16. WHEREAS, the Webb County Jail lacks adequate ventilation, cooling, and heating;

17. WHEREAS, plaintiffs and defendants have agreed upon a plan and steps required for the implementation thereof which will secure the federal and state protected rights of plaintiff's class;

18. WHEREAS, in view of the shared understanding of principles, the parties and the Court have concluded there is no further need to litigate the issue of liability or the nature of the Plan to be provided, and the parties have mutually agreed to the entry of this consent decree;

19. WHEREAS, plaintiffs and defendants by consenting to the entry of this decree do not waive any rights they have under the Laws and Constitution of the United States and the state of Texas

IT IS THEREFORE HEREBY ORDERED, ADJUDGED AND DECREED, and the parties do hereby consent as follows:

1. This action is properly maintainable as a class action under Rule 23(b) (2) of the Federal Rules of Civil Procedure. Members of the class are: all persons confined to the Webb County Jail, whether in the past, present, or in the future.

2. The Order of the Juvenile Court in and for Webb County, dated July 14, 1975, titled CONFINEMENT AND DETENTION OF FOREIGN JUVENILES, is hereby declared null and void as violative of the Equal Protection Clause of the Fourteenth Amendment.

3. The Sheriff of Webb County, his agents and successors in office, shall release from the confines of the Webb County Jail all juveniles detained under the authority or jurisdiction of the Webb County Juvenile Court.

4. The Sheriff of Webb County, his agents and successors in office, shall not utilize the Webb County Jail for the confinement, detention or
incarceration of any juvenile who is subjected to the provisions of the Texas Family Code, except in cases of extreme emergency, where certain juveniles may be the cause of an imminent and serious danger to the safety and security of juveniles detained at the Webb County Juvenile Hall, and it is thereby necessary to remove said dangerous juveniles from the Webb County Juvenile Hall. Provided however that said juveniles may only be incarcerated on the first floor of the Jail, separate and apart from adult prisoners; Further provided, that attorneys for plaintiffs will be notified by the Sheriff of Webb County of said juvenile transfers to the Jail within 24 hours after such transfer; Further provided, that no juvenile may be incarcerated in the Jail for the above reasons for longer than 18 hours, except by order of the Juvenile Court Judge, or a magistrate if said judge is available, and that in no case may a juvenile be kept in the Jail beyond 72 hours.

5. The Sheriff of Webb County, his agents and successors in office, shall forthwith release to the general jail population those prisoners in the Webb County Jail relegated to the solitary confinement units on the second floor, west side of the Jail, otherwise known as “los tostones”.

6. The Sheriff of Webb County, his agents and successors in office, shall not utilize the solitary confinement units, otherwise known as “los tostones,” located on the second floor, west side of the Jail, for the confinement, detention, or incarceration of prisoners. The cell housing “los tostones” may be used by the Sheriff of Webb County for the detention, confinement, and incarceration of prisoners, if said cell is completely renovated and used as a regular cell comparable to other existing cells within the Jail. This must be done by disengaging, dismanteling, dislodging, and tearing down the present existing “tostones” steel walls, removing the unnecessary plumbing facilities therein, and placing up to eight steel bunks within said cell.

7. Defendants acknowledge that overcrowding is a major and pressing problem at the Webb County Jail, and that the early assistance of counsel for indigent defendants, as well as a prompt preliminary arraignment would significantly alleviate the overcrowding. The defendants, their agents and successor in office, shall make certain that all pre-trial detaineese are brought before a magistrate within 72 hours after arrest, and that counsel be appointed to represent indigent pre-trial detaineese within 72 hours after arrest.

Defendants shall seek the cooperation of the state prosecuting and judicial authorities to establish workable methods by which all pre-trial detaineese will be assured of a prompt preliminary arraignment, and indigent pre-trial detaineese are promptly provided with appointed counsel.

The Sheriff of Webb County shall release on their personal recognizance all pre-trial detaineese who are not taken before a magistrate within 72 hours after arrest, and shall release on their personal recognizance all indigent pre-trial detaineese who have not been appointed counsel within 72 hours after arrest.

8. The Sheriff of Webb County, his agents and successors in office, shall provide each prisoner upon entering Webb County Jail with a copy, in English and Spanish, of the rules and regulations of the Jail.

9. The Sheriff of Webb County, his agents and successors in office, shall not punish prisoners at Webb County Jail by isolation or segregation in separate quarters unless the accused prisoner is afforded (a) written notice of the alleged infraction or violation, (b) an adequate opportunity to prepare a defense to the allegations raised, (c) an opportunity for an informal hearing before a neutral officer at which the prisoner is allowed to present his defense and confront adverse witnesses, (d) written findings of fact, and (e) an opportunity to appeal an adverse decision, including written notice of the right to appeal.

Prisoners will not be punished by being placed in isolated or segregated confinement until they have (a) received written notice of the charges, and (b) if the charges are controverted, a hearing officer has held after a fair hearing, that the allegations raised are valid. Provided, however, that a prisoner may be isolated from the prison population for up to three days without notice and hearing whenever there is imminent and serious danger to the security of Jail or the safety of any person therein. In no case may a prisoner be isolated longer than 72 hours without a fair hearing.
The Sheriff of Webb County, his agents and successors in office, is hereby ordered to classify and segregate pre-trial detainees from those convicted of criminal violations as required by Article 5115 of the Civil Statutes of the State of Texas. The Sheriff of Webb County, his agents and successors in office, shall impose upon said pre-trial detainees only those hardships requisite for the purpose of physical custody pending trial.

10. The Sheriff of Webb County, his agents and successors in office, shall not open any mail leaving the Webb County Jail addressed to a court, public official or attorney. The Sheriff may check all other mail entering or leaving the Jail for contraband, but may not censor such mail.

11. The Sheriff of Webb County, his agents and successors in office, shall not permit prosecutors or their agents to interview pre-trial detainees without the consent of his/her defense counsel or written permission from the prisoner.

12. The Sheriff of Webb County, his agents and successors in office, shall obtain health certificates for all persons employed in the Jail's kitchen, or who are utilized to handle and/or distribute food in the Jail. Said health certificates shall be renewed as required by law and shall otherwise be kept in force.

13. The Sheriff of Webb County, his agents and successors in office, shall provide each pre-trial detainee with three completed telephone calls immediately following his/her admittance to the Jail. Provided, however, that all long distance telephone calls will be made at the prisoner's expense.

14. The Sheriff of Webb County, his agents and successors in office, shall allow for visitation privileges at the Webb County Jail to be extended to Fridays from 9-11 A.M. and 3-5 P.M. and Saturdays from 9-11 A.M. and 2-4 P.M.

15. Within forty five days after the filing of this Order, defendants will present to Plaintiffs and the Court a Plan designed to alleviate the overcrowding of the Webb County Jail, and to improve the conditions of confinement. Said Plan will include at a minimum the following:

A. A program for the release of eligible pre-trial detainees on their own recognizance pending the disposition of their case. Said program to be modeled after the "Manhattan-Vera Foundation Personal Recognizance Program" presently in effect in Harris, Bexar, and Travis counties, Texas.

B. A "Work-Furlough" program whereby eligible prisoners are allowed the opportunity to work at their jobs during the day while receiving credit for time served on nights and week-ends.

C. Provisions for the comprehensive repair and improvement of the plumbing facilities at the Webb County Jail, as well as provisions for additional toilets, sinks, showers, and drinking fountains.

D. Provisions for the acquisition of adequate medical facilities for the Webb County Jail. The hiring of a full-time nurse to examine and treat prisoners, to dispense medication prescribed by a physician, and to aid in the prevention and spreading of disease. Defendants shall also study the feasibility of having a physician present at the Jail on a regular basis, said physician to examine and treat patients identified by the nurse as requiring the physician's attention.

E. Provisions for the hiring of additional jailers for the Webb County Jail.

F. Provisions for the effective laundering, cleaning, and sanitizing of all blankets, mattresses, mattress covers, towels, and clothes used by prisoners of the Webb County Jail including provisions for the furnishing of jail clothes, at the expense of Webb County, for use by men incarcerated at the Jail.

G. Provisions for the use of air coolers to ventilate the Webb County Jail, as well as additional heaters.

H. Provisions for a reasonable method by which prisoners may utilize the law library at the Webb County Jail, as well as the purchase of additional legal books and publications.

16. Within 90 days after the filing of this Order defendants will present to plaintiffs and the Court a Plan designed to further alleviate the overcrowding and improve the conditions of confinement at the Webb County Jail. Said Plan will include at a minimum the following:

A. Provisions for the proper care and custody of prisoners suspected of insanity or adjudged insane.

B. Provisions for the construction of a recreational facility for the use of prisoners at the Webb County Jail. The feasibility of all pos-
sible alternatives shall be studied, reduced to writing and filed with the Court, with copies to plaintiff's counsel.

17. Within nine months after the filing of this Order, defendants will present to plaintiffs and the Court plans for the construction of a separate facility for the detention and confinement of Webb County prisoners. Said plans will include a report from defendants as to whether it is advisable to proceed with such construction, with documentation in support thereof, reduced to writing and filed with the Court.

18. The defendants are under duty to use their maximum feasible efforts to obtain and expend the funds required to implement the Plan pursuant to the Timetable. They shall make good faith efforts and undertake all necessary steps to secure sufficient funds from City, State, Federal and other sources for such implementation. In the event defendant's good faith efforts fail to generate sufficient funds to implement this Plan pursuant to the Timetable, defendants shall be required to show good cause to this Court why sufficient funds are unavailable, including what steps, if any, defendants have taken to generate sufficient funds from City, State, Federal, and other sources.

19. Representatives of the Sheriff's Department and the Webb County Commissioner's Court shall consult with counsel for plaintiffs with respect to the development and implementation of all items contained in this Consent Decree.

20. Defendants shall file with copies to plaintiff's counsel, detailed, monthly compliance reports commencing on September 1, 1976, on the progress of the implementation of the Plan. Such reports shall include copies of relevant supporting documentation and other materials relating to the implementation of the Plan.

21. Defendants shall allow attorneys for plaintiffs reasonable access to the Jail and records in their possession relevant to the progress and implementation of the foregoing Plan.

22. Notice of this Consent Decree shall be given to members of plaintiffs class by posting same in English and in Spanish within the individual tanks where prisoners are confined.

23. The defendants acknowledge that the plaintiffs by entering into this Consent Decree do not waive any rights plaintiffs may have with respect to costs, disbursements, and reasonable attorney's fees arising out of this action; and plaintiffs expressly reserve any and all rights they may have to costs, disbursements, and reasonable attorney's fees, arising out of this action.

24. The Court retains jurisdiction of this action for all purposes, including the entry of such additional orders as may be necessary or proper.

Dated: Laredo, Texas

July , 1976

ROBERT O'CONER
United States
District Judge
The parties to this Decree, by their Attorneys, hereby consent to the entry of this Order:

RECARDO DE ANDA
PAUL D. RICH
LEE TERAN
1001 Sta. Cleotilde
Laredo, Texas 78040
(512) 723-2943
ATTORNEYS FOR PLAINTIFFS

JACOB G. HORNBERGER
915 Victoria
Laredo, Texas 78040
(512) 722-1121
ATTORNEY FOR DEFENDANTS
Webb County Commissioners

JULIO A. GARCIA
1016 Flores
Laredo, Texas 78040
(512) 722-0071
ATTORNEY FOR DEFENDANT
Sheriff of Webb County
19. Representatives of the Sheriff’s Department and the Webb County Commissioners Court shall consult with counsel for plaintiffs.

20. In the event defendants are unable to generate sufficient funds to pay pursuant to the Timetable, defendants shall be required to show good cause to this Court why sufficient funds are unavailable, including what steps, if any, defendants have taken to generate sufficient funds from City, State, Federal, and other sources.

21. Defendants shall file with the Court, within ninety days of the Court’s issuance of this Consent Order, a report from defendants concerning the steps taken by defendants to provide public notice and documentation in support thereof, together with a report from defendants concerning the efforts to proceed with the Plan pursuant to the Timetable. The defendants and counsel for plaintiffs shall use their best efforts to work in cooperation to adopt, implement and finance the Plan. In the event defendants are unable to generate sufficient funds to pay pursuant to the Timetable, defendants shall be required to show good cause to this Court why sufficient funds are unavailable, including what steps, if any, defendants have taken to generate sufficient funds from City, State, Federal, and other sources.

22. Notice of this Consent Order shall be given to members of plaintiffs class by posting notices in English and in Spanish within the individual Harris County jails for at least thirty days.

23. The defendants acknowledge that, by entering into this Consent Order, they do not waive any rights, defenses, or causes of action with respect to costs, disbursements, and attorneys’ fees arising out of this action. Defendants expressly reserve any and all rights they may have to costs, disbursements, and reasonable attorneys’ fees, arising out of this action.

24. The Court retains jurisdiction of this action for all purposes, including the entry of such additional orders as may be necessary.

Dated: Laredo, Texas
July__________, 1976

ROBERT O’CONER
United States District Judge
The Children's Defense Fund (CDF) is a national, nonprofit organization created in 1973 to provide long-range and systematic advocacy on behalf of the nation's children. Funded by private foundations and individual contributions, we are staffed with federal policy monitors, lawyers, researchers and people working with communities to reform institutions, policies and practices affecting the lives of children.

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