Report for the NY Governor’s Commission on Youth, Public safety & Justice

International Human Rights Standards:
Juvenile Justice Administration and Conditions of Youth Detention

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I. Background and Introduction

This report is meant to provide the New York Governor’s Commission on Youth, Public safety & Justice with key international human rights standards regarding administration of juvenile justice and detention of youth, so as to inform the process of making concrete, actionable recommendations regarding youth in New York’s juvenile and criminal justice systems. Pursuant to its mandate, which focuses on juvenile justice reform, the Commission is also considering policy changes that would raise the age of criminal responsibility in New York. Current events, including the recent release of a U.S. DOJ report revealing widespread abuse of adolescents in New York City jails, make clear the dire need for New York to change the way it treats youth in conflict with the law. They also underscore the important role the Governor’s Commission can have in bringing the state in line with human rights norms.

It is not just the practices of some correctional officers in one jail that violate human rights standards. New York State’s current policies regarding administration of justice and conditions of confinement also contravene international human rights standards in multiple ways, most notably by automatically treating certain youth as adults, instead of as youth. Under human rights standards, youth in conflict with the law, including sixteen and seventeen year olds, should not be in the adult criminal justice system, nor held in adult jails or prisons. Furthermore, youth should only be deprived of their liberty as a measure of last resort, for the minimum period possible, and only in conditions appropriate for their continued development.

International human rights standards call for governments to address unjust social justice systems in sentencing, to diminish the use of detention, to increase services for youth, and to create conditions of detention that help youth flourish, by serving their unique developmental needs and respecting their inherent dignity as human beings. These standards are widely accepted

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internationally and represent the culmination of findings on best practices by experts members international human rights treaty bodies, the United Nations (UN) General Assembly, the UN Human Rights Council; as well as by regional human rights monitoring and enforcement bodies, such as the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, and the European Court of Human Rights. The United States has signed and ratified major international human rights treaties that provide protections to people deprived of liberty, and the government has stated its commitment to meeting its obligations under those instruments. Our hope is that the Commission will make recommendations that strive to meet and exceed international human rights standards concerning youth who are in conflict with the law.

The section following this introduction describes international human rights standards regarding the administration of juvenile justice, with subsections addressing (A) treatment of youth as youth, not as adults; (B) the principles of least use of imprisonment and promoting alternatives to imprisonment; (C) the role of social justice in the administration of juvenile justice; and (D) discretion in sentencing. The third section discusses conditions of confinement, should youth be deprived of their liberty. The subsections therein focus on: (A) the segregation of youth and adult populations, including standards applicable to youth 18 up to at least 21 years of age; (B) international human rights standards for conditions of confinement for youth, including specific information on physical facilities, visiting, hygiene, and nutrition; (C) standards applicable to programming for detained youth, specifically regarding education, job training and recreation; (D) standards on medical and mental health care for detained youth; (E) limitations on the use of force; (F) international human rights standards related to discipline of youth deprived of their liberty, including prohibitions on solitary confinement. The final section lists some recommendations.

II. ADMINISTRATION OF JUVENILE JUSTICE

A. Youth Should Be Treated as Youth, Not as Adults

International human rights standards call on states to ensure that youth are afforded protections that take into consideration their status as minors. These standards reflect an understanding that youth are particularly vulnerable to the negative effects of incarceration, and are particularly vulnerable to abuse, such as sexual assault and rape. Additionally, the detention of youth with adults runs counter to a core principle of international juvenile justice standards, the rehabilitation and reintegration of youth into society.

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5 While international human rights standards make clear that youth under eighteen years of age must be treated as youth in criminal processing and in detention, international human rights bodies also call for governments to apply juvenile justice rules and regulations to people aged 18 up to at least 21. See infra, § III (A).
7 Beijing Rules, supra note 2, at R.13.
8 International Covenant on Civil and Political Rights, supra note 1, at art. 14; see also UN Human Rights Committee, General Comment No. 17, Article 24 (Rights of the Child), ¶ 2 (Apr. 7, 1989) (“[C]onvicted juvenile offenders shall be subject to a penitentiary system that involves segregation from adults and is appropriate to their age and legal status, the aim being to foster reformation and social rehabilitation.”).
International human rights law makes clear that youth should be treated as youth, and not as adults in both the administration of justice and in detention. Prosecuting youth as adults and jailing or imprisoning youth with adults violate U.S. obligations under multiple human rights treaties, as well as under the international *corpus juris* on children’s rights. In 2014, both the UN Human Rights Committee and the UN Committee on the Elimination of Racial Discrimination called on the U.S. to ensure that juveniles are not transferred to adult courts and that they are separated from adults during pre-trial detention and after sentencing. In 2006, the UN Committee Against Torture criticized the practice in some parts of the U.S. of incarcerating youth in adult jails and prisons.

International and regional human rights experts now encourage governments to not only apply juvenile justice rules and regulations to persons under eighteen, but also to those aged 18 up to at least 21. This includes youth who attain the age of majority while serving a custodial sentence. The Inter-American Commission on Human Rights (IACHR) recommends that youth who are aged 18 to at least 21 should not necessarily be confined with adults. There should be an appropriate best interest of the youth standard in deciding where a detained youth who turns 18 will serve any remaining period of confinement. New York has several alternatives to incarceration programs funded by New York State, New York City, and local foundations. Expanding these would allow for youth to avoid custodial sentencing while receiving appropriate services and treatment.

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10 *E.g.* International Covenant on Civil and Political Rights, *supra* note 1 at art. 10(2)(b).

11 The international *corpus juris* on children’s rights includes the Convention on the Rights of the Child and its General Comment No. 10, the UN Standard Minimum Rules for the Treatment of Prisoners, the UN Standard Minimum Rules for the Administration of Juvenile Justice, the UN Standard Minimum Rules for the Non-custodial Measures, the UN Rules for the Protection of Juveniles Deprived of their Liberty, the UN Guidelines for the Prevention of Juvenile Delinquency, and Principle XIX of the Inter-American Commission on Human Right’s Principles and Best Practices on People Deprived of Liberty in the Americas.


15 UN Committee on the Rights of the Child, General Comment No. 10, *Children’s Rights in Juvenile Justice*, CRC/C/GC/10, ¶ 38 (25 April 2007) [hereinafter CRC General Comment No. 10].

16 *Id.*, at ¶ 86.

17 Inter-Am. Comm’n on Human Rights, Rapporteurship on the Rights of the Child, *Juvenile Justice and Human Rights in the Americas*, ¶ 427, OEA/Ser.L/V/II Doc. 78 (July 13, 2011). (The IACHR recommends that states undertake a hearing to determine whether youth who attain the age of majority while serving a custodial sentence “should remain incarcerated or be released, or whether the remaining portion of the custodial sentence can be commuted and replaced with a non-custodial measure.”).

B. Standards on Least use of imprisonment and Promoting Alternatives to incarceration

Under international human rights standards, rehabilitation and restorative justice, instead of repression and retribution, should remain central in the administration of juvenile justice;¹⁹ as should the best interest of the youth in question.²⁰ As such, because imprisonment is the most severe punishment, deprivation of a youth’s liberty must be a measure of last resort;²¹ meaning it should not be used particularly where the case does not involve the most serious criminal acts or when other methods that do not restrict liberty can be used instead.²² International human rights standards call for imprisonment of youth to be restricted in both quantity and in time,²³ meaning that the arrest, detention, and imprisonment of a youth should not only be a measure of last resort, but also, if a youth is deprived of his or her liberty, it should be for the shortest time necessary.²⁴ The Standard Minimum Rules for the Treatment of Prisoners (SMR) even call for “young person[s]” who come into contact with the juvenile justice system not to be sentenced to imprisonment at all.²⁵

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¹⁹ CRC General Comment No. 10, supra note 15, at ¶ 10.
²⁰ Id.; see also Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 310.
²³ Convention on the Rights of the Child, supra note 2, art. 37(b); see also UN Committee on the Rights of the Child (CRC), Concluding Observations: Suriname, ¶ 70, U.N. Doc. CRC/C/SUR/CO/2 (June 18, 2007) [hereinafter CRC Concluding Observations Suriname]; see also Beijing Rules, supra note 2, at R. 11.1, Commentary to R. 19 (“Rule 19 aims at restricting institutionalization in two regards: in quantity ("last resort") and in time ("minimum necessary period").
To ensure deprivation of liberty is a measure of last resort, under international human rights standards, governments should develop and implement alternatives to imprisonment or detention. To meet international standards, before trial and post-sentencing, such alternatives must be available for all youth accused of or found to have broken the law. It should be a well-established practice that youth offenders be removed from the criminal or juvenile justice systems and referred to alternative, namely, social services; instead of undergoing judicial proceedings. In urging this practice, the drafters of the Beijing Rules noted the benefits that would accrue to both the youth and society as a whole by hindering the negative effects of subjecting the youth to legal proceedings. These benefits include minimizing the stigma associated with a conviction and a sentence, and the impact of removing youth from their communities, the effects of which youth are particularly vulnerable to given their developmental stage.

Once justly assigned to diversion, free of will, youth should consent to the diversion program(s) they are to undergo, be apprised of the details as well as consequences of not cooperating, and be permitted to seek legal counsel or other proper help for determining the suitability or desirability of the measure(s) offered. Especially where a youth is under the age of 16, parental involvement should be fostered by also seeking consent of the parent. Under international


27 CRC General Comment No. 10, supra note 15, at ¶¶ 70, 80.

28 Convention on the Rights of the Child, supra note 2, at art. 40(3)(b); See also CRC General Comment No. 10, supra note 15, at ¶ 24.

29 Beijing Rules, supra note 2, at Commentary to R. 11.

30 Id.

31 Beijing Rules, supra note 2, at Commentary to Rs. 13, 19.


33 To strengthen the chances of avoiding unlawful behavior and chances of social integration, conditions of the measures should be practical, precise and few as possible. Tokyo Rules, supra note 32, at R. 12.2.

34 “The failure of a non-custodial measure should not automatically lead to the imposition of a custodial measure.” While revocation is possible recourse, so is modification, which are both subject to appeal. Tokyo Rules, supra note 32, at R. 14.

35 CRC General Comment No. 10, supra note 15, at ¶ 27.

36 Id.
human rights standards, diversion should not be deemed to be a conviction or a part of “criminal records,” and upon its completion, the case ought to be considered complete.\textsuperscript{37}

Models of alternative measures can include “care, guidance and supervision orders; counselling; probation; foster care; [and] education and vocational training programmes.”\textsuperscript{38} Should judicial proceedings be undertaken despite international human rights standards that urge to the contrary, throughout the process, alternatives to a court conviction should continuously be explored.\textsuperscript{39} Also, to mitigate the negative impact collateral to deprivation of liberty, be it in the form of an alternative remedy, imprisonment, or detention, the government must allow for the youth to continue with education.\textsuperscript{40} The government should also facilitate the maintenance and even strengthening of family ties, as well as the maintenance of a relationship with the community and re-assimilation to community life.\textsuperscript{41}

Pretrial and preventive detention must also be used only as a measure of last resort and for the minimum period possible under international human rights standards, with alternatives to detention being applied as early as possible, particularly in the case of youth.\textsuperscript{42} International standards also call for well-defined limits on the use of preventive detention so as to eliminate abuse of discretion by judges or administrative authorities.\textsuperscript{43} To meet human rights standards, governments must never use pretrial and preventive detention as a method of imposing punishment prior to trial.\textsuperscript{44} Within this narrow scope, justifications for the rare use of pre-trial detention of youth must be clearly delineated in law, and should also be limited to ensuring appearance at trial and to instances where the youth legitimately poses immediate danger to themselves or others.\textsuperscript{45} Within these standards, there is no allowance for simple inability to pay bail as a reason for pre-trial or preventive detention. Maximum length of pre-trial detention must

\textsuperscript{37} Id.
\textsuperscript{38} Convention on the Rights of the Child, \textit{supra} note 2, at art. 40(4); see also CRC General Comment No. 10, \textit{supra} note 15, at ¶ 27 (offering “community service, supervision and guidance by for example social workers or probation officers, family conferencing and other forms of restorative justice including restitution to and compensation of victims” as among the array of alternatives to incarceration that governments have implemented); see also Beijing Rules, \textit{supra} note 2, at R. 18 (suggesting that a combination of measures may be appropriate; also, giving high regard to programs “that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance”); see also Tokyo Rules, \textit{supra} note 32, at Rs. 8.2, 9.2.
\textsuperscript{40} Inter-Am. Comm’n on Human Rights, \textit{supra} note 17, at ¶ 313.
\textsuperscript{41} Id.
\textsuperscript{42} Tokyo Rules, \textit{supra} note 32, at Rs. 6.1, 6.2; see also UNRPJDL, \textit{supra} note 2, at R. 17 (“Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention.”); see also Beijing Rules, \textit{supra} note 2, at R. 13.1; Inter-Am. Comm’n on Human Rights, \textit{supra} note 17, at ¶ 291.
\textsuperscript{44} CRC General Comment No. 10, \textit{supra} note 15, at ¶ 80 (The use of pretrial detention should be minimized because it is a punishment which violates the presumption of innocence); see also Inter-Am. Comm’n on Human Rights, \textit{supra} note 17, at ¶ 289.
\textsuperscript{45} CRC General Comment No. 10, \textit{supra} note 15, at ¶ 80 (The use of pretrial detention should be minimized because it is a punishment which violates the presumption of innocence); see also Inter-Am. Comm’n on Human Rights, \textit{supra} note 17, at ¶ 289.
also be limited by law, and subject to regular review. Under international human rights standards, the maximum length of time a youth can be detained pre-trial should be no more than four weeks.

Human rights standards also call for youth to have prompt legal assistance when arrested. If detained by police, they should appear no later than 24 hours before a competent authority to determine the legality of their continued detention. If detained, that decision should be reviewed at least every two weeks, and youth should be brought before an independent court no later than thirty days after the start of their period of pretrial detention. Additionally, an appropriate court or judge should make a final determination on the charges against a youth no later than six months following presentation of the charges, without “stopping the clock” as currently occurs under New York procedures. As with any detained youth, while held pending trial or during trial, a youth must be afforded all the necessary care, protection, and assistance necessary under human rights standards to meet their educational, vocational, medical, physiological and other needs.

Prior to subjecting youth in conflict with the law to any measures of diversion, under international human rights standards, compelling evidence must exist indicating that the individual did in fact commit the alleged offence. Additionally, the youth must voluntarily, without coercion, intimidation, or pressure, admit culpability for the offence. Finally, should there be a subsequent legal hearing, the admission must not be used against the youth.

Unfortunately, the standards designed to prohibit coercion of youth in the administration of justice, and to protect them from pretrial detention are routinely violated in New York. For those released on bond, coercion occurs in the form of continued court appearances, while prolonged detention acts as a form of coercion for those held in jail. The executive director of the Bronx Defenders, which represents approximately 30,000 people a year, notes that defendants often plead guilty to charges, not necessarily because they lack a strong defense, but because they need to stop the debilitating interference with their work and education posed by continual court appearances over months and even years. Despite their allegations of innocence and desire for an elusive speedy trial, defendants are threatened with harsher sentences that could result from

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46 CRC General Comment No. 10, *supra* note 15, at ¶ 80.
47 Where a government increased the maximum length of time that a youth could be detained pre-trial to beyond four weeks, UN human rights experts pointed out that this ran counter to the spirit and provisions of both the Convention on the Rights of the Child and international human rights standards on juvenile justice. CRC Concluding Observations Japan, *supra* note 21, at ¶ 53; CRC General Comment No. 10, *supra* note 15, at ¶ 83.
48 CRC General Comment No. 10, *supra* note 15, at ¶ 83.
49 *Id.*
50 *Id.*
52 CRC General Comment No. 10, *supra* note 15, at ¶ 27.
53 *Id.*
54 CRC General Comment No. 10, *supra* note 15, at ¶ 83.
trial and forced to accept guilty pleas in order to go home instantly. The court appointed lawyer for one youth who spent almost three years in detention on Rikers Island without trial stated, “ninety-nine out of a hundred would take the offer that gets you out of jail.”

C. Social Justice in the Administration of Juvenile Justice

International human rights standards encourage governments to situate their juvenile justice systems within a framework of social justice in order to contribute to “the protection of the young and the maintenance of a peaceful order in society.” For governments to operate within this framework, “the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed” should be properly investigated as part of ensuring a socially just outcome for the youth.

Another integral part of a social justice framework is the responsibility of the government to take all possible measures to ensure youth who encounter the justice system are treated equally. International human rights standards make clear that youth should not be discriminated against on the basis of race, sex, disability or other status. In fact, not only are governments obligated to address de jure discrimination under human rights standards, they are also obligated to address policies and practices that have discriminatory impact, even where there is no showing of discriminatory intent.

Various international human rights monitoring bodies are troubled by the racial injustice within the United States criminal justice system. In particular, the UN Committee on the Elimination of Racial Discrimination has called on the U.S. to address the racial disparities that exist at all levels of its criminal justice system, including its juvenile justice system. The Committee is the expert body that monitors governments’ compliance with the Convention to Eliminate all Forms of Racial Discrimination (CERD), which the U.S. has ratified and is committed to adhere to. Just

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57 Id.
58 Beijing Rules, supra note 2, at R. 1.
59 Id.; see also Beijing Rules, supra note 2, at R. 1.4 (A state has an obligation to treat youth in conflict with the law impartially and without distinction.).
60 CRC General Comment No. 10, supra note 15, at ¶ 6.
61 Convention on the Rights of the Child, supra note 2, at arts. 2, 37(b); see also UNRJDL, supra note 2, at R.4 (Youth should not be discriminated against because of their “race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”); see also Beijing Rules, supra note 2, at R.2.
63 Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 114 (“The IACHR observes that children from minority communities in the Americas, such as Afro-descendant children and indigenous children, as well as Latino children in the United States, are overrepresented in detention facilities and occasionally receive harsher sentences for the criminal acts they commit.”); see also UN Human Rights Committee (HRC), *Concluding Observations of the Human Rights Committee : United States of America*, ¶ 22, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (Dec. 18, 2006) [hereinafter HRC, 2006 Concluding Observations United States].
this year, the Committee specifically called on the U.S. to address the disproportionate rate at which youth of color are arrested in schools and are referred to the criminal system, prosecuted as adults, incarcerated in adult prisons, and sentenced to life imprisonment without parole.64

Unfortunately, New York is an exemplar of the unjust social dynamics that human rights bodies identify in the United States with regard to race. In New York, youth of color, those who lack proper education and economic stability, and youth who suffer mental disabilities, disproportionately represent the youth who enter the criminal justice system. In regards to race, African American and Latino youth represent more than 80% of placements in New York’s juvenile institutional facilities, despite the fact that they constitute only 44% of the state’s youth population.65 Youth of color are also disproportionately represented amongst those sent to the adult criminal system in New York. Of the 136 youth held in New York’s adult prisons on December 31, 2012, 65% were Black, though only 17.5% of the state’s general population is Black; 24% were Hispanic, also disproportionate to their numbers in the general population; and 9% were white, despite representing 57.2% of the general state population.66

The UN Human Rights Committee (HRC), which monitors governments’ compliance with the International Covenant on Civil and Political Rights (ICCPR), another international treaty the United States has ratified and is committed to adhere to, has also expressed concern with the high rate of incarceration of persons who are mentally ill in the U.S.67 This disparity certainly holds true in the juvenile justice system. As many as 70 percent of the youth who come into contact with the juvenile justice system are suffering a mental disorder.68 The recent Department of Justice report concerning conditions on Rikers Island stated far more adolescent inmates suffer from mental illness than their adult counterparts. In fact, nearly half of the youth at Rikers in FY 2013 were diagnosed with a mental illness.69

The HRC has also stressed the need for the U.S. to provide equality before the law without discrimination on the basis of sexual orientation.70 Yet, LGBT youth are also likely to experience discrimination, resulting in overrepresentation within the U.S.

64 Committee on the Elimination of Racial Discrimination, supra note 1, at ¶ 10.
67 HRC, 2006 Concluding Observations United States, supra note 63, at ¶ 32.
69 Preet Bahara, CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island, US Department of Justice, US Attorney, Southern District of NY 6 (Aug. 4, 2014) (“Inmates with mental illness are less likely to make bail as they tend to have fewer financial resources and family members are less willing to post their bail, so their average length of stay tends to be longer.”).
70 Committee on the Elimination of Racial Discrimination, supra note 1, at ¶ 10; HRC, 2006 Concluding Observations United States, supra note 63, at ¶ 25.
criminal justice system.\textsuperscript{71} One report found approximately 300,000 LGBT youth are arrested and/or detained each year; of the reported number, more than 60 percent are black or Latino.\textsuperscript{72} It is estimated that anywhere from 4 to 10 percent of the incarcerated youth in New York identify as LGBT.\textsuperscript{73} Taking into consideration a youth’s background is a key component of international human rights standards regarding administration of justice\textsuperscript{74}, and would be particularly useful when dealing with LGBT youth in conflict with the law due to a likely systematic misunderstanding of LGBT issues.\textsuperscript{75}

For New York to comply with international human rights standards regarding social justice in administration of juvenile justice, it should take measures to address these various forms of \textit{de facto} discrimination in its criminal justice system and treatment of youth. These measures should include creating and strengthening mechanisms for allowing consideration of the social background of youth at all stages of their interactions with the law.

\textbf{D. Discretion in Sentencing}

The practice of statutory exclusion of youth from the juvenile system, as is performed in New York, is inconsistent with international human rights standards.\textsuperscript{76} Human rights experts find that there is a two-fold detriment to youth resulting from such transfer mechanisms. Not only does it deny youth the jurisdiction of juvenile court and its protections, it also leaves them vulnerable to harsher sentencing intended for adult offenders.\textsuperscript{77} As such, rules providing for the treatment of

\textsuperscript{71} \textsc{Funders for Lesbian and Gay Issues, Out for Change: Racial and Economic Justice Issues in Lesbian, Gay, Bisexual and Transgender Communities\textsuperscript{11} (2005), available at http://www.lgbtfunders.org/files/LGBT-REJ.pdf (“LGBT people of color, transgender people and LGBT homeless youth are disproportionately targeted by police officers for non-violent drug arrests; they are more likely than most white, heterosexual middle-class drug users to face drug possession charges; and they often receive harsher sentencing.”).}


\textsuperscript{74} Beijing Rules, supra note 2, at R. 16 (A way for the criminal justice system to do this on an individual level is using social reports including relevant facts about a particular youth in conflict with the law, to inform authorities of a particular youth’s social situation and guide the adjudication of the case. Relevant facts about the juvenile would include “social and family background, school career, educational experiences, etc.”).}

\textsuperscript{75} Katayoon Mair, \textit{Hidden Injustice: Lesbian, Gay, Bisexual, and Transgendered Youth in Juvenile Courts\textsuperscript{}, The Equity Project\textsuperscript{69} (2009), available at http://www.equityproject.org/pdfs/hidden_injustice.pdf (“For LGBT youth in particular, an added obstacle to fair and individualized treatment is the failure of juvenile justice professionals to understand that societal biases against LGBT youth can negatively impact adolescent development and lead to family rejection and school victimization. These factors can place LGBT youth at risk of contact with the juvenile justice system, and once in their system can negatively influence the trajectory of their cases.”).}

\textsuperscript{76} Inter-Am. Comm’n on Human Rights, supra note 17, at ¶¶ 86, 88.

\textsuperscript{77} Id.
youth as adults should be abolished, thus allowing a judge to exercise discretion as is appropriate for each case. Simultaneously, the comprehensive juvenile justice system, including processing and the exercise of judicial discretion in sentencing youth, must be in a manner that remains mindful of the age of the youth and of the youth’s well-being, and thus proportionate to the circumstances and the offence.

Regarding the dismissal of cases against juvenile offenders, with certain violations of criminal laws as delineated by the appropriate body, it must be the case that all juveniles in violation are uniformly, not selectively dismissed, so as to avoid discrimination. Accordingly, all youth being charged with a wide range of crimes and offenses, irrespective of whether or not they have criminal records, must be afforded the same treatment.

Where alternative measures are followed, youth “should be given the opportunity to express [their] views concerning the (alternative) measures that may be imposed, and the specific wishes or preferences [they] may have in this regard should be given due weight.” Human rights experts consider this to be another check on the discretion of the judges involved. Allowing input of the youth not only further his/her human rights, but it ultimately serves the purpose of eliminating a passive posture, thus, contributes to efficacy resulting from the youth’s active engagement.

III. Conditions of Confinement

In instances where youth are deprived of liberty, institutions should implement conditions of confinement that ensure youth’s human rights under international laws and standards. A state can ensure a child’s rights and human dignity by implementing the following standards:

A. Segregating Youth and Adult Populations

Imprisoning or jailing youth in adult facilities violates human rights treaty provisions that specifically require the separation of juveniles from adult detainees, both before adjudication and following sentencing. Just this year, both the UN Human Rights Committee and the UN Committee on the Elimination of Racial Discrimination called on the U.S. to ensure that youth

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78 HRC, 2014 Concluding Observations United States, supra note 1, at ¶ 23; CRC Concluding Observations Suriname, supra note 2, at ¶ 70(a).
79 CRC General Comment No. 10, supra note 15, at ¶ 23; see also International Covenant on Civil and Political Rights, supra note 1, at art. 14(4); see also Beijing Rules, supra note 2, at Rs. 5, 17.1.
80 Inter-Am. Comm’n on Human Rights, supra note 17, at ¶¶ 230, 232; see also Beijing Rules, supra note 2, at R. 17.4, Commentary to R. 17.4 (In juvenile cases proceedings should be discontinued at any time particularly if “a complete cessation of the intervention appear[s] to be the best disposition of the case” in light of previously unknown circumstances being revealed).
81 Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 232.
82 CRC General Comment No. 10, supra note 15, at ¶ 45.
83 Id.
84 Id.
85 International Covenant on Civil and Political Rights, supra note 1, at arts. 10(2)(b), 10(3); Convention on the Rights of the Child, supra note 2, at art. 37(c); American Convention on Human Rights, supra note 6, at art. 5.
86 HRC, 2014 Concluding Observations United States, supra note 1, at ¶¶ 20, 23.
87 Committee on the Elimination of Racial Discrimination, supra note 1, at ¶ 21.
are separated from adult detainees during pre-trial detention and after sentencing. In 2006, the UN Committee Against Torture also criticized the practice in some parts of the U.S. of incarcerating youth in adult jails and prisons. As explained by the Inter-American Commission on Human Rights, imprisoning youth with adults denies them the special protection as minors that they are afforded under human rights law. Further, it threatens youths’ physical integrity, and exposes them “to conditions highly prejudicial to their development and makes them vulnerable to others who, as adults, could prey on them.” Because of the various deprivations that accompany the “total institution” of incarceration, governments have a special obligation to protect people deprived of liberty from circumstances that could detrimentally impact their rights to life, health, and personal integrity. According to the IACHR, failure to separate youth and adults also makes impossible the “aim of reform and social rehabilitation;” which is to be the essential purpose of deprivation of liberty, and places youth in an environment that encourages recidivism.

The definition of “youth” in this context is important to consider. Human rights standards make clear that juvenile justice rules must be applied to anyone under 18. However, international and regional human rights standards recognize that it may be appropriate to also provide protection to youth 18 and older rather than automatically pushing them into the adult system when they turn 18. International and regional human rights bodies encourage governments to apply juvenile justice rules and regulations to persons aged 18 up to at least 21. This includes youth who attain the age of majority while serving a custodial sentence. The IACHR and UN Committee on the Rights of the Child suggest applying a “best interests of the child” standard in deciding where a youth in custody who turns 18 will serve any remaining period of confinement. This means accounting for the best interests of the 18 year-old youth, as well as those of the younger children in the facility. For children who attain the age of majority while serving a custodial sentence the IACHR recommends that states undertake a hearing to determine if the person in question should remain incarcerated or be released, or whether the remaining portion of the custodial sentence can be commuted and replaced with a non-custodial measure.

B. Conditions of Confinement Regarding Physical Facilities, Visiting, Hygiene, & Nutrition

88 CAT Concluding Observations United States, supra note 14, at ¶ 34.
89 Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 408.
91 Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 442.
92 International Covenant on Civil and Political Rights, supra note 1, at art. 10(3); Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 408.
93 Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 409.
94 CRC General Comment No. 10, supra note 15, at ¶ 38; Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 427.
95 Id., at ¶ 86.
96 Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 427; CRC General Comment No. 10, supra note 15, at ¶ 86.
97 Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 433.
Under international human rights standards regarding the protection of juveniles deprived of liberty, the conditions under which youth are detained must ensure respect for their human rights and for their inherent dignity as human beings, and account for their particular needs as youth.\textsuperscript{98} Human rights experts recognize that the nature of imprisonment places governments in the position of guarantor of life and physical integrity of all people deprived of liberty, thus obligating governments to protect detainees from circumstances harmful to their rights to life, health or physical integrity.\textsuperscript{99} These rights should in fact be afforded to any person deprived of liberty,\textsuperscript{100} however, youth in particular are entitled to special protections by virtue of their age and special developmental needs.\textsuperscript{101}

One of governments’ primary obligations regarding detained youth is to provide physical facilities that ensure their health and dignity.\textsuperscript{102} Human rights standards call for governments to establish open facilities for detaining youth, meaning facilities “with no or minimal security measures.”\textsuperscript{103} Sleeping accommodations provided to youth should not entail large, barracks-style dormitories, but instead should “normally consist of small group dormitories or individual bedrooms,” and each individual youth should be provided with adequate, clean bedding.\textsuperscript{104} Under international human rights standards, youth should have access to the facilities and resources to maintain proper hygiene for general health and cleanliness. They should have easy access to sanitary and private hygienic facilities and be allowed a regular bath or shower, at a comfortable temperature.\textsuperscript{105} Facilities must include adequate floor space, lighting, clean drinking water, heating, and ventilation, and should permit youth to receive daily exposure to natural light.\textsuperscript{106}

Additionally under human rights standards, the physical space where youth are detained should facilitate individualized programming and education,\textsuperscript{107} with architecture that is consistent with the socio-educational and rehabilitative aims of the juvenile justice system.\textsuperscript{108} Youth should have sufficient space and equipment for study and for meaningful educational and recreational

\textsuperscript{98} International Covenant on Civil and Political Rights, \textit{supra} note 1, at art. 10(1); Convention on the Rights of the Child, \textit{supra} note 2, at arts. 37(c), 40(1); UNRPJDL, \textit{supra} note 2, at Rs. 12-13.

\textsuperscript{99} Inter-Am. Comm’n on Human Rights, \textit{supra} note 17, at ¶ 442.

\textsuperscript{100} International Covenant on Civil and Political Rights, \textit{supra} note 1, at art. 10(1); American Convention on Human Rights, \textit{supra} note 6, at art. 5(2).

\textsuperscript{101} International Covenant on Civil and Political Rights, \textit{supra} note 1, at art. 10(3); Convention on the Rights of the Child, \textit{supra} note 2, at art. 37(c), Inter-Am. Comm’n on Human Rights, \textit{supra} note 17, at ¶¶ 3, 519.

\textsuperscript{102} UNRPJDL, \textit{supra} note 2, at Rs. 12-13, 31, 87(f); Inter-Am. Comm’n on Human Rights, \textit{supra} note 17, at ¶ 520.

\textsuperscript{103} UNRPJDL, \textit{supra} note 2, at R. 30.

\textsuperscript{104} UNRPJDL, \textit{supra} note 2, at R. 33.

\textsuperscript{105} Inter-Am. Comm’n on Human Rights, \textit{supra} note 17, at ¶ 522; Council of Europe, European Rules for Juvenile Offenders Subject to Sanctions or Measures, CM/Rec(2008)11, Rs. 65.2, 65.3 (Nov. 5, 2008).


\textsuperscript{107} Inter-Am. Comm’n on Human Rights, \textit{supra} note 17, at ¶ 520.

\textsuperscript{108} Inter-Am. Comm’n on Human Rights, \textit{supra} note 17, at Rec. 19(h).
activities and programs, including accessible open-air recreation space. Additionally, facilities should be adapted to meet the needs of youth with disabilities who are deprived of liberty.

Under international human rights standards, youth should be permitted to communicate with and receive frequent visits from family and friends. As human rights experts point out, the more community and familial ties youth maintain in detention, the more effortless re-integration will be when they are released from custody. International human rights standards provide that visitation should not be restricted to immediate family members. Facilities should encourage visits from extended family, friends, and various members of the community. To accommodate youths’ rights, detention facilities must be both geographically as close to their families and communities as possible and have visiting facilities that allow for privacy. This means that if governments detain youth, they should do so in small, decentralized centers near the youth’s homes. It is governments’ obligation to ensure family visitation is conducive to family bonding. International human rights standards prohibit restriction or denial of contact with family members for detained youth.

Under international human rights standards, overcrowding in juvenile facilities must be prohibited; and adequate physical space should be provided. Human rights experts note that overcrowding is one of the factors that increase incidents of violence in prisons, leading to long-term, irreversible psychological and physical harm, and thus violating governments’ obligations to protect youths’ wellbeing and physical integrity. International human rights experts additionally find that in overcrowded facilities, staff report they feel the need to resort to more repressive measures in order to maintain control.

International human rights standards require every prisoner to be provided with “food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.” Yet, the dietary requirements of adults and youth are distinct. The food prepared for youth should be of nutritious quality and of adequate quantity to satisfy their specific dietary needs. Youth should receive at least three meals a day and at reasonable intervals, and the reduction of diet should be prohibited for any purpose, including as a disciplinary measure.

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109 UNRPJDL, supra note 2, at Rs. 12, 13, 47; see also CRC General Comment No. 10, supra note 15, at ¶ 89; Inter-Am. Comm’n on Human Rights, supra note 17, at ¶¶ 511, 522.
110 Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 534.
111 UNRPJDL, supra note 2, at Rs. 59, 60.
112 Inter-Am. Comm’n on Human Rights, supra note 17, at ¶¶ 390, 403.
113 Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 393; UNRPJDL supra note 2, at Rs. 30, 60.
114 Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 393.
115 Id., at ¶ 401.
116 UNRPJDL, supra note 2, at R. 67.
117 Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 522; see also Inter-Am. Comm’n on Human Rights, Principles and Best Practices, supra note 106, at Principle XVII.
118 Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 535.
119 Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 532.
121 UNRPJDL, supra note 2, at R. 37.
122 Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 473; Council of Europe, supra note 105, at Rs. 68.1, 68.2.
123 UNRPJDL, supra note 2, at R. 67.
Human rights experts recognize that youths’ right to food that is “adequate for health and sufficient for strength” is essential because they are still growing.\textsuperscript{124}

International human rights experts recognize that in some instances, governments may need to set medium- and long-term goals in order to ensure that conditions of confinement meet human rights standards. However, governments must take immediate actions, particularly with regard to detained youth, “that guarantee [their] physical, mental and moral integrity…as well as their right to life and their right to enjoy the minimum conditions for a decent life.”\textsuperscript{125}

C. Programming—Education, Job Training, & Recreation

Youth in conflict with the law must be treated differently from adults and with their best interests in mind, based on a recognition that the particular developmental, emotional and educational needs of youth, among other differences, call for distinct treatment and a supportive approach.\textsuperscript{126} The “treatment model” advocated by Cardozo Law in its recent report\textsuperscript{127} to the New York Board of Corrections on alternative treatment for youth at Rikers is in line with international human rights standards regarding programming for detained youth.

1. Education and Job Training

Human rights experts recognize that education for youth deprived of liberty is critical and that deprivation of adequate education “limits [youths’] chances of actually rejoining society and carrying forward their life plans,” with the impact being particularly felt by youth from marginalized sectors of society.\textsuperscript{128} Thus, governments must not abandon the formal education of detained youth.\textsuperscript{129}

Under international human rights standards, detention facilities must make provisions for the further education of all detained people, with the curriculum fully integrated with and recognized by the educational system outside of prison.\textsuperscript{130} Detained youth of compulsory school age have a right to education that accounts for their individual needs and abilities, and their educational instruction must be well integrated with that of the educational system of the broader community.\textsuperscript{131} Requirements for content and for hours of attendance must match those required for youth who are not deprived of liberty.\textsuperscript{132} Instruction should occur outside the institution wherever possible and should always be provided by qualified instructors. Detained youth with cognitive or learning disabilities have a right to special education instruction.\textsuperscript{133}

\textsuperscript{124} Inter-Am. Comm’n on Human Rights, \textit{supra} note 17, at ¶ 469.
\textsuperscript{125} Matter of Children Deprived of Liberty in the Complexo Do TaTuapé of FEBEM, Provisional Measures Regarding Brazil, Order, Inter.-Am. Ct. H.R. Point 10 (Jul. 3, 2007).
\textsuperscript{126} CRC General Comment No. 10, \textit{supra} note 15, at ¶ 10; International Covenant on Civil and Political Rights, \textit{supra} note 1, at art. 10(3).
\textsuperscript{128} Inter-Am. Comm’n on Human Rights, \textit{supra} note 17, at ¶ 495.
\textsuperscript{129} Inter-Am. Comm’n on Human Rights, \textit{supra} note 17, at ¶ 510.
\textsuperscript{130} Standard Minimum Rules, \textit{supra} note 25, at Rs. 77(1-2).
\textsuperscript{131} UNRPJDL, \textit{supra} note 2, at R. 38; CRC General Comment No. 10, \textit{supra} note 15, at ¶ 89.
\textsuperscript{132} Inter-Am. Comm’n on Human Rights, \textit{supra} note 17, at Rec. 19(d).
\textsuperscript{133} UNRPJDL, \textit{supra} note 2, at R. 38; CRC General Comment No. 10, \textit{supra} note 15, at ¶ 89.
youth receive while incarcerated must prepare them to return to society, and diplomas and educational certificates should not in any way indicate that they were incarcerated. International human rights standards also provide for youth above compulsory school age to be permitted and encouraged to continue their education, with every effort made to ensure they receive access to appropriate educational instruction. The aim should be for youth to be able to continue their education with ease upon release from detention.

International human rights standards call for all detained people, and especially youth, to receive vocational training in useful trades. With the protections of all national and international child labor standards in mind, detained youth should have the specific right to pursue vocational training in the type of work they wish to perform and in occupations likely preparing them for future employment. Where possible, youth should have the right to perform work for equitable remuneration as a complement to vocational training, within the local community, in a way that permits them to save money for their use upon release, and without subordinating their training to the pursuit of profit by the detention facility or a third party. In this effort to prepare for future conditions of normal occupational life, organization and methods of work offered to the youth should mimic as best as possible those of the work in the community.

Detained youth should be in facilities with an adequately stocked library carrying instructional, recreational, and periodical materials that they are encouraged and able to fully use. Both education and job training must take cultural diversity into account and should be applicable to, and recognized outside the institutional setting. The aim of education, job training and programming for youth should be to develop skills, learning and other capacities; as well as to promote human dignity, self-esteem and self-confidence, accordingly empowering youth and enabling them to develop their personalities, talents and abilities so they may live full and satisfying lives within society.

2. Recreation

International human rights standards call for detained youth to be guaranteed meaningful activities and programs that promote and sustain their health and self-respect. Human rights experts underscore that this recreation is critical for youth deprived of liberty, particularly because they are still growing and maturing. Facilities detaining youth should be designed to

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134 CRC General Comment No. 10, supra note 15, at ¶ 89; Beijing Rules, supra note 2, at R. 26.6; UNRPJDL, supra note 2, at R. 38.
135 UNRPJDL, supra note 2, at R. 40.
136 UNRPJDL, supra note 2, at R. 39.
137 UNRPJDL, supra note 2, at R. 38.
139 UNRPJDL, supra note 2, at Rs. 42-45.
140 UNRPJDL, supra note 2, at Rs. 45, 46.
141 UNRPJDL, supra note 2, at R. 45.
142 Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 493.
143 CRC General Comment No. 10, supra note 15, at ¶ 2; see also Convention on the Rights of the Child, supra note 2, at art. 29.(a).
144 UNRPJDL, supra note 2, at R. 12.
145 Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 511.
allow them physical exercise and leisure-time activities. Daily, as the weather permits, and with adequate space, installations, and equipment, youth should be given a suitable amount of time in the open air for exercising and participating in recreational and physical training. Youth should also have daily access to other leisure activities, including for arts and crafts skill development should the youth wish to participate in them. Remedial physical education and therapy should also be offered, under medical supervision, for those who need it.

Another key principle in the human rights standards regarding recreation for detained youth, is that recreation opportunities should by design encourage contact between detained youth and their families and communities. That is, detention facilities should facilitate opportunities for imprisoned youth to be able to socialize, play, relax, and participate in health and education programs alongside the broader community. These activities should not be limited to the confines of the secure facilities. Particularly as a youth nears release, participation in these activities should increase as a means of facilitating re-assimilation into the family and the community.

D. Medical and Mental Health Treatment

1. Medical Care

In accordance with international human rights standards, all detained persons have the right to the highest possible level of physical and social wellbeing, and the government’s obligation to respect their physical integrity and inherent dignity “includes guaranteeing access to proper medical care.” Detained youth must receive “regular medical supervision that would ensure the … normal growth and development so essential to their future.” According to international human rights experts, depriving detained people access to proper medical care can become a form of unlawful cruel or inhuman treatment in situations where their health or wellbeing deteriorates.

All youth have a recognized human right to the “enjoyment of the highest attainable standards of health and to facilities for the treatment of illness and rehabilitation of health.”

147 UNRPJDL, supra note 2, at R. 32; CRC General Comment No. 10, supra note 15, at ¶ 89.
148 UNRPJDL, supra note 2, at R. 47.
149 Id.
150 UNRPJDL, supra note 2, at R. 47.
151 Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 511.
152 UNRPJDL, supra note 2, at R. 47.
153 Id.
154 UNRPJDL, supra note 2, at R. 47.
155 Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 474.
158 Case of Pedro Miguel Vera Vera, supra note 156, at ¶ 42; Lori Berenson-Mejia v. Peru, Inter-Am. Ct. H.R., (Ser. C) No. 119, ¶ 100 (Nov. 25, 2004) (Petitioner was subjected to CIDT where she was detained and medical care provided to her was deficient, she had health and vision problems).
159 Convention on the Rights of the Child, supra note 2, at art. 24(1).
youth have “the right to special protection, care and aid,” including for those youth with disabilities, those living with HIV/AIDS, and for young women or girls “during pregnancy and the nursing period.” International human rights standards regarding detained youth call for governments to provide adequate preventive and remedial medical care, including dental care, ophthalmological care, and medically indicated pharmaceutical products and special diets.

All facilities where youth are detained must have “immediate access to adequate medical facilities and sufficient equipment,” as well as “staff trained in preventive health care and the handling of medical emergencies.” If youth are ill, complain of illness or otherwise demonstrate symptoms of illness, they should receive prompt medical examination by a qualified doctor. Medical staff should visit those detained people who are sick every day, as well as those who complain of illness, or those whom others signal may be sick. All prison or jail staff must take action to assure medical attention whenever required for detained people.

2. Mental Health Care

Governments’ obligation to prohibit cruel or inhuman treatment under international human rights law includes the obligation to assure conditions of confinement do not result in deterioration of detained persons’ mental health. The enjoyment of the highest possible level of mental and social wellbeing for persons deprived of liberty includes adequate psychiatric care and access to free and appropriate treatment and medication. Regarding youth deprived of liberty, governments must ensure that they have access to “mental health, treatment for drug dependent children, special programs to prevent suicide, and others.” According to international human rights standards, “[e]very juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.” Thereafter, detention facilities must assure all youth receive adequate mental health care.

On the right to accessible mental health services, international human rights standards specifically call for the availability of at least one qualified medical officer with some knowledge of psychiatry at every detention facility. Medical services should include adequate services for psychiatric diagnoses and treatment. Medical staff must report to a director if detained person’s mental health has or will be harmed by continued imprisonment or by a particular

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160 American Declaration of the Rights and Duties of Man, supra note 156, at art. VII; Inter-Am. Comm’n on Human Rights, Principles and Best Practices, supra note 106, at Principle X.
161 Inter-Am. Comm’n on Human Rights, Principles and Best Practices, supra note 106, at Principle X.
162 UNRPJDL, supra note 2, at Rs. 28, 49.
163 Id. at R. 51.
164 Id.
165 Standard Minimum Rules, supra note 25, at R. 25(1).
166 UNRPJDL, supra note 2, at R. 87(d).
167 Case of Pedro Miguel Vera Vera, supra note 156, at ¶ 42; Lori Berenson-Mejia v. Peru, supra note 158, at ¶ 100.
168 Inter-Am. Comm’n on Human Rights, Principles and Best Practices, supra note 106, at Principle X; see also UNRPJDL, supra note 2, at R. 51.
169 Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 480; see also UN Committee on the Rights of the Child (CRC), Concluding Observations: Albania, ¶ 84(b)(c), CRC/C/ALB/CO/2-4 (Dec. 7, 2012).
170 UNRPJDL, supra note 2, at R. 50; Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 543.
171 UNRPJDL, supra note 2, at R. 49; Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 475.
172 Standard Minimum Rules, supra note 25, at R. 22(1).
condition of imprisonment. Under international human rights standards, people determined to suffer from psycho-social disabilities are not to be held in detention facilities, and instead must be moved to mental health care facilities where they can receive necessary observation and treatment. Youth should have access to the broad range of individualized services necessary for their care, such as trauma services, including for recovery from the trauma of arrest. Furthermore, all facility staff “should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required.”

E. Limitations on Use of Force

International law calls for every youth deprived of liberty to be treated with humanity, “and in a manner that takes into account the distinct needs of a person of his or her age.” Torture or other cruel, inhuman or degrading treatment or punishment of youth or of any detainee is prohibited. Given the jus cogens prohibition of such treatment under international law; as well as governments’ special obligations to ensure the safety of youth, governments must apply the highest standard when judging the seriousness of the actions violating their right to be free of such treatment. This includes accounting for factors such as age, sex, health status, the effect of the tension or fear experienced, and level of maturity.

Only in the face of imminent threat of injury to the youth or others, and after exhausting all other means of control, can restraint or force be used on a youth. Such restraint should not be used to cause humiliation or to degrade, and should be restricted to the shortest time possible. Given that scientists warn against the use of certain chemical agents against detained youth because such use has led to serious adverse health effects or death, the use of such chemical sprays falls within the set of tactics that compromise the health of youth and should thus be prohibited.

Under international human rights standards, detained youth should never be subjected to violence or other cruel, inhuman or degrading treatment; and to the extent that their rights are abused, the government must facilitate their access to justice. To ensure meaningful access to

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173 Standard Minimum Rules, supra note 25, at R. 25(2); UNRJPDL, supra note 2, at R. 52.
176 UNRJPDL, supra note 2, at R. 87(d).
177 Convention on the Rights of the Child, supra note 2, at art. 37(c).
178 Convention on the Rights of the Child, supra note 2, at art. 37(a).
179 Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 457.
180 Inter-Am. Comm’n on Human Rights, supra note 17, at ¶ 458.
181 CRC General Comment No. 10, supra note 15, at ¶ 89; UNRJPDL, supra note 2, at R. 64.
182 UNRJPDL, supra note 2, at R. 64.
justice, the government must provide detained youth with judicial and administrative mechanisms that are fair, expeditious, affordable, and accessible. The government should also facilitate judicial and administrative processes by taking measures to protect victim safety and privacy, and by providing youth with legal assistance. Youth, and where appropriate, family members, should receive restitution and compensation for violations committed against them.

F. International Standards for Discipline

1. Limits to Discipline for Youth

The interest of safety and an ordered community life should be the driving forces behind procedures and measures to discipline incarcerated youth. A sense of justice, the inherent dignity of youth, and their basic human rights can never be lost to discipline. Punishment that inflicts physical force and is used with the intention of causing some degree of pain or discomfort, including hitting, kicking, and forcibly placing youth in uncomfortable positions is necessarily degrading, and thus strictly forbidden. Solitary confinement is also prohibited and discussed in more detail below. Other forbidden disciplinary measures include deprivation of food, restricting or denying contact with family, the use of labor as punishment, and multiple sanctions for the same infraction.

International human rights standards call for governments to observe the principles of due process, non-discrimination, and possibility for judicial review in applying disciplinary measures with detained youth. Human rights experts note that employing broad, generic categories to describe offenses for which detained youth can be punished encourages abuse by prison officials and violation of due process rights, as these categories leave youth unclear as to what they can and cannot be sanctioned for. Under international standards, staff at youth detention facilities should be trained in working with youth in conflict with the law so that disciplinary issues are more effectively prevented. Any disciplinary measure should serve the youth’s best interest and must be appropriate, necessary and proportional. Further, youth should be permitted to receive assistance of an attorney or family members for their defense.
2. Solitary Confinement

**General Restrictions on Solitary Confinement**

The approach by human rights monitoring bodies and the international community to solitary confinement generally reflects an understanding that the practice can cause mental and physical harm to prisoners, and that it should therefore be dramatically diminished or abolished. In 1990 the United Nations (UN) General Assembly called on governments to phase out solitary confinement, 197 and the UN Committee Against Torture has repeatedly recommended it be abolished.198 The UN Special Rapporteur on Torture has also called for abolition of the use of solitary, whether as punishment or in pretrial detention.199 Prolonged solitary confinement can violate international human rights law prohibitions on cruel, inhuman and degrading treatment, and in certain circumstances, may constitute torture.200

International human rights standards call for solitary to only be used as a last resort in exceptional cases, and for the shortest time possible.201 In the rare instance where solitary might be used, international human rights experts cap the length at which an adult can be placed in solitary confinement at about two weeks or less before it constitutes cruel, inhuman or degrading treatment. The European Committee for the Prevention of Torture holds that the maximum period of solitary confinement can be no more than fourteen days, but should preferably be less.202 The UN Special Rapporteur on Torture concludes that fifteen days is the limit, pointing out that some of the harmful psychological effects of isolation may become irreversible after that point.203 Scientific studies repeatedly find that solitary confinement for more than ten days can

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200 UN Human Rights Committee, General Comment No. 20, Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), ¶ 6 (Sep. 30, 1992); CAT Concluding Observations United States, supra note 14, at ¶ 36; HRC, 2014 Concluding Observations United States, supra note 1, at ¶¶ 20, 23; UN General Assembly, Torture and other cruel, inhuman or degrading treatment or punishment: Note by the Secretary-General, U.N. Doc. A/63/175, July 28, 2008, p. 18-21.
202 Council of Europe, supra note 201, at R. 56(b).
203 Juan Mendez, supra note 199, at ¶¶ 81, 88.
cause negative physical and mental health effects, including depression, anxiety, hallucinations, paranoia, and heightened risks of self-harm and suicide. Some studies find that even in a matter of hours or a couple days, people locked in solitary confinement can display negative mental health impacts. Human rights standards additionally call for the conditions and regime in solitary to largely resemble those required under international standards for prisoners generally, including access to natural light, continued visits, regular prison meals, etc.

Because solitary confinement is widely recognized as a potential cause of physical and mental health problems, its use has implications for detained peoples’ human right to health. International human rights standards prohibit disciplinary punishments that cause physical or mental harm to prisoners, and call instead for governments to ensure that imprisoned people are provided treatment for any physical or mental illness that may hamper their rehabilitation. Punishments that harm detainees’ mental health contravene the rehabilitative and reformative aims that are to be the purpose of imprisonment under the ICCPR. The practice of subjecting people to solitary confinement may also violate the human right to the highest attainable standard of physical and mental health.

Medical Decisions Regarding Psychosocial Disabilities and Solitary Confinement

If youth eighteen and older are to be treated as adults, albeit in contravention of developing international standards, decisions about solitary confinement for this population may draw on standards for adults, which prohibit corrections officials from placing certain people, including those with psychosocial disabilities, in solitary. While international human rights standards initially called for involvement of qualified doctors in decision-making about confining people in isolation as punishment, recent human rights standards recommend that doctors not be involved in those decisions. This new stance results from widespread recognition that solitary confinement causes harm to detainees’ health, and that it would violate ethical commitments and international human rights standards for doctors to condone someone’s placement in solitary confinement, simply because that person did not exhibit symptoms of mental health.
However, people in solitary must still be able to access health care. Under international standards, health care staff should visit people in solitary at least once daily, properly remedy any deterioration in detained peoples’ health condition, and immediately report to the director of the institution if a confined persons’ health is at risk as a result of solitary confinement.

Despite the prohibition on direct involvement of doctors in decisions about solitary, current international human rights standards regarding imprisonment do envisage a role for medical evaluation, which has an indirect tie to decisions about solitary confinement. Under international human rights standards, governments are to ensure that qualified doctors evaluate the mental and physical health of each incoming detained person, in part to determine whether or not they have a mental health disability or a history of psychosocial disability. International standards also prohibit solitary for people with mental illness or psychosocial disabilities. Thus, if doctors must determine whether any detainee is mentally ill, and if the presence of mental illness definitively negates the use of solitary under international human rights standards, these standards together raise a question as to what constitutes mental illness such that governments should be forbidden from placing someone suffering it into solitary confinement.

International human rights standards provide no definitive answer to this question. The World Health Organization (WHO) states that mental disorders, of which there are many, with many different presentations, “are generally characterized by some combination of abnormal thoughts, emotions, behaviour and relationships with others.” According to the WHO, more common disorders that generally cause severe disability “include depressive disorders, substance use disorders, schizophrenia, epilepsy, Alzheimer’s disease, mental retardation, and disorders of childhood and adolescence.” For a full list of all mental and behavioral disorders, the WHO points to the International Statistical Classification of Disease and Related Health Problems (ICD-10).

Reflecting the disability rights movement’s efforts to move toward a social model approach to

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215 International standards additionally bar medical staff from condoning or participating in any treatment or punishment that may violate prohibitions on torture or cruel, inhuman and degrading treatment, or that violates any relevant international treaties. Principles of Medical Ethics relevant to the Role of Health Personnel, Particularly Physicians in the Protection of Prisoners and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/194, Dec. 18, 1982, Principles 2, 4(b); Also prohibited is their participation in restraining prisoners, unless determined to be “in accordance with purely medical criteria as being necessary for the protection of the physical or mental health or the safety of the prisoner or detainee himself, of his fellow prisoners or detainees, or of his guardians, and presents no hazard to his physical or mental health.” Id. at Principle 5.

216 Council of Europe, supra note 201, at ¶ 63; European Prison Rules, supra note 201, at R. 43.

217 Standard Minimum Rules, supra note 25, at Rs. 24, 66(2).

218 HRC, 2014 Concluding Observations United States, supra note 1, at ¶ 20; Juan Mendez, supra note 199, at ¶ 86.


220 Id. at 20.

221 Id. at 22.

disability (as opposed to an individualized medical model), the WHO recognizes that “[d]eterminants of mental health and mental disorders include not only individual attributes … but also social, cultural, economic, political and environmental factors, such as national policies, social protection, living standards, working conditions, and community social supports.” In this vein, the World Network of Users and Survivors of Psychiatry, which made formative contributions to the drafting of the UN Convention on the Rights of People with Disabilities, uses the term “psychosocial disability” to capture the psychological and the social and cultural factors that contribute to this form of disability. Drawing on this logic, the considerations for determining psychosocial disability could involve analysis of both individual symptoms, as well as the social, environmental, and cultural circumstances that exacerbate or fuel those symptoms.

IV. Recommendations

* Ensure New York’s justice system observes the principle of only detaining youth as a measure of last resort and for the minimum period possible, in part by developing and increasing viable alternatives to detention.
* End the practice of trying youth under eighteen as adults and of detaining youth in adult facilities.
* Expand access to diversion from judicial proceedings and to other non-incarceration alternatives for youth in conflict with the law, both pre-trial and post-conviction, with the aim of relying on detention only as a last resort.
* Take measures to address the various forms of de facto discrimination in New York’s treatment of youth in conflict with the law. Amongst the measures should be creation and strengthening of mechanisms encouraging consideration of the social background of youth at all stages of their interactions with the law.
* End solitary confinement for youth.
* Ensure that all staff assigned to work with youth in detention—including security staff, programming staff, health and mental health professionals, and counselors—are properly trained and qualified to work with and meet the special needs of adolescents in conflict with the law.
* Juvenile justice personnel should reflect the backgrounds of youth who come into contact with the system.
* Expand access for all youth, including those 18-21, to facilities and programming designed for youth.
* Ensure that all youth, no matter where held, have access to uninterrupted, high-quality, age-appropriate education, including education tailored to special-needs youth, and including vocational training and higher education where appropriate.
* Provide and increase age-specific programming for all detained youth, including community-oriented recreation and educational programs that allow youth to participate as members of the population outside of the jail, without being identified as detained youth.

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* Incorporate a therapeutic model in facilities where youth are detained, and ensure youth have access to adequate health care, including mental health treatment.
* Facilitate youths’ access to justice for abuses committed against them while detained, including by providing clear, accessible instructions and means for filing complaints; providing independent legal counsel and hearings; providing judicial redress; and ending impunity for officials who commit abuses against youth, including excessive use of force.
* Permit and encourage detained youth’s contact with their family and community, decentralizing detention facilities so that youth are either in or near the community where they or their parents, guardians and friends live.
* Encourage visits by family members, friends and members of the community by establishing flexible visiting hours and setting up comfortable areas that allow for privacy, so that the visits serve to strengthen the family bond and ties to members of the community.
* Ensure detained youth are held in a safe, well-maintained facility providing ample space for large indoor and outdoor recreation areas for congregate activity; as well as for classrooms conducive to learning.
* Develop and implement an adequate continuum of alternative disciplinary sanctions for rule violations that do not involve isolation, as well as systems to reward and incentivize good behavior, and a due process system that allows for independent review of disciplinary decisions and provides youth with proper legal counsel.