Abdication of Duty: The Potential for Child Abuse and Neglect in the Juvenile Justice System (Part One)

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Arguably, the most important responsibility we have as a society is to restrict the liberty of those among us, either for their own protection or for ours. The incarcerated must sometimes be held for their protection as well as society’s. In striking an equal balance between rehabilitating the juvenile and protecting the community, prosecutors ask for detention or long-term correctional placement in appropriate cases. This article will broadly examine the potential for abuse and neglect of youth held in detention centers, shelters, and long-term correctional facilities. Part Two of this Update article will examine how prosecutors, law enforcement officers and others in the juvenile justice and child protection systems can help to ensure that incarcerated children are not abused and neglected by the very system designed to protect them and society as a whole.

The Numbers

On a given day in the United States, over 100,000 children are held in residential placement. While the majority of these juveniles are held for delinquency matters, many are held for status crimes such as running away or being truant from school. A study commissioned by the United States Congress and released in 1994 revealed that almost 700,000 juveniles had been admitted to both short- and long-term detention centers in 1990 alone. While the great majority of incarcerated juveniles are male, the number of females in juvenile detention is increasing. Black and Hispanic youth are far overrepresented in juvenile corrections system, compared to their percentage of the population as a whole. Moreover, recent trends that call for treating older offenders as adults have doubled the number of youth admitted to adult state prisons, from 3400 in 1985 to 7400 in 1997.

The Dangers

Incarcerated youth face many dangers when they are detained by the police or the courts. They are particularly vulnerable to aggressive behavior by other incarcerated youth as well as by staff. Physical neglect of incarcerated youth is also a risk of detention, as many juveniles enter facilities with preexisting medical conditions that require continuous monitoring and treatment.

1. Abuse of youth by other incarcerated youth. Despite acts of violence between juveniles in correctional facilities and detention centers may not be viewed as traditional acts of child abuse, the failure of governmental authorities to protect children from victimization while in governmental placement must be taken seriously and viewed for the child neglect that it is. Although statistics of children who are abused by fellow juvenile inmates are hard to ascertain, some studies have been done. In California, for instance, the Attorney General and the state Youth Authority (YA) requested an independent review of the juvenile corrections system in 2003. Despite generally positive findings regarding the efforts and dedication of YA staff in corrections facilities, stunning levels of violence were detected in the California juvenile correctional system. The study found that over 4000 ward-on-ward assaults were committed in six institutions in 2002, averaging at least 10 assaults every day. Less frequent but still disturbing ward-on-ward sexual acts, assaults and harassment were also documented, with incidents of sexual harassment numbering over 900 for the same year.

Of the many factors that can contribute to youth-on-youth violence in correctional facilities, one that has been particularly troublesome is overcrowding. A 1993 report by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) on conditions in juvenile detention notes that overcrowding in juvenile facilities was found to be associated with higher rates of institutional violence, suicidal behavior, and greater reliance on the use of force. Although this problem has abated somewhat in recent years as juvenile crime rates have fallen, budget cuts continue to threaten to revive the issue as facilities close and staff gets smaller.

2. Abuse of youth by correctional staff. The abuse of youth by correctional staff is a much clearer child abuse issue. Again, statistics on how often youth in juvenile corrections are subject to either excessive use of force or genuine sexual, physical or emotional abuse by staff are not easy to gather. One complicating factor is simply the number of independent state and local facilities that are operating, some of them privately. All 50 states have individual juvenile justice systems, and many state and local facilities are run on a contract basis with private-for-profit companies. In 2001, almost 30% of youth in residential placement were in privately operated facilities.
Since government oversight of private facilities can vary according to state policy and resources, some groups have called for stronger regulations and increased accountability for private juvenile detention centers. A study by the National Council on Crime and Delinquency (NCCD) in 1998 found that over 200 adolescent girls entering juvenile detention centers in California had been subjected to some form of childhood victimization; 56% percent had been victims of sexual assault. Victimized youth who enter the juvenile justice system will carry the scars of their abuses, whether physical, emotional, or both.

The mental health needs of incarcerated children are also of serious concern. Another NCCD study conducted through 51 juvenile probation departments in California showed that nearly a third of youth in detention and almost half in long-term correctional placement had an actual diagnosis of a major mental illness.

Finally, it is also often the case that basic medical and dental needs of children entering the justice system have not been met because of childhood neglect. A 1980 study cited by the Journal of Pediatrics found medical problems in almost half of incarcerated youth, including a 50% prevalence rate of dental problems: missing, fractured or infected teeth. A more recent study in the same journal found non-STD or drug abuse related, serious medical problems in 10% of juveniles admitted to a short-term detention facility. Among these problems were asthma, orthopedic problems and ear, nose and throat conditions. Only one third had a regular source of medical care, and only about one fifth of these detained children had a private physician.

Consequences of the “Get Tough” Approach: Youth in Adult Facilities.

Recent changes in many states have made it easier to charge and sentence certain adolescents as adults. Among other concerns raised by these polices, there is particular pretrial concern that youth sentenced to adult time are particularly vulnerable to overcrowding and abuse. A recent national study conducted by the National Council on Crime and Delinquency (NCCD) found that youth in adult facilities are three times more likely to be sexually assaulted, 500% more likely to be beaten by staff, and 50% more likely to be attacked with a weapon than youth in a juvenile facility.

An adult prison is a dangerous place for a juvenile to be, even if the juvenile has been appropriately placed there because of his prior record and the seriousness of the offense. When adult incarceration is the appropriate sentence, the job of the juvenile justice and child protection communities is at once the most crucial and the most difficult. It is crucial because there are a lot of convicted young people, that is, dangerous offenders who are sexually abusing children and youth, that is, extraordinary offenders. The serious nature of these offenses is therefore of special concern where children are involved.

Conclusion

Minor who are incarcerated face a myriad of risks related to their health and wellbeing. In addition to a clear moral obligation on the part of the juvenile justice and child protection communities to alleviate these risks, there are practical considerations as well. Allegations of staff and youth-on-youth abuse in facilities weaken arguments for detention sentences in appropriate cases. Defense attorneys often cite medical problems in their efforts to keep juveniles from being detained, particularly pretrial. Some of these arguments can be successfully rebutted if juvenile justice and child protection professionals are meeting their responsibilities to ensure that detained youth are not further subjected to a deterioration of their bodies and minds through medical neglect. Part Two of this Update will examine strategies and give suggestions to juvenile justice professionals facing these issues.

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1. Senior Attorney, APPI’s National Center for Prosecution of Child Abuse.
3. Id.
5. Id.
6. Id.
8. Id. at p. 23.
9. Id.