KEEP CHILDREN OUT OF ORLEANS PARISH PRISON

Speedy, Safe, and Cost-Effective Prison Reform in New Orleans, Louisiana

Louisiana Center for Children’s Rights
September 2015
The Louisiana Center for Children’s Rights is a nonprofit law center that defends the right of every child in Louisiana’s juvenile justice system to fairness, dignity, and opportunity.

Our Children’s Defense Team is the juvenile public defender in New Orleans, using an innovative model of holistic, cross-disciplinary advocacy to help vulnerable youth achieve their legal and life goals in nearly 1,000 cases each year.

Our policy reform and impact litigation arm is the Juvenile Justice Project of Louisiana. JJPL has 17 years of experience fighting for a juvenile justice system that is fair, compassionate, and supportive of positive youth development. We have closed down prisons, helped to reduce Louisiana’s incarcerated youth population by 75%, and passed legislation that fundamentally reshaped the state’s juvenile justice system by requiring the provision of key evidence-based supports to vulnerable children.

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ONE INTRODUCTION
KEEP CHILDREN OUT OF ORLEANS PARISH PRISON

New Orleans can act now to stop young people from being raped, beaten, and even killed. We can do it while saving money. We can do it legally and constitutionally, while enhancing public safety and reducing long-term recidivism.

We just have to commit to holding youth accountable in age-appropriate settings. When we detain youth prior to trial, we should hold them in a facility that is designed to keep them safe – not at the Orleans Parish Prison (OPP), New Orleans’ adult pretrial jail.

OPP is no place for children. OPP is under a federal consent decree – a binding ruling that imposes federal judicial oversight. As part of the consent decree, the Orleans Parish Sheriff and the federal government have agreed that the conditions at OPP are unconstitutionally cruel. One expert told a federal judge that the facility is probably the worst large jail in the country.¹

But, at any given moment, at least thirty children younger than 18 – 33 of them on August 28, 2015, according to data collected by the Louisiana Center for Children’s Rights – are locked up at the notoriously dangerous prison, awaiting trial. It’s not safe; it’s not legal; it’s not fair; and the costs of attempting to fix the problems for children in OPP are prohibitively expensive.

Who are those children at the Orleans Parish Prison?

+ Some are “transfer” youth – children who were 14, 15, and 16 years old when they were accused of committing an offense. Those youth are being prosecuted as adults, at the District Attorney’s discretion.²

+ Some are children who were 17 years old when they were arrested. Those youth are always prosecuted as adults in Louisiana. Louisiana is one of only 9 states in the country that prosecute all 17-year-olds as adults, even though they are too young to vote, buy cigarettes, sign contracts, or serve on a jury.³

Louisiana may count 17-year-olds as adults, but when it comes to safety standards for jails and prisons, the federal government considers them children. The federal Prison Rape Elimination Act requires that all jails and prisons impose complete sight and sound separation between adults 18 and over and children younger than 18.⁴ That rule was driven by a tragic history of sexual and physical violence in America’s prison system.

Why does that matter?

If we continue to hold children younger than 18 at OPP, it’s going to cost us.
In the fall of 2015, there has been a public debate in New Orleans over how big to build the current jail – whether, in particular, to add an additional “Phase III” facility to the new, 1,438-bed “Phase II” facility that opened in September of 2015.5

One thing, however, should be clear: In the long term, it makes no sense even to attempt to accommodate children in either the Phase II facility or in any future Phase III facility.

If we house children at OPP, the city is going to have to pay for specialized space and services. The Phase II facility is built in “pods” of 60 beds. Boys and girls cannot be held together, and both federal law and the consent decree prohibit jailing children alongside adults. So holding the current population of 33 children at OPP, as the facility is currently constructed, would require setting aside two pods with a total of 120 beds. That’s assuming no children need to be placed in protective custody, which would require additional set-asides. New Orleans could end up paying to build, and maintain into the indefinite future, more than a hundred beds that will never be used.

That capital outlay, and the ongoing operating costs, would defy common sense and misallocate taxpayer resources.

Fortunately, there is an alternative. New Orleans operates a juvenile detention center, known as the Youth Study Center (YSC). That is the right place to hold children – all children – who are detained prior to trial.

Holding children in OPP exposes them to a risk of suicide that is 36 times higher than in juvenile custody.6 At OPP, the risk of sexual assault and brutality is unacceptably high. And, because they have so frequently been brutalized and traumatized, children held in adult custody are more likely to recidivate when they come back into the community. A study by the federal Centers for Disease Control found that holding children in adult custody actually increases the likelihood of rearrest by 34%.7

It is important to remember that these youth will come home. Some 17-year-olds who are held prior to trial at Orleans Parish Prison are low-level offenders who will come home very quickly.

But even the transfer youth, who are often charged with serious offenses, are likely to come home while they are still young men and women. The Louisiana Center for Children’s Rights examined data on transfer youth from January 1, 2011 through August 31, 2015. 39% of those youth are found not guilty, have their charges dismissed, or get probation. Another 22% are sentenced to serve five or fewer years in prison.
ONE CONTINUED

Our children are in our communal care – quite literally, when they are in the city’s custody.

But OPP has no meaningful programming for children. LCCR’s interviews with dozens of jailed youth, conversations with school system officials, and reviews of hundreds of pages of school records shows that there is no true high school program at OPP. And the jail’s response to mental illness is frequently to place children in solitary confinement.

Meanwhile, YSC staff have the appropriate training for working with youth, and the facility can adapt its programming to educate and care for all children – regardless of whether they are being prosecuted as juveniles or adults.

The first edition of this report was originally released in November of 2014. Since then, the City Council and the Mayor’s Office have taken steps to move some of the transfer youth out of the Orleans Parish Prison. In June of 2015, an ordinance carved out 12 beds at YSC specifically for transfer youth.  

That was a good start. But we need to finish the job. We can build capacity for holding all detained children younger than 18 at the Youth Study Center, and provide appropriate services there. That is a better investment than trying to shoehorn youth, who must be kept completely separate from adults, into the Orleans Parish Prison.

This report makes the case for common-sense reform. If children must be jailed prior to trial, they should be jailed at YSC.

Keeping children out of OPP is safe, smart, cost-effective, fair, and constitutional. We need to get it done – right now.
In the last nine years, 11 states in addition to Louisiana have acted to remove children from adult jails and prisons. Those states ranged from Virginia to Idaho and from Ohio to Texas. Recent legislation included:

- **Idaho Senate Bill 1003**, which became law in 2011, “allow[ed] youth” who are being prosecuted as adults “to be placed in the general population of a juvenile detention center rather than an adult facility.”

- **Ohio Senate Bill 337**, which became law in 2012, created “a presumption that youth who are in the process of being transferred to adult court... remain in juvenile detention facilities instead of being placed in adult jails.”

The national trend has reduced the number of juveniles held in adult jails on any given day from about 7,500 in 2004 to 1,700 in 2011. Meanwhile, other states have limited the possibility that children could be held in adult jails by raising the age of juvenile jurisdiction to 18. In the past decade, Connecticut, Illinois, Massachusetts, Mississippi, and New Hampshire have all included 17-year-olds in their juvenile justice systems. That trend leaves Louisiana as one of only 9 states that still prosecute all 17-year-olds as adults.

Other states’ behavior is instructive. It is also important to know that, here in Louisiana, we are moving in the same direction.

**Louisiana law not only allows youth under 17 who are prosecuted as adults to be held in a juvenile detention facility pending trial – it actually makes that the default custodial arrangement.**

In 2012, the Louisiana legislature passed Act 698, which became law that summer. The act amended Louisiana’s juvenile transfer law to provide that physical custody of a 14-, 15-, or 16-year-old child does not necessarily change just because the child is being prosecuted in criminal court. Now, the law says that, after transfer, “the district court may order that the child be transferred to the appropriate adult facility for detention prior to his trial as an adult.”

Act 698 allowed children who are being prosecuted as adults to be held in juvenile detention facilities. The two chief legislative witnesses on the bill that became Act 698, pro and con, were nevertheless united in this understanding. According to the testimony before the legislature...
of East Baton Rouge Parish District Attorney Hillar Moore, the bill ensured that “[t]he district court judge that is going to hear [the matter post-transfer] has the ability to keep that juvenile housed in a detention facility as opposed to jail.”

So transfer youth can be held at a juvenile detention center, even though they are being prosecuted as adults. That’s the common-sense rule: After all, no legal maneuver can transform a 15-year-old child into a mature adult.

Louisiana is also joining its sister states in moving towards including 17-year-olds in the juvenile justice system. In 2015, the legislature approved a study resolution that requests a report on raising the jurisdictional age so that 17-year-olds will be prosecuted as juveniles, and the effort to raise the age appears to have considerable momentum. And, when Louisiana does raise the age, New Orleans would do well to be ahead of the curve, rather than being caught flat-footed. Now is the time to determine the capacity and allocation of beds in our prison facilities.

If we act with pragmatism and foresight, we can make the right decision for our kids and for the public.
THREE
WE CAN’T AFFORD TO BUILD UNNEEDED PRISON BEDS FOR CHILDREN

Continuing to hold children at OPP will require building and maintaining new, specialized bed space. That would defeat the best practices goal of building the smallest jail that is consistent with public safety.

Mayor Landrieu and the New Orleans City Council have repeatedly and correctly resisted pressure to build a bigger jail than the city needs. A big jail demands to be filled. Our city needs as many of its people as possible working, attending school, and growing up in their own homes and communities – not in jail.

The Orleans Parish Sheriff’s Phase II facility – the 1,438 bed facility that opened in September of 2015 – is the only adult jail facility currently authorized by law in New Orleans.17

Even when children are prosecuted as adults, the federal Prison Rape Elimination Act (PREA) requires that they be completely segregated from adults in jails and prisons.18 Historically, OPP has been flatly in violation of that law.19 And the Phase II facility is no better. It has no space set aside for children, as is required under both federal law and the consent decree between the City of New Orleans, the sheriff, and the federal government.

In order to bring OPP into compliance, the sheriff would have to designate two separate pods exclusively for youth – each with 60 beds, one for girls and one for boys – or else purpose-build those pods.20

That math assumes that none of the children needs to be placed in protective custody. Inmates in protective custody must be held separately from general population. If even one girl and one boy were in protective custody, the sheriff would need to designate 4 pods – or 240 beds – to house fewer than three dozen children.

There is no way that could happen in the current facility without significant and costly retrofitting. And setting aside so many excess beds – most of which will remain empty forever – would generate massive wastes in fixed overhead costs. Why is waste almost certain in this arrangement? Here’s just one example: Since January 1, 2011, LCCR counts only 7 girls who have been prosecuted as adults. And on August 28, 2015, there were only two girls under 18 incarcerated at OPP.

The public should not expend its money on separate space at OPP for children to live, eat, exercise, learn, and bathe, as required under federal law. Not when, on average, only 20 juveniles are detained at YSC, New Orleans’s 40-bed juvenile detention center,21 and when YSC is already primed to provide services for youth.
On September 15, 2015, as the second edition of this report was prepared for printing, the office of New Orleans Mayor Mitch Landrieu announced a plan to build additional capacity at YSC to accommodate youth who would otherwise be held at OPP. The mayor proposed expending $7 million in FEMA dollars – from a pool of about $54 million still owed for rebuilding a jail destroyed in Hurricane Katrina – to build 24 new beds at YSC. That would be enough, with the excess capacity already at YSC, to accommodate all of the children who are detained pretrial in New Orleans. However the capacity – expansion at YSC is funded, there is enormous merit and real savings to building out a facility that will not have to bear the ongoing staffing and operating cost, in perpetuity, of imposing sight-and-sound separation between youth and adults.
Children in adult prisons are in serious danger of victimization and death. The national data is frightening, showing that youth held in adult custody are:

+ At great risk of **sexual assault**: According to a report from the National Prison Rape Elimination Commission, young people incarcerated with adults are the most at-risk group for sexual assault while in confinement.\(^{23}\) A report from the U.S. Department of Justice found that, in 2005, youth under 18 accounted for 21% of all victims of sexual violence perpetrated by other inmates in jails, despite the fact that these youth only represented 1% of the population.\(^{24}\) This disproportionate risk is in part because corrections officers in adult prisons, which are already drastically understaffed, are not trained to work with children and keep them safe.\(^{25}\)

+ At great risk of **physical assault**: Children in adult jails are twice as likely to report being beaten or abused by prison guards, and are 50% more likely to report being attacked by adult inmates with a weapon.\(^{26}\)

+ At a significantly increased risk of **suicide**: According to the federal Bureau of Justice Statistics (BJS), youth under 18 had the highest suicide rate of all jail inmates – 101 per 100,000, compared to 5.32 per 100,000 for youth 14-17 not in jail.\(^{27}\) Youth in adult jails are 19 times more likely to commit suicide than adult inmates and they are 36 times more likely to commit suicide than youth held in juvenile facilities. Relatedly, youth in adult facilities are less likely to have access to age-appropriate mental health services and mental health staff trained specifically to work with youth.\(^{29}\)

+ The risk of youth suicide in adult custody is neither remote nor academic. In 2014, a 16 year old child being held in adult custody while awaiting trial in Iberia Parish committed suicide. He was being held in isolation.\(^{30}\) And the entire country recoiled in horror at the suicide of Kalief Browder, who was arrested at 16 and detained for three years as an adult at the Riker’s Island jail in New York City.\(^{31}\)

+ Often held in **isolation** for long periods of time: The federal Prison Rape Elimination Act requires that jails confine youth separately from adult inmates for their own protection. Unfortunately, some jails respond by placing youth in conditions similar to solitary confinement – kept on lock down for 23-24 hours a day in tiny, windowless cells, without any contact with other prisoners and very little meaningful contact with staff. Even short periods under these conditions can lead to paranoia, anxiety, and depression.\(^{32}\)

+ Often **deprived of an education**: Nationally, jails fail to meet their legal obligation to provide education for youth in their care. A Justice Department survey found that 40% of jails did not provide any educational services at all, only 11% provided special education services, and just 7% provided vocational training.\(^{33}\)
The cumulative result of these conditions is upsetting but not surprising. A review of policies that facilitate transfer to the adult system, commissioned by the Centers for Disease Control, found that treating youth as adults in the justice system increases the incidence of subsequent arrests, including for violent crime.

The report concludes: “To the extent that transfer policies are implemented to reduce violent or other criminal behavior, available evidence indicates that they do more harm than good.”
ORLEANS PARISH PRISON IS NO PLACE FOR CHILDREN

The national statistics are troubling enough. But an elevated risk of danger to children nationally has almost become a statistical certainty at OPP.

OPP’s inability to house youthful inmates with even the constitutional minimum of safety and services was the root of the current prison conditions litigation. The civil rights lawsuit now known as Jones v. Gusman began with a complaint filed by three youth who were housed at OPP. The lawsuit has given us a clear understanding of the horrific conditions faced by children in what one expert called “likely the worst large city jail in the United States.”

Here is federal Judge Lance Africk’s dry recounting of the conditions in which one visiting expert found children at OPP:

“The population of youth inmates at the time was approximately 24, and these inmates ranged from approximately 14 years old to 18 years old. Just over half of the youth inmates were housed in protective custody because of issues including prior sexual assault. Those in protective custody were confined for 23 hours per day. Youth inmates and staff advised Dr. Glindmeyer to see a youth inmate who had symptoms including “bizarre behavior” and a history of suicidal ideation. Although the inmate had been seen by a psychiatrist ten months earlier, he received no diagnosis for his apparent mood disorder and he was not receiving any medication or treatment. Dr. Glindmeyer persuasively opined that his treatment or lack thereof was worsening his condition, and his isolation was increasing his risk of suicide.”

Judge Africk spoke of a “staggering frequency of violence,” and “an extraordinarily high level of rapes and sexual assaults.” That’s for all inmates. It’s worse for children.

In June of 2013, Brian Ellis, a 16-year-old inmate at OPP, was attacked while he was sleeping and stabbed more than 20 times with a shank. Brian’s story was in the newspaper, but so many instances of mistreatment and violence towards children are known only to the children, their families, and their lawyers. Some of those lawyers shared their stories for this report:

+ “Darius” went to OPP at 16. He was ultimately released on probation after a year at OPP. During that time, he didn’t attend high school once.

+ “Carl” was 15 and so mentally ill that a judge found he didn’t understand what was happening to him and couldn’t go to trial. But he was sent to OPP, where he was beaten by a group of men on his first day. He was hospitalized; when he came back, he was raped. The rest of his time at OPP, he was held in isolation.

As Judge Africk’s expert noted, solitary confinement – being held in a cell for 23 hours – is the rule, not the exception, for children at OPP. They go in as children – and they come out hard and angry.
SIX EDUCATION

ORLEANS PARISH PRISON CANNOT EDUCATE CHILDREN

The average sentence of a child prosecuted as an adult in New Orleans is less than 11 years. That is an extraordinarily long sentence – a lifetime to a child. But a 15- or 16-year-old child who is sent to prison for 11 years will still be a young man when he returns to our community.

Meanwhile, 39% of transferred youth are found not guilty, have their charges dismissed, or get probation. Another 22% receive a prison sentence of 60 months or less, meaning that nearly 61% of all transferred youth are coming back to the community within 5 years.

We need all of those young people to be ready to continue learning or to earn a living. Education is one of the strongest buffers against criminality, and one of the best predictors of earning power and professional success. All children in Louisiana under 20 years of age – including those who are incarcerated – are entitled to an education. Special education students are entitled to education until they turn 22. The sheriff runs OPP, and has to provide the facilities and environment that make quality education possible. The Orleans Parish School Board is responsible for providing educational services to children in the sheriff’s custody.

But an LCCR investigation found that the majority of children at OPP receive only the most rudimentary educational services – if they get any education at all.

LCCR interviewed dozens of youth; reviewed hundreds of pages of student records; obtained hundreds of additional pages of records on the OPP educational program’s curriculum via public records request; and inspected the educational facilities at the jail.

The results of the investigation are tragic, if not shocking. Virtually all of the education at OPP is geared towards a high-school equivalency certificate – not a diploma. Indeed, OPP does not offer classes in which youth can earn high-school credits. The vast majority of children are in school for a few hours a week as against the state-mandated 6 hours per day.
Individualized special education needs are largely ignored, even though many inmates received special education services before going to jail. The federal Individuals with Disabilities Education Act requires that each disabled child receive an “individualized education program” (IEP) that is designed to meet his or her unique learning needs. It also requires that schools identify and evaluate students believed to have disabilities.

Those evaluations are not happening in a meaningful way for children at OPP. Those plans are not being developed. Those services are not being delivered.

In 1993, the Youth Law Center filed a class action lawsuit against then-Sheriff Charles Foti and the Orleans Parish School Board. A federal magistrate found that then, like today: “Only a handful of juvenile inmates were receiving regular schooling. Some were not receiving formal education at all.” The federal court ordered the School Board to hire nineteen additional teachers and tutors sufficient to place every student in class for five days per week for at least five periods per day. It ordered the city and the sheriff to improve conditions for youth in the sheriff’s custody, and it made the city and the sheriff share the costs of bringing the facility into compliance.

The current litigation over the conditions at OPP, Jones v. Gusman, makes no claims about education. But the claims are ripe to be made. Existing law, and the most basic concern for what happens when high-risk youth go virtually uneducated, demands that we do better.

A better option is at hand, without the need for further litigation. Only a few years ago, the Youth Study Center (YSC) came through a federal consent decree with flying colors. It features a traditional high-school curriculum, with 360 minutes of educational programming every day and full-time special education staff. The Orleans Parish School Board has committed to providing the necessary resources for educating youth at YSC, and in the summer of 2015 hired two new teachers to provide education for those youth under adult court jurisdiction who are detained at the juvenile detention facility.
SEVEN OPTIONS
THE YOUTH STUDY CENTER CAN SERVE ALL DETAINED CHILDREN YOUNGER THAN 18

The Youth Study Center is the only facility in New Orleans that can house all youth constitutionally and in accordance with best practices for safety and positive youth development.

The OPP federal consent decree requires “developmentally appropriate mental health and programming services” for children at the jail. Building and implementing the structures and programming to meet those requirements in the jail will be costly – and it might never happen properly because OPP lacks expertise in giving children the developmental supports that they need.

But all of that can be done affordably at YSC.

Seven years ago, the Juvenile Justice Project of Louisiana – the policy reform and impact litigation arm of the Louisiana Center for Children’s Rights – sued the City of New Orleans, arguing that YSC inflicted unconstitutional conditions of confinement on children. In response, a new facility was built, a new leadership team was hired, and both staffing and programming were completely revamped. The results speak for themselves. The federal litigation has concluded, and while YSC continues to face some challenges, it is light-years ahead of OPP:

| Facility | YSC is a new, secure facility that was designed and built with dedicated education, programming, and indoor- and outdoor-recreation space. |
| Education | At YSC, there is a traditional high-school setting such that all juveniles can attend school every day. The curriculum moves children toward a high school diploma, not just an equivalency test. |
| Programming | YSC boasts a daily, structured schedule that includes school, meals, group therapy, recreation, and other programming. The schedule calls for at least 16 hours outside of the cell every day. In addition, YSC has implemented a behavior management program that rewards positive behavior. |
| Staff | YSC staff is trained specifically to working with young people. The training covers such topics as adolescent development, de-escalation techniques, and suicide prevention. There are social workers and a medical psychologist on staff. |
| Intake | When youth arrive at YSC, there is a comprehensive intake specifically designed for youth. It includes mental health screening, risk assessment, and an education assessment. This ensures youth and staff safety and enables the facility to better meet the needs of the youth. It helps, for example, to identify suicide risks, avoid delays in youth receiving necessary medication, and ensure appropriate education placement. |

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In November of 2014, the New Orleans City Council passed a resolution calling for an end to incarcerating children at OPP, and the Mayor’s Office convened a group of stakeholders and advocates to develop and implement a plan to achieve this goal. In June of 2015, the City Council unanimously passed an ordinance carving out 12 of YSC’s 40 beds specifically for youth being tried as adults. In fact, youth being tried as adults have accounted for nearly a third of YSC’s daily population for the better part of a year – without any serious incidents or overcrowding in the facility. But, unfortunately – because far too many youth are transferred to the adult system at the discretion of the District Attorney – 12 beds is not enough. On August 28, 2015, when this report was written, LCCR data indicated that all but one of the 12 “transfer” beds were full, with several additional children facing the potential of transfer in the near future. But 33 children under 18 remained incarcerated at OPP.

To solve this problem, the Mayor’s Office has proposed a 24-bed expansion to YSC, specifically intended for juveniles being tried as adults. Importantly, that doesn’t mean increasing the total number of pretrial detention beds in New Orleans. It just means locating those beds in an age-appropriate setting at YSC rather than at OPP.

In the end, YSC would have a total capacity of 64, which would be sufficient space – if we remain vigilant about detaining only youth who represent a demonstrated risk to public safety – to house all children who are detained pretrial: on average, 20 youth under juvenile jurisdiction and approximately 40 youth under criminal court jurisdiction on a daily basis. The project is expected to cost $7 million – less, in all likelihood, than it would cost to build space for children at OPP because of the up-front and ongoing operating costs that would be required to comply with PREA.

Keeping children at YSC is good for both short-term and long-term public safety.

Since its reincarnation under new leadership several years ago, YSC has had no major incidents of youth-on-youth violence or youth-on-staff violence, and no escapes. The contrast with OPP is stark. Children at YSC don’t climb out over the fence. They can’t get out by pretending to be another person. They can’t cut their way out. And they are not videotaped carousing on Bourbon Street.
NINE RECOMMENDATIONS

It is costly, counterproductive, and inhumane to jail children alongside adults at OPP.

Fortunately, the solutions are simple:

1. In the fall of 2015, the City of New Orleans should approve and prioritize capital funding for an expansion of the Youth Study Center that will eliminate the need to detain children at Orleans Parish Prison.

2. The City should take appropriate steps to ensure that the expanded capacity at YSC is available to all children under 18 who are incarcerated pre-trial — not just those whose cases originated in juvenile court, and regardless of the offenses with which they are charged.

3. The City should pass an ordinance prohibiting pre-trial detention of youth younger than 18 at OPP for any reason, and designating portions of YSC as the appropriate adult facility for youth under Criminal District Court jurisdiction.

4. To ensure that the population of YSC remains below the rated capacity of 64 youth, the City should work with justice system stakeholders to ensure vigorous oversight of detention decisions, the availability of alternatives to detention, and reductions in case processing delays.


See Carmen Daugherty, Campaign for Youth Justice, State Trends: Legislative Victories from 2011-2013, Removing Youth from the Adult Criminal Justice System (2013)

Id. at 2.

Id. at 3.


La. Ch. C. art. 305 (codifying 2012 La. Act 698) (emphasis added). Prior to Act 698, the statute provided that, after jurisdictional transfer, the “child shall be transferred forthwith to the appropriate adult facility for detention prior to his trial as an adult.” Id.

Juvenile Procedure Relative to Jurisdiction Over Certain Juvenile Proceedings: Hearing on H.B. 202 Before the H. Comm. on Administration of Criminal Justice, 2012 Leg. (La. 2012). Mr. Moore’s understanding was shared by his opponent, Joshua Perry, a juvenile public defender, who was opposed to a provision of the bill that permitted transfer of incompetent youth to criminal jurisdiction. Mr. Perry noted: “If what this bill is about is really simply allowing the district court to make the competency determination, and not the juvenile court, there’s no reason for this bill to also include a provision authorizing the physical transfer of the child to adult criminal custody. The child can simply be left in juvenile custody pending that competency determination and competency restoration.”

See 2015 House Concurrent Resolution 73.


PREA’s requirements are built into the consent decree that governs reforms at OPP. “Consistent with the Prison Rape Elimination Act of 2003, 42 U.S.C. § 19901, et seq., and its implementation of regulations, a youthful prisoner shall not be
placed in a housing unit in which the youthful prisoner will have sight, sound, or physical contact with any adult prisoner through use of a shared dayroom or other common space, shower area, or sleeping quarters.” Consent Judgment, Jones v. Gusman, No. 2:12-cv-00859-LMA-ALC, at 37 (E.D. La. 2013).


26 Id.


32 Campaign for Youth Justice, Jailing Juveniles (2007).

33 C.W. Harlow, Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Education and Correctional Populations (2003).


35 Testifying in Jones v. Gusman, prison security expert Jeffery Schwartz explained that he had investigated hundreds of jails in 40 states over 35 years of working in corrections. “OPP is the worst jail I’ve ever seen,” he opined. “[I]t is likely the worst large city jail in the United States.” See Order Approving Consent Decree, Jones v. Gusman, No. 2:12-cv-00859-LMA-ALC, at 19 (E.D. La. June 6, 2013).

36 Id. at 54.

37 Id. at 25.

38 Id. at 29.


40 See generally J. Sander et al., School Policies, Academic Achievement, and General Strain Theory: Applications to Juvenile Justice Settings, J. Juvenile Justice, 107-08 (2011) (observing that school enrollment and advancement are “buffers for juvenile crime”).

41 La. R.S. 17:221, amended by 2014 La. Acts 411 (H.B. 407); see also La. Const. art. VIII, § 1 (“[t]he legislature shall provide for the education of the people of the state and shall establish and maintain a public educational system.”). More specifically: education is mandatory for youth who are younger than 18, and youth between the ages of 18 and 21 who have not yet attained a high school diploma, or its equivalent, are also entitled to receive an education. La. R.S. 17:221.

42 It has been suggested that 70% of youth who are in justice system custody require special education supports. See American Bar Association’s Children’s Rights Litigation Committee, Stopping the Schoolhouse to Pipeline By Enforcing Federal Special
Meanwhile, both federal and state law require that special education services be provided to students with disabilities. The Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. §1400 et seq., sets forth a comprehensive scheme for the provision of education to young people with disabilities, which applies to youth in detention facilities just as it applies to youth in the general population. 34 C.F.R. §300.2(b)(1)(iv). The IDEA guarantees all special education students, whether or not they are incarcerated, a "free and appropriate public education" (FAPE), which means that these students must derive an "educational benefit" from the educational programming. Board of Educ. v. Rowley, 458 U.S. 176, 203 (1982). Violations of incarcerated disabled students' rights are also actionable under Title II of the ADA, which prohibits discrimination against individuals with disabilities by public entities, and § 504 of the Rehabilitation Act, 29 U.S.C. § 701 et seq., which prohibits discrimination by any organization that receives public assistance, and applies to individuals who have a disability but may not have an IEP.

Evidence from across the country shows that Youth Study Center is not anomalous. Juvenile detention centers are generally far better equipped to serve children than adult prisons. One study involved interviewing children who were being held in juvenile and adult confinement for the same crimes. The children in the juvenile facilities indicated that the staff was more helpful to them in "achieving goals, making them feel good about themselves, teaching skills, and improving interpersonal relations." Children in detention centers "rated their case management services as more helpful in obtaining needed services, providing counseling, encouraging their participation in programs, teaching them the consequences of rule breaking, and orienting them to facility rules and procedures." Richard E. Redding, Conditions and Programming for Juveniles in Correctional Facilities 3-4 (2000).


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ENDNOTES CONTINUED

Louisiana Center for Children’s Rights