

**STOPPING SEXUAL ASSAULTS IN JUVENILE CORRECTIONS FACILITIES:
A CASE STUDY OF THE CALIFORNIA DIVISION OF JUVENILE JUSTICE**

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**TESTIMONY BEFORE THE NATIONAL PRISON RAPE
ELIMINATION COMMISSION**

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I commend the National Prison Rape Elimination Commission for dealing honestly and objectively with the challenging problem of eliminating rape in correctional facilities. I am especially honored to be invited to share with the Commission my thoughts on ridding juvenile facilities of this terrible problem. The founding of the American juvenile court in 1899 was based on the urgent need to stop the exploitation and abuse of children in adult prisons and jails. My organization, the National Council on Crime and Delinquency (NCCD), was created in 1907 to promote this crucial reform agenda. Our struggle for justice for children continues today.

Accurate data on the problem of sexual assault in juvenile corrections facilities are difficult to assemble. We eagerly await the release of the Survey of Youth in Residential Custody that was funded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and conducted in 2000 to provide important national-level information on many aspects of the conditions of confinement in juvenile facilities. More recent work by the Bureau of Justice Statistics (BJS) offers a glimpse at officially reported sexual abuse in state juvenile facilities, and BJS is currently planning another survey of incarcerated young people.¹

My testimony today is based on a comprehensive 2003 investigation of the California Youth Authority² that was requested by the California Attorney General in response to a lawsuit

¹ Allen J. Beck and Timothy A. Hughes, Sexual Violence Reported by Correctional Authorities, 2004, Washington, D.C.: Bureau of Justice Statistics, 2005.

² On July 2005, the CYA was merged into the California Department of Corrections and Rehabilitation as the Division of Juvenile Justice (DJJ).

(Farrell v. Tilton) filed by the Prison Law Office.³ This report led to a consent decree to rectify these problems, and I am currently part of the court-appointed monitoring team.⁴ The CYA (now the Division of Juvenile Justice or DJJ) operates eight large facilities that house approximately 3300 young people that are convicted of very serious offenses. All of these youth are housed in antiquated and decrepit facilities that most observers agree must be replaced. Many youth must live in open barracks or dorms with as many as 60 youth sleeping in bunk beds. Staff are usually stationed in a caged security post. There is limited ability to visually observe the behavior in the living units.

The investigation covered the safety of California's state youthful offender facilities, the appropriateness of the use of force and restricted housing, medical and mental health issues, the treatment of disabled youngsters, and educational services. My specific assignment covered topics under the general heading of the Safety and Welfare of incarcerated youth. In connection with this effort, I reviewed thousands of pages of official documents and had access to all DJJ statistics that were pertinent to these issues. Without exception, I was given all agency and youth records that I requested. Site visits were conducted at six DJJ facilities. Most important, I was permitted to conduct confidential interviews with a cross section of over 100 youths and additional interviews with dozens of staff members. As part of the court monitoring work, I have continued making site visits and conducting more interviews with youth residents and staff.

The California DJJ is plagued with high levels of violence and fear. Fights, assaults on

³ Barry Krisberg, General Corrections Review of the California Youth Authority, Oakland, CA: National Council on Crime and Delinquency, 2003.

⁴ The DJJ has submitted a remedial plan to respond to these issues that will be reviewed by the court on June 30, 2006. At this writing, the Governor and the Legislature appear to be willing to commit nearly \$110 million as a down payment to start the reforms. But, since 2003 little has changed to reduce the violence and poor conditions of

staff, and riots are common occurrences. Incidents of violence, gang and racial conflicts, and staff fears have led to reliance on extended periods of lockdown, with many youth spending an average of 21 hours per day in their cells. There is virtually daily use of chemical and mechanical restraints, and many correctional staff wear equipment such as security vests and helmets that are more typical of maximum security prisons than juvenile correctional institutions. A video tape showing several DJJ staff beating up two youth was aired on national television news shows and the Internet. In the past, some of the facilities have employed guard dogs to maintain order. Suicide attempts are frequent events, and four youths took their own lives in the last two years. Sexual assaults are part of these horrific conditions.

Official DJJ Data on Violence and Sexual Assaults

The DJJ possesses little reliable data on violence in its institutions. Addressing this absence of management information is a key part of the proposed reform agenda. The best, albeit incomplete, data on DJJ violence come from the Disciplinary Decision Making System (DDMS).⁵ This information system covers allegations of youth misconduct. For 2002, I reviewed cases of *sustained serious disciplinary infractions* at the six facilities that I visited. Typically a sustained serious disciplinary infraction can lead to additional time served before parole and transfer to a restricted housing unit. This is a very conservative measure of violence because it does not count incidents in which the assaults were not observed by staff, cases that could not be proved to agency fact finders, or situations in which less severe sanctions were employed. However, even

confinement described in this testimony.

⁵ Information on staff sexual assault is closely protected by state personnel and union agreements, and is very difficult to obtain.

this conservative measurement documented over 4000 serious infractions for youth-on-youth assaults and batteries at these six DJJ institutions—over 10 per day.⁶ It would require an in-depth analysis of these instances to determine how many of these violent events included sexual violence. But, in addition to these assaults, there were another 9 sustained disciplinary infractions for *sexual assaults* and 56 sustained charges for *sexual acts*. DJJ staff distinguish between these categories based on their judgments whether they believe the acts were consensual. In practice these staff judgments are extremely subjective and somewhat arbitrary. There were also 925 sustained serious infractions for *sexual harassment* that covers a very wide range of behaviors including sexual gestures, provocative language, public masturbation, and other activities defined broadly as sexual horseplay directed at either other youth or staff. It is difficult to determine without inspection of detailed incident reports how many of these disciplinary charges actually include sexual assaults.

Youth Interviews

Few of the youth with whom I talked felt safe in DJJ facilities. A typical response was, “this is a jail filled with dangerous people.” Some youth, especially youth who openly identified as gay, bisexual, lesbian, or transgender told of being sexually assaulted in the barracks or dorms. These youths also reported that staff did not take these violent victimizations seriously. The youth reported that staff believed that most sexual behavior in the dorms was consensual. Staff that I talked with tended to downplay reports of rape as coming from youths who had consented to sex, but then regretted their actions. In general, facility superintendents took this problem more

⁶ These facilities housed 3820 youth on average in 2002.

seriously than living unit staff, and DJJ central office staff reviewed a small number of the incidents that were investigated at the institutional level.⁷ The only recourse that most victimized youth had was to file a grievance that did require an administrative review. However, grievances were routinely processed by other youth inmates, who acted as grievance clerks. Many of these youth had little faith in the grievance procedure and often discouraged victims from reporting these assaults.⁸ A few youth wrote letters to the DJJ director complaining of their victimization, but they generally received a response drafted by facility staff.

Other youth who were avowedly heterosexual also described sexual assaults, including group rapes. They tended to categorize this behavior as sexual “horseplay,” but it was reported that some youth would attempt to take advantage of others after the lights were out in the barracks. Almost none of these assaults were reported to authorities. Most youth felt that fighting back was the way to fend off these sexual assaults. Gang affiliations provided allies to protect youth from these situations. Youth who were not gang members were especially vulnerable.

To escape repeated victimization, some youth would assault other youth or staff and would be placed in single rooms in temporary detention units or other restricted housing units. Many staff told me that a significant number of youth in these lockup units were essentially protective custody cases, not particularly violent youths. Even though this meant being confined for at least 21 hours a day, these youth would describe being locked up as a respite from “always having to watch your back” in the barracks. Also, especially vulnerable youths would engage in abnormal behavior such as suicidal gestures, smearing feces on themselves or their beds, or

⁷ The DJJ headquarters is attempting to review a larger proportion of incidents involving the use of force. The proposal to fund reforms would increase the number of staff dedicated to monitoring activities at the institutions.

⁸ The DJJ has proposed to eliminate the youth grievance clerks and replace them with paid staff.

claiming they were having psychotic episodes. These behaviors would result in a review by DJJ psychologists or psychiatrists and potential placement in a mental health unit where the youth would reside in single rooms. Both custody and clinical staff often discounted these outward signs of mental illness as attempts by some youths to manipulate their living unit assignments.

There seemed little focus on youth sexual victimization. The dominant focus of DJJ staff was to prevent gang-related violence and assaults on staff. Due to a concern about sexual harassment in the workplace, sexual behavior or language that might otherwise be overlooked is defined as harassment if it is directed at or observed by female correctional officers or counselors. In these cases, the behavior may be punished with as serious a sanction as a 90-day time add. Training of staff was rare on the topic of reducing sexual assaults among youth. As noted earlier, few data were routinely collected or reviewed by DJJ managers. Investigations of allegations of staff sexual misconduct with DJJ youth, especially young women, would surface periodically. These allegations were investigated in highly confidential forums. During my investigation, I encountered a few youth grievances that alleged that staff had engaged in inappropriate sexual conduct with the youthful inmates. In these cases, the accused staff were permitted to resign, were placed on limited duty, or the charges were dropped. Even in cases in which the DJJ management fired staff for a range of allegations of excessive use of force or other proscribed behavior, the State Personnel Board restored these staff to regular employee status. There were no criminal prosecutions of DJJ staff despite allegations of felony law violations.

My overall conclusion was that sexual assault was a significant problem in DJJ facilities. These assaults were inextricably tied to an overarching climate of violence and fear in California's state juvenile facilities. Sexual assaults were tied to patterns of physical intimidation

and threats that some youth use to claim status within the extremely violent institutional culture. Moreover, there are a large number of DJJ residents with severe mental health issues. Health care for these troubled youngsters is woefully inadequate, creating an even more chaotic atmosphere. Until more management resources can be found, the current DJJ review and investigation processes are insufficient to reduce violence and victimization in its facilities. The use of the DDMS or the youth grievance system are not effective to stem the problem of sexual assaults. Current DJJ facilities are dangerous and not designed to promote the safety of youth or staff. There is insufficient staff training to prevent unwanted sexual behavior in DJJ facilities. Although responses to many of these safety deficiencies are included in the DJJ remedial plans, it remains to be seen how quickly these needed reforms can be implemented.

Recommendations for Reforms

Here are my key recommendations to reduce youth violence and sexual assaults in the California DJJ and in other troubled youth corrections systems.

- Youth corrections systems must implement research-based risk and needs assessment classification systems to identify those youth most likely to be victims and victimizers. Living unit assignment and staffing should be guided by objective classification information. An excellent example of a system that can reduce institutional violence is the Juvenile Intervention and Assessment System (JAIS), developed by the NCCD.
- Living unit sizes must be no larger than 20 youth. Barracks-style dorms should be phased out and staff-youth ratios should be less than 1:8. Antiquated and unsafe institutions must be replaced with “state-of-the-art” facility designs that permit greater monitoring of youth behavior and which encourage more staff and youth communication and interaction.
- Staff need training in techniques such as the Normative Culture, which was developed by the North American Family Institute.⁹ The Normative Culture creates “communities of

⁹ See for example, Barry Krisberg, Excellence in Adolescent Care: The Thomas O’Farrell Youth Center, Oakland, CA: The National Council on Crime and Delinquency, 1992.

dignity and respect” in juvenile correctional programs. It teaches staff to enlist youth residents in the common goal of ensuring safety of all those who live or work in these facilities.

- Training of staff in gender-responsive adolescent psychological development must be required of all staff working in juvenile corrections facilities. In particular, staff need a better understanding of the victimization of gay, bisexual, lesbian, and transgender youth.
- There must be adequate numbers of medical and mental health professionals assigned to juvenile facilities, and these clinical staff require additional training in recognizing and responding appropriately to instances of sexual victimization. Health and mental health staff need better information on the link between histories of maltreatment, sexual victimization, and violent behavior.¹⁰
- Institutionalized youth need access to reporting and grievance systems that result in genuine and thorough investigations of their alleged victimization.
- Youth facilities should be open to regular inspections by bona fide outside groups that can conduct confidential interviews with youth to identify potential problems of sexual victimization.
- Juvenile facilities need to create adolescent living environments that are as normal as possible. Youth facilities should not embrace the trappings and methods of prisons. Harsh custodial tactics breed institutional violence. Juvenile corrections systems need to rediscover the importance of the concepts of treatment and rehabilitation that are central to their missions.

Concluding Observations

The horrid conditions of confinement found in the California DJJ are not an anomaly. The media has reported many examples of abusive treatment of youth in jurisdictions such as Arkansas, Arizona, Connecticut, Georgia, Florida, Hawai`i, Indiana, Louisiana, the Marianna Islands, Maryland, Mississippi, Nevada, New Jersey, Oklahoma, Puerto Rico, and South Dakota, to name a few. In the last several years, the United States Department of Justice has initiated an unprecedented number of investigations of juvenile facilities under the Civil Rights of

¹⁰ Cathy Spatz Widom, The Cycle of Violence, Washington, D.C.: The National Institute of Justice, 1992.

Institutionalized Persons Act. Youth advocates in many states have challenged the conditions of confinement in federal and state courts as unconstitutional. The National Institute of Corrections and the Office of Juvenile Justice and Delinquency Prevention have continued their training, publications, and technical assistance to improve the circumstances confronting youth in confinement. Non-governmental groups such as Human Rights Watch and Amnesty International have brought these issues to public attention.

One recommendation that I believe could stimulate positive action on this issue would be to amend the federal Juvenile Justice and Delinquency Prevention Act (JJDP) to require that all states receiving federal funds must (1) conduct a comprehensive study of the nature, extent, and causes of rape in juvenile institutions; and (2) that states must present “good faith” plans to OJJDP to remedy this problem. The OJJDP should be required to produce an annual report to the Congress on rape in juvenile facilities, including evidence-based practices to eliminate rape in juvenile institutions. This same approach was put forth by advocates that were concerned with the disproportionate numbers of minority youth in the juvenile justice system. Similar to eliminating rape in juvenile correctional facilities, reducing disproportionate minority confinement is a complex issue and is not likely to be resolved very quickly. But, a new amendment to the JJDP would give great impetus to those looking for solutions and assistance to victims.

We ignore the problem of violence and sexual victimization in juvenile corrections at our own peril. All the youth presently incarcerated will return to our communities in a very short time. They will return home either better or worse for their experience in juvenile corrections. Unchecked violence and sexual assault in juvenile facilities will lead to more tragedies and

victims in the community. Moreover, the failure to protect the troubled and vulnerable young people that are now in juvenile corrections calls into question the legitimacy of our child welfare and juvenile court laws and the humanity of our civilization.

**I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
AND CORRECT. EXECUTED ON THIS 22ND DAY OF MAY, 2006.**

Barry Krisberg, Ph.D.