

*The City University of New York*

**CUNY SCHOOL OF LAW**



Juvenile Life Without Parole Initiative



## **Children in Adult Jails and Prisons**

### **Shadow Report to the U.N. Committee Against Torture**

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## I. Issue Summary

1. In the United States, there is no constitutional provision or national law prohibiting states from subjecting children under age 18 to the adult criminal justice system, imposing adult criminal sentences, or incarcerating children in adult prison facilities. As a result on any given day more than 6,000 children are detained in adult jails and prisons.<sup>1</sup>

2. The majority of children tried in the adult criminal justice system are charged with low-level, non-violent offenses.<sup>2</sup> In nine states, 17 year olds are automatically tried and sentenced as adults no matter the charge, and in two of those states, New York and North Carolina, 16 year olds are automatically tried and sentenced as adults. In Michigan, where 17 year olds are tried as adults and prosecutors have discretion to transfer younger children, the majority of children in prison have committed property crimes and an increasing number are sent to prison for probation violations.<sup>3</sup> Similarly in Florida, which also gives prosecutors discretion to transfer children, the majority of children transferred to the adult criminal justice system have not committed violent crimes.<sup>4</sup>

3. International law recognizes that children in conflict with the law have the right to special protection because of their youth, capacity for change, and the long term detrimental impact that adult criminal punishments can have during a crucial time during their development. Indeed, numerous studies repeatedly show that brain development continues until children reach their mid-twenties and the effects of incarceration can delay development or cause long-term damage.<sup>5</sup> In addition to the human rights violations inherent in trying and imposing criminal punishments on children, once in the adult system, children in adult jails and prisons face disproportionately high rates of physical and sexual abuse and solitary confinement.

### **Violations of the Convention Against Torture**

4. Subjecting children to adult criminal punishments violates the Convention Against Torture (CAT). It also gives rise to other serious violations of the Convention because children in adult prisons and jails around the country face higher rates of physical<sup>6</sup> and sexual assault,<sup>7</sup> placement in solitary confinement,<sup>8</sup> and suicides<sup>9</sup> than children in youth facilities.

### **Sexual Violence**

5. The Department of Justice (“DOJ”) has recognized the increased risk of sexual violence faced by children in adult facilities,<sup>10</sup> and reports from the federal Bureau of Justice Statistics (“BJS”) confirm the increased risk.<sup>11</sup> The majority of children reporting sexual victimization in a 2013 BJS study reported being victimized more than once and indicated that they had not reported the incident.<sup>12</sup> Non-heterosexual individuals across all demographic groups reported much higher incidents of sexual victimization, placing gay, lesbian or bi-sexual children at a higher risk.<sup>13</sup>

6. Information obtained in individual states confirms the high rate of sexual violence children face. More than a third of children in adult prisons in Michigan responding to a

survey conducted by the ACLU Michigan Juvenile Life Without Parole Initiative (JLWOPI) and International Women's Human Rights Clinic (38%) reported that they had been sexually assaulted while incarcerated (12% by staff, 35% by other prisoners and 9% by both staff and other prisoners). In follow up interviews, children reported being infected with sexually transmitted diseases as a result of sexual assaults, but were often denied testing, medical care, or forced to pay the cost for their examination and treatment.

7. In addition to the trauma of sexual assault, children suffer feelings of shame and embarrassment that can keep them from reporting assaults. One individual who was raped at knifepoint stated:

I felt like I should've fought and gotten stabbed because then at least I would've fought for myself rather than getting raped. . . . By him being more than 25 years my senior and bigger than me, I didn't know what to do but give in. I didn't go to the authorities about the incident because I feared being humiliated about the fact that I couldn't stick up for myself.

8. Also, children are also often sexually exploited or coerced into having sex. Children in Michigan prisons reported that adult prisoners threaten them or offer "protection" in exchange for the "right" to sell them to other prisoners for sexual services. Prison gang members force them to engage in sexual services, and they are told that they will be stabbed or beaten if they refuse sex with gang members.

### **Staff Physical Abuse and Use of Electroshock Devices**

9. Children in adult facilities are twice as likely to be physically harmed by staff than their counterparts in juvenile facilities.<sup>14</sup> The United States Department of Justice recently released a report finding that youth (16-18 years old) detained at New York City's Rikers Island Jail (Rikers) sustained a total of 754 visible injuries due to staff force from April 2012 to April 2013.<sup>15</sup> Although youth are only 6% of the daily population, they are involved in 21% of all incidents involving use of force.<sup>16</sup> Youth also reported that correctional officers often take them to isolated locations, away from cameras, in order to inflict injury.<sup>17</sup> They are routinely beaten in the presence of other staff, including the medical staff and teachers, who turn a blind eye to avoid reporting the violence for fear of reprisal.<sup>18</sup>

10. The DOJ report describes that "Inmate H" was in class when an officer struck him in the ribs for having fallen asleep. He was pulled out of the classroom and his teacher reported hearing the child "crying and screaming for his mother." When the child was removed from the corridor all that remained was blood and saliva on the floor.<sup>19</sup>

11. Also troubling is the use of electro-shock devices, also known as Tasers. Data from the Michigan Department of Corrections indicates that children in prison are over 4 times likely to be involved incidents where tasers are deployed than adults.<sup>20</sup> Ten out of 38 children questioned in Michigan indicated that they had been tasered, and 31 of them witnessed the tasing of other youth.<sup>21</sup> Tasers appeared to be used to control behavior

where there is no immediate threat to safety. In follow up interviews, children reported being tasered if they ran in the recreation yard or if they ran away from staff. They also were tasered to stop them going back to their cells. One child reported that as a result of being tasered, he now has scars on his stomach and the left side of his body goes into spasm each time he lays on his bunk.

### **Solitary Confinement**

12. Despite international law prohibitions on placing children in solitary confinement, children in adult facilities are *more likely* to be placed in isolation than adults. In adult facilities, staff do not have the necessary training that would enable them to appropriately address youth behavioral issues. Correctional staff, lacking training, use excessive force and discipline when children, fearful in dangerous adult jail or prison settings, act out in order to appear tough. Children are also less able to navigate prison disciplinary procedures. As a result, they are more likely to face disciplinary sanctions, such as solitary confinement.<sup>22</sup>

13. Children are also placed in solitary to protect them from physical threats or segregate them from incarcerated adults. Some facilities routinely place children and LGBTI individuals in “protective solitary.”<sup>23</sup> Likewise, girls face an increased risk of protective solitary because of smaller proportions of girls in prison and a general lack of women's facilities.

14. Because the states and the federal government do not publish data regarding the number of children held in solitary confinement, it is impossible to determine the exact number of juveniles subjected to this practice.<sup>24</sup> However, state data shows high rates of solitary confinement of children. In Michigan, 35% of children in prison have been placed in isolation at least once.<sup>25</sup> In New York City Jails, 23% of youth under the age of 19 are placed in solitary confinement at any given moment.<sup>26</sup> In New York State, nearly 10% of the people in the extreme isolation cells are under the age of 21 and nearly 30% are under the age of 25.<sup>27</sup>

15. Children of color are disproportionately subjected to solitary confinement.<sup>28</sup> In Michigan, from 2010-2013, 37% of children of color spent time in isolation compared to 28% of white children and on average, the total length of stay for children of color was twelve days longer than for their white peers.<sup>29</sup>

16. Solitary confinement can have long-term serious impact on children during a crucial time in their emotional and cognitive development. According to a HRW/ACLU report, children in U.S. prisons reported physical harm,<sup>30</sup> self-harm (including cutting themselves and suicide attempts),<sup>31</sup> hallucinations,<sup>32</sup> and anxiety from solitary confinement.<sup>33</sup> Evidence suggests that the psychological harm that accompanies solitary confinement affects girls at an even higher rate than boys.<sup>34</sup> Furthermore, children enter the adult criminal justice system with high rates of mental disabilities, which can exacerbate the psychological harm inflicted by solitary.<sup>35</sup>

### **Other Cruel and Degrading Treatment**

17. Incarceration in adult facilities places tremendous stress on youth and fails to provide adequate mental health services and programming. As a result, children in adult facilities are much more likely to commit suicide than youth in juvenile facilities.<sup>36</sup> Placing children in adult jails and prisons also separates them from their families and communities and deprives them of appropriate educational, health and rehabilitative services, in violation of international law standards.

### **Domestic Legal Framework**

18. State Laws. Currently, all 50 states allow children to be transferred to adult courts in some manner.<sup>37</sup> These laws have resulted in approximately 200,000 children being tried as adults each year.<sup>38</sup> While some are given judicial waiver hearings before being transferred to adult courts, the age, individual circumstances, and offense are not subject to individualized judicial consideration for the majority of children tried as adults.

19. Nine states exclude 17 year olds from juvenile court jurisdiction, automatically trying them as adults.<sup>39</sup> Two states, New York and North Carolina, exclude 16 and 17 year olds from juvenile jurisdiction.<sup>40</sup> Children also end up in adult criminal proceedings because of state laws that require juveniles to be tried as adults for certain crimes, give prosecutors discretion to file cases directly in criminal courts for certain crimes or allow juveniles to be transferred after a judicial waiver proceeding.<sup>41</sup> In Florida, a state that allows prosecutors to directly file in criminal court, more than 12,000 children were transferred to adult court between 2008 and 2012, without any possibility of judicial oversight or appeal of the decision.<sup>42</sup>

20. By far, the vast majority of the children who are criminalized and incarcerated in adult facilities are racial and ethnic minorities. Indeed, while there are troubling racial disparities throughout the U.S. prison system, the disparities are the most extreme among the youngest prisoners. For instance, in the state of Michigan, persons of color made up 56% of the adult prison population and 76.5% of the youthful prison population.<sup>43</sup>

21. Federal Responses. Federal law does not prohibit trying children as adults or prohibit their incarceration in adult jails and prisons if they have been tried and sentenced in the adult criminal justice system. The federal Juvenile Justice and Delinquency Prevention Act (JJDP) currently does not extend its protections to children who are tried as adults. The federal Prison Rape Elimination Act (PREA) continues to allow children to be incarcerated in adult jails and prisons, but it does create national standards requiring that individuals under 18 be separated from adult inmates in housing units. However, PREA is only legally binding on federal facilities and the only mechanism for state compliance is through a funding incentive. Federal prisons may lose 5% of certain grants for failure to comply with the standards.

22. To date, only two states have certified that they are in compliance with PREA.<sup>44</sup> Eight states and territories have opted out of complying with PREA standards.<sup>45</sup> Forty-six states and territories have filed assurances that they will work toward compliance, which allows them to avoid losing funding.<sup>46</sup> Despite current challenges in state implementation, the federal government has taken steps that weaken facilities audit

requirements and may remove financial penalties. The U.S. has issued interpretive guidance indicating that the states that have submitted assurances may not be required to undertake the facility audits required by the standards during the first three-year audit cycle.<sup>47</sup> There are current federal legislative attempts to delay or eliminate PREA's financial penalties.<sup>48</sup>

## **II. 2006 Concluding Observations and U.S. Response**

23. In its 2006 Conclusions and Recommendations,<sup>49</sup> the Committee expressed specific concern about the conditions of detention of children and emphasized that the U.S. “should ensure that detained children are kept in facilities separate from those of adults in conformity with international standards” and address juvenile life without parole sentences. ¶ 34.

24. The Committee also expressed concern about a range of human rights abuses committed in the law enforcement, prison, and detention contexts. These abuses disproportionately impact children in the adult criminal justice system. The Committee expressed concern about the excessive use of force by law enforcement, ¶ 37, sexual violence in detention centers, ¶ 32, the use of electroshock devices, ¶ 35, the use of prolonged isolation, ¶ 36, and ill-treatment of vulnerable groups, including racial minorities, migrants and persons of different sexual orientation, ¶ 37.

25. The Committee recommended the implementation of “appropriate measure to prevent all sexual violence in detention centres” along with prompt investigation, prosecution and punishment for sexual violence, brutality or ill-treatment. ¶¶ 32, 37. The Committee also recommended elimination of the use of electroshock devices to restrain persons in custody. ¶ 35.

## **III. U.S. Government Report and Response the CAT List of Issues**

### Custodial Sexual Violence (Issue 32)

26. Prison Rape Elimination Act Implementation, 32(a). The U.S. report describes efforts to implement PREA in federal facilities. ¶¶ 169-75. However, the vast majority of prisoners and detainees in the U.S. are in state facilities and state implementation continues to be a substantial challenge. The U.S. report inaccurately states that “[s]tates must certify that all facilities in the state under the operational control of the state’s executive branch are in compliance with the regulations.” ¶ 170. In reality, states may choose not to certify compliance and simply lose some federal funding or issue an assurance letter to delay certification. Currently only 2 states have submitted certifications. See ¶ 22 above.

27. Sexual Violence Data, 32(b). PREA requires that the Bureau of Justice Statistics (BJS) report on the sexual victimization of prisoners. For individuals incarcerated in adult prisons, BJS issues reports based on inmate self-reporting, information reported by correctional authorities and information reported by former state prisoners. ¶ 176. While it is commendable that the U.S. is trying to obtain this data, it is difficult to get accurate

information on sexual victimization of children under 18 because children are less likely to report abuse.<sup>50</sup> See ¶ 7 above.

Further, there is a general lack of data on children under 18 in adult jails and prisons. Only 13 states report to the federal government the number of children who enter the adult criminal system. Prison and jail data on the number of children in adult jails and prisons is limited to a one-day count (i.e. the number of individuals in custody on a given day). There is no annual count.

28. Response to Data, 32(c). The U.S. report describes the investigation requirements in the PREA regulation. ¶ 178. However, as discussed above, only 2 states have certified that they are in compliance with PREA. See ¶ 22 above.

29. Redress for Victims, 32(b). The U.S. report lists 2 individual cases in Ohio and New York and a class action lawsuit brought by 500 female prisoners in Michigan. ¶ 182-83. Although victims have brought successful lawsuits, fear of retaliation and federal and state laws that restrict access to the courts make it difficult for victims to seek redress.

#### Women in Detention (Issue 33)

30. The U.S. report describes important provisions in the PREA regulations that prohibit cross-gender pat, strip and cavity searches, limit cross-gender viewing of inmates showering and dressing to exigent situations and requires staff member of the opposite gender to announce their presence in housing units. ¶ 186. The limitations on cross gender supervision do not go into effect until 2015 for facilities with over 50 inmates and 2017 for smaller facilities.<sup>51</sup> As discussed above, only 2 states have certified that they are in compliance with PREA, and many states that have refused to comply have specifically criticized these requirements as too costly and onerous. See ¶ 22 above.

#### Children in Detention (Issue 34)

31. The federal Juvenile Justice Delinquency Prevention Act (JJJPA) described in the U.S. Report, ¶ 193, requires removal of children who are tried in the juvenile justice system from adult jails and lock ups in all but very limited circumstances. In the limited circumstance when they are in adult jails there must be “sight and sound” separation from “adult inmates.” However, the JJJPA’s protections do not apply to the 200,000 children who are tried as adults in state courts each year. The JJJPA has not been reauthorized since 2002, and its reauthorization is currently seven years overdue. Any reauthorization should extend JJJPA protections to all children under 18 in pre-trial detention whether or not they are tried as a juvenile or adult.

32. PREA regulations do require separation between children who are tried and incarcerated as adults and adult inmates. However, as discussed above, only 2 states have certified that they are in compliance with PREA. Many states that that have refused to comply have indicated that they do not want to spend the funds required to separate children. See ¶ 22 above.

### Juvenile Life Without Parole Sentences (Issue 35)

33. While recent U.S. Supreme Court decisions barring life without parole (LWOP) sentences for children convicted of non-homicide offenses (*Graham v. Florida*), and barring mandatory LWOP sentences for children convicted of homicide offenses (*Miller v. Alabama*) described in the U.S. Report ¶ 202 are a positive step, thousands of individuals continue to serve life without parole sentences for crimes committed as children.

34. *Miller* does not categorically prohibit juvenile LWOP sentences in homicide cases. Post-*Miller*, two children have been sentenced to life without parole sentences in the state of Michigan alone. Many state courts have refused to give *Miller* retroactive effect.<sup>52</sup> Pennsylvania and Michigan courts have ruled that *Miller* is not retroactive and continue to enforce LWOP sentences for nearly 1,000 individuals.

### Use of Electroshock Devices (Issue 36)

35. Although the federal Bureau of Prisons limits its use of electro-shock devices, inmates in state prisons, including children, are routinely subject to Electro-Muscular Disruption devices (EMDs), also known as Tasers. Despite federal court cases holding that use of EMDs must be justified by a government interest that compels the use of force such as an “immediate threat to the safety of the officers or others,” U.S. Report ¶ 203, state correctional officers use EMDs when there is no threat to safety as a method to intimidate and control prisoners, including children. See ¶ 11 above.

### Solitary Confinement (Issue 37)

36. Although the U.S. Constitution creates certain due process protections prior to placing an inmate into solitary confinement for punitive purposes, U.S. Report ¶ 209, there is no constitutional prohibition on subjecting children to solitary confinement or requirement that age be taken into consideration. In fact, in adult jails and prisons, a disproportionate number of children end up in solitary confinement because of alleged misconduct or for protection. See ¶ 13 above.

37. The PREA regulations recognize that solitary confinement is also often used as a means to protect inmates from sexual violence and separate children from adult inmates. While correctional officials should protect inmates from sexual violence and separate children, the use of solitary confinement to achieve these goals raises human rights concerns. The PREA regulations state that agencies should “make best efforts to avoid placing youthful inmates in isolation to comply” with the separation requirement but does not prohibit placing children in isolation.

### Racial Discrimination and Vulnerable Groups (Issues 42 and 49)

38. The U.S. has taken steps to address racial profiling and discrimination in the criminal justice system. U.S. Report ¶¶ 247-49. However, severe disparities in the criminal justice system persist and are the most extreme in the U.S.’s treatment of children. In Michigan,



people of color make up more than half of the adult prison population but over three-quarters of children under 18 in prison. Overall, the imprisonment rate of black males is 6 times that of white males, but among 18-19 year olds, black males are more than 9 times as likely to be in prison than white males the same age.<sup>53</sup> See ¶ 20 above.

39. Despite the increased vulnerability to discrimination and harm that result when age intersects with other identities the U.S. does not provide uniform data on children under 18 in the criminal justice, jail and prison systems broken down by race, ethnicity, gender and sexual orientation.

#### **IV. Legal Framework**

40. The systemic imposition of adult criminal punishment and detention of children in adult jails and prisons in the United States is a grave violation of articles 2, 10, 11, 12, 13, and 16 of this Convention<sup>54</sup> and a clear violation of minimum international standards of juvenile justice outlined in the Beijing Rules.<sup>55</sup>

#### **V. The CAT Committee Concluding Observations**

41. In prior Concluding Observations, the Committee against Torture (“CAT”) has specifically expressed concern about the lack of complete segregation of detained children from adults.<sup>56</sup> The Committee has recognized that all persons under the age of 18 should be classified as juveniles for the purposes of detention and should not be detained with adults.<sup>57</sup> CAT has recommended that state parties expand and reinforce alternatives measures other than detention for children below the age of 18.<sup>58</sup> Additionally, the committee has specifically admonished the United States on this matter before, stating that it is a well-established minimum international standard to keep children separate from adults during all phases of detention.<sup>59</sup>

#### **VI. Other UN Body Recommendations**

42. Both the U.N. Human Rights Commission (HRC)<sup>60</sup> and the Committee on the Elimination of All Forms of Racial Discrimination (CERD)<sup>61</sup> have issued Concluding Observations to the U.S. recommending that it ensure that juveniles are not transferred to adult courts and are separated from adults during pre-trial detention and after sentencing. They have also recommended that it abolish life without parole and solitary confinement for juveniles.

43. In March 2014, the HRC stated that the U.S. must ensure “that juveniles are not transferred to adult courts” and encourage “states that automatically exclude 16 and 17 year olds from juvenile court jurisdictions to change their laws.” HRC COs (2014), ¶ 23. It also stated that the U.S. should “ensure that juveniles are separated from adults during pretrial detention and after sentencing,” “prohibit and abolish the sentence of life imprisonment without parole for juveniles,” and abolish the use of solitary confinement for anyone under 18. HRC COs (2014), ¶¶ 20 and 23.

44. In August 2014, the CERD expressed concern about “racial disparities at all levels of

the juvenile justice system, including the disproportionate rate at which youth from racial and ethnic minorities are arrested in schools and are referred to the criminal justice system, prosecuted as adults, incarcerated in adult prisons, and sentenced to life imprisonment without parole.” It recommended that the U.S. “ensure that juveniles are not transferred to adult courts and are separated from adults during pretrial detention and after sentencing.” CERD COs (2014), ¶ 21.

45. The CERD also expressed concern that despite recent Supreme Court cases, discretionary (non-mandatory) juvenile life without parole sentences are still permissible for homicide crimes. It recommended that the U.S. “prohibit and abolish life imprisonment without parole for those under 18 at the time of the crime” and “commute the sentences for those currently serving such sentences.” *Id.*

## VII. Recommended Questions

- What alternative measures is the United States taking to ensure that institutionalism for children under the age of 18 is a last resort and that children in conflict with the law receive proper social services from specialized professionals as well as all additional rehabilitation services necessary for recovery?
- What efforts is the federal government undertaking to ensure that all state and local prisons and jails comply with PREA?
- How will the delay in audits have an effect on states’ compliance with PREA?
- What incentive would states have to comply with PREA if there were no financial penalties?

## VIII. Suggested Recommendations

1. The U.S. should ensure that children under 18 are not criminally tried in adult courts and are separated from adults during pretrial detention and after sentencing and encourage states to consider raising the extended age of juvenile court jurisdiction to 24.
2. The U.S. should reauthorize and strengthen the JJDP A by extending the Jail Removal and Sight and Sound protections to all children under the age of 18 held pre-trial whether they are awaiting trial in juvenile or adult court and revise the definition of “adult inmate” to explicitly exclude children who were under 18 at the time of the offense charged if they have not yet reached the allowable age to be held in juvenile facilities under state law.
3. The U.S. should create meaningful incentives and penalties to ensure that there is full compliance with PREA and issue guidance that removal of children under 18

from adult jails and prisons is the best practice for complying with the Youthful Offender standard.

4. The U.S. should prohibit the use of solitary confinement for children and other vulnerable populations and encourage states to adopt comprehensive reforms of their policies around solitary confinement like the Humane Alternatives to Long Term (HALT) Solitary Confinement Act, A. 8588A / S. 6466A that is currently proposed in New York.
5. The U.S. should implement training programs that teach law enforcement officers, particularly police, prison administration, and correction officers the unique needs of children in conflict with the law especially pertaining to identifying signs of torture and the use of force only in extreme situations.
6. The U.S. should require that states track the frequency and mechanisms by which children are tried in the adult criminal justice system and develop nationwide statistical data on children in the adult system that is disaggregated by race, ethnicity, disability, gender and sexual orientation. The United States should improve data collection and reports on incidents of violence against children in adult facilities. Such reports should pay particular attention to intersections of age, race, ethnicity, disability, gender, and sexual orientation and should address factors that may discourage or inhibit children from reporting violence.

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<sup>1</sup> The combined single day count for youth in adult jails and prisons in 2012 was over 6,800. This figure combines counts of children in adult prisons on December 31, 2012 and children in adult jails on June 30, 2012. *See e.g.*, Todd D. Minton, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, JAIL INMATES AT MIDYEAR 2012 – STATISTICAL TABLES, P. 5, tbl. 2 (2013) available at:

<http://www.bjs.gov/content/pub/pdf/jim12st.pdf>; E. Ann Carson, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2012: TRENDS IN ADMISSIONS AND RELEASES, 1991-2012, 26 (2013) available at: <http://www.bjs.gov/content/pub/pdf/p12tar9112.pdf>.

<sup>2</sup> National Juvenile Justice and Delinquency Prevention Coalition, Promoting Safe Communities: Recommendations for the Obama Administration, p. 15 (2013-2014).

<sup>3</sup> J. Shook and R. Sarri, *Trends in the Commitment of Juveniles to Adult Prisons*, 54 WAYNE L. REV. 1725 (2008).

<sup>4</sup> Human Rights Watch & ACLU, *Branded for Life: Florida's Prosecution of Children as Adults under its "Direct File" Statute*, p. 27 (Apr. 2014) available at: <http://www.hrw.org/reports/2014/04/10/branded-life>.

<sup>5</sup> Robert L. Listenbee, Jr., *Report of the Attorney General's National Task Force on Children Exposed to Violence*, p.171 (2012) available at: <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>; American Civil Liberties Union, *Alone & Afraid Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities* (June 2014) available at: <http://www.aclu.org/files/assets/Alone%20and%20Afraid%20COMPLETE%20FINAL.pdf>.

<sup>6</sup> Martin Forst, Jeffrey Fagan and T. Scott Vivona, *Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy*, *Juvenile and Family Court Journal*, 40 (1) (1989).

<sup>7</sup> *See, e.g.*, U.S. Department of Justice, Bureau of Justice Statistics, *Sexual Victimization in Prisons and Jails Reported by Inmates, Survey 2011-12* (May 2013) available at: <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.

<sup>8</sup> Human Rights Watch and American Civil Liberties Union, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States*, (October 2012) available at:

<http://www.aclu.org/criminal-law-reform/growing-locked-down-youth-solitary-confinement-jails-and-prisons-across-united>; New York Civil Liberties Union, *Boxed In: The True Cost of Extreme Isolation in New York's Prisons* (2012) available at:

[http://www.nyclu.org/files/publications/nyclu\\_boxedin\\_FINAL.pdf](http://www.nyclu.org/files/publications/nyclu_boxedin_FINAL.pdf).

<sup>9</sup> See, e.g., Arya Neelum, *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America* (2007), Campaign for Youth Justice, available at:

[http://www.campaignforyouthjustice.org/documents/CFYJNR\\_JailingJuveniles.pdf](http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf).

<sup>10</sup> 42 U.S.C. § 15601(4).

<sup>11</sup> From 2009-2011 children under 18 were .4 % of substantiated incidents of inmate on inmate sexual victimization in prison and .112% of the population in 2011 (1790 of 1,598,780), making them more than three and half times as likely to be a victim of sexual abuse. Bureau of Justice Statistics, *Sexual Victimization Reported By Adult Correctional Authorities, 2009-11*, p. 8 (January 2014) Bureau of Justice Statistics, *Prisoners 2011*, p. 1, 13 and Appendix 16, p. 33 (Dec. 2012). Recent BJS reports show youth are at greater risk of sexual victimization than adults in prisons (4.5%-youth, 4% adults) and jails (4.7%-youth, 3.2% adults). Bureau of Justice Statistics, *Sexual Victimization in Prisons and Jails Reported by Inmate, 2011-12*, p. 21 (May 2013).

<sup>12</sup> Among youth victimized by other inmates, two-thirds were victimized more than once and only one in six reported the incident. Among youth victimized by staff, three-quarters were victimized more than once and only one in ten reported the incident. BJS, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12*, p. 23 (May 2013).

<sup>13</sup> *Id.* at 30.

<sup>14</sup> M. Forst et al. *Youth in Prisons and Training Schools*, *JUVENILE & FAMILY COURT*, vol. 4 (1989) (finding that youth were twice as likely to be physically harmed by staff).

<sup>15</sup> Preet Bahara, *CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island*, US Department of Justice, US Attorney, Southern District of NY, p. 7 (2014).

<sup>16</sup> *Id.* at 8.

<sup>17</sup> *Id.* at 15, 28 (Rikers school areas surprisingly do not have video surveillance. The videotapes that do exist frequently go missing or cannot be located when requested).

<sup>18</sup> *Id.* at 74.

<sup>19</sup> *Id.*

<sup>20</sup> Children under 18 make up .19% of the prison population but were involved in .88% of incidents involving the deployment of tasers. MDOC data from 2013-2014 analyzed by the ACLU/Michigan JLWOP Initiative.

<sup>21</sup> ACLU/IWHR follow-up survey.

<sup>22</sup> See ACLU/HRW, *Growing Up Locked Down*, *supra* note 8, p. 51-52.

<sup>23</sup> *Id.* at 54, 56.

<sup>24</sup> *Id.* at 63.

<sup>25</sup> This figure reflects the 3-year period from July 26, 2010-July 25, 2013. MDOC data as of July 2013, analyzed by the ACLU Michigan/JLWOP Initiative.

<sup>26</sup> Testimony of Dr. Robert Cohen, NEW YORK CITY BOARD OF CORRECTION, Public Meeting, p. 6 (June 3, 2013) available at:

<http://www.nyc.gov/html/boc/downloads/pdf/Minutes/BOC%20Minutes%2020130603%20with%20handout.pdf>.

<sup>27</sup> See NYCLU, *Boxed In*, *supra* note 8, p. 22.

<sup>28</sup> Testimony of Scott Paltowitz, CORRECTIONAL ASSOCIATION OF NEW YORK, Public Meeting, p. 6 (July 10, 2014).

<sup>29</sup> This figure reflects the 3-year period from July 26, 2010-July 25, 2013. MDOC data as of July 2013, analyzed by the ACLU Michigan/JLWOP Initiative.

<sup>30</sup> See ACLU/HRW, *Growing Up Locked Down*, *supra* note 8, p.37.

<sup>31</sup> *Id.* at 36.

<sup>32</sup> *Id.* at 33.

<sup>33</sup> *Id.* at 26.

<sup>34</sup> *Id.* at 29.

<sup>35</sup> *Id.* at 32. (noting how one Florida juvenile “was always biting on his hands and wrists” while in solitary confinement. Another Florida juvenile who experienced solitary confinement said, “I became a cutter [in

solitary confinement]. I like to take staples and carve letters and stuff in my arm. Each letter means something to me. It is something I had lost.”).

<sup>36</sup> Arya Neelum, *Jailing Juveniles*, *supra* note 9, p. 10.

<sup>37</sup> Patrick Griffin, Sean Addie, Benjamin Adams, and Kathy Firestone, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, U.S. DEP’T OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION NATIONAL REPORT SERIES, BULLETIN, p. 1 (Sept. 2011).

<sup>38</sup> *Id.* at 20-1. This figure combines the estimated number of youth transferred from juvenile to adult criminal court and the estimated number of youth prosecuted as adults in states that exclude 16 and 17 year olds from juvenile court jurisdiction. The conservative estimate of youth who are tried as adults in states that try all 16 and 17 year olds as adults is 175,000. *Id.* at 21. There were 14,000 reported transfers of youth into the adult system in 2007, but most states do not track or report the data. *Id.* at 20.

<sup>39</sup> *Id.* at 21. Since the report was written, Illinois, Massachusetts and New Hampshire raised their age of juvenile court jurisdiction to 17. The states that currently automatically try 17 year olds as adults are: Georgia, Louisiana, Michigan, Missouri, South Carolina, Texas and Wisconsin.

<sup>40</sup> *Id.* at 21.

<sup>41</sup> *Id.* at 2-3.

<sup>42</sup> Fla. Dep’t of Juvenile Justice, *2012-2013 Delinquency Profile*, available at <http://www.djj.state.fl.us/research/delinquency-data/delinquency-profile> (last visited Apr. 8, 2014) (of the 12,101 children transferred to adult court during the period from fiscal years 2008 to 2013, 7,935 were aged seventeen, 3,115 were aged sixteen, 832 were aged fifteen, 217 were aged thirteen or fourteen, and two were aged eleven or twelve).

<sup>43</sup> MDOC data as of November 2013, analyzed by the ACLU Michigan/JLWOP Initiative.

<sup>44</sup> See, Department of Justice List for PREA State Certifications (May 28, 2014) available at: <http://www.wcl.american.edu/endsilence/documents/PREASStateList.pdf>.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> See, Department of Justice Issued Frequently Asked Questions on Governor Certification Question 5 May 16, 2014. (Question: May a governor submit an Assurance even if the state will not be conducting any PREA audits? Answer: During the initial three-year audit cycle, which ends on August 19, 2016, a governor may submit an Assurance without conducting any PREA audits. If necessary, additional guidance will be provided on whether the Department of Justice will continue to accept Assurances in the absence of PREA audits beyond the initial three year audit cycle.) available at:

<http://www.prearesourcecenter.org/faq#n2233>.

<sup>48</sup> In September 2014, the Senate Judiciary Committee approved a bill that would delay any financial penalties against states for failure to comply for 4 years. Congress will consider the bill in November. John Kelly, *Cornyn’s PREA Penalty Amendment: What’s Five Percent of Zero?*, Chronicle of Social Change (September 19, 2014). Available at <https://chronicleofsocialchange.org/newsmaker/cornyns-prea-penalty-amendment-whats-five-percent-of-zero/8145>

<sup>49</sup> Committee Against Torture, *Concluding Observations: United States of America*, U.N. Doc. CAT/C/USA/CO/2 (2006).

<sup>50</sup> See e.g., Preet Bahara, *supra* note 15, p. 10 (expressing concern that Riker’s may be underreporting sexual assault and encourages the New York Department of Corrections to examine and comply with PREA).

<sup>51</sup> 28 C.F.R. 115.15 (b).

<sup>52</sup> [State v. Tate, 2012-2763 \(La. 11/5/13\)](#), [People v. Carp, 828 N.W.2d 685 \(Mich. Ct. App. 2012\)](#), [Chambers v. State, 831 N.W.2d 311 \(Minn. 2013\)](#); [Commonwealth v. Cunningham, No. 38 EAP 2012, 2013 WL 5814388 \(Pa. Oct. 30, 2013\)](#) (same). Other state courts have held that *Miller* is retroactive. [State v. Null, 836 N.W.2d 41 \(Iowa 2013\)](#), [People v. Morfin, 981 N.E.2d 1010, 1022 \(Ill. App. Ct. 2012\)](#), [Jones v. State, 2009-CT-02033-SCT \(Miss. 2013\)](#); [2013 WL 3756564](#) (en banc) (same). In cases before the Second and Eighth Circuit Courts of Appeal, the federal government conceded that *Miller* is retroactive. See [Wang v. United States](#), No. 13-2426 (2d Cir. July 16, 2013) (order granting successive [28 U.S.C. § 2255](#) motion); [Johnson v. United States, 720 F.3d 720 \(8th Cir. 2013\)](#) (per curiam).

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<sup>53</sup> Bureau of Justice Statistics, *Prisoners in 2012: Trends in Admissions and Releases, 1991-2012* (Dec. 2013), p. 25, available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4842>.

<sup>54</sup> Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, United Nations, Treaty Series, vol. 1465, p. 85 (1984).

<sup>55</sup> United Nations General Assembly, *The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")*, U.N. Doc. A/RES/40/33 (1985) ¶¶ 13, 17, 19, 26, 28, and 29.

<sup>56</sup> Committee Against Torture, *Concluding Observations: Indonesia*, U.N. Doc. CAT/C/IDN/CO/2 (2008) ¶ 17; *Id.*, *Concluding Observations: Cambodia* U.N. Doc. CAT/C/KHM/CO/2 (2011) ¶ 23; *Id.*, *Concluding Observations: El Salvador* U.N. Doc. CAT/C/SLV/CO/2 (2009) ¶ 17-19; *Id.*, *Concluding Observations: Yemen*, U.N. Doc. CAT/C/YEM/CO/2/Rev.1 (2010) ¶ 25; *Id.*, *Concluding Observations: Norway* U.N. Doc. CAT/C/NOR/CO/6-7 (2012) ¶ 23, *Id.* *Concluding Observations: South Africa* U.N. Doc. CAT/C/ZAF/CO/1 (2006), ¶ 22.

<sup>57</sup> Committee Against Torture, *Concluding Observations: Syrian Arab Republic*, U.N. Doc. CAT/C/SYR/CO/1 (2010) ¶ 31; *Id.*, *Concluding Observations: The Philippines* U.N. Doc. CAT/C/PHL/CO/2 (2009) ¶ 19; *Id.*, *Concluding Observations: Nicaragua* U.N. Doc. CAT/C/NIC/CO/1 (2009) ¶ 24.

<sup>58</sup> Committee Against Torture, *Concluding Observations: Liechtenstein*, U.N. Doc. CAT/C/LIE/CO/3 (2010) ¶ 27-28; *Id.*, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* U.N. Doc. CAT/C/GBR/CO/5 (2013) ¶ 31.

<sup>59</sup> Committee Against Torture, *Concluding Observations: United States of America*, U.N. Doc. CAT A/55/44 (2000) ¶ 179(i); Committee Against Torture, *Concluding Observations: United States of America* CAT/C/USA/CO/2 (2006) ¶ 34.

<sup>60</sup> Human Rights Committee, *Concluding Observations: United States of America*, U.N. Doc. CCPR/C/USA/CO/4 (2014).

<sup>61</sup> Committee on the Elimination of All Forms of Racial Discrimination, *Concluding Observations: United States of America*, U.N. Doc. CERD/C/USA/CO/7-9 (2014).