

THE LINK

CONNECTING JUVENILE JUSTICE AND CHILD WELFARE

Convention on the Rights of the Child and Juvenile Justice

By Jenni Gainborough and Elisabeth Lean

Convention on the Rights of the Child Adopted by the United Nations General Assembly in 1989 and instituted as international law in 1990, the Convention on the Rights of the Child (CRC) is widely recognized as the first legally binding human rights treaty that incorporates the full range of human rights—civil, cultural, economic, political, and social—into a single text. It was drafted to specifically promote and protect the well-being of all children, regardless of national boundaries. The CRC is not the first international document to affirm that children, due to their status as minors, are vulnerable and thus in need of special protection. Both the 1924 and 1954 Declarations of the Rights of the Child avowed that children are entitled to basic needs, rights, and freedoms. These Declarations are aspirational documents, however, voted for by the General Assembly of the United Nations but not legally binding under international law. Recognizing the need for a legal mechanism to ensure the universal protection of child welfare, the United Nations commenced efforts in 1979 to develop an inclusive human rights treaty for all the world’s children. To date, 193 countries have ratified the CRC¹; the only two UN member nations that have not done so are the United States and Somalia.²

It is paradoxical for the United States to not have ratified the CRC given that our government played an active role in the decade-long drafting sessions, commenting on nearly all of the 41 substantive articles and proposing the original text for seven articles, three of which come directly from the U.S. Constitution and were inserted at the request of President Reagan’s

administration.³ Upon conclusion and adoption of the CRC by the UN General Assembly, various resolutions were introduced in Congress calling for the President to submit the CRC to the Senate Foreign Relations Committee for required review and speedy ratification. In 1995, Madeleine Albright, acting U.S. Delegate to the UN, signed the CRC on behalf of President Clinton and the United States. The Convention was not forwarded to the Senate Foreign Relations Committee, however, due to procedural and political barriers.

It is important to note that historically the United States employs a cautious and deliberate approach when it seeks to ratify a treaty.⁴ In addition to the extensive analysis and lengthy ratification process, widespread misconceptions about the CRC’s intent, provisions, and potential impact have created obstacles to moving the CRC ahead expeditiously. This has resulted in opposition to the treaty within the Senate⁵ and in some sectors of the public.

Two of the most common objections to the Convention are: 1) national and state sovereignty would be endangered and 2) parental authority would be undermined. As ruled by the U.S. Supreme Court, under the Supremacy Clause of the U.S. Constitution, no treaty can override the Constitution [*Reid v. Covert*, 354 U.S. 1 (1957)]. Moreover, as

see **CRC**, page 3

1 There are 192 UN Member States—190 of them have ratified the CRC. The Holy See, the Cook Islands, and Niue have ratified the Convention but are not members of the UN. The Holy See is a UN observer while the Cook Islands and Niue are associated states of New Zealand, which represents their international interests.

2 At present, Somalia is without a functioning central government. Parties within the government structure, however, have committed to signing and ratifying the CRC once the domestic political situation is rectified.

3 These include Articles 10 (Family Reunification), 12 (Freedom of Opinion), 13 (Freedom of Expression), 14 (Freedom of Thought, Conscience, and Religion), 15 (Freedom of Association and Assembly), 16 (Right to Privacy), and 25 (Periodic Review of Placement for Children in Alternative Care).

4 For example, the Convention on the Elimination of All Forms of Racial Discrimination was ratified 28 years after being signed by President Johnson.

5 In 1995, Senator Jesse Helms, Chair of the Senate Foreign Relations Committee, disavowed the CRC. Helms stated the following: i.) The CRC is incompatible with the God-given right and responsibility of parents to raise their children; ii.) The CRC has the potential to severely restrict States and their Federal Government in their efforts to protect children and enhance family life; and iii.) The U.S. Constitution is the ultimate guarantor of rights and privileges to every American, including children.

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DIRECTOR'S MESSAGE

As I read this issue, I am struck by how powerful the two primary pieces are in terms of public policy advocacy for this country's youth in the child welfare and juvenile justice systems.

The article on the Convention on the Rights of the Child (CRC) points out that the language in the articles of the CRC and its corresponding committees advocates for many of the same policies that are at the heart of United States advocacy for best practices in both the child welfare and juvenile justice systems. To name a few, these include, for child welfare, the primacy of family to care for children and the overall well-being of children. For juvenile justice, they include the provision of due process, diversion, and prevention; keeping youth out of adult jails; addressing developmental needs; protecting select populations (children of color, female children, children with disabilities); and addressing the age of criminal responsibility. Many of these issues are the subject of current efforts to reauthorize the Juvenile Justice and Delinquency Prevention Act (JJDP), legislation that many of you are working hard to pass.

The report from the American Bar Association highlights its recent efforts to promote good policy on behalf of crossover youth, those children who are present in both the child welfare and juvenile justice systems. This report describes new ABA policy that advocates for governments to revise their laws, court rules, policies and practices to help dual jurisdiction youth in ways that truly address their needs and to prevent them from unnecessarily penetrating further into the juvenile justice system.

I think these two pieces provide a good forum for us to take stock, both institutionally and individually, of our efforts to move the best policy and practice forward for youth in the child welfare and juvenile justice systems. Is there more that we can do? Are we using all the tools we have to advocate for these youth? I challenge you to send us your ideas (jtuell@cwla.org, sconcodora@cwla.org, jwiig@cwla.org) and to get involved (if you are not already) in promoting these policies.

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with any treaty, each U.S. state would be responsible for developing and executing its own legislation. With regard to the CRC usurping parental rights, it is important to note that the Convention recognizes the family “as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children . . .,” and acknowledges “that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love, and understanding.”⁶ Despite the fact that various legal scholars have disputed these claims,⁷ these erroneous assertions persist to the detriment of ensuring universal child well-being.

Ironically, in 2002, the United States ratified the CRC’s two optional protocols—the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography and the Optional Protocol on the Involvement of Children in Armed Conflict. In ratifying these agreements, the United States has acknowledged that certain children, by virtue of their extreme vulnerabilities, are in need of special protection. Although this action is to be applauded, what about the thousands of voiceless children confined to the juvenile and criminal justice systems in the United States whose human rights are violated every day?

The Convention rests on four fundamental principles: survival, development, protection, and participation. These principles apply to all children regardless of circumstances and many of them have particular resonance for children in conflict with the law. Among the articles that have particular applicability are:⁸

- Article 1: A child is defined as a person below age 18, unless the laws of a particular country set a younger age limit.
- Article 2: The Convention applies to all children, regardless of gender, race, ethnicity, culture, religion, family status, or ability.
- Article 3: With regard to decisions that affect a child, his/her best interests should be taken into consideration. This provision extends to legal and administrative decisions.
- Article 6: Children have the right to live.
- Article 12: Children have the right to form and express an opinion. This provision extends to

6 Preamble of the Convention on the Rights of the Child, G.A. Res.44/25, UN General Assembly, 44th Sess. Supp. No. 49, UN Doc. A/Res/44/25 (1989) entered into force 1990. The Convention repeatedly emphasizes the pivotal role parents play in their children’s lives. See Articles 3, 5, 7-10, 14, 18, 22, and 27.

7 For a thorough dissection of these and other arguments, see Todres, J., Wojcik, M. E., & Revaz, C. R. (Eds.). (2006). *The U.N. Convention on the Rights of the Child: An analysis of treaty provisions and implications of U.S. ratification*.

8 The entire text of the Convention can be accessed through the Office of the UN High Commissioner for Human Rights at www2.ohchr.org/english/law/crc.htm.

any legal and administrative proceedings concerning the child.

- Article 16: Children have the right to privacy.
- Article 19: Governments should make sure that children are appropriately cared for and are not being physically, psychologically, or sexually abused or neglected.
- Article 23: Children with disabilities, such as physical, emotional, cognitive, or developmental impairments, are entitled to all the rights prescribed in this Convention.
- Article 24: Children have the right to quality health care.
- Article 27: Children have the right to a standard of living that fosters their physical, emotional, social, moral, and spiritual development.
- Articles 28 and 29: Children have the right to an education. Governments should ensure that a child’s education allows him/her to develop to his/her fullest potential.

In addition to those more general articles, Articles 37 and 40 directly address issues pertaining to juvenile justice:

- Article 37: Children cannot be arrested, detained, or imprisoned without warrant. Governments should ensure that children who break the law are not tortured or subjected to other inhumane forms of punishment. Children should not be housed with adult inmates. They have the right to remain in contact with their families, the right to an attorney, and the right to appeal their stay in prison.
- Article 40: Children accused of committing a crime have the right to due process of the law. This includes the right to be presumed innocent until proven guilty, the right to legal assistance, the right to a trial, and freedom from being compelled to testify or enter a guilty plea. Governments are responsible for establishing the minimum age for which children can be punished for the crimes they commit. Prison sentences should only be imposed if a child is convicted of a most serious offense.⁹

These articles build upon provisions articulated in the UN Standard Minimum Rules for the Administration of Juvenile Justice (1985 Beijing Rules), UN Guidelines for the Prevention of Juvenile Delinquency (1990 Riyadh Guidelines), and UN Rules for the Protection of Juveniles Deprived of Their Liberty (1990 Havana Rules). Unlike these prior UN documents, the strength of these articles lies in the fact that they are part of a larger international Convention which is not only legally

9 Direct text of Articles 37 and 40 are provided in Textboxes 1 and 2, page 4.

binding, but underscores that *all children* are entitled to the preservation, promotion, and protection of their human rights.

The Convention calls for States Parties to devise and implement a comprehensive, child-centered juvenile justice policy that upholds the best interests of children as well as that of society. To further this end, the Committee on the Rights of the Child¹⁰ advises that States Parties address the following five core issues:

1. The prevention of juvenile delinquency with particular attention paid to children at risk. Prevention programs should focus on socialization and integration at the individual, family, and community levels.
2. The promotion and use of diversionary measures to keep individuals accused of committing minor offenses out of the formal justice system. With regard to children involved in the formal justice system, no child should be sentenced to life without parole or the death penalty. Sentences should focus on rehabilitation and social reintegration—not repression and retribution.
3. The establishment of a minimum age of criminal responsibility (not less than 12 years of age) and upper age limit for juvenile justice (age 18).
4. The guarantee of a fair trial, which, in addition to the provisions laid out in Article 40 (2), includes

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
 - (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

¹⁰ The Committee on the Rights of the Child monitors the implementation of the CRC. Parties to the Convention are required to submit periodic reports to the Committee detailing their efforts to ensure implementation of the CRC in their respective states.

the right to be heard (Article 12). In addition, those involved in the administration of justice should receive training on the biological, psychological, and social development of adolescents and the needs of vulnerable children, in particular female children, those belonging to racial and ethnic minorities, and children with disabilities.

5. The deprivation of liberty as a means of last resort (Article 37). Children deprived of their liberty have the right to health care (Article 24), adequate standard of living (Article 27), an education (Articles 28 and 29), and leisure activities (Article 31).¹¹

The Convention has improved children's well-being throughout the world by challenging the way governments and citizens view and prioritize them. Implementation of the CRC has led governments to amend their constitutions and penal codes in reference to juvenile justice laws, policies, and programs. Peru (1993), Italy (1994), Malawi (1995), Kazakhstan (1997), Poland (1997), Morocco (1999), Kenya (2001), and Mali (2002) abolished the provision of sentencing children to life imprisonment without parole.¹² Yemen (1994) and Mali (2002) established 18 as the age of criminal responsibility.¹³ Trinidad and Tobago (2000) revised the definition of young person from an individual under the age of 16 to a person under 18 years of age. Prior to this amendment, 16 year-olds were subject to criminal justice laws, policies, and procedures.¹⁴

In addition, a vast majority of ratifying countries has made significant efforts to prevent youth involvement in the justice systems. Australia, for example, has involved indigenous communities in developing diversion programs for native youth who are overrepresented in the juvenile and criminal justice systems—much like youth of color in the United States.¹⁵ With regard to youth offenders who have been detained due to alleged violations, efforts to ensure these individuals are processed more quickly and receive alternative interventions as opposed

11 U.N. Committee on the Rights of the Child. (2007, Feb. 9). General Comment No. 10: Children's rights in Juvenile Justice, 44th Sess., UN Doc. CRC/C/GC/10.

12 See the following *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention* to the U.N. Committee on the Rights of the Child: Italy (CRC/C/70/Add.13), Kazakhstan (CRC/C/41/Add.13), Kenya (CRC/C/KEN/2), Mali (CRC/C/MLI/2), Malawi (CRC/C/8/Add.43), Morocco (CRC/C/93/Add.3), Peru (CRC/C/65/Add.8), and Poland (CRC/C/70/Add.12).

13 See the following *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention* to the U.N. Committee on the Rights of the Child: Mali (CRC/C/MLI/2) and Yemen (CRC/C/70/Add.1).

14 U.N. Committee on the Rights of the Child. (2004, Nov. 15). *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Trinidad and Tobago*, CRC/C/83/Add.12.

15 U.N. Committee on the Rights of the Child. (2004, Dec. 29). *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Australia*, CRC/C/129/Add.4.

to traditional detention sentences have been instituted in Germany, England and Wales, and East Asian and Pacific countries.¹⁶

Despite these initiatives, continued and vast improvements are needed in the justice systems. These efforts, however, do signify an international commitment to protecting the well-being of children involved in the juvenile and criminal justice structures.

U.S. Juvenile Justice System

Article 40 of the CRC describes the guiding principle of a good juvenile justice system as recognizing the

right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

Given the close involvement of the United States with the development of the CRC, it is not surprising that the principles it lays out for the treatment of children in conflict with the law are very much in line with the best practices of the U.S. juvenile justice system as it has developed since the founding of the juvenile court in 1899. Until the end of the 19th Century, youth in the United States who were charged with criminal conduct were tried in the same courts as adults, with their age considered relevant mainly to the question of criminal responsibility. Children under seven years of age were

see *CRC*, page 11

16 Audit Commission. (2004). *Youth Justice 2004: A Review of the Reformed Youth Justice System*. London, UK: Author. Centre for the Prevention of Youth Crime. (Ed.). (2004). *Prevention of Youth Crime in Germany: Educational Strategies*. Munich, Germany: Author. UNICEF East Asia and Pacific Regional Office. (2004). *Justice for Children: Detention as a Last Resort, Innovative Initiatives in the East Asia and Pacific Region*. Bangkok, Thailand: Author.

LATEST DEVELOPMENTS

The Juvenile Justice Policy Network Listserv (JJPOLNET) is a valuable tool for all Juvenile Justice stakeholders who are interested in or participate in advocacy efforts on behalf of youth and adolescents involved with the Juvenile Justice System. With JJPOLNET it is easy keep up with the latest Juvenile Justice news, information, and policy developments, as well as the events, publications, and work being done by the CWLA Juvenile Justice Division. To sign up for JJPOLNET, the CWLA Juvenile Justice Listserv, e-mail sconcodora@cwla.org.

CHILD WELFARE LEAGUE OF AMERICA

ABA Policy and Report on Crossover and Dual Jurisdiction Youth

American Bar Association, Commission on Youth at Risk

Recommendation (Approved February 2008)
BE IT RESOLVED, that the American Bar Association urges the federal, state, territorial, and tribal governments to revise laws, court rules, policies, and practices related to dual jurisdiction youth (abused and neglected youth with juvenile dependency cases who are charged with acts of delinquency) to:

- a) Use diversion and intervention services for minor or low level acts of misbehavior committed while a youth is in foster care;
- b) Eliminate statutory and legal restrictions inhibiting dual jurisdiction;
- c) Create a legal preference enabling youth to have their dependency proceedings remain open with continued child and family support;
- d) Provide, when feasible, that a single judge hear postadjudication dispositional matters involving dual jurisdiction cases and that continuity of legal representation for the child in both court proceedings be secured;
- e) Promote training for all juvenile defense counsel on foster care issues;
- f) Ensure that an adult responsible for the youth attend hearings in both proceedings to address issues related to the child and family;
- g) Encourage information-sharing among dependency and delinquency courts and agencies, establish confidentiality protections for all child welfare information shared, and restrict the use of information gathered from foster youth as part of screening, assessment, or treatment in the pending or future delinquency or criminal proceedings;
- h) Promote the prompt postarrest involvement of providers, caseworkers, or advocates acting on the youth's behalf; ensure fair treatment of foster youth in juvenile detention, incarceration, or probation decisions; and eliminate practices that result in detention or prolonged incarceration of

youth due to foster care status or an absence of suitable placement options;

- i) Provide clear authority for continued social services/child welfare support for children and families when youth cross from dependency to delinquency court/juvenile justice, and eliminate funding barriers that inhibit multiple agency support of these youth and their families;
- j) Apply protections afforded foster youth under Titles IV-E of the Social Security Act to youth placed through delinquency or status offense proceedings, in foster care or other nonpenal settings, under court authority or under the auspices of juvenile justice agencies; and
- k) Fully implement 2002 and 2003 amendments to the Juvenile Justice and Delinquency Prevention Act and the Child Abuse Prevention and Treatment Act to: 1) make youths' child welfare records known to the juvenile court for effective treatment planning; 2) provide effective treatment and service continuity when youth transition between child welfare and juvenile justice systems; 3) assure that when youth are placed in settings funded through Title IV-E of the Social Security Act they receive full protections afforded under that law; and 4) collect state data on all youth transferred from one system to another.

Report

Introduction

As of September 30, 2005 (the latest national statistics available), across the country there were over 179,000 youth ages 13 through 17 in foster care. That constitutes over a third of the total foster care population.¹ Based on a Chicago study, we have learned that the average juvenile delinquency rate for youth previously abused or neglected is 47% higher than for children with no abuse or neglect histories. Researchers have found children who had at least one foster care placement (many children have multiple placements) significantly more likely to find themselves subject to a delinquency court petition.²

Practitioners agree youth in foster care, whose lives have become the responsibility of state or local governments, face a strong likelihood of appearing at some point in time before a juvenile court, charged with some type of offense. The Child Welfare League of America (CWLA) noted that although the social problem of child maltreat-

1 Adoption and Foster Care Analysis and Reporting System (AFCARS) Report, See: www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report13.htm.

2 Morris, L. (2004, Summer/Fall). Youth in foster care who commit delinquent acts: Study findings and recommendations. *The Link*, 1; Herz, D. C., Krinsky, M., & Ryan, J. P. (2006, Summer). Improving system responses to crossover youth: The role of research and practice partnerships. *The Link*, 1.

ment has, through extensive research, been clearly related to later delinquency, youth who find themselves crossing over from the care of a child welfare agency to the involvement of a juvenile justice agency too often *fall between the cracks* of the two systems. Youth services system fragmentation negatively affects these dual jurisdiction cases (also known as “crossover youth” cases), and it is a reason for these recommendations, which are being introduced with urgency due to the large numbers of youth currently affected by the lack of appropriate laws and policies related to crossover youth.

CWLA has found these crossover youth more likely to be detained upon an arrest than their nonabused/neglected peers and then remain longer in custody and under the jurisdiction of the delinquency (juvenile justice) system. Staying out of trouble is only one challenge facing youth in foster care. In addition to their maltreatment histories, they generally come from very disadvantaged families and neighborhoods. By adolescence, they have too often only achieved low educational outcomes, have few employment opportunities, frequently face mental health problems, and may “transition” at adulthood from the foster care system to homelessness. No surprise, then, that they are at high risk of juvenile delinquency infractions.

Even where minor offenses would not have involved police or the courts—if a youth had been living with their parents—a teenager in a foster home or congregate group care setting is commonly subjected to penal sanctions. A recent scholarly article concluded that there was a “child welfare system bias” in favor of processing misbehaving youth through the juvenile justice system.³

If police are contacted because of a foster youth’s minor act of misbehavior, this policy promotes the youth’s diversion from the juvenile justice system. It is hoped that foster parents and caseworkers will seek to have the child remain in foster care rather than detained in juvenile detention facilities, something that most biological parents of youth who commit similar infractions would want. Further, foster parents and caseworkers would also hopefully advocate for a noncriminal resolution of any minor acts committed by the youth.

3 Ryan, J. P., Herz, D., Hernandez, P. M., & Marshall, J. M. (2007). Maltreatment and delinquency: Investigating child welfare bias in juvenile justice processing. *Children and Youth Services Review*, 29(8), 1035.

From experiences in addressing crossover youth in New York City,⁴ Los Angeles,⁵ Ohio,⁶ and Pennsylvania,⁷ we have learned of law, policy, and practice related approaches to this issue that can help assure foster youth are treated fairly in terms of approaches taken in response to their misbehavior. Clearly, every youth who has committed a serious crime, such as a crime of violence, should be prosecuted as appropriate by the juvenile justice system. For minor acts of delinquency or juvenile status offenses (running away, truancy, difficult at-home behavior), however, it is important to learn from research and program advancements about better ways of legally addressing the needs of crossover youth.

Changes in Laws, Court Rules, and Prosecutorial Practices

In an August 2004 article in the *ABA Child Law Practice*, Center on Children and the Law attorney Andrea Khoury proposed a set of guidelines to maximize the achievement of positive, permanent placement outcomes for youth involved in the delinquency and dependency systems.⁸ She suggested, as others have proposed, that, whenever appropriate, intervention for a youth’s noncompliant actions or misbehavior be addressed through their existing abuse/neglect (dependency) court proceedings. Early provision of effective child welfare services can help such problems from escalating in seriousness. A report on this topic jointly issued by CWLA and Children’s Rights, Inc. recommended an improved, unified, and coherent response to crossover youth, with enhanced communication and collaboration across the systems.⁹

- 4 Project Confirm, a program of the Vera Institute of Justice in New York City, has collaborated with the NYC child welfare agency to study crossover youth and then help the various agencies work together to reduce detention bias against children in foster care who commit delinquent acts and help assure that foster parents and caseworkers are informed of and appear at delinquency hearings.
- 5 The Children’s Law Center of Los Angeles has done considerable work to help address one aspect of California law unique in the country, a requirement that a youth’s dependency case be terminated upon their being found delinquent. They helped in the passage of AB 129, a law that allows a youth to be designated “dual status” thereby permitting for simultaneous dependency and delinquency jurisdiction.
- 6 The Children, Families, and the Courts Committee of the Supreme Court of Ohio and the Ohio Department of Job & Family Services, in the Summer-Fall 2005 issue of their *Bulletin*, addressed this topic in an article entitled “Effectively Intervening with Dual Jurisdiction Youth in Ohio.” The National Center for Juvenile Justice reported on work they had done to research the crossover youth issue in the state and various county reforms to improve the handling of dual jurisdiction cases. This article also reports on related reforms in two large counties in Arizona and Minnesota.
- 7 For several years the Juvenile Law Center, based in Philadelphia, has conducted a dual status project and both statewide and county reforms are changing practices where youth have both dependency and delinquency cases. Personal communication with Robert Schwartz, director, Juvenile Law Center, December 19, 2007.
- 8 Khoury, A. (2004, August). The delinquency factor in permanency planning for adolescents. *ABA Child Law Practice*, 23(6).
- 9 Freundlich, M., & Morris, L. (2004). *Youth involvement in the child welfare and juvenile justice systems: A case of “double jeopardy?”* Washington, DC: CWLA. Available from Child Welfare League of America at: www.cwla.org/pubs.



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Therefore, this resolution addresses appropriate intercourt and interagency information sharing. Efforts to promote and further such information sharing are to everyone's benefit; the more we know about a youth in foster care, the better job we can do assessing and treating him and thereby protecting society.

We also express a concern, however, about information gathered from foster youth in diagnostic decision-making being later used against them as evidence in court to support either a finding of guilt or to enhance punishment.¹⁰ It is critical not to compromise the therapeutic process intended to help troubled foster youth by using it as an opportunity for their self-incrimination rather than as a means to promote the process of rehabilitation and recovery from their victimization.

Treatment-related settings should create a "safe" environment, where these youth can feel free to reveal what could be incriminatory information, but not have that information used for additional purposes beyond protection of other youth from serious harm—if there are revelations of ongoing criminal behavior that would endanger other children. Allowing use of information in additional contexts will often simply result in information being held back—a result that no one benefits from and that further compromises our ability to treat the youth and thereby protect society in the long term.

These types of information protection measures have been urged nationally and are consistent with existing protections against self-incrimination in other contexts. Indeed, the proposed language in the resolution was modeled after recommended reforms urged by the Juvenile Law Center. See *Protecting Youth from Self-Incrimination when Undergoing Screening, Assessment and Treatment within the Juvenile Justice System* (2007), available at www.jlc.org/File/publications/protectingyouth.pdf. Similar information sharing protections exist under federal law in the context of drug treatment—to encourage treatment and disclosures that can further the assessment and treatment process, we do not reveal and hold against individuals things they divulge as part of involvement in that therapeutic setting.

The resolution further urges improved child welfare-juvenile justice system linkages while at the same time suggesting that, whenever possible (likely in large, urban juvenile courts) a single judge hear dual jurisdiction cases under a special crossover case docket utilizing a "problem-solving court" or therapeutic jurisdiction approach. If a single judge is to hear dual jurisdiction cases, that judge should preferably be a specialized dependency court judge or a judge well-versed in dependency case issues.

There should also be a continuity of the youth's legal representation in both proceedings, assuming the attorney has been trained to effectively handle both dependency and delinquency cases. CWLA also noted the importance of foster parents, caseworkers, and others attending both proceedings, so that is additionally incorporated into the resolution.

Articles addressing crossover youth have also recognized that these system collisions can ill affect the accessibility of funding to support the services foster youth and their families continue to need. Because of their complexity, crossover youth cases can drain scarce resources from child welfare and juvenile justice agencies alike, probation departments, behavioral health care systems, and the courts themselves. Child advocates believe it is therefore critical not to close off any significant funding source for services to a youth, especially the child welfare agency support that is contingent on the dependency court case remaining open, even after a juvenile delinquency charge or adjudication is made.

As mentioned earlier, the practice of dismissing dependency court proceedings and ceasing child welfare case jurisdiction even upon a youth's juvenile detention, incarceration, or placement on probation can have seriously negative effects. Thus the recommendation calls for foster youth to be treated fairly and not simply to have their dependency case and foster care support ended because they happened to be in foster care at the time of their offense. Moreover, detention and incarceration decisions should not be driven by the youth's foster care status or the availability or absence of a placement for the youth.

This resolution, while suggesting the importance of not using arrest, detention, and delinquency prosecution for low-level acts of youth misbehavior, recognizes the importance of public safety and concerns about crime victims' rights concerns when any youth, including those in foster care, commit serious criminal acts. Thus, we have balanced those important concerns in crafting policy that would be applicable only to "minor acts of misbehavior" by foster youth. We believe that society can, by avoiding the use of delinquency system sanctions for these young people, better attend to youth who commit lower level offenses, alter their path at an early stage, and better protect society as a whole.

Andrea Khoury, in her *ABA Child Law Practice* article, also noted that "many delinquency cases have dependency overtones due to gross problems in the adolescent's home life." If the teen's dependency issues are not addressed, she will likely continue down the delinquency road and never receive the services needed to live a law-abiding and productive life. Therefore, this resolution calls upon those who professionally encounter delinquent youth to quickly find out if they have a current or past history of being abused or neglected, as well as whether a child welfare agency has ever been involved with them or their family.

10 See, Rosado, L. M., & Shah, R. S. (2007). *Protecting youth from self-incrimination when undergoing screening, assessment and treatment within the juvenile justice system*. Philadelphia: Juvenile Law Center. Available online at: www.jlc.org/publications/3/protecting-youth-from-self-inc/.

If the delinquency or status offense charges are minor in nature, juvenile court judges have authority to dismiss the delinquency proceedings and cause a dependency petition to be filed. The youth may then be better able to access more appropriate aid, while avoiding the stigma of being labeled a delinquent.

Clarification of Federal Law and Policy

Federal laws, including the Child Abuse Prevention and Treatment Act (CAPTA),¹¹ Title IV-B and IV-E of the Social Security Act,¹² and the Juvenile Justice and Delinquency Prevention Act (JJDPA),¹³ provide funding streams to support both residential and nonresidential services for troubled youth. Services funded under one law may not be available to youth not in the system funded through that law. This fragmentation of services and funding has been mentioned above.

At the 2006 Annual Meeting, the House of Delegates approved a policy resolution sponsored by the Colorado Bar Association that urged timely and effective services for at-risk youth and their caregivers through public child welfare, youth services, mental health, schools, and other agencies. That resolution also called for such services to be available without tying them to the necessity of formal juvenile justice agency jurisdiction. In August 2007 the House of Delegates approved a resolution on juvenile status offenders, calling for laws, policies, and programs that divert alleged juvenile status offenders from court jurisdiction while mandating development and implementation of targeted evidence-based programs that provide juvenile, family-focused, and strength-based early intervention and precourt prevention services and treatment.

One way to help assure that all avenues of support for needed youth and family services remain open is to eliminate funding stream barriers that can inhibit blended, multiple-agency financing of those services. The resolution therefore calls for clear authority of multiagency funding when youth cross over from dependency to delinquency systems.

Since many youth who commit relatively minor delinquent acts are placed with foster families or in small group placements, their placements may qualify for a share of placement costs to be borne by the U.S. Department of Health and Human Services through the Title IV-E program of the Social Security Act. In order to receive such funding, the federal Adoption and Safe Families Act (ASFA) requires specific judicial findings (remaining at home is contrary to the youth's welfare; reasonable efforts have been made to avoid the need for placement and to speed reunification), court hearings (periodic reviews and special permanent placement hearings), notices to interested adults such as foster parents and

relative caregivers, and special documents in every case for which the state claims IV-E dollars.

Applying ASFA to youth involved in delinquency cases but still in foster care, according to Andrea Khoury, is very important because a) ASFA's goals of safety, permanency, and well-being for youth are similar to the rehabilitative goals of the juvenile justice system, b) delinquent youth often have underlying issues of abuse or neglect within their families that ASFA is intended to help address, and c) even if a youth is in a detention facility (which does not qualify for IV-E funding) they may later be placed in a IV-E eligible setting.

Finally, the resolution calls for implementation of five- to six-year-old federal JJDPA and CAPTA amendments, through which Congress intended improvements to be made related to crossover youth. The JJDPA includes a provision that ties federal funding to states to a requirement that states, to the maximum extent practicable, implement a system to ensure that if a juvenile is before the juvenile delinquency court that public child welfare agency records will be made known to the court. Also, relevant past child protection records related to the youth must be incorporated into their juvenile justice records to help assure an effective treatment plan.

The JJDPA amendments also called for a national study of youth who, prior to their juvenile justice placements, were under the care and custody of child welfare agencies, as well as of youth who could not return to their families after completing their juvenile delinquency sentences. Data collected was to include numbers of youth in each category as well as information on intersystem coordination of services and treatment, funding streams utilized, barriers to services, postplacement services for these youth, frequency of youth having formal case plans and case plan reviews, and how permanency issues are identified and addressed.

In CAPTA, permissible uses of federal funding were expanded to include support and enhancement of interagency collaboration between the child protection and juvenile justice systems for improved delivery of services and treatment. Such funding can also be used for methods of continuity of treatment plans and services as youth transition between systems. The CAPTA amendments also encouraged states to collect annual data on the number of youth under the care of the state's child protection system who are transferred into the custody of the state's juvenile justice system.

Little has been done at the federal or state level to apply these innovative JJDPA and CAPTA reforms. For this reason, there is a final recommendation urging that these provisions be fully acted upon.

Conclusion

Both federal and state governments must address the important issues raised in this resolution. Youth facing both the dependency and delinquency systems are

11 42 U.S.C. 5106a(a).

12 42 U.S.C. 622 et seq. and 42 U.S.C. 670 et seq.

13 42 U.S.C. 5633 and 5661.

PUBLIC POLICY UPDATE

CWLA Holds Briefings on Capitol Hill

On Monday, July 21, 2008, CWLA held House and Senate briefings on legislation (H.R. 5461 and S. 2771) to reestablish a White House Conference on Children and Youth. Representative Chaka Fattah (D-PA) spoke at the House briefing. Mr. Fattah and Representative Jon Porter (R-NV) introduced H.R. 5461 and sponsored the House briefing. Senator Mary Landrieu (D-LA), who introduced the Senate version of the legislation, along with Senator Chuck Hagel (R-NE), sponsored the Senate briefing.

The panel of presenters, moderated by CWLA's CEO Christine James-Brown, painted a vivid picture of the need for the White House Conference and how it could have a significant impact on reform of the child welfare system. Panelist Bob Blancato, who served as the Executive Director of the 1995 White House Conference on Aging, offered valuable expertise on how the two year process of a White House Conference works and on what will make the White House Conference on Children and Youth successful. Reverend Ken Fellenbaum was a participant in the last White House Conference on Children and Youth in 1970 and currently serves as CEO of Boys & Girls Village, Inc. in Milford, Connecticut and has extensive experience in community based social service programs.

Mikelle Wortman and Asia Moore also presented at the briefings. They are young people who are former foster youth and members of CWLA's National Foster Youth Advisory Council. They presented their very personal accounts of the challenges they faced and offered themselves as proof that children can overcome serious obstacles. They relayed their own experiences as leaders and advocates and their support and commitment to working on the White House Conference.

What You Can Do to Promote a White House Conference

First and foremost, you can contact your Senators and Representatives in Congress and urge them to support S. 2771 and H.R. 5461—legislation to hold a White House Conference on Children and Youth! Call 202/224-3121 to connect to Congress.

Get Cosponsors!

Call your member of Congress today and ask them to cosponsor this monumental legislation! For a list of current cosponsors, visit www.cwla.org/advocacy/whitehouseconfcosponsors.htm.

Contact the Committee!

The House Education and Labor committee has been assigned this important legislation. If your member of Congress is on this committee, contact them right away and tell them to support a long-overdue White House Conference on Children and Youth! To see a list of committee members, visit <http://edworkforce.house.gov/about/members.shtml>.

Sign On in Support!

You will receive regular updates as the campaign progresses, alerts around upcoming key developments, and most importantly you will be part of a movement to make children a national priority!

Visit www.cwla.org/advocacy/whitehouseconf10.htm to join in the campaign!

As you can see, visiting your member of Congress can really make a difference. Keep making phone calls and keep scheduling visits with Congress in Washington and at home!

from *ABA*, page 9

seriously in need of assistance and greatly at-risk. A court's closing of their dependency case can shut off a vital source of support and protection that may include adequate care, supervision, and housing. Whichever system they are in, their history of abuse and neglect, mental and emotional problems, and other family difficulties remain. The law, court rules, and agency policies should provide for optimal flexibility that can help assure they have the scholarship aid, mentorship assistance,

community resources, housing opportunities, mental health and substance abuse services, and other care and treatment they need. The ABA is calling for laws and legal policies that look upon troubled youth holistically—these young people need help that is not limited by artificial or rigid barriers that merely focus on a youth possessing a specific legal or court status.

from *CRC*, page 5

deemed too young to be held criminally responsible. Those between seven to 14 years of age were presumed not responsible, but the prosecution could refute the presumption. Individuals over age 14 were considered equally culpable with adults. Once convicted, youth were subject to the same sentences as adults, including imprisonment, corporal punishment and execution.

Reformers' calls for change led to the first separate court for youth charged with committing criminal acts established in Illinois in 1899. Among the Juvenile Court Act's key features were rehabilitative, rather than punitive, purposes: 1) a provision that juvenile court records be rendered confidential and kept separate from criminal records in order to minimize stigma, 2) the physical separation of youths from adults when incarcerated or placed in the same institution, 3) a provision barring the detention of children under the age of 12 in jails at all, and 4) generally informal procedures. The juvenile court idea spread rapidly throughout the United States.¹⁷ A series of Supreme Court decisions defined the Constitutional rights of children before the court and the general notion that children in conflict with the law were entitled to special treatment remained in place.

Over time, however, the United States lost sight of the goals that had driven the development of the juvenile justice system. Beginning in the 1970s and escalating in the late 1980s and early 1990s, concerns about increasing juvenile crime and the (wildly inaccurate) predictions of a coming generation of "super predators," led to major changes to the juvenile justice system. Juvenile court judges had always had authority to "waive jurisdiction" over serious offenders (i.e., transfer the offender to criminal court to be tried as an adult), however, as fear of juvenile crime increased, the cry became "do the adult crime, do the adult time." Laws were changed in many states to transfer more young people.

In addition to giving judges the discretion to waive case into adult court, many states now allow for Direct File or "Prosecutorial Discretion" giving the prosecutor the discretion to have the youth's case tried in the adult criminal court. Statutory Exclusion laws that automatically require certain cases to be tried in the adult court, based either on the nature of the crime or the age of the child, were also passed in many states. As a result, some 50,000 children are transferred to adult criminal court each year while an additional 200,000 children are sent directly there because their state laws set the upper age of juvenile court jurisdiction at 16 or 17, rather than 18 years of age.¹⁸ Transfer disproportionately affects youth of color.¹⁹ Studies have shown that in California, as many as 70% of the children transferred to the adult criminal system are black or Latino. Children of color in Illinois represent 9 out of 10 of the transfer cases.²⁰ Nationally, research has shown that in 2002, 73% of the 4,100 new admissions to adult prisons of children under age 18

were children of color.²¹ Racial disparities are often most pronounced when children are transferred based on drug or gun charges. For example, in 2003, white youth were 69% of the petitioned drug cases in the country, and 58% of the transferred drug cases. Black youth, on the other hand, were only 29% of the petitioned drug cases, but made up 41% of the transferred drug cases.

This movement toward harsher treatment of children within the justice system contrasts with a view of children in general as being more in need of protection because of their age (e.g., age restrictions on smoking and drinking, movie ratings, concerns with regard to access to pornography, and laws on the age of marriage and other contractual obligations). In these contexts, we recognize that children's decision-making skills are less developed and that their youth makes them vulnerable to outside influences. Yet, we have become all too ready to forget these differences when changing laws to make our juvenile justice system more punitive.

In recent years, brain imagery has given us a new understanding of the gradual changes that take place as the brain grows and develops throughout childhood and into young adulthood. Science now demonstrates that teenagers and young adults are not fully mature in their judgment, problem-solving and decision-making capacities as we have always intuitively recognized and reflected in our protective laws and regulations but often chosen to ignore in our justice system.²²

There is also hard evidence from studies of the outcomes of transferring children into the adult system that the impacts are bad for the individual children and for society as, far from decreasing criminal activity, adult transfers appear to increase it. Youth sent to adult court are more likely to recidivate than youth who remain in the juvenile system, more likely to re-offend sooner, and to re-offend

17 For more detail on the history of the development of the juvenile court system in the United States, see *The Juvenile Court: 100 Years in the Making* at www.buildingblocksforyouth.org/juvenile_court.htm.

18 Campaign for Youth Justice. (2007). *The consequences aren't minor: The impact of trying youth as adults and strategies for reform*. Washington, DC: Author. Woolard, J. L., Odgers, C., Lanza-Kaduce, L., & Daglis, H. (2005). Juveniles within Adult Correctional Settings: Legal Pathways and Developmental Considerations. *International Journal of Forensic Mental Health*, 4(1): 1-18.

19 Males, M., & Macallair, D. (2000). *The color of justice: An analysis of juvenile adult court transfers in California*. Washington, DC: Building Blocks for Youth. Ziedenberg, J. (2001). *The racial impact of Illinois' practice of transferring young drug offenders to adult court*. Washington, DC: Building Blocks for Youth.

20 Campaign for Youth Justice, op. cit.

21 National Council on Crime and Delinquency. (2007). *And justice for some: Differential treatment of youth of color in the justice system*. San Francisco, CA: Author.

22 The Coalition for Juvenile Justice has published two reports, available on their web site, examining the impact of the new understanding of adolescent brain development on juvenile justice. See www.juvjustice.org/resource_category_104.html.

with greater severity.²³ The Task Force on Community Preventive Services appointed by the Centers for Disease Control (CDC) analyzed findings of several studies. Their conclusion was that,

On the basis of strong evidence that juveniles transferred to the adult justice system have greater rates of subsequent violence than juveniles retained in the juvenile justice system, the Task Force on Community Preventive Services concludes that strengthened transfer policies are harmful for those juveniles who experience transfer. Transferring juveniles to the adult justice system is counterproductive as a strategy for deterring subsequent violence.²⁴

Studies of brain development and social scientists confirm that the principles underlying the CRC and U.S. best practices represent the best approach for juvenile justice systems.

Applicability/Usefulness of the CRC in the U.S. JJ System

The main applicability of the CRC to this point has been as an advocacy tool. Its language is inspiring in its statement of the rights of the child and the need for special protections, as well as its articulation of the duty of the state and all responsible adults to respect those rights and provide those protections. Indeed the very use of the word “child” in talking about arrest, detention, and imprisonment rather than “juvenile offender” or “juvenile delinquent” is important in underlying that a child is a child and should be treated as one, regardless of the circumstances of his life. Speaking consistently about the “child” helps to break down the dichotomy so often seen in our treatment of “children” in need of care and protection and “juveniles” who commit crimes and should be punished.

The principles that the best interests of the child shall be a primary consideration in all actions concerning children whomever undertakes them (Article 3-(1)) and that detention and imprisonment should be used only as a measure of last resort and for the shortest appropriate period of time (Article 37(b)) not only represent the best U.S. practice but show that U.S. best practice is strongly supported by the knowledge and understanding of experts in nations throughout the world. As a result, advocates in the United States who are working to improve the treatment of children in conflict with the law, to restore the understanding that children are different from adults and should be treated differently within the justice system, often cite the CRC as support for their reform goals.²⁵

The problem with racial disparities within the juvenile justice system is addressed by the CRC in Article 2, which requires that

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or

legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

General Comment 10 from the Committee on the Rights of the Child stresses the particular need for States Parties to take all necessary measures to ensure that all children in conflict with the law are treated equally. Again this emphasis on the need to avoid discrimination supports the ideals of the U.S. juvenile justice system.

The Juvenile Justice and Delinquency Prevention Act (JJDPA), due for reauthorization this year, includes the current effort underway at the federal level and in many states to end the sentence of life imprisonment without possibility of parole for offences committed by anyone under the age of 18 is a prime example of the use of the CRC in advocacy efforts. The CRC states unequivocally in Article 37(a) “neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.” The joint 2005 report by Human Rights Watch and Amnesty International,²⁶ which first drew attention to the large numbers of children serving life without possibility of parole sentences in the United States, made clear that this sentence violated the CRC. Subsequent studies and reports have continued to point out that the United States is far outside international norms in ignoring this prohibition.²⁷

The use of the CRC in litigation is of course more problematic. The use of international human rights law in U.S. courts is a new endeavor and is still being tested even in those instances where the United States has signed and ratified a treaty. Although the United States has not ratified the CRC, it has been used in a number of cases as an illustration of internationally accepted norms, as for example in the case that ended the juvenile death penalty in the United States, *Roper v. Simmons*. In its Opinion, the Supreme Court took note that the execution of juvenile offenders violated several international treaties, including the Convention on the Rights of the Child and stated that

see **CRC**, page 14

23 See Bishop, D. M., Frazier, C. E., Lane, J., & Lanza-Kaduce, L. (2002). *Juvenile transfer to criminal court study: Final report*. Tallahassee, FL: Florida Department of Juvenile Justice.

24 Full text of the report is available on the Task Force's web page at www.thecommunityguide.org/violence/Violence-YouthTransfer_rev.pdf.

25 An interesting discussion of this issue can be found in Dohm, B. (2007). I'll Try Anything Once: Using the Conceptual Framework of Children's Human Rights Norms in the United States, *University of Michigan Journal of Law Reform*, 41(1).

26 Amnesty International & Human Rights Watch. (2005). *The rest of their lives: Life without parole for child offenders in the United States*. New York, NY: Authors.

27 See Leighton, M., & de la Vega, C. (2007). *Sentencing our children to die in prison: Global law and practice*. San Francisco, CA: University of San Francisco School of Law, Center for Law and Global Justice.

JUVENILE JUSTICE NEWS AND RESOURCES

Building Brighter Futures in Indian Country: What's on the Minds of Native Youth

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has released the report *Building Brighter Futures in Indian Country: What's on the Minds of Native Youth*.

The report captures the meeting of the 2007 Tribal Youth Focus Group, which was comprised of boys and girls ages 10 to 17 from 20 tribes across the United States and their chaperones.

OJJDP Administrator J. Robert Flores subsequently described the meeting as "an important event that will shape the relationship between our Office and your communities for many years to come," and the report will guide OJJDP as it continues to develop programs to help tribal communities address the challenges they face in strengthening families and assisting at-risk youth.

Building Brighter Futures in Indian Country: What's on the Minds of Native Youth is available at <http://ojjdp.ncjrs.gov/typ/download/223353.pdf>.

America's Children in Brief: Key National Indicators of Well-Being, 2008

The Federal Interagency Forum on Child and Family Statistics has released *America's Children in Brief: Key National Indicators of Well-Being, 2008*.

Each year since 1997, the Forum has published this report, which includes detailed information on the welfare of children and families, alternating between a comprehensive report and a condensed version that highlights selected indicators, as is the case this year.

The report addresses such topics as family and social environment, economic circumstances, health care, physical environment and safety, behavior, education, and health.

America's Children in Brief: Key National Indicators of Well-Being, 2008 is available online at www.childstats.gov/pubs/index.asp.

Best Practices to Address Community Gang Problems: OJJDP's Comprehensive Gang Model

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has published *Best Practices to Address Community Gang Problems: OJJDP's Comprehensive Gang Model*.

The report provides communities responding to a present or potential youth gang problem with guidance in implementing OJJDP's Comprehensive Gang Model. It describes the research informing the model, notes findings from evaluations of several programs demonstrating the

model, and outlines best practices derived from practitioners with experience in planning and implementing the model in their communities.

Best Practices to Address Community Gang Problems: OJJDP's Comprehensive Gang Model (NCJ 222799) is available at www.ncjrs.gov/pdffiles1/ojjdp/222799.pdf.

Violence by Teenage Girls: Trends and Context

The first in a series of publications from OJJDP's Girls Study Group, the bulletin assesses trends of juvenile arrest rates for violent crimes, focusing on simple and aggravated assault. It also examines the context in which girls and boys offend, including the type of victims targeted and environments where offenses commonly occur.

Violence by Teenage Girls: Trends and Context is available online at www.ojjdp.ncjrs.gov/publications/PubAbstract.asp?pubi=240649.

Native American Youth and the Juvenile Justice System

The National Council on Crime and Delinquency (NCCD) released a review of national data on the disparity of treatment between Native American youth and other racial and ethnic groups in the juvenile justice system. NCCD found that at the points of arrest and formal processing, Native Americans and whites are equally likely to be arrested and to be petitioned, once referred. Native Americans are 50% more likely than whites, however, to receive the most punitive measures, namely out-of-home placement after adjudication and waiver to the adult criminal justice system. Native American youth are 1.5 times as likely as white youth to be waived to the adult criminal justice system.

This review is available online at www.nccd-crc.org/nccd/pubs/2008_Focus_NativeAmerican.pdf.

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For more information, contact Janet Wiig at jwiig@cwla.org.

from *CRC*, page 12

the overwhelming weight of international opinion against the juvenile death penalty provided confirmation for the Court's own conclusion that the death penalty is disproportionate punishment for offenders under 18.²⁸

In the ongoing litigation aimed at ending juvenile life without parole, lawyers are also referencing the CRC and other international treaties not as binding legal authority but as support for their case that the sentence is cruel and unusual punishment.²⁹ There is increased interest among litigators in using the international human rights treaties wherever possible to bolster their Constitutional and other claims. As more law students graduate from programs that have placed increased emphasis on international law both in courses and in clinical work, there will undoubtedly be more interest in the CRC and other international treaties and conventions in criminal justice litigation. The work of organizations such as the U.S. Human Rights Network³⁰ is also focused on bringing together activists, community organizers, and lawyers to work cooperatively on using a human rights framework for social justice reform. Criminal justice reform organizations are playing a major role in this effort.

Call to Action

The U.S. justice system, with its routine use of detention over prevention and rehabilitation, prevalence of violence inflicted on inmates by police, prison officials, and other inmates; abysmal conditions of confinement; and dependence on adult courts to prosecute youth offenders, is failing our children. The Convention on the Rights of the Child, in outlining the minimum standards for the protection and promotion of children's rights, challenges the United States to look at how we perceive and view children both within and regardless of their circumstances. Yet, the immediate challenge is to raise awareness of the Convention and its applicability to children in conflict with the law.

The Campaign for U.S. Ratification of the CRC is the national coalition that has been working towards ratification and subsequent implementation of the Convention at the grass-roots level since 2002. With representation from over 160 organizations and 40 academic institutions, the Campaign represents a diverse range of individuals from attorneys and health care professionals to human rights and child welfare advocates and members of the religious and faith-based communities. In April 2007, the Campaign cohosted a Senate briefing on the CRC and juvenile

justice with the following: Georgetown University's Center for Juvenile Justice Reform and Systems Integration, Children and Family Justice Center at Northwestern University School of Law, Juvenile Justice Initiative of Illinois, and National Juvenile Justice Network. Last November, in commemoration of the Convention's 18th anniversary, the Campaign worked with sponsors in Atlanta, Boston, Denver, Hartford, Honolulu, Los Angeles, New Orleans, New York City, suburban New York, and Washington, DC to convene briefing days on the CRC and its impact for children in the United States.

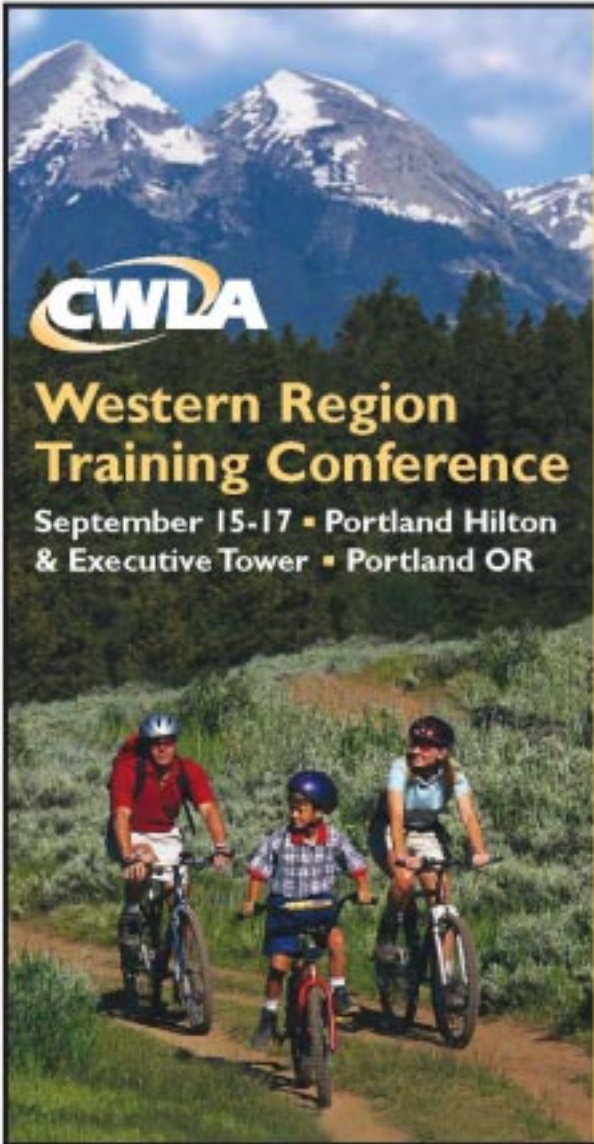
The momentum is building, and the Campaign is in the process of planning a national event for next year. You do not have to wait until then to get involved with the Campaign for U.S. Ratification. While ratifying and implementing the CRC is principally the obligation of the United States, you are vital contributor to the success of the Campaign and the success of ensuring children are made a national priority. To learn more about the Convention on the Rights of the Child and to join the Campaign for U.S. Ratification of the CRC, visit <http://childrightscampaign.org>.

Jenni Gainsborough is the Director of the Washington, DC Office of Penal Reform International and Elisabeth Lean MSW is the Coordinator of The Campaign for U.S. Ratification of the Convention on the Rights of the Child (CRC).

28 *Roper v. Simmons*, 543 U.S. 551 (2005), 125 S.Ct. 1183 (2005).

29 The Equal Justice Initiative of Alabama has made this connection both in its litigation and its recent report on life without parole sentences for 13- and 14-year-olds. See Equal Justice Initiative of Alabama. (2007). *Cruel and unusual: Sentencing 13- and 14-year-old children to die in prison*. Montgomery, AL: Author.

30 For more information on the work of the U.S. Human Rights Network, visit their www.ushrnetwork.org.



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