



Meeting the Youthful Inmate Standard: Addressing Operations, Finding Promising Practices and Knowing the Law

Professor Brenda V. Smith, Elissa Rumsey and Carmen
Daugherty

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Presented by:
The Project on Addressing Prison Rape

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Welcome and Agenda for Webinar

PRESENTERS:

Prof. Brenda V. Smith, Director
Project on Addressing Prison Rape

Elissa Rumsey
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Campaign for Youth Justice

AGENDA:

- | | |
|-------------------------|---------------------------|
| • 2:00 p.m. – 2:15 p.m. | Welcome and Conventions |
| • 2:15 p.m. – 3:15 p.m. | PowerPoint and Discussion |
| • 3:15 p.m. – 3:30 p.m. | Questions |



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Conventions

The conventions for this webinar are:

- Your microphone should be on mute.
- If you are joining us by phone and Internet please be sure the telephone button is checked under the audio section of the webinar tool box.
- If you are joining only by phone you are on mute—you will not be able to ask questions, but if you email your question to jyarussi@wcl.american.edu we can address it.
- If you have a question during the webinar, use the chat box feature to send your question to Jaime Yarussi (listed as WCL Organizer).
- If you have technology issues, send an email message to Jaime Yarussi (jyarussi@wcl.american.edu) or call at 202-274-4385

If your question is not answered during the webinar, we will respond after the session.

We will prioritize pre-submitted questions during the webinar and post them along with the webinar archive.



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Message from BJA

Tom Talbot, Senior Policy Advisor
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Tom oversees the PREA Management Office at BJA and assumed this position early 2014.



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PREA and the Youthful Inmate Standard



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Why Have a Youthful Inmate Standard

We know that young people are vulnerable in adult prisons and jails

Many adult facilities do not want to hold youthful inmates

Their physical and cognitive profile puts them at increased risk in adult correctional settings

There are a wide range of ages for youth who can be in adult settings



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28 C.F.R. § 115.5

Definitions

Youthful inmate means any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail.

Youthful detainee means any person under the age of 18 who is under adult court supervision and detained in lockup.



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28 C.F.R. Adult Prisons and Jails § 115.14 Youthful Inmates

- (a) A youthful inmate **shall not be placed in a housing unit in which the youthful inmate will have sight, sound or physical contact with any adult inmate** through use of a shared dayroom or other common space, shower area, or sleeping quarters.
- (b) In areas outside of housing units, agencies shall either:
1. **maintain sight and sound separation** between youthful inmates and adult inmates, or
 2. **provide direct staff supervision** when youthful inmates and adult inmates have sight, sound, or physical contact.



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28 C.F.R. Adult Prisons and Jails § 115.14 Youthful Inmates

(c) Agencies shall make **best efforts to avoid placing youthful inmates in isolation to comply with this provision.** Absent exigent circumstances, agencies shall not deny youthful inmates daily large-muscle exercise and any legally required special education services to comply with this provision. Youthful inmates shall also have access to other programs and work opportunities to the extent possible.



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FAQ Guidance from DOJ

Do all inmates under the age of 18, regardless of court adjudication, need to be housed and managed in an area totally separate from adult inmates while residing in an adult jail or prison?

PREA Standard 115.14 provides that youthful inmates, which the standards define as “any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail,” must be housed separately from adult inmates in a jail or prison, but may be managed together outside of a housing unit if supervised directly by staff. Standard 115.114 provides analogous but abbreviated standard requirements for lockups.



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FAQ Guidance from DOJ Cont'd

The standard includes three requirements. First, no youthful inmate may be placed in a housing unit where he/she will have contact with any adult inmate through use of a shared day room or other common space, shower area, or sleeping quarters. Second, outside of housing units, agencies must either maintain “sight and sound separation” between youthful inmates and adult inmates—i.e., prevent adult inmates from seeing or communicating with youth—or provide direct staff supervision when youthful inmates and adult inmates are together.

Third, agencies must make their best efforts to avoid placing youthful inmates in isolation to comply with this provision. Finally, absent exigent circumstances, agencies must comply with this standard in a manner that affords youthful inmates daily large-muscle exercise and any legally required special education services, and provides access to other programs and work opportunities to the extent possible.



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FAQ Guidance from DOJ Cont'd

Persons under 18 who are charged with status offenses and/or delinquent offenses are not covered by Standard 115.14, but they are covered by the Juvenile Justice and Delinquency Prevention Act (JJDP Act) and regulations promulgated pursuant to the JJDP Act.

- These requirements ensure that states do not securely detain status offenders in adult facilities and severely limit the time in which accused delinquent youth may spend in adult facilities; status offending and delinquent youth must always be sight and sound separated from adult inmates in prisons, jails, and lockups.
- More information about JJDP Act requirements is available at www.ojjdp.gov/compliance.

Found at: <http://www.prearesourcecenter.org/faq#n1067>



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How Youth Come to be in Adult Custodial Settings

Transfer Laws

These are laws that dictate the transfer of a youth from juvenile court jurisdiction to adult court jurisdiction

Virtually **every state** allows for discretionary transfer in which either the prosecutor or judge makes a motion to waive jurisdiction and adjudicate the youth as an adult. Generally, a hearing is held to determine whether the youth should be subject to juvenile or adult criminal court. In these states, a youth is eligible for discretionary transfer by some combination of a minimum age and the alleged commission of certain types of crimes (always felonies, mostly violent felonies)



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Illinois and Texas: 17 year olds

Texas – TEX. FAM. CODE § 51.02(2)(A) (West 2013).

- In Texas, 17 year olds are considered adults and are not subject to the juvenile court jurisdiction.

Illinois - 2007 Ill. Laws 1031.

- Illinois passed a law allowing youthful offenders who are 17 to remain in the juvenile court's jurisdiction, provided the juvenile is charged with a misdemeanor, and not a felony.
- HB2404
 - Changes the definition of delinquent minor to include a person who was under 18 (rather than 17) years of age when he or she committed an offense classified as a felony.
 - Allows both misdemeanor and non-violent felonies to stay in the juvenile justice system



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Alabama: 16 years olds

Automatic Transfer - ALA. CODE § 12-15-204 (LexisNexis 2014)

Acts for which person who has **attained age 16 shall be charged, arrested, and tried as adult**

A child will be removed from juvenile court jurisdiction and charged, arrested and tried in adult court if:

- the child is 16 at time of commission of crime and is charged with
 - a capital offense
 - class A felony
 - felony which has element of use of deadly weapon
 - felony which has an element of use of deadly weapon against a law enforcement official, correctional, probation, or juvenile court probation officer, or a court official (including prosecutor, judge)
 - drug trafficking



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Connecticut: Younger than 16 year olds

Automatic Transfer - CONN. GEN. STAT. § 46b-127(a) (2014).

If a juvenile is **at least 14** and has been charged with the commission of a capital felony, or a class A, B, C or D felony, he/she will be automatically transferred to criminal court and adjudicated as an adult.



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When Statute Dictates Housing

California [CAL. WELF. & INST. § 207.1 (b)-(d) (Deering 2014)]

- Minors whose cases have been transferred to criminal court may be detained in a jail or other facility for the confinement of adults if: (1) the juvenile court finds that the minor's detention in a juvenile hall would endanger safety of public or be detrimental to other minors in the juvenile facility; (2) contact between minor and adults in the facility is restricted pursuant to § 208; and (3) minor is adequately supervised.

Kentucky [KY. REV. STAT. ANN. § 635.020(4) (LexisNexis 2014)]

- If a juvenile is adjudicated, convicted, and sentenced as an adult, that juvenile will remain in a juvenile facility until he/she reaches the age of 18.



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When Statute Dictates Housing

New Hampshire [N.H. REV. STAT. ANN. § 169-B:27 (LexisNexis 2014)]

- Any minor who has been tried and convicted as an adult shall henceforth be treated as an adult for all purposes in connection with any criminal offense with which said minor may be charge.



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What States are Doing (2014)

11 states have passed laws limiting states' authority to house youth in adult jails and prisons:

- Colorado, Idaho, Indiana, Maine, Nevada, Hawaii, Virginia, Pennsylvania, Texas, Oregon and Ohio

5 states have expanded their juvenile court jurisdiction so that older youth who previously would be automatically tried as adults no longer go straight into the adult criminal justice system:

- Connecticut, Illinois, Mississippi, Massachusetts, and New Hampshire

15 states have engaged in transfer reform making it more likely that youth will stay in the juvenile justice system:

- Arizona, Colorado, Connecticut, Delaware, Illinois, Nevada, Indiana, Utah, Virginia, Washington, Ohio, Maryland, Nebraska, Washington, DC and New York



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What States are Doing (2014)

12 states have changed their mandatory minimum sentencing laws to take into account the developmental differences between youth and adults, allow for post-sentence review for youth facing juvenile life without parole or made other changes to how youth are sentenced in the adult system:

- California, Colorado, Georgia, Indiana, Texas, Missouri, Ohio, Washington, Florida, Hawaii, West Virginia, and Iowa



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Youthful Inmates in Adult Custodial Settings: Data



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What We Know: BJS Data on Youth in Adult Settings

States held 2,295 inmates under age 18 in custody in adult prisons at midyear 2010

4,600 youth under 18 were held in adult jails and charged an adult (0.6%) at mid-year 2012



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Adult Jails

As of April 2012 there were nearly 4,000 young people are locked up in adult jails

39 states permit or require that youth charged as adults be held before they are tried in an adult jail

In some states, if convicted, youth may be required to serve their entire sentence in an adult jail

As many as one-half youth transferred for prosecution as adults will be sent back to the juvenile justice system or will not be convicted

- Yet, most of these youth will have spent at least one month in an adult jail
- 1 in 5 will have spent over six months in an adult jail



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Adult Prisons

Approximately 1,325 young people are incarcerated in adult prisons

The majority of youth held in adult prisons have not been convicted of the most serious offenses and are likely to be released in early adulthood

- Approximately 80% of youth convicted as adults will be released from prison before their 21st birthday
- 95% will be released before their 25th birthday

Human Rights Watch reported in 2009 that an estimated 2,600 people were serving life without parole for crimes they committed while under age 18



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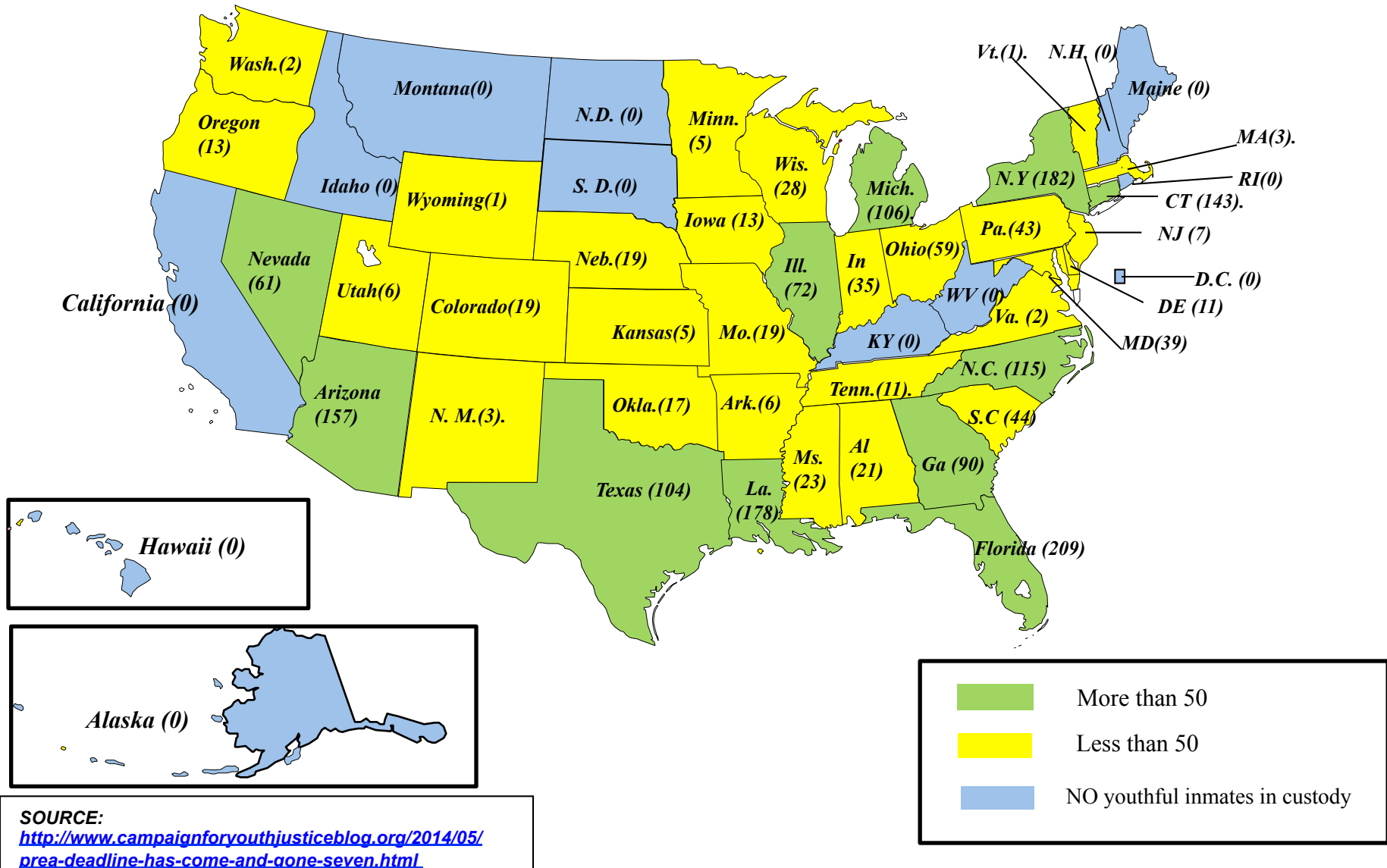
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Youthful Inmates in Adult Prisons (2011)

Total = 1,790

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Data and Findings: The Risk of Sexual Abuse

The Prison Rape Elimination Act of 2003"

- "Juveniles are 5 times more likely to be sexually assaulted in adult rather than juvenile facilities—often within the first 48 hours of incarceration."

The National Prison Rape Elimination Commission Report (2009)

- "More than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse."

BJS 2005

- 21% percent of all substantiated victims of inmate-on-inmate sexual violence in jails

BJS 2006

- 13% percent of all substantiated victims of inmate-on-inmate sexual violence in jails



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Data and Findings: The Risk of Sexual Abuse

BJS 2011-12

- Male youthful inmates reported higher rates of staff sexual misconduct (3.3%) than female juveniles (0.9%)
- Youthful inmates held for violent sex offenses reported higher rates of staff sexual misconduct (12.0%) than those held for property offenses (1.5%).
- Staff Sexual Misconduct
 - Three-quarters of youthful inmates (75.8%) were victimized more than once
 - Fewer than 1 in 10 reported the staff sexual misconduct
- Sexual victimization by other inmates
 - Two-thirds were victimized more than once (65.5%)
 - An estimated 78.6% reported experiencing physical force or threat of force
 - 39.8% were pressured by the perpetrator
 - Fewer than 1 in 6 (15.4%) reported an incident to someone



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Current Practices: Housing Youthful Inmates



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FAQ Guidance from DOJ

In crafting this standard, DOJ was cognizant of agency concerns regarding cost, feasibility, and preservation of state law prerogatives related to youthful inmates. Accordingly, this standard affords facilities and agencies flexibility in devising an approach to separate youthful inmates. In particular, agencies can achieve compliance by **1) confining all youthful inmates to a separate housing unit; 2) transferring youthful inmates to a facility within the agency that enables them to be confined to a separate unit; 3) entering into a cooperative agreement with an outside jurisdiction to enable compliance; or 4) ceasing to confine youthful inmates in adult facilities as a matter of policy or law.**

Agencies may, of course, combine these approaches as they see fit.

Found at: <http://www.prearesourcecenter.org/faq#n1067>



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Guidance Given to Auditors at Training

Placing a youth in a segregation unit during sleeping hours only (not considered isolation)

Create a direct supervision programming unit, and put the youth in that unit during programming hours.



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Sight and Sound Separation

When youth are placed in an adult prison, jail or lockup, the standard prohibits "sight and sound" contact with adults in order to prevent threats, intimidation, or other forms of psychological abuse and physical assault directed toward youthful inmates.

"Sight and sound" means that youth cannot be housed next to adult cells, share dining halls, recreation areas, or any other common spaces with adults, or be placed in any circumstance that could expose them to threats or abuse from adult inmates.



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Sight and Sound Separation: Examples

South Carolina

- Has a designated a wing in one of its adult housing units for male youthful inmates

Missouri

- To ensure sight and sound separation, for male youthful inmates a 12-foot privacy fence was installed around the housing unit
- The male unit provides programming areas as well as outdoor large muscle exercise areas which includes a basketball court
- When female youthful inmates are incarcerated they are housed in a trailer on the grounds of a female facility
- The female trailer allows for sight and sound separation, programming and large muscle exercise.



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Sight and Sound Separation: Examples

Orange County, Florida

- All Orange County Corrections inmates under the age of 18 years old are housed in an area that has complete separation from any adult inmate
 - While in the housing area, the juvenile classroom area or the juvenile recreation area, the youthful inmate does not have sight, sound or physical contact with adult inmates



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Sight and Sound Separation

BENEFITS (Pros)

- Keeps youth away from the influences of adult inmates
- An option other than isolating youth within the facility which often causes mental health issues and limits access to programs e.g. schooling
- Makes youth less likely to be victims of sexual abuse

BARRIERS (Cons)

- Small facilities with limited bed space could have an issue doing this
- This will only keep youth safe from sexual abuse from adult inmates but the issue of sexual abuse by another youthful inmate or staff remains
- Specialized training for staff working with youth who are in adult facilities
- Physical plant issues



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Not Housing Youthful Inmates as Adults Until 18

Some states choose to house youthful inmates in juvenile facilities until they are at least 18 and then transfer them to adult housing

Example: Maine

- A youth who has been convicted and sentenced to a sentence alternative involving imprisonment and who has not attained 18 years of age at the time of sentence imposition must be committed to a Department of Corrections juvenile correctional facility for an indeterminate period not to extend beyond the youth's 18th birthday.



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Not Housing Youthful Inmates as Adults until 18

BENEFITS (Pros)

- Youth will be safe from advances by adult inmates
- Youth will not be isolated from other youth
- Youth will have better access to age appropriate programming as well as education

BARRIERS (Cons)

- Classification systems and risk assessments in some juvenile facilities will need to be strengthened
- Physical plant issues– housing and bed space
- Politics– many juvenile agencies do not want to house youthful inmates



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Interstate/ County Compacts

Agreements between counties and states to house youthful inmates

Example: Iowa

- Male youthful inmates are housed in one specific facility (a renovated area of the adult male prison)
- They are sight and sound separated from adult inmates
- Female youthful inmates are transferred to Nebraska for housing



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Interstate/ County Compacts

BENEFITS (Pros)

- Keeps youth away from the influences of adult inmates
- Youth will have better access to age appropriate programming as well as education
- Makes youth less likely to be victims of sexual abuse

BARRIERS (Cons)

- Access to visitation from families/ friends/community
- Access to legal representation
- Disproportionate impact on girls
- Reintegration back into the community
- May impact lower socio-economic groups more negatively
- May not be an option for pretrial youth



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Using a Direct Supervision Model

Staff directly supervises youth when and if they are in the presence of adult inmates

Example: Illinois

- [M]ale inmates who are 17. . . are housed separately and have direct supervision when out of the housing unit. . .

Example: Pennsylvania

- There is a draft policy at SCI Pine Grove in Indiana, PA for youthful offenders. The PA DOC is in the process of making changes so they meet the sight and sound criteria.
- It has been a challenge since youthful inmates are in an adult setting but PA DOC is segregating them on a unit and **keeping them from having contact with adult inmates without a security officer being present in the room**



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Using a Direct Supervision Model

BENEFITS (Pros)

- An option other than isolating youth within the facility which often exacerbates issues of mental wellness and schooling
- May have more access to alternate types of programming

BARRIERS (Cons)

- Staffing ratios would need to be increased
- Youth would still be at risk for influence and abuse by adult inmates
- Additional training would need to be provided to staff supervising this population mixture– red flags and grooming would have to be addressed regularly



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Other Options.....

Sleeping Separate with a Specialized Programming Unit

- Youth would sleep in segregation cells at night but would be programmed together in a specialized unit

Utilizing alternate forms of supervision

- Placing youth with non-violent offenses on community supervision or treatment instead of in adult facilities



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Sleeping Separate with a Specialized Programming Unit

BENEFITS (Pros)

- Keeps youth away from the influences of adult inmates
- An option other than isolating youth within the facility which often exacerbates issues of mental wellness and schooling
- Makes youth less likely to be victims of sexual assault by adult inmates

BARRIERS (Cons)

- Segregated cells may still be in close proximity to adult segregation cells
- Segregation may place youth at risk once placed into general population after 18
- Can still feel isolated depending on the physical plant set up of the segregation cells
- Reliance on well-trained staff to make it work



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Utilizing Alternate Forms of Supervision

BENEFITS (Pros)

- Youthful inmates would not be in adult custodial settings
- Keeps youth away from the influences of adult inmates
- Makes youth less likely to be victims of sexual abuse by both other adult inmates and staff

BARRIERS (Cons)

- Training for staff
- Already large community caseloads
- Finding an appropriate placement in the community
 - residential community supervision, treatment centers, foster care, shelters



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The Reality of Housing Youthful Inmates

Agencies and facilities have grappled with this issue for decades. DOJ is cognizant that options presented here are not perfect for all settings.

Facilities will need to do an appropriate staffing and physical plant assessment before making a judgment about housing for youthful inmates

Agencies and facilities, in order to comply with PREA shall not continue to house youthful inmates with or as adults– they have different needs and concerns even though their crimes are adult in nature

[e.g. adolescent development/ cognition]



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The Reality of Housing Youthful Inmates

Youthful inmates have unique housing and safety needs; this cannot be ignored

Pursuing legislative change takes time– stay vigilant in the interim, work to address immediate needs

Policy and practice change that is achievable on a smaller scale.



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Legal Considerations: Youthful Inmates



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Mandatory Reporting Laws and Youthful Inmates

Even if a youthful inmate is in adult custody, they may still be a juvenile for the purposes of victimization and you may then be a mandatory reporter if sexual abuse allegations arise from a youthful inmate.

Example: Wisconsin

Mandatory Reporting WIS. STAT. § 48.981 (2014).

- Community Placement means . . . any other placement of an adult or juvenile offender in the community under the **custody or supervision of the department of corrections**, the department of health services, a county department under or any other person under contract with the department of corrections, the department of health services or a county department under to exercise custody or supervision over the offender.



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Juvenile Justice and Delinquency Prevention Act (JJDPA)

The Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. § 5601 *et. seq.* (2012), sets forth standards for facilities across the U.S. that house juvenile offenders. The Act provides funds to those states which chose to participate in juvenile justice reform, specifically around the four core protections. The “Four Core Protections” are:

- Deinstitutionalization of Status Offenders: Juveniles who are status offenders and non-offenders should not be detained in any secure facility.
 - Status offenders are those who are accused of committing an offense that would not be a crime if that person was an adult (e.g. runaways, truant juveniles, curfew violators)
- Jail Removal: Juveniles should not be placed in adult jails or lockups except under very limited circumstances. These exceptions generally allow for juveniles to be held in adult facilities for very short periods of time (6-48 hours) while awaiting processing, transfer to juvenile facility, or waiting to make a court appearance



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Juvenile Justice and Delinquency Prevention Act (JJDPA)

- Sight and Sound Separation: The JJDPA prohibits housing juveniles in adult facilities, except for a limited number of circumstances (see jail removal standard previous slide). If a juvenile is housed with adults, they should be separated both by sight and sound
- Disproportionate Minority Contact: The JJDPA also requires states to address the issue of the overrepresentation of youth of color in the justice system



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Liability When Sexual Abuse Happens

Pending Litigation:

Doe v. Mich. Dep't of Corr., No. 13-14356, 2014 U.S. Dist. LEXIS 2376, at*1 (E.D. Mich. May 28, 2014)

- This is a class action brought on behalf of several male juveniles who are held in adult prisons within the Michigan Department of Corrections (MDOC)
- The plaintiffs allege that MDOC improperly housed them with adults and allowed the adult inmates to physically and sexually abuse the juvenile inmates. Juvenile plaintiffs were cell mates with adults, forced to eat, shower and work with adult prisoners. Plaintiffs allege this placed them at increased risk for sexual harassment by adult inmates



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Liability When Sexual Abuse Happens

Pending Litigation:

Doe v. Mich. Dep't of Corr., No. 13-14356, 2014 U.S. Dist. LEXIS 2376, at*1 (E.D. Mich. May 28, 2014)

- Plaintiffs have been granted injunctive relief in the form of a protective order. The lawsuit is ongoing and plaintiffs are seeking relief under Michigan's Elliott-Larsen Civil Rights Act



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Liability When Sexual Abuse Happens

Pending Litigation

Poore v. Glanz, No. 11-CV-797-JED-TLW, 2014 U.S. Dist. LEXIS 120818, at *1 (N.D. Okla. Aug. 29, 2014).

- 17 year old female juvenile inmate held at the Tulsa County Jail alleged 10 instances in which she was sexually assaulted by male detention officer
- Juvenile female inmates at Tulsa County Jail (which is facility that houses adult inmates) are held in individual cells in the medical unit of the jail



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Liability When Sexual Abuse Happens

Pending Litigation

Poore v. Glanz, No. 11-CV-797-JED-TLW, 2014 U.S. Dist. LEXIS 120818, at *1 (N.D. Okla. Aug. 29, 2014).

- The Court discussed, at length, the facility's Youthful Offender Policy - which required:
 - two officers (one of same sex and juvenile inmate) be present when entering a juvenile's cell
 - the detention officers working in the juvenile unit had at least one year of experience in the Tulsa Jail
- The medical unit was frequently single-staffed
- Defendant's (detention officer) motion for summary judgment was denied and a Jury Trial set for January 20, 2015



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Still needs more attention and research.....

Housing for female youthful inmates

Stronger risk assessments if housing youthful inmates in juvenile settings

Additional staff training for line staff working with youthful inmates on issues of adolescent development and additional risks these youth face in adult settings

Understanding who youthful inmates are and why they are in adult custody



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Recommendations

Bureau of Justice Assistance:

- Better staff training to supervise youth populations
- Specialized education response to the developmental needs of younger inmates
- Further research and assessment into the area

Juveniles in Adult Prisons and Jails: A National Assessment (2000)

<https://www.ncjrs.gov/pdffiles1/bja/182503.pdf>



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Recommendations

National Institute of Corrections:

- Better data collections efforts so that there are not “data gaps” when it comes to juveniles.
- Refuse to allow youths to be housed in adult facilities while they are still pretrial detainees.
- Better serve youths who were sentenced as adults and are now out on parole.

You're an Adult Now: Youths in Adult Criminal Systems (2011)

<http://static.nicic.gov/Library/025555.pdf>



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Recommendations

Campaign for Youth Justice

- Solicit stories from youths housed in adult facilities and their families, in order to better understand this experience and learn from it.
- Create an interstate memorandum on the treatment of youth in adult facilities, to help clarify policy goals and work toward keeping youths out of adult facilities.

Keeping Youth out of Adult Prisons and Jails (2012)

http://www.campaignforyouthjustice.org/documents/KYOAJP_102012.pdf



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Your Questions Answered.....



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Resources

The Sentencing Project

www.sentencingproject.org

Campaign for Youth Justice

www.campaignforyouthjustice.org

The National Institute of Corrections

www.nicic.gov

Office of Juvenile Justice and Delinquency Prevention

www.ojjdp.gov

Human Rights Watch

<http://www.hrw.org/topic/childrens-rights/juvenile-justice>



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For More Information

For more information about the **National PREA Resource Center**, visit www.prearesourcecenter.org. Direct questions to info@prearesourcecenter.org

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