CHILDREN BEHIND BARS
YOUTH WHO ARE DETAINED, INCARCERATED & EXECUTED

Booklet No. 4 in a Series on International Youth Issues
Youth Advocate Program International

Y.A.P. INTERNATIONAL

CHILDREN
YOUTH WHO ARE DETAINED, INCARCERATED AND EXECUTED

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The mission of Youth Advocate Program International is to promote the rights and well-being of youth on a global basis, giving particular attention to the plight of troubled and needy youth and to those victimized by armed conflict and by state and personal violence.

The Youth Advocate Program International was incorporated in 1994 and is an affiliate organization of the National Youth Advocate Program, Inc. (NYAP). NYAP is a private, nonprofit youth advocacy organization that develops and implements community-based services for troubled and needy youth. It is the parent organization of seven state affiliate programs that offer services in their respective states: Ohio, West Virginia, Indiana, South Carolina, Georgia, Illinois and Kansas. Youth Advocate Program International is registered in the United States as a 501(c)(3) organization.

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Graphic Design: Fine Points Multimedia Services
Photos: Front: Jason Eskenazi, Impact Visuals.
About the photo: Misha, age 16, from Moscow Region, spends three days in a “psychological relaxation” room for sending notes to the girls building at Detp riannik—a detention center for youth picked up by the militia.
Back: Frank Methe, Jr.

First Edition
Printed by Master Print, Inc.

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Cost per booklet is $6.00US.
INTRODUCTION

Youth Advocate Program International's parent organization, the National Youth Advocate Program (NYAP), operates community-based programs that are rooted in the following philosophy: troubled and needy youth should be surrounded by concerned and caring individuals within the community, rather than the bars and walls of institutions. In fact, NYAP Director Mubarak Awad started the Ohio Youth Advocate Program (OYAP) in 1978 because Ohio was among the states incarcerating the greatest number of youth, and Awad believed that the only way to reverse the trend was to provide viable community-based programs. Since that beginning, NYAP's work has expanded to six additional states—West Virginia, Indiana, South Carolina, Georgia, Kansas, and Illinois. Foster parents, advocates, and social workers have worked with thousands of young people to change the direction of their lives and to help them grow in caring and nurturing environments. Most importantly, there have been more successes than failures.

Writing a booklet about incarcerated children, therefore, has been an endeavor supported by the entire NYAP community. We have strived to include information from all parts of the world, but we also have drawn upon the experience of NYAP staff. We are grateful for the assistance of each of the individuals interviewed. Special appreciation is extended to Jabakki Granderson, an Ohio youth who was incarcerated for four years, and Judge Yvette McGee Brown, the Franklin County Juvenile Court judge who referred Granderson to OYAP in 1998. Their stories provide inspiration to all those who are advocates for children behind bars.

We believe in the potential of transformation in the lives of children; we're not willing to give up on them. And we hope this booklet will help us refocus our attention on the plight of children behind bars. They deserve our attention and compassion.

Nancy Nye
Director
Youth Advocate Program International
OVERVIEW

Throughout the world, children are held in detention centers, jails and prisons. Some are locked up after being found guilty of criminal charges, but children awaiting trial and those accused of non-criminal offenses also are living behind bars. Some countries have developed juvenile justice systems that process accused children separately from adults. Other countries do not have separate justice systems but follow different prosecution and sentencing practices designed to take into account children's needs and their potential for correction. Whether or not countries have formal juvenile justice systems, international rules and treaties encourage the fundamental principle of providing for the well-being of all children without discrimination. Another principle found in international instruments is to ensure that children are treated in a manner proportionate both to their circumstances and to the offense. Also, all children, regardless of offense, should receive treatment and services that will aid their reintegration into society.

With little regard for these principles and specific provisions outlining the ideal treatment of incarcerated children, governments routinely fail to apply national and/or international standards. Some countries, ignoring the most fundamental value placed on children's lives, put them to death. This booklet calls attention to the gap between the promise of our world's highest standards of humane treatment and the real conditions experienced by incarcerated children. Also included here, are examples of government programs and private programs that attempt to improve the treatment of these children and bridge that gap.

Throughout this booklet, the terms child, youth and juvenile are used in accordance with the definition of a child provided by the United Nations Convention on the Rights of the Child (CRC). The CRC defines a child as a person under age 18, unless national laws recognize the age of majority earlier. Because the CRC is the most widely ratified convention addressing children’s rights in the world—to date every country has ratified it except the United States and Somalia—this definition appears to be acceptable as a global standard.
WHY ARE CHILDREN INCARCERATED?

Children are incarcerated when they are found guilty of committing serious crimes.

In many parts of the world, street children often are incarcerated on false charges or no charges at all.

- Children are incarcerated because their families cannot manage their behavior.

Children are incarcerated when accused of committing crimes

Youth accused and found guilty of the most serious crimes—including the violent acts of murder, assault, and rape—are generally removed from society and held in some form of incarceration. These youth are most in need of standards that recognize their inalienable humanity. Even children who are convicted of less violent property offenses such as arson or theft may face sanctions that deprive them of their liberty for a long time. Regardless of the charges against them, international treaties and rules have established standards for the humane treatment of children who are detained or incarcerated.

One of the most fundamental international standards of juvenile justice is that no child shall be deprived of his or her liberty unlawfully or arbitrarily. This safeguard is found in the widely accepted International Covenant on Civil and Political Rights (ICCPR), the UN Rules for the Protection of Juveniles Deprived of their Liberty, and the Convention on the Rights of the Child (CRC). However, governments have found many pretexts for locking children up, regardless of obligations to respect children’s liberty rights.

* See Table 1. on page 32.

Children may be incarcerated to maintain public order

In several countries, children are jailed on false charges—or no charges at all. Street children are routinely detained by police for days, ostensibly for the purposes of reuniting them with their families, identifying runaways, clearing public areas, or rounding up vagrants and prostitutes. Recently, 40 Guatemalan street children were detained by police and sent to a juvenile detention center because the police believed such action would decrease vandalism during a holiday celebration.

Children may be incarcerated when families cannot cope with them

Sometimes children enter detention facilities because their parents are unwilling to care for them or unable to control their behavior. In Bangladesh and Bulgaria, for example, children can be placed in detention centers for being “uncontrollable.” “Beyond parental control” is second only to destitution and vagrancy as the most common legal basis for incarcerating children in Kenya.

Children may be incarcerated for political activity

In some parts of the world, children are held in police stations or jails to prevent their participation in political demonstrations and movements. Palestinian children, for example, have grown up in the midst of a political conflict that has existed their entire lives. It is not uncommon for them to become politically active at a very young age. In just the last seven years of the Intifada—the Palestinian popular uprising—an estimated 5,000 Palestinian children were detained for political activities.
Also, in South Africa throughout the 1970s and 80s, thousands of children and adults were detained and incarcerated without trial and without due process while the country struggled against the systemic practice of racism and segregation known as Apartheid.

**Children may be incarcerated when they are placed under protective custody**

Children also are placed in detention facilities based on arguments that it is for their own protection. Protective custody may occur because the child is a witness to a crime or has been abused or neglected. Children in protective custody sometimes are held in the same facilities as convicted criminal offenders if a responsible adult relative is not located to take charge of them.7

**Children may be incarcerated when they seek asylum or immigrate illegally**

Children are confined, sometimes for months, when they attempt to enter another country illegally. Unaccompanied immigrant children detained in Australia, Hong Kong, Japan and Great Britain are routinely placed in detention centers that also house people convicted of criminal offenses.6

In the United States, for example, thousands of children enter the country illegally every year. Many are unaccompanied by any adult.9 Some of these children are fleeing persecution. Whether these children’s reasons for immigrating warrant legal refuge or not, they are held in detention while they await deportation or asylum.

**Children may be incarcerated for status offenses**

Children who commit non-criminal “status offenses” are subject to incarceration in several countries. A status offense is an act committed by a child that would not be an infraction of the law if done by an adult. Status offenses include acts such as skipping school or running away from home.

**Children may be incarcerated because of war**

During war, child soldiers and civilian children accused of committing war crimes often are incarcerated. International humanitarian law10 provides for the protection of these children by granting them prisoner-of-war status or demanding that they receive special consideration for their needs based on the fact that they are children.

However, in practice, the application of these provisions has proven difficult to implement and monitor. For example, in Rwanda, over 1,000 children were held in detention in 1997 on suspicion of committing acts of genocide in the country’s bloody civil war, which began in 1994. Charges have not been formally brought against those several hundred children under age 14 at the time of massacre, but they remain in detention facilities and deprived of their liberty. For the remaining youth aged 14 to 17, the maximum sentences applied have been set lower than adults’ sentences. There remains considerable debate in that society as to what kind of sentences are appropriate in this situation.11

**Children may be incarcerated with their mothers**

There are newborn and infant children who live in prison with their incarcerated mothers. They have been accused of no crimes at all. In Great Britain, France, Hong Kong, Bangladesh, Rwanda and Uganda infants and even toddlers in some instances12 are living in prison because their mothers have been convicted of crimes. This custom has been instituted in order for infants to receive the beneficial care of their mothers.
WHAT HAPPENS TO CHILDREN WHEN THEY ARE INCARCERATED?

Physical punishments are common—and illegal. Incarcerated children who are housed with adults are vulnerable to many kinds of exploitation and abuse. Many incarcerated children lack access to the services that they have a right to enjoy.

The cell was small and damp. There were between twelve and twenty people in the cell when I was there. I was the only kid. There were bedbugs and lice. There was only one window and it was very high up. There was nothing in the cell. We slept on the floor. The lights were on twenty-four hours a day. There was a bucket for a toilet. They gave us tea and a slice of bread in the morning, ugali [porridge] and greens for lunch, and the same thing again for dinner with a little water to drink.13

Tom, from Kenya

Physical abuse is common in detention centers, jails and prisons

Physical abuse occurs in juvenile detention facilities and jails and prisons throughout the world because violence is common in these institutions. In A Sin Against the Future, author Vivien Stern writes:

This culture of violence cannot be put down to a few disturbed individuals. It is an intrinsic element of the life in a place where young men are locked up together. A victim of prison violence, who had gone on to inflict violence on others, said, “Everyone does it. If I don’t, someone else will. You’ve got to learn to stand up for yourself... I’m doing them a favour really”.18

In addition to the risk of abuse from other inmates, incarcerated children face beatings administered by police officers, facility staff and guards. Physical punishments that constitute “cruel, inhuman or degrading treatment,” including corporal punishment,19 are in direct violation of international standards. Whether or not physical punishments are used as a regular disciplinary practice for infractions of an institution’s rules or as a punishment for the criminal activity of which a child is convicted, they remain abuses of children’s human rights.
An eight-year-old Bulgarian girl who was detained for begging in a market described her experience in police custody: "While I was there, the police handcuffed me and put a hat over my head so I couldn't see anything, and started beating me with a chain. I begged them not to beat me, but they told me I had stolen." A 16-year-old boy, who was incarcerated in a detention center in Guatemala, described his situation.

If you do something wrong the guards will hit everyone. They hit you with aluminum baseball bats. They put you face down on the ground and hit you on the back with the bat. Once I saw them hit a boy so hard they broke his ribs. Then they threw him into isolation. Later, because of his broken ribs, they had to call an ambulance.

The use of physical and chemical restraints also violates international standards. The UN Rules for the Protection of Juveniles Deprived of their Liberty limits the use of restraints and force to "exceptional cases, where all other control methods have been exhausted and failed." The UN Rules state that restraints and force should be used only to prevent a child from inflicting injury to himself or herself or to others. However, restraint chairs and four-point restraint, in which a child is tied to a bed by the wrists and ankles for several hours, are disciplinary techniques often employed in U.S. juvenile detention facilities. Amnesty International warns that the use of chemical agents, such as pepper spray, are a significant concern in U.S. juvenile detention facilities. There are even reports of stun guns being used on incarcerated children.

Solitary confinement for children is strictly prohibited

Punishment in many juvenile detention facilities also includes the use of solitary confinement. This practice violates international standards, which specifically and strictly prohibit "placement in a dark cell, or closed or solitary confinement." In the United States, federal law stipulates that a child may be placed in solitary confinement only if he poses a danger to himself or others, never as a punishment. However, Human Rights Watch cites a case in a Georgia facility in which a youth had been sent to a segregation cell for 63 days for minor fights with other juveniles and insubordinate behavior. That behavior did not involve violence but included "falling to place his hands behind his back when security staff called him to attention, failing to look up at security staff, and mouthing off." Amnesty International reported on the extreme case of a boy who was incarcerated in the state of Arizona in 1998. The boy was repeatedly placed in solitary confinement for transgressions such as talking to staff without permission, carrying cleaning fluid to his assigned work area, for "laziness effort in exercise" and complaints of feeling ill and tired. He died while staff "assisted" him to do push-ups.

Overcrowding is a common problem among juvenile facilities

The U.S. Justice Department reported that 62 percent of juveniles in public detention centers in 1995 were held in facilities whose populations exceeded the facilities' designed capacity. As a result, children—usually those who were being detained prior to trial and had not yet been convicted of a crime—slept in rooms designed for single inmates or even in bathrooms, isolation rooms, or infirmaries. Children held in those overcrowded conditions often had no access to toilet facilities and were forced to urinate and defecate on the floor or towels.

Crowding is a problem in other countries' juvenile facilities as well. In one juvenile detention facility in Nairobi, Kenya, which has a capacity of 80 children, the population occasionally rises to nearly 500 children ranging from 7 to 16 years old. In 1996 in Malawi's Zomba Central Prison, approximately 180 boys between 12 and 18 years of age were crammed into four communal cells. The cells opened onto a compound 100 yards long by 10 yards wide, enclosed by high brick walls. When Amnesty International delegates visited the prison in 1996, there was evidence of an epidemic of scabies, lice and fleas. Many boys suffered infected sores.
Housing with adults may endanger children

The ICCPR, the UN Standard Minimum Rules for the Administration of Juvenile Justice, the UN Rules for the Protection of Juveniles Deprived of their Liberty, and the CRC all explicitly state that children must not be imprisoned with adults. However, children are routinely incarcerated in the same facilities, sometimes even in the same cells, as adults.

For example, Romanian national law requires that children be kept in separate sections of the prisons, but an adult prisoner is always put in charge of the juvenile section. In South Africa, reports show that there were approximately 1,000 children in adult prisons in May 1998, and in early 1999 there were more than 400 children incarcerated in adult jails in Nicaragua.

Housing children with adult inmates creates opportunities for children's physical abuse and exploitative incidents such as stealing their clothes and food. At the other extreme, housing children in adult prisons can result in their isolation. To keep them separate from adults, the authorities of some U.S. facilities keep children in their cells or confined to very small areas for extended periods.

Sexual abuse is another problem found in jail and prison facilities, and it is often linked to the practice of housing juveniles with adult prisoners. A former inmate in a Guatemalan prison explains—

Boys who are put in with the adults are often raped. This is very common. Zone 18 is the adult prison with the most minors, therefore it is the prison with the most rape. The guards don't pay any attention. In jail, money runs everything.

In the United States, where children as young as 13 have been imprisoned with adults, sexual abuse has been perpetrated by prison officials. According to Amnesty International, "[T]eens in adult facilities are five times more likely to be sexually assaulted and twice as likely to be beaten by staff than those in juvenile facilities."

Incarcerated children lack access to basic services

The Right to Legal Counsel and Due Process. Some incarcerated children lack access to legal counsel because of both overburdened court systems and a blatant disregard for their rights. International standards are explicit in this area. The CRC provides for the prompt access to legal assistance for children deprived of their liberty, and the UN Standard Minimum Rules for the Administration of Juvenile Justice details that right. This safeguard also is found in the national law of many countries, although it is frequently ignored.

Take, for example, the case of Paris Pangabaribuan, a 16-year-old Indonesian boy convicted of petty theft. In 1997, Paris was found sprawled on the floor of his cell vomiting blood. He died six days later. According to Amnesty International, "Paris' mother said that her son had complained of pains in his chest, back and shoulder after being beaten by police officers. No lawyer or parent ever accompanied Paris during his interrogation by police, in violation of Indonesian law."

U.S. children accused of crimes generally have better access to public defenders, but the United States has no statutory requirement to provide legal counsel for children detained by the U.S. Immigration and Naturalization Service (INS). INS detainees do have a right to be represented by their own lawyers, but they must find one who speaks their language, and they must find the means to employee him or her—while they are held in detention. According to Human Rights Watch, the lack of legal information and assistance...
The Right to Medical Care and Health Services. International norms, and many national legal standards, recognize the right of every imprisoned child to receive adequate medical care. This right extends to treatment for mental as well as physical illnesses.\(^4\) However, in addition to suffering multiple abuses, incarcerated children rarely have access to basic, necessary services.

For example, Guatemalan children who are imprisoned often fall victim to illnesses, including posttraumatic disorders, depression, severe dental decay, skin disorders, venereal disease, respiratory illnesses, and chronic diarrhea; but medical staff and supplies are inadequate. A study by Human Rights Watch found that only three medical doctors were available to treat approximately 600 children—and the doctors worked only four hours each day.\(^5\)

A similar situation exists in the United States with regard to mental health treatment. In 1996, only three psychologists were assigned to the 300 children imprisoned in Virginia’s system of juvenile detention facilities, and about 40 percent of those children had mental health or suicide-watch needs.\(^6\)

The Right to Education. Similarly, incarcerated children’s access to education—also guaranteed by international standards—\(^7\) varies widely, even within countries. One secure facility for serious juvenile offenders in the state of Colorado in the United States provides substantial educational opportunities for youth, including the opportunity to complete studies in order to receive a high school diploma in addition to vocational training.\(^8\) At another juvenile facility in the same state, the educational program is insufficient, completely lacking in classroom instruction and special needs services for some students.\(^9\)

In Kenya, juvenile detention facilities do not provide educational opportunities. There is no limit to the amount of time youth may be held in these facilities, and “some children can stay in remand for years without so much as a book or a ball to provide them with stimulation,” according to a Human Rights Watch report.\(^10\)

In contrast, the “reeducation schools,” to which most convicted Romanian children are sentenced, require these children to attend school, and have full-time teachers on staff who are able to teach the full range of subjects.\(^11\) Although the reeducation schools suffer from serious overcrowding, they do offer an education resulting in a diploma that is equivalent to diplomas from other Romanian schools.

The Right to Freedom of Religious Expression. International norms recognize the right of an imprisoned child to “satisfy the needs of his or her religious and spiritual life.”\(^12\) The U.S. INS detention centers, which hold children with a variety of cultural identities, are required by its own internal policies to allow the opportunity for religious worship. However, in one INS facility, which had a small altar, some of the detained children did not know of the altar’s existence. Other children reported that they were not informed that they could worship there. Also, no provisions were made for clergy visits.\(^13\)

Some children are victims of outright religious coercion. In Guatemala, religious coercion is practiced in juvenile detention centers, and includes mandatory Bible classes, the forcible removal of crosses from Catholic children, and beatings in connection with religious training.\(^14\)
WHICH CHILDREN ARE INCARCERATED?

- In several countries, children from minority groups are overrepresented in detention facilities, jails and prisons.
  Physical abuse by parents increases the likelihood of a child committing juvenile crime.

It is impossible to determine how many children are incarcerated around the world. Most countries maintain statistics but how those statistics are organized and who is counted varies greatly. For example, statistics from the United States are difficult to gather because of differences in reporting among various types of facilities as well as delays in reporting from all 50 states. According to the U.S. Department of Justice, on a single day in 1995, it was determined that 108,700 juveniles were being held in various types of U.S. facilities. However, a daily tally cannot be extrapolated to provide a reliable annual figure because some of the same children enter and exit incarceration while awaiting adjudication, and because children may be counted more than once as they enter different types of facilities or are moved from one area to another. In some other parts of the world, the names of children arrested on lesser charges, such as vagrancy or prostitution, are never even recorded.

Socioeconomic factors

There is a clear indication that poor children constitute a disproportionately large part of the population of imprisoned youth. For example, Human Rights Watch notes that the Guatemalan juvenile justice system offers "less procedural protection and fewer liberty guarantees to poor children than to middle-class children. Poor children are most likely to be held in lengthy pre-trial detention rather than released pending adjudication. They are most likely to serve time for their transgressions, rather than being afforded the opportunity to 'conciliate' with the victim."57

Race factors

In the United States, minority youth are markedly overrepresented in detention facilities, jails and prisons. African Americans make up 15 percent of all U.S. youth between the ages of 10 and 17, yet they comprise 30 percent of youth arrested from that age group, 40 percent of the youth in custody, and 50 percent of the juvenile cases transferred to criminal courts.58

The same trend is evident in Canada, where the Child Welfare League of Canada reports that blacks, who make up three to four percent of the general population in Canada, comprise more than a third of Canadian prisoners.59 And in the Northern Territory of Australia, Aboriginal youth make up 90 percent of juvenile detainees despite the fact that only one third of the child population in the Northern Territory is Aboriginal.60

Gender factors

There is evidence that boys are detained more often than girls. U.S. statistics show that there were four times as many boys sentenced to secure facilities in 1993 as compared to girls.61 This disparity may be due in part to a tendency for boys to commit more violent crimes and to repeat criminal activity.62 However, in the United States, there is some indication that judges are less likely to sentence girls to prison, preferring residential alternatives for girls.63

In at least one area of criminal activity, commercial sex crimes, girls vastly outnumber the boys arrested. In many parts of the world, children involved in prostitution and pornography are still treated as criminals rather than as the victims of crime.64 UNICEF reported on one case of a 15-year-old girl who had been abducted for sale into the commercial sex business. When she was rescued by police, she was placed in protective custody and remained there for four years.64

Psychological and physiological factors

Although there is very little research on the psychological health of incarcerated children around the world, some research exists on

*See YAP-I's booklet "Commercial Sexual Exploitation of Children"
the backgrounds and emotional health of incarcerated children in North America. Studies have shown a clear link between criminal behavior and adverse family conditions. Lack of adequate parental love and supervision, erratic or harsh parenting, abuse, and parental alcohol or drug abuse contribute to juvenile crime.65

The U.S. National Institute of Justice has reported that a child who has been subjected to abuse or neglect is more likely to become an offender at some point in his life. A history of abuse increases the likelihood of being arrested as a juvenile by 53 percent, being arrested as an adult by 38 percent and being arrested for violent crime by 38 percent.66

In addition, many incarcerated youth suffer from one or more forms of mental illness. The incidence of psychiatric disorders is substantially higher among incarcerated U.S. teens than among U.S. teens who have not had contact with the justice system.67 The types of emotional problems found in imprisoned U.S. adolescents range from depression and posttraumatic stress disorder to attention deficit disorder and mania.68

Another significant indicator influencing a child’s likelihood of being incarcerated is whether or not a child’s parent has been imprisoned. Psychiatric studies show a link between parental criminality and youth crime.69 Brenda Harris, a youth advocate with the West Virginia Youth Advocate Program, reports occurrences of “second generation recidivism”—incarcerated children whose parents also have experienced incarceration. Harris describes receiving referrals to work with troubled children as young as age three, who are exhibiting serious behavior problems and whose parents were detained as children. “The parent was hardened by violence,” said Harris, “and they instill that in their child.”70

Physiological problems, such as drug and alcohol addictions, play a part in making some children and youth more likely to be incarcerated than others. Drug and alcohol abuse is common among juvenile offenders in the United States. In fact, substance abuse is a predictable stage in the development of anti-social behavior in U.S. youth.71

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**WHICH CHILDREN ARE PUT TO DEATH?**

- International standards forbid application of the death penalty to people for crimes committed when they were under age 18.

Six countries have executed youthful offenders since 1990. The United States leads in the number of executions of youthful offenders.

The International Covenant on Civil and Political Rights (ICCPR) specifically states that “sentence of death shall not be imposed for crimes committed by persons below eighteen years of age.”72 The CRC reiterates that capital punishment must not be imposed for crimes committed by persons below age 18.

As evidenced by the standards set by these documents and others, there is growing consensus worldwide that the death penalty is not acceptable as a form of punishment for children. The death penalty fails on all principles that apply to protection of the human rights of children. It is not in the best interest of the child; it does not take into consideration a child’s stage of development and level of maturity; it does not take into consideration a child’s ability to be reintegrated into society.

Since 1990, the executions of juvenile offenders have been documented in only six countries: Iran, Nigeria, Pakistan, Saudi Arabia, the United States, and Yemen.73 In some of these cases, the legality of the executions under some of those countries’ national laws is in doubt. However, with the exception of the United States, the five other countries were in clear violation of international treaties and rules their governments have ratified. The United States has ratified the ICCPR, but stated its reservation toward observing the section on the juvenile death penalty and has not ratified the CRC. Recently, Yemen has passed legislation that outlaws the use of the death penalty among possible sanctions for offenders who have committed crimes when they were under age 18.74
The United States executes more youthful offenders than any other country

The United States holds another dubious distinction in the matter of the juvenile death penalty. It is executing far more of its children than any other country. Beginning with the first such execution in 1642, 356 juvenile offenders have been executed in the United States. Since the death penalty was reinstated in 1973 as a legal punishment for crime, 13 people who committed crimes when they were children have been executed. Ten of those executions have occurred since 1990. As of April 1999, there were 73 male offenders awaiting execution for murders committed when they were children.

In spite of the growing international consensus that children should not be sentenced to death, the U.S. Supreme Court has ignored the country’s place in the world and looked at the practices of some of the 24 states that legally put children to death. In 1989 the U.S. Supreme Court held that there was

...neither a historical nor a modern societal consensus [in the United States] forbidding the imposition of capital punishment on any person who murders at 16 or 17 years of age. Accordingly, we conclude that such punishment does not offend the [U.S. Constitution’s] Eighth Amendment’s prohibition against cruel and unusual punishment.

However, an examination of the details of the prosecution, incarceration and execution of these offenders reveal a disturbing reliance on social retribution as the only purpose served by their executions.

In many modern-day cases, youth who have been sentenced to death in the United States have been mentally impaired. A study found that all 14 U.S. juvenile offenders sentenced to death in 1988 had suffered serious head injuries during their childhoods. All 14 suffered from psychiatric disorders. In addition, all but two had been physically abused as children. Because most juvenile offenders are still living at home when they commit their crimes, experts note that the abuse they suffer is often a very recent and influential factor.
A case in point is that of Robert Carter, who was executed in Texas in 1998 for a murder he committed when he was 17. Carter was mentally retarded and seriously brain damaged. He was brutally abused throughout his childhood by his mother and stepfather who whipped and beat him with wooden switches, belts and electric cords. While a child, he was hit on the head with bricks, plates and baseball bats. He received no medical attention for these injuries. After being shot by his brother, Carter suffered from seizures and fainting spells. Carter's jury never heard evidence of his mental retardation, his brain damage or his abuse. The murder he was convicted of was his first offense. Jurors took ten minutes to decide that he should be put to death.

Another concern about the U.S. juvenile death penalty is the racial discrimination apparent in its application. Two-thirds of juveniles on death row in America are from minority racial groups, and most of their alleged victims were white. A pattern of discrimination, in direct violation of international standards, appears to exist.

Children sentenced to death in the United States spend many years awaiting execution. The delay in execution is supposed to allow the appeals process to reverse wrongful convictions and to allow for the possibility of clemency. However, the safeguards do not appear to work.

Juvenile offender, Sean Sellers, was convicted of murder in Oklahoma in 1986 when he was 16. He was executed on February 4, 1999—13 years later. During that time Sellers was examined by mental health professionals who diagnosed him as having Multiple Personality Disorder and brain damage. However, when Sellers' case was appealed in 1995, the Oklahoma Court of Criminal Appeals ruled that his right to raise the claim of his mental disability was waived because it could and should have been raised at his trial—even though the clinical tests for diagnosing and confirming Multiple Personality Disorder had not been developed in 1986.

In 1998, with all appeals exhausted, executive clemency was the only option to execution. International standards within the ICCPR state that "Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence...."

Sellers had been an exemplary prisoner with no incidents on his disciplinary record. He had become religious, engaged in artwork, and had participated in the production of videos that warn people about the dangers of cults and drugs. He reportedly saved the life of another prisoner who was attacked by other inmates. Sellers did not receive clemency. He was executed by lethal injection.

**WHAT ARE THE EFFECTS OF INCARCERATION ON CHILDREN?**

- Some incarcerated children, separated from positive role models, choose to identify with peers in secure facilities.
- Violence is reinforced by incarceration.

There is surprisingly little scientific research on how incarceration impacts children. What follows are some observations gathered from professional licensed social workers and a consulting psychologist who work with affiliate programs of the National Youth Advocate Program in the United States. The National Youth Advocate Program (NYAP) was founded in 1978 in the state of Ohio. Now operating in seven U.S. states, the organization's staff has treated and counseled thousands of troubled youth, including youth who have been incarcerated.

Although some social workers point out that there are children who are motivated to change their behavior by the desire to avoid repeated incarceration, most children demonstrate evidence of increased psychological problems as a result of incarceration. Fore-
most, among the observable behaviors, is a decreased ability to express emotions. Limiting emotional reaction appears to be a self-defense mechanism encouraged by the circumstances of incarceration.

Wendie Parsons-Nuhn, a former probation officer who now works for Ohio Youth Advocate Program (OYAP), says that children who have been incarcerated “learn to be a little more hardened. They don’t show their emotions as well because you can’t appear vulnerable in a prison-type setting. Showing emotions could be detrimental to your safety.”

Under normal conditions, adolescent youth are experimenting with self-definition and identity issues, and they are influenced by the examples of people around them. Incarcerated youth, deprived of contact with successful people from their communities, are exposed daily to people who exemplify delinquent or criminal behavior. Staff employed by the NYAP affiliate organizations observed that the isolation imposed on them leaves few opportunities to learn from positive role models.

Many incarcerated children become so accustomed to the structure and routine of the detention facility that they appear to suffer difficulties making decisions for themselves after they are released. David Lowenstein, a consulting psychologist to OYAP, explains—

Adolescence is a time for developmental and psychological changes that must occur for the adolescent to be better able to emancipate from their family of origin and become an independent and self-sufficient adult. It is a time when the adolescent attempts new roles to assist them with identifying who and what they are. This occurs when the adolescent makes changes in their decisions about future goals and career choices....

Adolescents who are incarcerated will thus have difficulty with emancipation issues because their choices have been taken away from them. Their psychological and emotional development becomes unstable, and they never learn the appropriate ways to deal with the future or learn decision-making skills since they have little experience with the trial and error stages that normal adolescents experience.

Social workers in the NYAP affiliate organizations spoke of the skills incarcerated children teach each other. “It boils down to survival of the fittest,” said Fritzann Isenhart, who works with the West Virginia Youth Advocate Program (WVYAP). “When you’re incarcerated, you have to develop skills that aren’t necessarily going to help you in society, but they’re going to keep you alive while you’re incarcerated.”

Incarcerated children learn both how to refine their current crime skills and how to undertake other kinds of crime. Brenda Harris, who also is an advocate with WVYAP, noted that “they’re [incarcerated children] going to come out ready for the adult world of crime.... It’s a learned behavior.... It’s just like a career.”

Boys, in particular, appear likely to adopt the behavior of their incarcerated peers as acceptable models of a lifestyle they feel they can emulate successfully.

The violence that permeates secure facilities impacts youth. Referring to her experience working with a youth who had been incarcerated, Jennifer Colvin Thomas, a treatment coordinator with OYAP, spoke about the lingering influence of violence on this boy’s behavior.

After he was out, his foster placement was not working. He didn’t care about the rules of living in a regular home. Compared to the facility where he was held, the penalties for not following the rules seemed minor.... In school, this young man could not understand why the teachers bothered him. He went to class but did not participate. From his perspective, no one was threatening him with violence so why should he do anything.”

Lawrence Duru, a house supervisor of the OYAP shelter care program, noted that most of the youthful offenders he has worked with have come from families where violence is a part of everyday life. Duru notes that these children have grown up experiencing violence and getting their needs met through showing anger or behaving violently. When they are incarcerated, Duru said, the violence is reinforced. “They are no longer scared of the idea of prison, or any kind of authority.... But they are angry. Their underlying problems are never addressed. These children believe that violence is the only means they have for expression.”
One Youth’s Journey Toward Rehabilitation and the Perspective of the Judge Who Granted his Early Release

Jabaksi Granderson was 15 years old when he murdered a man in 1994. He was arrested, convicted and served four years in two Ohio juvenile facilities. Recently, he was released from incarceration one year early after Franklin County Juvenile Court Judge Yvette McGee Brown came to the decision that Granderson had demonstrated remorse and taken advantage of opportunities for rehabilitation.

While incarcerated, Granderson began writing Judge McGee Brown because, he says, he wanted her to know that he was not “who she saw in the courtroom or what she said on paper.” Since being referred to OYAP, Granderson has completed an internship program in printing technology at the Village Press, a commercial printing business that supports an OYAP youth-to-work program. Granderson earned his high school diploma and a certificate in printing technology while he was incarcerated. Now 20 years old, Granderson is applying for professional employment.

Following are excerpts from interviews conducted by YAP-I and OYAP staff, with Granderson and Judge McGee Brown.

Granderson on being incarcerated: “I found out who Jabaksi was and that was the good side [of incarceration]…. It was a huge turn around for me because basically I used to justify a lot of the wrong stuff that I did by other people’s actions. Two wrongs don’t make a right, but I caught myself trying to make it right. So my main thing was to start learning how to accept what other people did wrong without responding and doing something wrong back. I said, ‘I’m the only one who can control me.’ I realized there’s a better way of life than living the way I was living. I was raised better than that.”

Granderson on writing to Judge McGee Brown: “I started knowing the depth of the wrong I did to my victim’s family and other people who knew him. I wanted to let them know the real me, the Jabaksi that my mother raised. I wasn’t raised for the street life. I decided to start writing to let her [Judge McGee Brown] know what I was accomplishing and how I felt about certain things, and I started putting my character on paper so it could be seen by her. She wrote back, which I really didn’t expect, but she’s got a really huge heart. Thank God she did write me back every time.”

Granderson on contacting his victim’s mother after he was released: “She forgave me for what I did. She’s teaching me a lot. She’s shown me a lot of things about forgiveness. I mean, if she can forgive me for what I did, who am I not to forgive anyone for what they did whether it’s in the past, present, or the future.”

Granderson on changing juvenile detention facilities: “I’d listen a lot more. I’d design it so people who work there listen to the youth a lot more than they do, and be more understanding. They [the staff] bring their problems with them. [Instead of encouraging them] to move forward, some people bring their anger and frustrations to work and let them out on the youth. They [staff] disrespect them. They will curse [youth] out and make themselves feel good. I’d let them know up front, if they’ve got problems, they need to leave them at home. These youth already have enough problems. They [youth] get more upset when they know they don’t have anyone to hear them out.”

Judge McGee Brown on granting early release to Granderson: “When Jabaksi came in front of me, he had no prior record. He was originally in front of me on a motion to transfer his case to the adult court, which I denied… I think what impressed me is that after he had been at the Department [of Youth Services] maybe six or eight months, he wrote me a letter. He said in that letter that he wasn’t honest with me in court. In his testimony he claimed that [the murder] was in self-defense, and that really wasn’t true. It was about drugs. What struck me was that he wasn’t asking for anything…. He was saying he needed to clear his conscience. After that, he’d write once every four or five months just to say this is what I am doing, or this is what I’ve accomplished. When he wrote me the letter asking if he could be considered for early release, I granted the hearing.”
"At the hearing, Jabakki's social worker from the institution came to court with him, which is very rare... She spoke in support of his release. She said he has done everything that he could do. She said Jabakki was a role model. To hold him for another year, would be simply punitive. The other kids in the institution were looking at Jabakki... If he didn't get released, what message would that send to the other kids?

"I have never granted early release for a kid adjudicated on murder before. Jabakki is the first. For the other kids who have been granted early release, I look for where they were when they were committed, and what have they accomplished while they were in the institution. Have they gotten their high school diploma? Have they enrolled in a vocational program? Have they been involved in a lot of fights or have they been leaders? What does the staff have to say about them? What family and community support is there for them upon release?"

Judge McGee Brown on alternatives to incarceration: "I agree with Jabakki that we don't need more bricks and mortar. What we do need is more social workers, more counselors, and more teachers who can work one-on-one with kids to help them deal with all the garbage, because by the time they get there [to secure facilities] they are dealing with 14 or 15 years of crap in their lives. They need to have someone who is trained to help them process that and help them see to the other side.

"Among the violent offenders, a lot of the kids who are sent to institutions... have had prior contact with the court. I think the only way you're going to turn them around is with the therapeutic model, but we also need therapeutic intervention with their families. While the kid is incarcerated, no one is dealing with the family. No one is looking at the issues that got this child here... [and] these kids are being released to the same families. These children are set up for failure.

"Part of Jabakki's success is his self-will, but knowing that someone cared also made the difference. If we can intervene before kids become so hardened and so disappointed with life—when they still believe that someone cares about what happens to them—then we wouldn't have all these kids incarcerated."

STRATEGIES FOR IMPROVEMENT

- Status offenses should not result in incarceration.
- Community service programs may serve as alternatives to incarceration in some cases.
- Secure facilities should be monitored so that conditions respect children's fundamental human rights.

Troubled and needy youth should be surrounded by concerned, caring people within their communities, rather than the bars and walls of institutions.

—philosophy of the National Youth Advocate Program

The international declarations and conventions discussed throughout this booklet provide comprehensive guidance about how a responsible society should respect and care for its youngest and most vulnerable citizens. All of these instruments, but particularly the Convention on the Rights of the Child (CRC), establish a standard throughout the world to improve conditions for children, including incarcerated children.

For example, in Tunisia, the CRC inspired new limitations on the range of physical punishments that may be used legally on children. Romania has begun a program to train judges to better handle juvenile delinquency cases. UNICEF reports that Pakistan has drafted legislation abolishing the death penalty for children under 16 years and gave social welfare departments responsibility for the rehabilitation of juvenile offenders. And China, which has the world's highest annual judicial death toll, amended its criminal law in 1997 to abolish the death penalty for offenders under age 18 at the time of the crime—in order to come into compliance with the CRC.

But examples cited earlier in this publication make it clear that many countries fall woefully short of meeting the standards for the care of incarcerated children. The Committee on the Rights of the Child, the international body responsible for monitoring countries'
compliance with the CRC, has limited ability to hold governments accountable. The full responsibility for ensuring that children’s rights are being upheld rests in the hands of child advocates, who must hold their respective governments accountable. Advocates in the United States and Somalia carry the additional burden of securing their countries’ ratification of the CRC.

Some hope is offered in the knowledge that implementation of standards can, of course, occur even before their ratification. And while ratification is the responsibility of a country’s national government, implementation most often occurs at the community level—giving advocates great opportunity to effect change and assist children. For example, decisions such as whether to invest in buildings and jails or rehabilitation and prevention programs are generally made at the local level. Child advocates can encourage their community leaders to focus on the long-term potential of children rather than the short-term fears and impatience of a neighborhood.

The UN Standard Minimum Rules for the Administration of Juvenile Justice and the UN Rules for the Protection of Juveniles Deprived of their Liberty give us clear and specific guidelines to follow when we implement policies concerning juvenile detention. We must strive to follow these standards.

Perhaps the first step toward supporting the general tenets of the international instruments, is to work on prevention and decrease the number of incarcerated children by eliminating the detention of children for unlawful reasons and for status offenses. Too often children are placed behind bars as a matter of convenience in societies that are looking for quick solutions to their problems. Too many children with psychological problems are put in jail rather than being admitted to mental health programs. Children who have committed no crimes, but who simply have had the misfortune of being children at a time and place where children were not wanted, do not belong behind bars.

A second way to support the spirit of international standards is to find alternatives to incarceration for children who have committed lesser crimes, yet require specialized attention and guidance. For example, Zimbabwe has experimented successfully with community service programs. Instead of short prison sentences, some juvenile offenders are given the opportunity for community ser-

vice work with social welfare organizations. Similar programs are being used in Jamaica and are under consideration in other African and Caribbean countries.

Attendance centers are another example of an alternative to incarceration. These centers, which are usually run by police, provide activities that juvenile offenders must attend regularly. In Ethiopian attendance centers, the activities are designed to teach useful skills to youth who have come into conflict with the law.

Various forms of mediation to determine sentencing also are being used in a number of countries. One type of mediation is New Zealand’s Family Group Conference method. This practice involves bringing a convicted young offender and his or her family together with youth advocates, social workers and police officers to determine what kind of sentence is appropriate. Conference plans often include an apology and restitution to the victim, as well as restrictions of the child’s activities.

Third, for those children who must be detained or confined, the least restrictive environment must be utilized. In the 1997 settlement of the Flores v. Reno class action lawsuit filed against the U.S. Immigration and Naturalization Service, the INS agreed to place each detained minor in the least restrictive setting appropriate to the minor’s age and special needs, provided that such settings could ensure the minor’s timely appearance in court and protect his/her well-being and that of others. Such a standard seems appropriate for both the child and the community. Residential settings and group homes are examples of environments that provide structure and discipline for children, but also provide some assistance to develop the skills essential to surviving in society.

Fourth, when incarceration is the sanction applied to a child convicted of a serious crime, it is crucial that the conditions of confinement be humane. Incarceration is a punishment in and of itself. Abuse and degradation is not called for, nor is it legal. Any period of incarceration should focus on a child’s rehabilitation. Not only must the prison environment be clean, healthy and free from abuse, but it must include elements designed to educate the child and provide treatment for his or her problems.

When asked how to improve the current juvenile detention system in the United States, all of the case workers interviewed for this
booklet agreed that providing better treatment and education programs would be the most important reforms. Treatment programs are essential, one case worker said, because without them, “when the kids come out to the outside world, they go back to the same life they had before they went in.”

**Juvenile courts were designed to protect children’s interests**

One hundred years ago, child advocates in the United States created and encouraged the implementation of a special court for the adjudication of children. Special procedures were put in place based on the assumption that social workers, not lawyers, would represent the interests of children in a juvenile court. The court was supposed to emphasize treatment, not punishment.

However, the original mission of the U.S. juvenile justice system has eroded over the years. Increasingly, juvenile courts have taken on the character of the adult criminal court system. The procedures that were designed to be individualized for particular children’s needs and carried out by social workers have become prescribed, legalistic and largely directed by lawyers. The results have been both positive and negative. On one hand, court decisions such as *Kent v. United States* and *In re Gault* required juvenile courts to expand the due process rights of youth. However, too often, juvenile courts also began to emphasize punishment more than rehabilitation.

There is an emerging interest in the U.S. juvenile justice system in a model based on restorative justice rather than retributive justice. The principles of restorative justice recognize that crime is an injury that hurts victims, the community and the offender; repairing the harm and rebuilding the relationships in the community is the primary goal; accountability for the offender means accepting responsibility and acting to repair the harm done; the victim’s perspective is central to deciding how to repair the harm caused by the crime; and, results are measured by how much repair was done rather than by how much punishment was inflicted.

Throughout the United States, there are examples of restorative justice programs being incorporated into the juvenile justice system, known as Balanced and Restorative Justice (BARJ) programs.

They often are created to meet the special needs of a community and may include particular cultural rituals. Each program, however, is built on the goals of accountability (the offender is accountable for the harm that is done to the victim or community), competency development (the positive skills and abilities of the offender should be increased), and community safety (the public should be safe from harm).

**CONCLUSION**

*It’s very easy to be angry about what these children have done, but they are children; they are not adults. People lose sight of that….*

*Yes, they have to be held accountable for their actions, but if there is treatment and rehabilitation for these kids, then why, as a society, wouldn’t we want to provide that to them?*

—Fritzann Isenhart, West Virginia Youth Advocate Program

Leadership, wisdom and compassion must be practiced locally and nationally by advocates for children. We must invest in prevention programs. We must give priority to the treatment of children whose problems—be they physiological, mental or psychological—have probably contributed to their delinquent or criminal behavior. And we must create social institutions to care for those children who are now incarcerated because society has no other alternative. Finally, we must recognize that executing children obliterates any chance of rehabilitation and deprives society of benefiting from the gifts those children might yet give to the world.

No matter the reason for their incarceration, children who are behind bars today will be among tomorrow’s adults. International treaties, conventions, rules and declarations recognize this; however, change is not accomplished by international documents alone. Societies must offer children the possibility of redemption and rehabilitation.
<table>
<thead>
<tr>
<th>Title</th>
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<tr>
<td>UN Rules for the Protection of Juveniles Deprived of their Liberty</td>
<td>International Guidelines. Adopted by UN General Assembly: 1990, non-binding; intended as recommendations for UN Member States. Sets out guidelines for the treatment of incarcerated children and for the conditions of confinement.</td>
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**ENDNOTES**


14. JDL Rule 31. See also ICCPR, Article 10; CRC, Article 37.


19. JDL Rule 67. See also CRC, Article 37.


22. JDL Rule 63.


25. JDL Rule 67.


35. Casa Alianza, email message from Bruce Harris, Executive Director, Latin American Programs, Casa Alianza, to Youth Advocate Program International, 1 February 1999.


40. CRC, Article 37.

41. Beijing Rules 7.1, 15.1, 15.2.


45. JDL Rule 51.


48. JDL Rule 38.


53. JDL Rule 48.


68. Ulzen and Hamilton, 60.


70. Brenda Harris, youth advocate, West Virginia Youth Advocate Program, telephone interview by Youth Advocate Program International staff, Washington, DC, 5 February 1999.


72. ICCPR, Article 6.


86. ICCPR, Article 6.


90. Brenda Harris, youth advocate, West Virginia Youth Advocate Program, telephone interview by Youth Advocate Program International staff, Washington, DC, 5 February 1999.


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TO LEARN MORE ABOUT CHILDREN BEHIND BARS

Information and Book List

International Handbook on Juvenile Justice

A Sin Against the Future: Imprisonment in the World


Publications Available from Amnesty International:
1 Easton St, London, WC1X 8DJ, UK
Tel: 44 (171) 413 5500, Fax: 44 (171) 956 1137,
Email: amnestyis@amnesty.org

“Juveniles and the Death Penalty: Executions Worldwide since 1990”

“Betraying the Young: Children in the US Justice System”
AI Index: AMR 51/60/98 Public, November 1998.

“On the Wrong Side of History: Children and the Death Penalty in the USA”

“United States of America: Rights for All”

Publications Available from Human Rights Watch:
350 Fifth Ave 34th Floor, New York, NY 10118-3299
Tel: (212) 216-1219, Fax: (212) 736-1300, Email: hrwnyc@hrw.org

High Country Lockup: Children in Confinement in Colorado

Guatemala’s Forgotten Children: Police Violence and Abuses in Detention
HRW Index: (2130), © 1997.

Juvenile Injustice: Police Abuse and Detention of Street Children in Kenya
HRW Index: (2149), © 1997.

**Resource Organizations**

**Human Rights Watch**  
350 Fifth Avenue, 34th Floor  
New York, NY 10118-3299 USA  
Tel: (1) 212 290 4700  
Fax: (1) 212 756 1300  
Email: hrwncs@hrw.org  
Web site: www.hrw.org

Human Rights Watch has a searchable web site for general and country specific reports. Many HRW reports are downloadable for free.

**Amnesty International**  
International Secretariat  
1 Easton Street  
London WC1X 8DJ  
United Kingdom  
Tel: (44) 171 413 5500  
Fax: (44) 171 956 1157  
Email: amnestylos@amnesty.org  
Web site: www.amnesty.org

Amnesty International publishes reports on juvenile justice particularly on the juvenile death penalty. AI has a searchable database and downloadable publications.

**Office of Juvenile Justice and Delinquency Prevention**  
810 Seventh St. NW  
Washington, DC 20531 USA  
Tel: (1) 202 307 5911  
Fax: (1) 202 307 2093  
Email: ojjdp.ncjrs.gov  
Web site: ojjdp.ncjrs.gov/index.html

OJJDP offers a searchable database on juvenile justice issues. They also produce a variety of publications on the issue.

**Casa Alianza**  
Covenant House Latin America  
SFO 1039, P.O. Box 025216  
Miami, FL 33102-5216 USA  
Tel: (50) 6 233 5439  
Fax: (50) 6 224 5689  
Email: info@casa-alianza.org  
Web site: www.casa-alianza.org

Casa Alianza has a searchable database with country specific information for Latin America.

**UNICEF**  
3 UN Plaza  
New York, NY 10017 USA  
Tel: (1) 212 326 7000  
Fax: (1) 212 887 7465  
Email: nwtmaster@unicef.org  
Web site: www.unicef.org

UNICEF provides general and country specific information, as well as, a searchable database.

**Defense for Children International**  
International Network on Juvenile Justice, Liaison Officer  
DCI-International Secretariat  
PO Box 88  
CH-1211 Geneva 20, Switzerland  
Tel: (41 22) 734 9558  
Fax: (41 22) 740 1145  
Email: dci-juvjustice@pingnet.ch  
Web site: www.childhub.ch/webpub/dcihome

DCI acts as the coordinator for international efforts on juvenile justice issues. They have a searchable web site and downloadable materials.

"Does it make sense to cut social programs for kids even as we incarcerate more and more of them? Read this book and get busy urging policymakers to change laws and statutes that disrespect, hurt and kill children. What voices do children have if we are silent?"

—Sister Helen Prejean, CSJ  
Author of Dead Man Walking

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