March 4, 2013

Emilio Álvarez Icaza
Executive Secretary
Inter-American Commission on Human Rights
Organization of American States
1889 F Street, NW
Washington, DC 20006

RE: Human Rights situation of children imprisoned with adults in the U.S.
Hearing – 147th ordinary period of sessions.

Dear Secretary Icaza:

We submit this letter to provide materials and background for the March 11 hearing on the Human Rights situation of children incarcerated in adult prisons in the United States.

The following individuals from our organizations will be present: Deborah LaBelle, Anlyn Addis, and Jennifer Kirby, ACLU of Michigan JLWOP Initiative and Cynthia Soohoo, Bianca Cappellini, Cassie Fleming and Mik Kinkead, International Women’s Human Rights Clinic, City University of New York. In addition, at the hearing, we will present the video testimony of two youths about their incarceration as children in adult prisons and jails, together with the testimony of Professor Brenda Smith, American University Washington College of Law. None of the hearing participants need a visa to enter the U.S.

We are also submitting letters of support from the families of youth, experts and NGOs. A full list of these pre-hearing submissions is attached. This letter refers to a number of public documents and reports. Please let us know if you would like us to provide copies of these documents, and we will be happy to provide them.

Applicable Standards:

In its recent report, *Juvenile Justice and Human Rights in the Americas*, the Inter-American Commission on Human Rights (the “Commission”) sets out the applicable human rights standards for the treatment of youth in conflict with the law and clarifies that the United States, as an OAS member state, is bound by the American Declaration of the Rights and Duties
of Man (the “American Declaration”) and the international corpus juris on children’s rights.\(^1\) The majority state practice and policy in the U.S. of trying and sentencing children as adults and incarcerating children in adult prisons violates Arts. VII and XXV of the American Declaration, Art. 37(c) of the Convention on the Rights of the Child (“CRC”) and Arts. 10 and 24 of the International Covenant on Civil and Political Rights (“ICCPR”). In addition, the treatment of children in adult prisons raises serious issues under Article I, Article II, Article XI, and Article XII of the American Declaration.

**Scope of the Problem**

As recognized by the Commission and the international corpus juris for the protection and the rights of adolescents, children under 18 should not be tried by, sentenced under or incarcerated within the adult criminal justice system.\(^2\) In its report on Juvenile Justice, the Commission stated that it was “extremely disturbed” that a number of states in the United States have set the upper limit for juvenile jurisdiction below 18 and has also expressed concern about laws that allow children to be transferred to adult criminal court in various situations.\(^3\) Moreover, the Commission has also noted the widespread practice of incarcerating children in adult prisons in the United States.

While the Commission has highlighted some aspects of the problem that has arisen from the U.S.’s failure to adhere to standards requiring children to be treated consistent with their status in the realm of sentencing and punishment, this hearing will present evidence of the breadth and depth of the violations, the extent of the ongoing harm resulting from these violations and the inadequacies in the laws and/or failure of compliance with existing laws and regulations that contribute to the continuing harm. We will present specific testimony from the State of Michigan as an exemplar of this issue.

- Thousands of children under the age of 18 in the United States are serving time in adult prisons at any one time, while scores more pass through the system on an annual basis.\(^4\)

---

\(^1\) IACHR Rapporteurship on the Rights of the Child, Juvenile Justice and Human Rights in the Americas, para. 20.

\(^2\) Juvenile Justice in the Americas, paras. 2, 8, 36, 39-43.

\(^3\) Juvenile Justice in the Americas, paras. 40, 86.

\(^4\) The U.S. Department of Justice’s Bureau of Justice Statistics does not provide comprehensive data on the number of youth under 18 admitted to adult correctional facilities throughout the year. However, it does provide single-day prison and jail population counts, including of people under age 18, roughly once a year. The 2011 count of youth under 18 in adult state prisons, federal contract prisons, and adult jails was 7,839. The BJS estimated that 5,900 people under 18 were held in local adult jails in 2011, and 7,560 in 2010. BUREAU OF JUST. STAT., U.S. DEP’T OF JUST., JAILS INMATES AT MIDYEAR 2011-STATISTICAL TABLES 6 (2012), available at http://bjs.ojp.usdoj.gov/content/pub/pdf/jim11st.pdf. The 2011 year-end BJS prison population count found 1,790 youth under 18 in adult prisons, and 149 in contract federal prisons. BUREAU OF JUST. STAT., U.S. DEP’T OF JUST.,
The U.S. is among a minority of nations that allow children in conflict with the law to be tried and sentenced as adults.\textsuperscript{5} In a recent study, the Justice Policy Initiative found that the U.S. has almost six times as many youth in secure confinement as all comparative nations.\textsuperscript{5}

Although the federal and state governments in the U.S. have established separate juvenile justice systems, children under 18 can be tried, sentenced and punished as adults because in many states the juvenile justice system does not extend to 16 or 17 year olds or because state laws allow children to be transferred to the adult criminal system in certain circumstances.\textsuperscript{7}

The majority of children tried, sentenced and incarcerated as adults have not committed serious crimes, nor has their child status been taken into consideration in framing the appropriate sentence or placement.\textsuperscript{8} In Michigan, less than 10\% of those incarcerated in adult prisons were found to have committed a homicide offense,\textsuperscript{9} and a large and substantially increasing number of juveniles are entering adult prison for child status crimes, including probation violations or because they committed a minor offense while on probation.\textsuperscript{10}

Prisons are not appropriate for youth

The state practices that allow children to be tried as adults are disturbing not only because they deny children the protections of the juvenile justice system\textsuperscript{11} but because they subject children to the “grave consequences” of being sentenced as an adult.\textsuperscript{12} Adult prisons are not
tailored to address the developmental needs of children and are an inappropriate place to imprison them.

- Correctional officials, government experts and professional associations oppose incarcerating youth with adults.
  - Correctional administrators and the leading correctional associations in the U.S. recommend removing youth from adult prison facilities.\(^{13}\)
  - Every national association of professionals with a policy regarding the housing of youth in adult facilities rejects the practice.\(^{14}\)
  - The Office of Juvenile Justice and Delinquency Prevention of the Department of Justice, task forces formed by the U.S. Centers for Disease Control and the U.S. Attorney General’s Office have all recommended against laws and policies facilitating the transfer of children into the adult criminal justice system.\(^{15}\)

- It is widely recognized that children between the ages of 14 and 17 who are thrown into adult jails and prisons are at grave risk for sexual and physical violence and assault.\(^{16}\)

- Children are at greater risk of psychiatric break down and depression than adults.

Children in prison are more likely to have experienced trauma and childhood abuse,\(^{17}\) and

---

\(^{13}\) Ziedenberg Letter (Attachment 14) (quoting the Council of Juvenile Correctional Administrators, the Prisoner Rape Elimination Act Commission, the American Jail Association and the National Association of County Organization).

\(^{14}\) Campaign for Youth Justice Letter, p. 4-5 (Attachment 3) (listing twenty-one professional organizations).

\(^{15}\) Id. at p. 2-3; OJJDP BULLETIN, JUVENILE TRANSFER LAWS: AN EFFECTIVE DETERRENT TO DELINQUENCY? 8 (2010) (“To best achieve reductions in recidivism, the overall number of juvenile offenders transferred to the criminal justice system should be minimized.”) available at https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf; CDC TASK FORCE ON COMMUNITY PREVENTATIVE SERVICES, EFFECTS ON VIOLENCE OF LAWS AND POLICIES FACILITATING THE TRANSFER OF YOUTH FROM THE JUVENILE TO THE ADULT JUSTICE SYSTEM (2007), (“the Task Force recommends against laws or policies facilitating the transfer of juveniles to the adult criminal justice system for the purpose of reducing violence.”) available at http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm; ATTORNEY GENERAL’S NATIONAL TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, DEFENDING CHILDHOOD 23 (“No juvenile offender should be viewed or treated as an adult. Laws and regulations prosecuting them as adults in adult courts, incarcerating them as adults, and sentencing them to harsh punishments that ignore and diminish their capacity to grow must be replaced or abandoned.”), available at http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf.

\(^{16}\) 42 U.S.C. §15601(4) (“Young first time offenders are at increased risk of sexual victimization. Juveniles are 5 times more likely to be sexually assaulted in adult facilities rather than juvenile facilities – often within 48 hours of incarceration.”).

\(^{17}\) Terry Kupers Letter, p. 4-5 (Attachment 10).
a significant number of children entering prison have mental or psychosocial disabilities. They are far more likely to be psychologically affected by the confinement and restrictions imposed than their adult counterparts.

- Incarceration in adult facilities places tremendous stress on children and fails to provide adequate mental health services and programming.
- The pressure and fear associated with being in an adult facility make it more likely that children will act out and be subjected to disciplinary measures such as segregation, and serve longer sentences. In addition lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI) youth are also disciplined for not following gender norms.
- A disproportionate number of youth end up in solitary confinement because of misconduct or for protection. Solitary offers little or no programming and the stress of solitary can result in emotional and psychological problems.
- Children in adult prisons die as a result of suicide at a rate of nearly four times that of all other age groups and over six times that of their peer age group who are not incarcerated.

Youth are at grave risk for abuse and irreparable harm in adult prisons and jails

When the state incarcerates a child, it becomes the guarantor of his or her rights to life, physical integrity, and humane treatment; and it has an added obligation of special protection under Article VII of the American Declaration. These obligations require that the state take positive measures to prevent violence by its agents and third parties. Youth in adult prisons and jails are at their most vulnerable and disproportionately victims of physical abuse, torture, sexual violence, and humiliation.

---

19 Juvenile Law Center Letter, p. 2 (Attachment 9); see also Callie Haczynski Letter (Attachment 5) (stating that her grandson seemed “distant, lost and sure of his surroundings”).
21 Kupers Letter, p. 3 (Attachment 10); Sarri Letter, p. 2 (Attachment 11).
22 Sylvie Rivera Law Project Letter, p. 1, 2 (Attachment 13) (youth are disciplined for refusing to wear clothing that matches the sex they were assigned at birth or refusing to cut their hair to conform to gender norms).
23 Kupers Letter, p. 4 (Attachment 10); HRW letter, p. 4 (Attachment 7); see also ACLU and HRW Testimony (Attachment 1). We will not present in-depth information about children in solitary confinement because the ACLU will be conducting a hearing on solitary confinement on March 12, 2013.
24 HRW Letter, p. 7-8 (Attachment 7).
The U.S. Department of Justice (DOJ) has recognized the increased risk of sexual violence upon placing children in adult facilities.\textsuperscript{26} In prison, children are more than eight times as likely to have a substantiated incident of sexual violence, based on reported incidents.\textsuperscript{27} The true prevalence of these rapes and sexual assaults of children is understandably higher – both due to under-reporting, lack of safe non-futile avenues for reporting and absence of adequate investigations to sustain allegations.

- As detailed in testimony to be presented at the hearing, youth who are victims of sexual violence by adult prisoners suffer extreme trauma as they continue to be confined with their assailants, live in fear of sexual and life threatening diseases and suffer deep and often irreparable damage, both physically and emotionally.

- Children are twice as likely to be physically harmed by staff and 50\% more likely to be attacked with a weapon in adult prisons than in juvenile facilities, suffering serious and long lasting physical injuries.\textsuperscript{28}

- Once in an adult prison, youth who are viewed as victims of sexual violence or at increased risk of physical harm are often placed in solitary confinement as the remedy. Isolation of youth constitutes cruel, inhuman and degrading treatment, inflicting severe emotional and psychological harm\textsuperscript{29} and depriving them of necessary physical exercise, limiting their food and access to programming.\textsuperscript{30}

\textbf{Other Rights Violations}

The Commission and international law make clear that the state’s main objective when dealing with children in conflict with the law should be their rehabilitation, comprehensive development and reincorporation into a constructive role in society.\textsuperscript{31} The State is guarantor of the other rights of incarcerated children and must take positive measures to make sure their rights are enjoyed.\textsuperscript{32} Yet, youth are detained in adult prisons with little or no rehabilitative programming and are deprived of age-appropriate education, access to family and community,

\textsuperscript{26} 42 U.S.C. § 15601(4).
\textsuperscript{27} National Standards to Prevent Detect, and Respond to Prison Rape, 77 Fed. Reg. 37106-01, 37128 (Jun.20, 2012) (amending 28 C.F.R. pt 115) ("[F]rom 2005 through 2008, 1.5 percent of victims of substantiated incidents of inmate-on-inmate sexual violence in State prison were under 18, even though under-18 inmates constituted less than 0.2 percent of the State prison population.").
\textsuperscript{28} HRW letter, p. 2-3 (Attachment 7).
\textsuperscript{29} Kupers Letter, p. 3-4 (Attachment 10).
\textsuperscript{30} HRW Letter, p. 4-5 (Attachment 7); ACLU and HRW Testimony, p. 1-2 (Attachment 1).
\textsuperscript{31} Juvenile Justice in the Americas, paras. 3, 26, 30-31.
\textsuperscript{32} Juvenile Justice in the Americas, paras. 437, 440-49.
legal assistance, medical and mental health care and specifically, counseling and therapeutic services.

- Adult corrections personnel lack the specialized training to meet the educational and mental health needs of young people and cannot provide the necessary programs, classes or activities to address their rehabilitative potential.  

- Lack of education is one of the most serious gaps for youth under 18. Often, the education available in adult prisons ends with a Graduation Equivalency Diploma (GED). For many youth in Michigan prisons, the GED programming is by self-study without regard to learning disabilities. Children are often deemed ineligible for existing educational and vocational programming or placed at security levels that reduce their access to programming.

- U.S. adult prisons are often located far from a youth’s family and friends.

- Youth in adult prisons do not receive appropriate access to medical and mental health care. Often, access to basic and necessary medical care is conditional on monetary payment and most children lack the resources to pay for these services. Prisons also discriminatorily deny gender-affirming health care including hormones and other transition-related treatments, devastating the mental health of transgender youth.

- The lack of adequate mental health care contributes to young people’s feelings of hopelessness. Youth in adult facilities are eight times more likely to commit suicide.

---

33 Juvenile Law Center Letter, p. 1 (Attachment 9).
35 Report to the Legislature, Education Feasibility Study (June 1, 2010) (The MDOC does not provide a high school diploma program) available at http://www.michigan.gov/documents/corrections/06-01-10-__Section_923_322333_7.pdf.
36 Irene Y. H. Ng, et. al., Comparison of Correctional Services for Youth Incarcerated in Adult and Juvenile Facilities in Michigan, The Prison Journal 18 (2012), at 16.
37 HRW Letter, p. 6 (Attachment 7); Haczynski Letter (Attachment 5) (stating her disappointment that since her grandson’s incarceration at age 15, he has not had access to a GED course, trade class or bible study).
38 Callie Haczynski lives in Illinois on a fixed income, and has difficulty talking and visiting with her grandson who is incarcerated in a Michigan prison. Haczynski Letter (Attachment 5).
39 Shook Letter, p. 2 (Attachment 12); Kupers Letter, p. 5 (Attachment 10).
40 SLRP Letter, p. 3 (Attachment 13).
41 Kupers Letter, p. 5 (Attachment 10); Juvenile Law Center Letter, p. 2 (Attachment 9).
Convincing and Incarcerating Children as Adults is Punitive and Not Rehabilitative

Incarcerating children in adult prisons without appropriate education and vocational programming, access to family and community, and mental and medical health services fails to rehabilitate children and leads to high rates of recidivism.

- Children transferred to the adult criminal justice system are 34% more likely to be re-arrested than youth processed in the juvenile system. The U.S. Department of Justice linked the high recidivism rates “to the lack of access to rehabilitative resources in the adult corrections system.”

- Criminal convictions impose stigma and barriers that will make it difficult for children to reintegrate, access education, find jobs and housing. A study undertaken by the American Bar Association’s Criminal Justice Section identified over 38,000 statutes imposing collateral consequences on individuals with a criminal record.

Discriminatory Impact of Laws and Sentencing Policies

The different statutes which allow juveniles to be transferred to adult courts result in discriminatory treatment of children depending upon where they live, their socio-economic class, and their race and gender.

- Because of the different laws in each state within the United States, whether or not a child will be tried and sentenced as an adult often will depend on where he or she lives. For example in New York all 16 and 17 year olds are tried and sentenced as adults. Michigan automatically treats all 17 year olds as adults and allows children as young as 14 to be treated as an adult for many offenses, based solely on a prosecutor’s discretion.

- Whether or not children get sentenced as adults often reflects organizational, political and financial factors rather than the individual characteristics of the child. In some counties in Michigan, the cost of incarceration also factors into the determination to treat a youth as

---

43 Id. at 26.
44 Juvenile Law Center Letter, p. 2 (Attachment 9).
45 Shook Letter, p. 3 (Attachment 12).
46 SLRP Letter, p. 2 (Attachment 13).
47 M.C.L. §712A.2(a)(1); M.C.L. §712A.4.
an adult, where local entities avoid the cost of placement in a county juvenile facility by sending youth to adult prisons. 48

- The discretion given to courts and prosecutors under transfer statutes has resulted in significant racial disparities between children getting adult sentences. 49 Compared to White children, African American children are nine times more likely to receive an adult prison sentence, Latino children are 40% more likely to be admitted to adult prisons, and Native children are 1.84 times more likely to be committed to an adult prison. 50

- 75% of youth in Michigan charged with a homicide crime were represented by court-appointed counsel because their family could not afford to hire an attorney. 51

- Although there are no specific statistics about the rates of abuse of girls in adult prison, simply being an incarcerated woman is a risk factor for sexual assault and rape. 52 In 2006, 34% of the substantiated victims of sexual violence in state operated youth facilities were female even though they accounted for just 11% of the population. 53 There are fewer protections from abuse for girls incarcerated in adult facilities. Girls in Michigan are placed in general population with no separation from adults. Following rampant sexual violence by male staff against women and girls in their custody, Michigan currently prohibits direct cross-gender supervision in housing units. 54 Cross-gender pat down searches of female inmates currently are not prohibited by federal law. 55

48 Shook Letter, p. 2-3 (Attachment 12).
49 Shook Letter, p. 3 (Attachment 12).
50 CFYJ Letter, p. 4 (Attachment 3).
52 HON. REGGIE B. WALTON (CHAIR) ET. AL., NATIONAL PRISON RAPE ELIMINATION COMMISSION REPORT, at 17 (“Simply being female is a risk factor.”).
54 See Everson v. MDOC, 391 F.3d 737, 760 (6th Cir. 2004) (The Sixth Circuit, in reviewing the history of abuse of women at the hands of male MDOC employees in Michigan’s prisons, characterized the level of sexual abuse of women prisoners in Michigan as “endemic”); Neal v. MDOC, 230 Mich.App. 202, 210-211; 583 N.W.2d 249 (1998); Neal v. MDOC, 2009 WL 187813 (Mich.App. 2009) (affirming a lower court finding that the MDOC was deliberately indifferent to protecting female prisoners from sexual violence, and that male corrections personnel systemically engaged in a pattern of harassment of female prisoners).
55 The regulations implementing PREA provide that prisons and jails shall ban cross-gender pat-down searches of female inmates absent exigent circumstances by August 20, 2015 or August 21, 2017 for smaller facilities. 28 C.F.R. 115.15(b). However, as discussed below, there are substantial question as to whether states will comply with the PREA regulations and whether there is adequate monitoring.
LGBTQI youth often face familial rejection and experience homelessness, difficulties in school, substance abuse and mental health issues at higher rates than other youth, and as a result are disproportionately targeted for arrests and funneled into adult jails and prisons.56

**Federal legislation is inadequate and poorly monitored to ensure compliance**

The U.S. federal laws, that are designed to protect children in conflict with the law, fail to prohibit the incarceration of youth with adults or to prevent the human rights violations that stem from the practice. Moreover, the mechanisms in place to ensure compliance with these laws have been inadequate to compel state compliance.

- The Juvenile Justice and Delinquency Prevention Act (JJDPA) is a federal law that conditions state funding on a requirement that states prohibit the placement of children under juvenile court jurisdiction in adult jails except under very limited circumstances. However, states interpret these protections as inapplicable to children prosecuted in the adult criminal justice system, and to youth the states deem to be adults. This results in children under the age of 18 being housed with adult prisoners.57
  - In its report on juvenile justice, the Commission stated that the exclusion of children tried as adults from a U.S. federal law prohibiting the imprisonment of children in adult facilities was disturbing.58

- Effective August 20, 2012, federal regulations implementing the Prison Rape Elimination Act (PREA) require that children (defined as under the age of 18) in adult facilities “shall not be placed in a housing unit in which the youthful inmate will have sight, sound, or physical contact with any adult inmate through use of a shared dayroom or other common space, shower area, or sleeping quarters.”59 Outside housing units, facilities are instructed to “maintain sight and sound separation” between all youth under the age of 18 or “provide direct staff supervision.”60
  - These regulations still allow children to be placed in adult facilities, and the Commission has cautioned that efforts to separate children within adult facilities

---

58 Juvenile Justice in the Americas, para. 415.
60 28 C.F.R. 115.14(b).
are insufficient where children come into contact with the adult population in various ways, “making the arrangement one of segregation in name only.”

- Housing children in adult facilities also makes it likely that they will not have staff specially trained to work with youth. The Commission has expressed concern where “security staff in detention facilities have no training at all regarding the specific rights and needs of children” and there is a “lack of training in medical, psychiatric, or psychological areas in order to respond to the special needs of certain adolescents and children.”

- The PREA regulations acknowledge that implementation of this standard could result in children being placed in isolation and caution that this remedy should be avoided as it may negatively impact their health, access to programming, recreation and work opportunities. In practice, however, Michigan routinely places children in solitary confinement and does not provide the daily large muscle exercising and other services required. The Commission’s Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas emphasize that the separation of persons cannot be used to justify “discrimination, the use of torture, cruel, inhuman or degrading treatment or punishment, or the imposition of harsher or less adequate conditions on a particular group.”

- The regulations are binding on federal prisons and state and local facilities, however the only enforcement mechanism for state and local facilities is loss of federal funding. The federal Government Accounting Office has noted that beyond loss of funds, PREA “does not require full nationwide compliance with the standards, nor does it enact a mechanism for [the Justice Department] to direct or enforce such compliance.” The GAO report goes on to state that it is “virtually

---

61 Juvenile Justice in the Americas, para. 420
62 Juvenile Justice in the Americas, para. 94
63 The regulation states that “Agencies shall make best efforts to avoid placing youthful inmates in isolation to comply with this provision. Absent exigent circumstances, agencies shall not deny youthful inmates daily large-muscle exercise and any legally required special education services to comply with this provision. Youthful inmates shall also have access to other programs and work opportunities to the extent possible.” 28 C.F.R. 115.14(c)
64 IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XIX.
65 42 U.S.C. 15607(b).
Emilio Álvarez Icaza, Executive Secretary
Inter-American Commission on Human Rights
Organization of American States

RE: Human Rights situation of children imprisoned with adults in the U.S.
Hearing – 147th ordinary period of sessions.

March 4, 2013
Page 12

certain” that state and local facilities will not spend the funds necessary to fully comply.67

Michigan’s laws, policies and practices violate human rights law and U.S. law

Juvenile court jurisdiction in Michigan only extends until age 16, and children between 14 and 16 are automatically tried and sentenced as adults for certain crimes. Children of any age can be designated as an adult or waived to adult court.68 As recognized by the Commission and the international corpus juris for the protection of the rights of and adolescents, these practices are clear violations of international law.69 Further, Michigan’s incarceration of children in jails and prisons violates federal law.

- 17 Year Olds. Michigan law requires that all 17 year olds in conflict with the law be tried, sentenced and incarcerated as adults and thereby denied any juvenile rehabilitation services.70 Because state law mandates that 17 year olds are charged and adjudicated as adults, Michigan takes the position that they are not covered by federal laws requiring the separation of adults and children in jails and prisons.

- Children under the age of 16. Under Michigan law, children between 14 and 16 years old are automatically tried, sentenced and incarcerated as adults for certain offenses.

- Jails. Michigan incarcerates children in adult jails. 17 year olds are treated as part of the general adult population. While there is some separation of children 16 years of age and under, it is inadequate under federal law and human rights law.

  o Michigan interprets federal law to allow children under the age of 17 to be confined in adult jails because they are charged and adjudicated as adults, and in certain situations without adequate separation from adults and is non-compliant with PREA.72

67 The regulation provides that states that do not will lose five percent of any prison funding grants from the federal Department of Justice they would otherwise receive, unless the Governor submits an assurance that such 5% will be to enable the State comply with the standards in future years. 42 U.S.C. 15607(c).
68 M.C.L. §712A.2(a)(1); M.C.L. §712A.4.
69 Juvenile Justice in the Americas, paras. 2, 8, 36, 39-43, 86.
70 M.C.L. §712A.2(a).
72 M.C.L. §764.27a(3).
Although Michigan law requires that children under the age of 17 be “held physically separate from adult prisoners”\textsuperscript{73} or in a “room or ward out of sight and sound from adults,”\textsuperscript{74} the law does not require that children be removed from jail, placing them at risk of violence and incarcerating them in an atmosphere that does not provide adequate services, programming or protection.

- **Prisons.** Michigan incarcerates children 14-17 years of age in adult prisons.
  
  o The Michigan Department of Corrections (MDOC) treats 17 year olds as adults for all purposes in prison despite policies that recognize their vulnerabilities.\textsuperscript{75}
  
  o MDOC policy states that children 16 years old or younger shall be “housed in specialized areas” “to the extent practicable.” In practice, Michigan does not keep all children under 17 in separate housing units. Moreover, these children mix with adults in outdoor yards, showers and programming areas.
  
  o MDOC policies do not require that children be separated from adults at all times, placing them at risk of violence and incarcerating them in an atmosphere that does not provide adequate services, programming or protection for children.

- **Michigan laws and policies violate U.S. law.**
  
  o The JJDPA prohibits the incarceration of children in jail who are accused of misdemeanors, except under very limited circumstances.\textsuperscript{76} Michigan law allows children charged with misdemeanors to be incarcerated in adult jails.\textsuperscript{77}

\textsuperscript{73} Id. Children 16 years old or under accused of a felony may be confined to an adult jail with the prior approval of the county sheriff if she or he is “held physically separate from adult prisoners.”

\textsuperscript{74} A child whose “habits or conduct are considered to be a menace to other children, or who may not otherwise be safely detained” may be confined to an adult jail upon court order in “a room or ward out of sight and sound from adults.” M.C.L. §764.27a(2).

\textsuperscript{75} Michigan Department of Corrections, Policy Directive, “Prison Placement and Transfer,” No. 5.01.140, effective 10/10/11, at 8E. (“to the extent practicable, youthful offenders shall have no more than incidental sight or sound contact with prisoners 17 years old or older in living, program, dining or other common areas of those institutions. Any other sight or sound contact... shall be minimized, brief, and in accordance with Department policy.”)

\textsuperscript{76} 28 C.F.R. 31.303(e) (providing that juveniles must be removed from jails except for juveniles who are charged with a felony in criminal court and for confinement for up to six hours from the time of entering secure custody or immediately before or after a court appearance).

\textsuperscript{77} See supra, note 71.
Emilio Álvarez Icaza, Executive Secretary
Inter-American Commission on Human Rights
Organization of American States

RE: Human Rights situation of children imprisoned with adults in the U.S.
Hearing – 147th ordinary period of sessions.

March 4, 2013
Page 14

- The federal regulations implementing PREA prohibit sight, sound, or physical contact with any adult inmate through use of a shared dayroom or other common space, shower area, or sleeping quarters. Michigan has failed to separate 17 year olds from the adult population or to provide the appropriate sight and sound separation for children 16 and under.

- Michigan’s confinement practices violate state law.

  - Under Michigan law a court may not impose a sentence of imprisonment in a county jail “unless the present county jail facility for the juvenile’s imprisonment would meet all the requirements under federal law and regulations for housing juveniles. Additionally, the court shall not impose the sentence until it consults with the sheriff to determine when the sentence will begin to ensure that space will be available for the juvenile.”

**Law reform efforts and best practices**

- In the last few years, 19 states have passed legislation reforming the treatment of children in the criminal justice system and recognized the developmental differences between youth and adults. These efforts include laws that limit the ability to house youth in adult jails and prisons, expand juvenile court jurisdiction, strengthen transfer laws so that youth are more likely to stay in juvenile court, and change mandatory sentencing laws to take into account the special status of youth.

  - In 2007, Connecticut raised the maximum age of juvenile court jurisdiction from 15 to 17. The new law has kept over 8,000 16 year olds from being prosecuted and punished in the adult criminal justice system. These 16 year olds have had higher success rates in alternative programs and lower arrest rates than younger children. The reform had less of an impact on juvenile caseloads and cost less than expected.

  - As of 2010, the age of adult criminal jurisdiction in Illinois is 18 for misdemeanors and 17 for felonies, and the state keeps children who have been tried as adults in juvenile facilities until they reach 18.

---

78 M.C.L. §712A.18(16).
79 Campaign for Fair Sentencing of Youth Letter, p. 5-6 (Attachment 2).
80 Justice Policy Institute Letter, p. 2-3 (Attachment 8) (17 year olds were only added to juvenile court jurisdiction on July 1, 2012 so comparable statistics are not yet available).
81 Bernadine Dohn Letter, p. 2 (Attachment 4).
Following the hearing, we respectfully request that the Commission consider:

- Conducting a further hearing to consider issuing precautionary measures to prevent the placement of children in adult prisons and jails in Michigan and to ensure full compliance with PREA standards, together with monitoring in light of the ongoing and irreparable harm of sexual violence suffered by youth in Michigan prisons and jails.

- Conducting a site visit to the United States to visit adult prisons where children are incarcerated and to interview children, their families, experts and NGOs working on this issue.

- Requesting that the state compile additional information regarding:

---

Marc
Inter-America
Emili
e
RE: Human Rights situation of children imprisoned with adults in the U.S.
Hearing – 147th ordinary period of sessions.
March 4, 2013
Page 16

- The precise number of children charged or sentenced as adults or held in jails and
  prisons;
- The risk and incidence of physical and sexual violence for children held in adult
  facilities;
- The rates at which children are subjected to solitary confinement or other forms of
  physical and social isolation in adult jails and prisons;
- The number of children subject to adult criminal supervision (such as parole,
  probation, and sex offender registration); and
- A further request that any such statistics be disaggregated by age, race, sex,
  gender or gender identity, disability status, and sexual orientation.

- Reiterating the recommendations in the Commission’s report, Juvenile Justice and
  Human Rights in the Americas, stating that:

  - The state should “ensure that the juvenile justice system is applied to all
    persons between the minimum age of criminal responsibility and 18 years of
    age,” including by:
    - Progressively raising the age of responsibility under the juvenile justice
      system to age 18; and
    - Adopting laws that prohibit children under 18 from being (1) prosecuted
      in adult court, (2) sentenced under the same sentencing guidelines as
      adults, and (3) incarcerated in adult prison facilities. (Recommendation 12
      and 12(a) and (c)).

  - The state should ensure that children deprived of their liberty “are able to
    exercise all those rights whose limitation is not warranted on the grounds of
    their deprivation of liberty,” including:
    - Ensuring the right to life and physical integrity;
    - Expressly prohibiting solitary confinement and any form for cruel,
      inhuman or degrading treatment;
    - Providing educational programs that meet the same content and attendance
      requirements required of children who are not deprived of liberty;
• Guaranteeing a diet that is adequate for children’s health and strength and takes into account that they are still growing;

• Making available adequate medical services and treatment and giving special consideration to individual needs; and

• Permitting and encouraging contact with family and community, including by setting up flexible visiting hours and financial assistance for visits. (Recommendation 19 and 19(b), (c)-(f), and (i)-(k)).

  o The state should “[e]stablish specific limits for the enforcement of custodial sentences in the case of children,” including by:

    • Guaranteeing that custodial sentences for children are used only in exceptional circumstances as a last resort; and

    • Reducing excessively long sentences and abolishing life imprisonment sentences, with or without parole (Recommendation 18 and 18(a) and (d) and (f)).

  o The state should “[e]nsure the existence of a range of alternatives to the deprivation of liberty, and make certain that such measures are the first option in the case of minors,” including by:

    • Enacting and enforcing laws establishing non-custodial alternatives to the deprivation of liberty in the case of minors, with special emphasis on community programs;

    • Adopting budgetary measures to ensure that alternatives to incarceration are available nationwide and can properly function; and

    • Encouraging community members and victims to participate in the design of the alternative measures. (Recommendation 16 and 16(a), (c) and (d)).

• Issuing a statement finding that current U.S. laws and practices that allow children to be tried and sentenced as adults and incarcerated in adult facilities violates the U.S.’s obligations under the American Declaration.

• Scheduling a working group meeting with the United States to continue this dialogue.
Respectfully submitted,

Cynthia Soohoo  
Director International Women’s Human Rights Clinic  
City University of New York

Deborah LaBelle  
Juvenile Life Without Parole Initiative  
American Civil Liberties Union of Michigan