

JUVENILE INCARCERATION AND THE PAINS OF IMPRISONMENT

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ABSTRACT

As a result of the movement to criminalize youth crime in the 1980s and 1990s, large numbers of incarcerated youth serve their sentences in adult correctional facilities. In an effort to understand the ramifications of this practice, prior research studies have compared the correctional experiences of youth in juvenile and adult facilities. Yet this research tends to minimize the pains of imprisonment for youth in juvenile facilities, based on the contrast to adult facilities and the toxic conditions of confinement within them. In the following article, we contribute to this literature by analyzing data from interviews with 188 young men incarcerated in juvenile and adult facilities across two states. Our results show that although inmates in adult facilities (surprisingly) give better reports than youth in juvenile facilities on several measures (including criminal activity and victimization), they also fare much worse on other measures. Importantly, the inmates in adult facilities report substantially and significantly greater rates of PTSD and mental illness symptoms, and are much more likely to be afraid for their safety, compared to those in juvenile facilities. Based on these results, we argue that incarceration should be used only as a last resort for juveniles, regardless of institutional auspice, but that when it is deemed necessary, juvenile correctional facilities represent the lesser of two evils.

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I. INTRODUCTION

For more than three decades, juvenile justice law and policy in the U.S. has focused on the criminalization of youth crime.¹ Much of the legislative action was on redrawing the boundary between juvenile and adult court, with special emphasis on transferring cases from the juvenile justice system to the criminal justice system.² In this article, we explore one dimension of this criminalization movement: incarceration of youth in adult correctional facilities. We compare the experiences of young males who are incarcerated in juvenile and in adult facilities. Our empirical results suggest that though juvenile facilities are less harmful for juveniles than are adult facilities, youth in them are still exposed to harsh conditions likely to exacerbate social, academic, and emotional deficiencies, and thus any incarceration ought to be used only as a last resort sentencing option.

Our research adds to a growing body of literature that illustrates the harms that come from punishing youth as adults, a practice that has grown dramatically during this criminalization movement. This nationwide movement represents an abrupt turn from the juvenile court's founding ideology of child saving.³ For

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¹ Jeffrey Fagan, *Juvenile Crime and Criminal Justice: Resolving Border Disputes*, 8 FUTURE OF CHILDREN 81 (2008)

² Franklin E. Zimring, *The Power Politics of the Juvenile Court: A Mildly Revisionist History of the 1990s*, 71 LOUISIANA L. REV. 1-15 (2010); BARRY C. FELD, *BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT* (1999).

³ DAVID TANNENHAUS, *JUVENILE JUSTICE IN THE MAKING* (2005). See, also, ANTHONY M. PLATT, *CHILD SAVERS: THE INVENTION OF DELINQUENCY* (1969); JUDITH SEALANDER, *THE FAILED CENTURY OF THE CHILD: GOVERNING AMERICA'S YOUNG IN THE TWENTIETH CENTURY* (2003)

much of its first century, the expulsion of cases to the criminal court was a minor but essential and necessary feature of the institutional architecture of the new juvenile court. Indeed, transfer helped maintain the court's legitimacy by removing hard cases that challenged the court's comparative advantage in dealing with young offenders—cases that critics could use to launch attacks on the court's efficacy and therefore its core jurisprudential and social policy rationales.⁴ So long as juvenile crime rates remained stable, attacks on the court were intermittent and short-lived. The lack of urgency in these episodes helped forestall any incursions on the boundaries of juvenile justice or the integrity of its legal institutions.

The boundary between juvenile and adult court began to crumble in phases starting in the 1950s, as crime rates began a slow rise and the racial composition of cities became more diverse.⁵ Both juvenile and adult crime rates increased more rapidly throughout the 1960s⁶ and into the following decade.⁷ By the mid-1970s, alarms went off both in the popular press⁸ and in legislatures around the country.⁹ Support for the traditional model of juvenile justice collapsed, including its foundation of individualization of juvenile court dispositions and its rehabilitative ideal.¹⁰ Beginning with New York's 1978 Juvenile Offender Law, states have been willing participants in a recurring cycle of legislative action that produced ever harsher laws designed to – and often with great success – move increasing numbers of young offenders from the juvenile to the criminal court.¹¹ In effect, the legislatures decided that adolescent offenders

⁴ Tannehaus, *id.*

⁵ Barry C. Feld, *Bad Kids*, *supra note* _.

⁶ President's Commission on Law Enforcement and Criminal Justice, 1967

⁷ FRANKLIN E. ZIMRING, *AMERICAN YOUTH VIOLENCE* (1998)

⁸ Time Magazine (1977) "The Youth Crime Plague" July 11. Accessed September 28, 2010 at <http://www.time.com/time/magazine/article/0,9171,919043,00.html>.

⁹ Martin Roysner & Peter J. Edelman, *Treating Juveniles as Adults in New York: What Does it Mean and How is it Working?*, in *MAJOR ISSUES IN JUVENILE JUSTICE INFORMATION AND TRAINING* (J.C. Hall et al. eds., 1981); FRANKLIN ZIMRING, *AMERICAN YOUTH VIOLENCE* (1998)

¹⁰ Marvin Wolfgang, *Abolish the Juvenile Court System*, *CAL. LAW.*, Nov. 1982, at 12; Janet E. Ainsworth, *Re-imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court*, 69 *N.C. L. REV.* 1083 (1991).

¹¹ JEFFREY A. FAGAN AND FRANKLIN E. ZIMRING (EDS.), *CHANGING BORDERS OF JUVENILE JUSTICE* (2000); Barry C. Feld *Bad Kids* (*supra note* _); SIMON I. SINGER, *RECRIMINALIZING DELINQUENCY* (1996); AARON KUPCHIK *JUDGING JUVENILES: PROSECUTING ADOLESCENTS IN ADULT AND JUVENILE COURTS* (2006); Jeffrey Fagan, *Juvenile Crime and Criminal Justice*, *supra note* _; Donna M. Bishop, *Juvenile Offenders in the Adult Criminal Justice System*, in 27 *CRIME AND JUSTICE* 81 (2002).

had become criminally culpable and more dangerous at younger ages than they were in the past.

Tactics to increase the rate and scope of transfer included legislative exclusion of certain offense or offender categories, presumptive judicial waiver laws that placed the burden of proof on juveniles to show why they should be retained in criminal court, or shifting waiver authority from judges to prosecutors.¹² By 2000, despite a steady decline in juvenile arrests, about 250,000 minors each year appeared in criminal court following arrest on criminal charges; most remain there for adjudication and sentencing.¹³ The numbers remain largely unchanged, even as the juvenile crime decline continues into its second decade.¹⁴

State legislatures and the Congress gambled that the threat of tough criminal punishment would deter young offenders from crime, make the public safer and assuage the demand for punishments that were proportional to what was seen as an epidemic of violent and other serious youth crimes.¹⁵ Even in the face of evidence that these laws were having no effect, and possibly perverse effects, on public safety, legislatures persisted in strengthening existing laws and resisting efforts to roll back the statutory engines of criminalization.¹⁶

A. The Reality of Getting Tough

The purpose of these moves was to strengthen punishment threats by exposing young offenders to longer sentences in harsh correctional settings through sentences that would be handed down with both greater speed and certainty.¹⁷ The law changes did, in fact, result in a sharp increase in the exposure of adolescents to adult punishment. The patterns of imprisonment of juveniles reflect broader trends in juvenile crime and arrest, especially the spike in juvenile

¹² Patricia Torbet et al., U.S. Dep't of Justice, *State Responses to Serious and Violent Juvenile Crime* (1996); H.N. Snyder & M. Sickmund, *Juvenile Offenders and Victims: 1999 National Report* (1999); Jeffrey Fagan, *Juvenile Crime and Criminal Justice*, *supra* note _.

¹³ Donna M. Bishop, *Juvenile Offenders in the Adult Criminal Justice System*, *supra* note _.

¹⁴ Jeffrey Fagan, *Juvenile Crime and Criminal Justice*, *supra* note _; Jeffrey Fagan, *The Contradictions of Juvenile Crime and Punishment*, DAEDALUS, Spring 2010

¹⁵ Juan A. Arteaga, *Juvenile InJustice: Congressional Attempts to Abrogate The Procedural Rights Of Juvenile Defendants*, 102 COLUM. L. REV. 1051(2002)

¹⁶ Jeffrey Fagan, *Juvenile Crime and Criminal Justice*, *supra* note _. See, generally, Andrea McGowan et al., *The Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System: A Systematic Review*, 34 AM J PREV MED. S7–S28 (2007).

¹⁷ Barry C. Feld, *The Juvenile Court Meets the Principle of the Offense: Legislative Changes in Juvenile Waiver Statutes*, 78 J. CRIM. L. & CRIMINOLOGY 471 (1987) [hereinafter Feld, *Legislative Changes*]

violence from 1987 to 1996.¹⁸ Figure 1 shows that the census of minors in adult prisons peaked at 5,400 in 1996 and declined by nearly half, to 2,477, in 2004.¹⁹ The population remained stable through 2007, when 2,283 youths were in state prisons or privately operated correctional facilities programmed for adults. Many other youths convicted and sentenced as adults were placed in juvenile facilities until they reached the age of majority, at which point they usually were administratively transferred to an adult correctional placement for the duration of their sentence.

Figure 1 Here

The policy and popular attention to youth imprisonment deflected attention from the fact that juvenile detention and incarceration also rose sharply during this time. While lawmakers were getting tough by removing juveniles to the criminal justice system, others – including juvenile court judges and correctional authorities, as well as lawmakers – also were getting tough by incarcerating more kids for longer periods of time in juvenile facilities.²⁰ Figure 2 shows that juvenile incarceration – both in short-term detention and longer-term correctional placements – rose from 73,023 youths in public institutions and private residential facilities in 1977 to 95,818 in 1992, the year preceding the modern peak in juvenile arrests for felony crimes.²¹ Juvenile incarceration peaked in 2000 at 108,802, a rate of 356 per 100,000 youths ages ten to seventeen. The placement rate declined by more than 20 percent by 2008, to approximately

¹⁸ Heather C. West and William J. Sabol, *Prison Inmates at Mid-Year 2008—Statistical Tables* (Bureau of Justice Statistics, U.S. Department of Justice, 2009), Table 1, <http://bjs.ojp.usdoj.gov/content/pub/pdf/pim08st.pdf>; See, also, Philip J. Cook and John H. Laub, *The Unprecedented Epidemic in Youth Violence*, 24 *Crime and Justice: Youth Violence* 27 (1998).

¹⁹ West and Sabol, *id.*

²⁰ The fact that we celebrate decisions like that of Judge Eugene Moore in the Nathaniel Abraham case, as well as the Florida Supreme Court ruling in Lionel Tate's saga, where courts courageously bucked the criminalization trend by keeping these serious young offenders in the juvenile justice system, tends to deflect attention from the hardening attitudes of juvenile court judges in terms of the prevalence of placement, and the terms and locations.

²¹ Prior to 1993, data were collected every three years as part of the Children in Custody (CIC) census, conducted by the Office of Juvenile Justice and Delinquency Prevention. It was based on a mail survey with response rates that varied by year. Starting in 1997, CIC was replaced by the Census of Juveniles in Residential Placement (CJRP), a one-day count conducted by the U.S. Bureau of the Census of all children placed in public and private facilities. Placement data for the years between 1993 and 1997 are not available. The differences in the two data sets reflect both the types of facilities included and whether residents are counted based on the state from which they were committed or, in the newer census, the state where they were placed. When aggregated to examine national trends, any biases resulting from these differences are minimized.

81,000 children living in either state-operated facilities or privately operated group homes, or 263 youths per 100,000 persons ages ten to seventeen.²² Although the juvenile placement rate today pales in comparison to the adult incarceration rate of 762,²³ it was indeed growth, from XXX to YYY beds on average across the states.²⁴

Figure 2 Here

The realities of juvenile incarceration went largely unnoticed during this time. At first glance, one might suppose that the correctional experiences of youths placed in juvenile facilities are less toxic and traumatizing than the experiences of youths in adult facilities. After all, the distinction with juvenile corrections is indeed sharp: prison garb is rare, staff wear blazers or casual clothing instead of military or police uniforms, small campuses with decentralized residential dormitories or “pods,” there is greater autonomy of movement and little physical security or barbed wire, and therapeutic services are omnipresent.²⁵ Although control and security remain meta-themes of juvenile corrections, these “training schools” or “youth centers” are designed to signal that developmental concerns are at the forefront of services since the “students” in these facilities are adolescents whose characters are not yet fully formed.

But the fact is, prior research tells us very little about the conditions of correctional confinement of adolescents, and its relative harshness when compared to the imprisonment of juveniles as adults. Throughout the cycle of increasing punitiveness toward adolescent offenders, there was little attention to the experiences of youths who were amassing in juvenile correctional facilities. Research on the correctional experiences of adolescent offenders during this time tended either to examine youths in adult facilities, or to compare the correctional experiences of youths in juvenile vs. adult correctional facilities.²⁶ Their purpose

²² Melissa Sickmund, *Juveniles in Residential Placement, 1997–2008* (Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, 2010), <http://www.ncjrs.gov/pdffiles1/ojjdp/229379.pdf>.

²³ The rate for adults is 509 per 100,000 persons in prisons and 762 per 100,000 in prisons or local jails. Heather C. West and William J. Sabol, *Prison Inmates at Mid-Year 2008—Statistical Tables* (Bureau of Justice Statistics, U.S. Department of Justice, 2009), Table 1, <http://bjs.ojp.usdoj.gov/content/pub/pdf/pim08st.pdf>.

²⁴ See Daniel P. Mears *Exploring State-level Variation in Juvenile Incarceration Rates: Symbolic Threats and Competing Explanations*. 86 PRISON J. 470-492 (2006).

²⁵ Dale G. Parent, Valerie Lieter, Stephen Kennedy, Lisa Livens, Daniel Wentworth, and Sarah Wilcox. *Conditions of Confinement: Juvenile Detention and Corrections Facilities* (1994); Melissa Sickmund, *Juveniles in Residential Placement, 1997–2008*, *supra* note _.

²⁶ See, e.g., Martin Forst, Jeffrey Fagan and T. Scott Vivona, *Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment Custody Dichotomy*, 39 JUVENILE AND FAMILY COURT JOURNAL 1 (1989); See, also, “The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Adult Criminal Court,” Research Brief

was to illustrate the relative hazards of adult prisons and to highlight the longer term consequences of punishing juveniles as adults. Though true, this obscures the important point that juvenile facilities have the capacity to impose pain and restrict future opportunities, just as do their adult analogs.²⁷

B. Comparing the Pains of Imprisonment

In this article, we broaden the inquiry on the correctional experiences of adolescent offenders to assess the marginal effects of incarceration in adult facilities compared to other correctional placements. We take into account the heterogeneity of correctional options for young offenders who were the policy targets of three decades of punitive legislation starting with the passage of New York's 1978 law. Specifically, we use common metrics to examine correctional placements of three groups of young adult males: those prosecuted in juvenile court and sent to juvenile facilities, those prosecuted in criminal court and sent to juvenile facilities, and those prosecuted in criminal court and sent to adult facilities. In this way, we consider both the relative and absolute pains of imprisonment across jurisdictional and institutional boundaries, and sort out the effects of the stigma of the adult sanction from the effects of the reality of adult incarceration.

The article continues with a review of current knowledge on the correctional experiences of juvenile offenders on both sides of the border between juvenile and criminal courts. We next describe the research enterprise, including the selections of persons and institutions. We discuss the dimensions and metrics of assessment. The results follow, including both simple tabular descriptions of differences by type of placement and multivariate regressions that show of the extent to which institutional auspice influences correctional experiences. We conclude with a discussion of the importance of viewing incarceration as a unified phenomenon that exacts costs that may well exceed any public safety benefits that research has identified.

II. BACKGROUND

A. The Sharp Distinction between Juvenile and Criminal Punishment

Much of the existing research on juvenile correctional facilities has used a binary lens to compare conditions of confinement for youth in juvenile facilities

No. 5 (MacArthur Research Network on Adolescent Development and Juvenile Justice), http://www.adjj.org/downloads/3582issue_brief_5.pdf.

²⁷ TED PALMER, A PROFILE OF CORRECTIONAL EFFECTIVENESS (1994); Jeffrey Fagan & Martin Forst, *Risks, Fixers and Zeal: Treatment Innovation and Implementation for Violent Juvenile Offenders*, 76 PRISON J. 5 (1994); Jeffrey Fagan and Richard Freeman, *Crime and Work*, 25 CRIME & JUSTICE 113 (1999)

versus adult facilities. This limited body of work has been widely cited by advocates in states that want to firm up the wall between juvenile and criminal courts.²⁸ The research, though limited, is quite consistent, reporting similar findings across a wide range of sampling and measurement conditions. The studies unanimously conclude that incarceration in juvenile facilities is the far better option for youth, for a number of reasons. By showing the counterproductive outcomes of the criminalization movement across a range of sampling and measurement conditions, these studies have influenced the discourse on the punishment of young offenders, and armed opponents of criminalization with persuasive if not compelling empirical facts.

In the first such study, based on data from the 1980s, Martin Forst, Jeffrey Fagan and T. Scott Vivona²⁹ showed that relative to youth in juvenile facilities in New York and New Jersey, those in adult facilities suffer from higher rates of physical and sexual abuse and less access to potentially helpful educational and counseling programs. They also report that youths in adult placements have significantly higher rates of mental health symptoms, including higher rates of psychological trauma, compared to youths in juvenile placements.³⁰

More recent studies find similar results. When comparing juvenile and adult facilities in Florida, Donna Bishop et al.³¹ find that the juvenile facilities were organized around a therapeutic model found beneficial by the juvenile inmates, in contrast to a more rigid security-oriented organizing principle in the adult facilities, in which few youth were engaged in programs that facilitated their social or personal development. Similarly, Jodi Lane et al.³² find that juveniles in “deep-end” (secure) juvenile correctional facilities were more likely than similar juveniles in adult facilities to see their time in custody as beneficial to them. And, Kupchik³³ showed that although youth in adult correctional facilities report

²⁸ See, e.g., Coalition for Juvenile Justice, Limit Youth Transfers to Adult Court, available at http://juvjustice.njjn.org/position_1.html (opposing trying and sentencing youth in adult criminal court, except in the rare case of a chronic and violent offender, and then only at the discretion of, and following an assessment by, a juvenile court judge; categorically opposing the transfer to adult court of any child younger than 15 years of age; opposing the granting of transfer discretion and authority to prosecutors).

²⁹ Martin Forst, Jeffrey Fagan, and T. Scott Vivona, Youth in Prisons and Training Schools: supra note _.

³⁰ *Id* at _

³¹ Donna M. Bishop, Charles E. Frazier, Lonn Lanza-Kaduce, and Henry George White. 1998. *Juvenile Transfers to Criminal Court Study: Phase I Final Report*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

³² Jodi Lane, Lonn Lanza-Kaduce, Charles E. Frazier, and Donna M. Bishop, *Adult Versus Juvenile Sanctions: Voices of Incarcerated Youths*.” 48 CRIME & DELINQUENCY 431-455 (2002).

³³ Aaron Kupchik, *The Correctional Experiences of Youth in Adult and Juvenile Facilities*, 24 JUSTICE Q’LY. 247-270 (2007).

greater access than youth in juvenile facilities to educational and treatment services, those in juvenile facilities report better relations with custodial staff; they are more likely to see the facility staff as fair and helpful than are youth in adult facilities.

Thus, we see that youths placed in juvenile facilities stand better chances of receiving help, finding their time beneficial, and avoiding the trauma of victimization, compared to youth in adult facilities. This is precisely what one would expect based on the legislative environment of the 1980s and 1990s, in which juvenile delinquents were intentionally subjected to harsher punishments, via transfer to criminal court and incarceration in adult facilities. Sentencing a juvenile to an adult facility is clearly a part of this trend, since this practice symbolically denies youthful status to an offender under age eighteen, instead restricting the state's punitive focus on the offense rather than the offender.³⁴

B. Beyond Binaries: Differences of Degree Rather than Kind

Overlooked in the unanimity of judgments about the adverse effects of adult punishment is a basic methodological hazard that is inherent in the reification of binaries. By comparing incarceration across juvenile and adult facilities, we risk minimizing the pains of imprisonment to youth in juvenile facilities. Even if they are more likely to provide beneficial services than adult prisons and to do less harm, juvenile facilities still cause pain through the deprivation of liberty (at a minimum). In fact, a close look at juvenile facilities suggest that they share with their adult counterparts the primary goals of control, discipline, order, security, and punishment, rather than treatment or education:

...like its adult counterpart, juvenile corrections ... is designed mainly to control its residents and restrict their personal freedoms. Movement and association are intensively regulated; outside contact with family, friends, and intimate partners is attenuated and used as an incentive for good behavior; access to media and culture is restricted; privacy is nonexistent; and choice of clothing, language, and other modes of personal expression is off-limits.... Most important, at either end of the continuum of institutional climate, the options of solitary confinement, physical restraint, or other forms of extreme deprivation exist to control the defiant and unruly or to punish wrongdoing.³⁵

Research on the conditions of juvenile correctional facilities is sparse, and making it difficult to establish just how wide the gap is between juvenile and adult

³⁴ See AARON KUPCHIK JUDGING JUVENILES, Chapter 1.

³⁵ Fagan, Contradictions of Juvenile Crime and Punishment, *supra* note __, 43.

incarceration. Though this topic was well-studied in the 1960s and 1970s,³⁶ this body of research predates the criminalization of youth and thus fails to capture potential changes in punitive conditions that might result. Few studies have investigated these conditions since then. Most studies that have considered conditions of confinement have been comparative, including the aforementioned comparisons of juvenile to adult facilities, as well as comparisons of private and public juvenile facilities,³⁷ and traditional juvenile facilities compared to boot camps.³⁸ One notable exception, by Professor Michelle Inderbitzin, uses ethnographic data to describe the daily lives of male youth in a “deep end” juvenile training school.³⁹ Inderbitzin finds that the juveniles she met very much feel the pain of their loss of liberty and privacy and frustration at the level of control to which they are subjected. Staff at the facility she studied attempted to teach life skills such as anger-management and cultural literacy, but had virtually no training to do so. Though juveniles did benefit in some ways from their incarceration, since many did receive more positive adult attention than they had before their incarceration, the control-orientation and pain of incarceration were evident.

The evaluation conducted by Dale Parent et al. for the Office of Juvenile Justice and Delinquency Prevention in the early 1990s – called the *Conditions of Confinement* study – offers another glimpse of life in juvenile facilities.⁴⁰ Parent and colleagues collected data from all public and private juvenile correctional facilities in 1990-1991, including assessment centers, juvenile detention centers, training schools, ranches, camps, and farms used to house delinquent youth. They found widespread problems, particularly in provisions regarding crowding, health care, security, and control of suicidal behavior. Though facilities vary widely,

³⁶ BARRY C. FELD, *NEUTRALIZING INMATE VIOLENCE: JUVENILE OFFENDERS IN INSTITUTIONS* (1977); CLEMENT BARTOLLAS, S.J. MILLER, AND SIMON DINITZ, *JUVENILE VICTIMIZATION: THE INSTITUTIONAL PARADOX* (1976) HAROLD W. POLSKY, *COTTAGE SIX- THE SOCIAL SYSTEM OF DELINQUENT BOYS IN RESIDENTIAL TREATMENT* (1962); KENNETH WOODEN, *WEEPING IN THE PLAYTIME OF OTHERS: AMERICA’S INCARCERATED CHILDREN* (1976).

³⁷ See, e.g., Gaylene Styve Armstrong and Doris Layton MacKenzie, *Private Versus Public Juvenile Correctional Facilities: Do Differences in Environmental Quality Exist?* 49 CRIME & DELINQUENCY 542-563 (2003).

³⁸ Gaylene J. Styve, Doris Layton MacKenize, Angela R. Gover, and Ojmarrh Mitchell, *Perceived Conditions of Confinement: A National Evaluation Of Juvenile Boot Camps And Traditional Facilities*, 24 LAW & HUMAN BEHAVIOR 297-308 (2000)

³⁹ Michelle Inderbitzin, *Lessons From a Juvenile Training School: Survival and Growth*, 21 J. ADOL. RES. 7-26, (2006)

⁴⁰ Dale G. Parent, Valerie Lieter, Stephen Kennedy, Lisa Livens, Daniel Wentworth, and Sarah Wilcox, *Conditions of Confinement: Juvenile Detention and Corrections Facilities* (1993), available at <http://www.ncjrs.gov/pdffiles/jjjs93.pdf>

Parent et al. found widespread shortcomings and failure among some facilities to fulfill congressional mandates for service provision.

In their book, *Youth in Prisons*, Professors M.A. Bortner and Linda Williams⁴¹ illustrate how security in contemporary juvenile corrections overrides treatment concerns in juvenile facilities – even after court-ordered implementation of treatment services. Bortner and Williams describe the experiences of an Arizona juvenile correctional facility as it attempted to follow a court order to improve educational and counseling services. Though the facility restructured and began what appeared (from a therapeutic perspective) to be an impressive new program, it soon deteriorated in the face of the daily pressures faced within a prison. With inadequate retraining, correctional staff soon reverted back to abusive behaviors, and security mandates impeded the functioning of the treatment program. Their story demonstrates how juvenile correctional facilities – even those mandated to offer educational and counseling services – are prisons first and therapeutic sites second.⁴²

The Arizona illustration is neither surprising nor unique. Reforms in juvenile corrections have struggled with this distinction for decades, and the inertial orientation toward security has defeated reform in the face of organizational culture and institutional rules that favor the custodial side of the ledger.⁴³ Perhaps the most famous example is the story of Jerome Miller as the superintendent of juvenile corrections in Massachusetts in the 1970s. In *Last One Over the Wall*, Miller describes how, after becoming head of Massachusetts' juvenile justice system (the Department of Youth Services) in 1969, he was taken aback by dismal conditions in the state's juvenile correctional facilities. Youth were exposed to irrational and excessive punishments from staff, and received insufficient counseling and treatment. Yet when he attempted to improve these conditions, he found the organizational inertia protecting them too strong to allow substantial change.⁴⁴ He eventually solved this problem by closing all juvenile correctional facilities in the state between 1970 and 1972.⁴⁵ His story speaks

⁴¹ M. A. BORTNER AND LINDA WILLIAMS, *YOUTH IN PRISON: WE THE PEOPLE OF UNIT 4* (2007)

⁴² *Id.*

⁴³ For a thorough analysis of differences in custody-oriented and therapy-oriented juvenile correctional facilities, see BARRY C. FELD, *NEUTRALIZING INMATE VIOLENCE: JUVENILE OFFENDERS IN INSTITUTIONS* (1977). See, also, JEROME G. MILLER, *LAST ONE OVER THE WALL: THE MASSACHUSETTS EXPERIMENT IN CLOSING REFORM SCHOOLS* (2nd ed) (1998)

⁴⁴ Feld, *id* at XX

⁴⁵ ALDEN D. MILLER AND LLOYD E. OHLIN, *DELINQUENCY AND COMMUNITY: CREATING OPPORTUNITIES AND CONTROLS* (1985); ROBERT COATES, ALDEN D. MILLER AND LLOYD E. OHLIN, *DIVERSITY IN A YOUTH CORRECTIONAL SYSTEM: HANDLING DELINQUENTS IN MASSACHUSETTS* (1978)

loudly about how juvenile facilities can be punitive and harmful places that resist change.

More recently, a number of states have faced litigation in response to noxious conditions of confinement for juveniles. In *Galloway v. Texas*, for example, the plaintiff, Galloway, was subjected to abusive conditions while being denied counsel, suitable medical, education and psychiatric services, as well as protection from custodial staff.⁴⁶ As a result of this suit, which found conditions to be unlawful, more than five hundred youth were released from Texan juvenile correctional facilities.⁴⁷ California as well has recently lost litigation due to failure to protect youth in its charge or provide necessary services to them.⁴⁸

In July, 2010, New York agreed to federal oversight of four juvenile correctional facilities after investigations found serious abuse and denial of services at these facilities, run by the Office of Children and Family Services.⁴⁹ The initial incidents that brought about investigation by the Civil Rights Division of the Department of Justice included a series of incidents and even a death in custody.⁵⁰ But the investigation found a pattern of neglect and abuse rather than simply isolated events; youth were routinely exposed to excessive levels of physical restraint and denial of mental health care. In fact, prior to federal involvement there was not a single psychiatrist on staff at the facilities.⁵¹

The problems at these New York facilities – and in other states where legal intervention has been necessary – demonstrate that deplorable conditions often are allowed to continue for years. After all, juvenile inmates – those who suffer under noxious juvenile correctional conditions – have less status than just about any other custodial group that one can imagine. They are legally barred from political and civic participation, as they cannot even sign a contract, let alone vote. And they often lack access to counsel or other legal resources that are integral to the culture of state prisons for adults. Nor do juveniles have standing

⁴⁶ Civ No. 1:07-CA-276 (W.D. Tex.).

⁴⁷ Sylvia Moreno, “In Texas, Scandals Rock Juvenile Justice System,” *The Washington Post*, April 5, 2007. See, also, Michael E. Tigar, *What are We Doing to the Children?: An Essay on Juvenile (In)Justice*, 7 OHIO STATE J. CRIM. L. 849 (2010)

⁴⁸ *Farrell v. Gate*, RG03-079344 (Cal. Super. Ct. 2004)

⁴⁹ U.S. v. New York State Office of Children and Family Services, Joint Motion to Enter Settlement Agreement, Civ XXXX, July 14, 2010, available at <http://www.justice.gov/opa/documents/agreement-07142010.pdf>

⁵⁰ Letter from Loretta King, Acting Assistant Attorney General, to Governor David A. Paterson, Re: Investigation of the Lansing Residential Center, Louis Gossett, Jr. Residential Center, Tryon Residential Center, and Tryon Girls Center, August 14, 2009, http://www.justice.gov/crt/split/documents/NY_juvenile_facilities_1/2ndlet_08-14-2009.pdf.

⁵¹ *Id* at XX

to bring lawsuits to remedy toxic conditions of confinement.⁵² When youth do complain of poor or abusive conditions, adults often dismiss their concerns as exaggerated, fantasy, or short-sighted due to immaturity.⁵³

Yet these aren't just any juveniles, they're prisoners – those who have been incarcerated because they've been judged to be unfit for society. And as prisoners, they are framed – institutionally and culturally – in terms similar to adult prisoners. Add to this the fact that large percentages are very poor and racial/ethnic minorities, and their lack of social capital is even clearer. The cascade of their status as juveniles and their racial makeup compounds their vulnerability to institutional indifference, and their limited access to redress. Like their adult counterparts, these poor minority youth often are housed in facilities in rural, mostly white areas of their states, with custodial staff who are members of powerful unions, which means that their lack of social status is accentuated through comparison to their overseers.⁵⁴ As a result, they are perhaps less likely than any other group of citizens to have the social power of self-help or effective advocacy to bring about change, especially change within the complicated bureaucracies of powerful state agencies that are responsive to the political web of unions and the punitive politics of state legislatures.⁵⁵

C. Auspice versus Institution: Considering the Effects of Juvenile Corrections

The potential for stark conditions in juvenile justice suggests that institutional climate competes with institutional auspice in shaping the correctional experiences of young offenders in state custody. One hint of this effect comes from recent work comparing the effect of juvenile vs. adult punishment on recidivism. Fagan et al. found that although transfer to the adult justice system was positively related to future crime, especially violence,⁵⁶ the effects were attributable to court jurisdiction, not incarceration. That is, whether a juvenile was incarcerated did not predict recidivism. This empirical fact hints at the possibility that conditions of confinement are comparable in both settings, and

⁵² Tigar, supra note ____.

⁵³ CITE?

⁵⁴ Final Report, New York State Governor's Task Force on Juvenile Justice (2010)

⁵⁵ JONATHAN SIMON, GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR (2007); KATHERINE BECKETT MAKING CRIME PAY: LAW AND ORDER IN CONTEMPORARY AMERICAN POLITICS (1999); BRUCE WESTERN PUNISHMENT AND INEQUALITY IN AMERICA (2006).

⁵⁶ Jeffrey Fagan, Aaron Kupchik, and Akiva Liberman, *Be Careful What You Wish for: Legal Sanctions and Public Safety Among Adolescent Offenders in Juvenile and Criminal Court* (July 2007). Columbia Law School, Pub. Law Research Paper No. 03-61. Available at <http://ssrn.com/abstract=491202>

equally protective or corrosive for kids.⁵⁷ Add to this another empirical fact: lengthened sentences for juvenile offenders, whether in juvenile or adult corrections placements, are of no apparent consequence to public safety.⁵⁸

But if it is the fact of punishment in general that predicts subjective experiences and developmental outcomes, rather than the institutional auspice where such punishment takes place, then we are obligated to broaden the inquiry in ways that challenge both the fundamental jurisprudential rationale(s) for juvenile court intervention and rethink the metrics by which we decide who is subject to incarceration and for how long, regardless of court auspice. This would cause us to question whether rehabilitation is a possibility, and whether we should forego the euphemisms and honestly call juvenile corrections punishment (as we do its adult counterpart). In other words, if punishment has risks that offset its political purposes and instrumental goals,⁵⁹ then a more responsive regulatory regime is needed.

Though helpful, the small volume of research on conditions of juvenile confinement is insufficient to respond to these concerns. If juvenile correctional facilities are custody-centered and fail to provide safe and therapeutic environments for youth, it becomes difficult to reconcile the claim that juvenile facilities are superior to adult facilities for youth. We address this gap in the literature with the following analyses by taking both a relative and absolute view of the pains of imprisonment in juvenile and adult correctional facilities. Our results demonstrate that both perspectives are helpful; though adult facilities are less appropriate for youth, the pains of imprisonment are universally experienced across institutional auspice.

⁵⁷ If incarceration of juveniles as adults produces adverse experiences and outcomes, as prior work suggests, then we ought to be very careful about whom (and how many) we punish as adults and how we punish them. This requires that we rethink the purposes of subjecting juveniles to adult punishment, and the potential for perverse legislative incentives. This argument has gained traction in recent years, with reports from the Centers for Disease Control. See, Robert Hahn, et al., “Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services.” *Morbidity and Mortality Weekly Report* 56: 1-11 (2007). See, also, Richard Redding, Richard E., *Juvenile Transfer Laws: En Effective Deterrent to Delinquency?* Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (document #NCJ 220595). 2008

⁵⁸ Thomas A. Loughran et al., *Estimating a Dose-Response Relationship between Length of Stay and Future Recidivism in Serious Juvenile Offenders*, 47 *CRIMINOLOGY* 699 (2009); Daniel Nagin, et al, *Imprisonment and Reoffending*, 38 *CRIME & JUSTICE* 115 (2009); Anthony N. Doob and Cheryl Marie Webster, *Sentence Severity and Crime: Accepting the Null Hypothesis*, 30 *CRIME & JUSTICE* 143 (2003); Emily G. Owens, *More Time, Less Crime? Estimating the Incapacitative Effect of Sentence Enhancements*, 52 *J. L. & ECON.* 551 (2009)

⁵⁹ See Franklin E. Zimring *The Power Politics of Juvenile Court Transfer*, *supra* note

III. METHODS

A. Research Setting

To understand the relative and absolute conditions of confinement for adolescent offenders, we examine evidence on the comparative experiences of adolescent offenders placed in a range of juvenile and adult correctional facilities. Consistent with prior work, we expect that there are meaningful differences in the correctional climates of juvenile versus adult facilities. But we also assume that there are meaningful differences within systems – that is, there is variation among juvenile facilities, just as there is among adult prisons.

We analyze data collected during interviews with young male inmates in both types of facilities, across two neighboring states, New York and New Jersey. The stark disparity in criminalization of adolescent crime across these two states allows for a quasi-experimental design, whereby similarly situated individuals who live within 10 miles of each other and who commit similar crimes are sent to a juvenile facility if they live in New Jersey but an adult facility if they live in New York. We focus our investigation on young adults from three counties in New York City and three counties from Northeastern New Jersey, since these areas together form a single Census Metropolitan Statistical Area, they are connected by local public transportation, and they all share similar demographic and socio-economic characteristics.⁶⁰

The two states vary extensively in how they respond to adolescent offending. New York statutorily sets age 16 as the age of majority for criminal offending, and also transfers many youth below age 16 to criminal court for a variety of felony offenses.⁶¹ In contrast, New Jersey has retained a fairly

⁶⁰ For more detail see Fagan, Kupchik and Liberman, *Be Careful What You Wish For*, *supra* note ____

⁶¹ 1978 N.Y. Laws, ch. 478, § 2. Section 30.00 of the New York Penal Law provides:

1. Except as provided in subdivision two of this section, a person less than sixteen years old is not criminally responsible for conduct.
2. A person thirteen, fourteen or fifteen years of age is criminal responsible for acts constituting murder in the second degree . . . ; and a person fourteen or fifteen years of age is criminally responsible for acts constituting the crimes [of] kidnapping in the first degree; . . . arson in the first degree; . . . assault in the first degree; . . . manslaughter in the first degree; . . . rape in the first degree; . . . sodomy in the first degree; . . . aggravated sexual abuse; . . . burglary in the first degree; . . . burglary in the second degree; . . . arson in the second degree; . . . robbery in the first degree; . . . robbery in the second degree . . . ; or . . . an attempt to commit murder in the second degree or kidnapping in the first degree.

traditional juvenile justice system, whereby most youth below age 18 are considered juveniles.⁶² As a result, many youth in New Jersey and New York who come from similar backgrounds and who commit the same crimes receive very different consequences; those in New Jersey are prosecuted and punished within the juvenile justice system, and those in New York are prosecuted and punished in the adult system.⁶³

The New Jersey facilities include the state's training school for boys and medium security facility (there is no maximum security facility for juveniles, making this the state's "deep end" placement), both of which are governed by the state's juvenile justice commission. The New York facilities are part of two state agencies: the Office of Children and Family Services (OCFS) and the Department of Corrections (DOC). All of the youth we interviewed in New York were prosecuted in criminal courts, but those who were under age 16 at the time of offense were sent to OCFS facilities and those older than 16 sent to DOC facilities. Thus our data include data from three types of facilities, representing a continuum of criminalization: juvenile facilities, adult DOC facilities, and hybrid OCFS facilities – we consider these hybrid facilities because they include juveniles who have been defined as adults but who are too young to be sent to DOC facilities.

N.Y. PENAL LAW § 30.00 (McKinney 1998).

⁶² N.J. Assembly Bills Nos. 641-45 (Jan. 19, 1982). The revised code included "tougher" delinquency sentencing and waiver provisions, and new dispositional alternatives including fines, restitution, and community service. See, N.J. STAT. ANN. § 2A:4-24 (b) (West 1987). The new code also created a presumption for confinement for youths charged with certain serious crimes such as murder, rape, and robbery, and presumption for non-incarceration for those youths convicted of less serious offenses and who have no prior record. *Id.* § 2A:4-25.

⁶³ The New Jersey legislature instructed juvenile courts to consider the characteristics of an offense and the criminal history of the offender when sentencing and provided for enhanced sentences for certain serious or repeat offenders. *Id.* §§ 2A:4A-43(a), -44(a), (d). New Jersey's code revisions reflect a desire to promote uniform terms in sentencing and to judge delinquent acts similarly based on their characteristics. *Id.* § 2A:4A-20 section 25 (containing Senate Judiciary Committee Statement). The New Jersey code also listed "aggravating and mitigating factors" to guide the court's decision whether or not to incarcerate a youth.. *Id.* § 2A:4A-44(a), (b). Aggravating factors included the circumstances of the crime, the injury to or special vulnerability of the victim, the juvenile's prior record and its seriousness and whether the youth was paid for committing the crime. The mitigating factors included youthfulness, lack of serious harm, provocation, restitution for damage, the absence of prior offenses, and likely responsiveness to non-incarcerative dispositions. *Id.* The code authorized substantial sentences for the most serious crimes and proportionally shorter sentences for less serious offenses. § 2A:4A-44(d)(1). The revised code also authorized periods of incarceration beyond the statutory maximum for the most serious juvenile offenders. *Id.* § 2A:4A-44(3). . The release of juveniles on parole prior to the completion of at least one-third of their sentence requires the approval of the sentencing court. *Id.* § 2A:4A-44(d)(2).

We did not need to sample institutions in New Jersey, since these are the only two secure facilities for boys. In New York, we selected the 2 OCFS facilities and 3 DOC facilities that house the largest numbers of eligible respondents, given a variety of sampling criteria. Of the state's four OCFS facilities, the two selected are closest to the sampled counties and thus house the majority of offenders from there; of the more than fifty secure DOC facilities in the state, the three we selected house the largest proportion of offenders from the sampled counties and also specialize in young adult offenders.

B. Study Samples

Our sample includes data from interviews with 188 youths: 93 in New Jersey and 95 in New York. All male inmates below 21 years of age who resided in one of the sampled counties prior to incarceration, and who were sentenced for offenses other than homicide or sexual assault (as the most serious offense)⁶⁴ were eligible for recruitment.

To recruit respondents, each correctional agency created lists of eligible inmates based on the above criteria. Prison counselors then approached each inmate and told him that researchers were interested in speaking with him. If he consented to speak with a researcher, then the interviewer would inform him about the study before conducting the interview.

C. Interview Procedures

Interviews lasted almost two hours, on average, and were conducted by professional interviewers with experience in correctional facility research. The interviews consist of mostly closed-ended and scaled questions, to which respondents were asked to respond using a Likert scale.⁶⁵ A number of questions inquire about respondents' background factors prior to incarceration: their experiences in court, their families, the neighborhoods in which they lived, their peers and social lives, and their criminal histories. Questions concerning correctional experiences include: vocational and academic education in prison, access to counseling and therapy, interactions with correctional staff, and levels of psychological distress.

⁶⁴ We excluded these two categories of offenses in order to remove the most serious offenders from our sample and capture the experiences of others. Young adults convicted of homicide and sexual assault may not have typical correctional experiences, as they may be more likely to serve time in isolation or receive different treatment from guards and other inmates.

⁶⁵ Likert scales typically ask respondents to indicate their view using a numerical scale that captures a range of possible reactions to a statement. For example, subjects are read a statement, and then asked to say whether they agree or disagree. The typical instruction would be: "Would you say that you: (1) strongly disagree, (2) disagree, (3) neither agree nor disagree, (4) agree, or (5) strongly agree."

Interviewers took several steps to help obtain full and honest answers from respondents. All interviews were conducted in semi-private spaces within each facility, out of the hearing of guards or other inmates. Furthermore, using scaled response cards assisted in obtaining information without fear of eavesdropping by inmates or guards; respondents could simply state the number from the Likert scale that corresponded to an option on the response card. This encrypted responses, which gave respondents further assurances that their responses could not be overheard by facility staff.⁶⁶ To ensure confidentiality, respondents were promised anonymity and informed about a federal certificate of confidentiality that protected their identity regardless of their responses.⁶⁷ Finally, most of the interviewers were either African American males or males who had served time in that state's correctional system themselves. Matching on race and ethnicity may have helped the respondents identify with the interviewer and answer questions fully and honestly.⁶⁸ Interviews were conducted between October 1999 and October 2001.

D. Measures and Variables

A number of measures from these interviews allow us to compare correctional experiences across facility types. We are particularly interested in the following domains of experiences: availability of institutional services, perceptions of fair treatment, quality of educational programs, individualized help, exposure to crime (as a witness, victim, or perpetrator), and psychological distress (including symptoms of mental illness and PTSD). Each of these domains is measured using an index based on several individual interview

⁶⁶ Finding privacy in correctional facilities was a difficult process. Facility administrators acknowledged our need for privacy, but refused to place interviewers in completely separated areas due to safety concerns. In some facilities, staff could observe the interview but not hear it. In other facilities, staff would be on the other side of a large room from the interviewer and respondent. In all cases, interviewers ensured that the interview could not be overheard; encrypting responses with scaled answers was a precaution aimed mainly at helping respondents feel comfortable.

⁶⁷ The only exception to this was if respondents stated facts about specific incidents or crimes. A respondent could say that he was abused in prison, but if he specifically stated that he was abused by Officer Jones on July 10th, then we were compelled to report this information to our Institutional Review Board and the correctional agency. Interviewers clarified these rules before each interview began. If a respondent began to offer details of any offenses the interviewer immediately stopped the respondent and repeated the rules for reporting information that we were required to follow.

⁶⁸ See, for example, Mark E. Hill, *Race of the Interviewer and Perception of Skin Color: Evidence from the Multi-City Study of Urban Inequality*, 67 AMER. SOC. REV. 99 (2008)

questions; each index showed internal reliability (via high Cronbach's alpha⁶⁹) and consisted of similar questions. A description of each index is listed in Table 1.

Table 1 Here

Measures of institutional services were adopted from research on juvenile correctional settings by Forst, Fagan and Vivona⁷⁰ and Coates, Miller and Ohlin (1978).⁷¹ Measures of exposure to crime (as perpetrator, witness or victim) were adopted from the Rochester Youth Study, a longitudinal study of high-risk adolescents.⁷² Post-Traumatic Stress Disorder was measured using the *Impact of Event Scale-Revised*.⁷³ The IES-R is designed to assess symptoms of trauma related to stressful events during a recent interval. Subjects were asked to recall a stressful event from the past 30 days, and were then asked to report how stressful the event was based on 20 specific questions.⁷⁴ Three subscales – intrusion, avoidance, hyperarousal – were computed from the scale scores.

Mental health functioning was assessed using the Brief Symptom Inventory (BSI).⁷⁵ The BSI is a 53-item scale that assesses symptoms of mental health functioning associated with emotional distress. Scores are computed for each of nine distinct dimensions of psychological functioning.⁷⁶ A global index of distress - the Global Severity Index – also is computed. Subjects are asked to report the extent to which they experienced each of these symptoms “over the past week including today” on a Likert-type scale ranging from 0 (not at all) to 4 (extremely). The Global Severity Index summary score strongly correlates with the other nine subscales. Derogatis and Melisaratos reported a 2-week test-retest

⁶⁹ The *alpha* coefficient measures how well a set of variables measures a single unidimensional latent construct. See Lee J. Cronbach, *Coefficient Alpha and the Internal Structure of a Test*, 16 PSYCHOMETRIKA 297–334 (1951).

⁷⁰ Forst et al. Youths in Prisons and Training Schools, *supra* note __.

⁷¹ Coates et al., Diversity in a Youth Correctional System, *supra* note __.

⁷² Terence P. Thornberry and Marvin D. Krohn, “The Self-Report Method for Measuring Delinquency and Crime” 4 *Measurement and Analysis of Crime and Justice* 33-83 (2000).

⁷³ Daniel S. Weiss, “The Impact of Event Scale-Revised,” in (J. P. Wilson & Terrance M. Keane, eds.), *ASSESSING PSYCHOLOGICAL TRAUMA AND PTSD: A PRACTITIONER'S HANDBOOK*. (2nd ed.) 168-189 (2004).

⁷⁴ Sample questions are: “I had trouble staying asleep”; “Pictures of it popped into my mind”, and “I had waves of strong feelings about it”. Response categories were: are 0 = Not at all; 1 = A little bit; 2 = Moderately; 3 = Quite a bit; 4 = Extremely.

⁷⁵ Leonard Derogatis and N. Melisaratos, *The Brief Symptom Inventory: An Introductory Report*. 13 PSYCHOL. MED. 595– 605(1983).

⁷⁶ Somatization, obsessive-compulsive, interpersonal sensitivity, depression, anxiety, hostility, phobic anxiety, paranoid ideation, and psychoticism.

reliability of $r = .91$ for the Global Severity Index.⁷⁷ Internal consistency coefficients – Cronbach’s Alpha⁷⁸ - range from $\alpha = .71$ to $.85$, scores considered moderate to good.⁷⁹

IV. RESULTS

Our analyses proceed in several stages, each of which compares characteristics and experiences of youth across our three categories of correctional facilities: juvenile facilities, adult DOC facilities, and hybrid OCFS facilities. We begin by presenting the individual and case characteristics of the young adults in the three groups. We continue with a series of bivariate tables and bar graphs that compare the above correctional experience measures across the three groups. However, despite the quasi-experimental design on which the study is based, the possibility remains that young adults in the different facility types vary on important underlying characteristics, such as amenability to treatment, attitude, or propensity for violence. To better isolate the effect of facility type on correctional experiences, we continue our analyses with a series of Ordinary Least Squares regression models; these models allow us to estimate the effect of facility type on correctional experiences while statistically controlling for theoretically relevant individual characteristics (age, race/ethnicity, and type of offense for which they are incarcerated).

A. Conditions of Confinement

As shown in Table 2, there are some statistically significant differences among individual and case characteristics across the three groups. Respondents in the adult (NY DOC) facilities are somewhat older at interview, while those in hybrid (NY OCFS) facilities were incarcerated at the youngest age, on average. Those in the hybrid facilities are most likely to have been in a gang prior to incarceration, most likely to be incarcerated for violence, and most likely to have been detained pretrial. In contrast, the juvenile facilities host the largest percentages of youth incarcerated for drug offenses and probation/parole violations. Respondents in the juvenile facilities (NJ) reported the shortest average sentence length. Overall there are very few white youth across all facilities, and none in the adult facility sample.

Table 2 Here

Table 3 offers information on the use of facility services. Interestingly, respondents in adult facilities are most likely to report that they are assigned a

⁷⁷ Derogatis and Meliseartos, *supra* note __.

⁷⁸ See, note __ *supra*, for a discussion of Cronbach’s alpha and the meaning of reliability coefficients.

⁷⁹ Derogatis and Meliseartos, *supra* note __.

caseworker, yet they also report the least contact with the caseworker, by a wide margin. Adult facility respondents report lower rates than both other groups of attending school and of being encouraged to write, though on other measures adult facility respondents appear more engaged in services than do respondents in the other facilities.

Table 3 Here

In Figure 3, we compare summary ratings of institutional services across respondents from the different facility groups. Adult facility respondents offer the highest ratings of the availability of institutional services, but the lowest ratings of interactions with staff, including both procedural justice and individualization. In conjunction with the results of Table 3, this suggests that adult facilities offer a wide range of services, though facility residents may not take advantage of these opportunities, and their interactions with correctional staff are less positive than those that take place in other facility types.⁸⁰

Figure 3 Here

In addition to providing potentially therapeutic services, correctional facilities are entrusted with the task of protecting inmates; the failure of adult facilities to protect young inmates is one of the most substantial criticisms that arises from prior research.⁸¹ In Figure 4 we compare reported ratings across facility types of the frequency of witnessing crime, committing crime, using drugs or alcohol, and perceptions of safety. The results show that respondents in adult facilities report the lowest frequencies of witnessing crime, being victims of crime, committing crime, or using drugs or alcohol. However, despite the lower reported rates of crime, we also find that adult facility respondents are much more likely to report feeling in danger all of the time (19.7% vs. 10.1% in juvenile facilities and 5.9% in OCFS facilities) or to feel like they are “in some danger” (27.9% vs. 13.5% in juvenile facilities and 0% in OCFS facilities). Thus, though they may actually be surrounded by less disorder and crime in adult facilities, young inmates feel more threatened there.

Figure 4 Here

B. Youth Perceptions of Conditions of Confinement

The multivariate regression models shown in Tables 4 and 5 confirm the bivariate results. While controlling for respondent characteristics, we find that respondents in adult facilities have lower scores than those in juvenile facilities on our procedural justice scale, but higher ratings on our availability of institutional services index. Moreover, as shown in Table 5, those in adult facilities report lower scores than juvenile facility respondents on each of the criminal activity

⁸⁰ See Kupchik, *Correctional Experiences of Youth* (2007).

⁸¹ See Forst, Fagan and Vivona, *Youth in Prison and Training School*, *supra* note _

indexes: witnessing crime, victimization, criminal behavior, and drugs / alcohol use.

Table 4 Here

Table 5 Here

C. Psychological Distress

We next consider differences among respondents' scores on two dimensions of psychological well-being: mental health symptoms associated with emotional distress and post-traumatic stress disorder. In contrast to the aforementioned seemingly positive results regarding adult correctional facilities, when we compare rates of psychological distress and trauma across facilities in Figure 5 and Figure 6, we see significantly more problems among respondents in the adult facilities. Regarding current psychological symptoms, adult facility respondents are significantly more likely than others to report higher levels of depression, anxiety, and phobic anxiety. Further, adult facility respondents score significantly and substantially higher on all three measures of PTSD. These results hold up when controlling for individual characteristics in Table 6. Here we regress each PTSD index, as well as the Global Severity Index, on the individual-level variables and facility auspice, as included in the above regression models. Adult facility respondents fare significantly worse on each PTSD measure than juvenile facility respondents, while controlling for individual characteristics.

Figure 5 and 6 Here

Table 6 Here

The results defy simple characterizations of the differences in custodial experiences across facility types. Unlike prior studies, we do not find that young inmates are in greater danger of assault or other criminal victimization in adult facilities, nor do we find that juvenile facilities are clearly superior at providing therapeutic services. In fact, the security orientation of adult correctional facilities seems to more effectively prevent victimization of younger adolescents. These facilities seem to provide a wider range of services than either juvenile or hybrid facilities. However, respondents in adult facilities offer lower evaluations of inmate-staff relations and appear somewhat less receptive to the services offered them, relative to other respondents. But the most important distinction is perhaps along the one dimension that may have the longest lasting, residual and toxic effects: regardless of the relatively low crime and victimization rates in adult facilities, adolescent respondents in adult facilities report significantly more fear and substantially higher levels of symptoms of psychological trauma.

V. DISCUSSION

We draw two overall conclusions that relate to juvenile justice policy making. First, juvenile prisons are a better option than adult prisons for young offenders. Despite the facts that adult facilities offer a greater range of services than juvenile or hybrid facilities, and that they seem effective at preventing crime, there are unambiguous hazards associated with sending youths into adult facilities. We find that young adults are substantially more likely to fear for their safety in adult facilities, they report inferior relations with staff, and they seem somewhat less involved in the services that are offered than are young adults in the other two facility types. Moreover, they show significantly higher scores of psychological distress and PTSD. These results are even more important when coupled with the reduced protections from stigma that come from criminalization. When youth are sent to adult facilities they serve more time and return to society with a criminal record, which powerfully diminishes their odds of gainful employment and other positive life experiences.⁸² Some – though certainly not all – of this stigma can be prevented by relying instead on juvenile facilities. The criminalization movement makes little sense from a crime prevention perspective (recidivism risks), it impairs reintegration (stigma of criminal record, baggage of incarceration), and as our analyses show, it is associated with negative outcomes such as psychological distress and fear for one's safety.

Our second conclusion is that incarceration ought to be used as a last resort, regardless of the type of institution to which an adolescent or young adult might be sent. The criminalization of delinquency we describe above has had harmful consequences on many youth through unnecessary incarceration, and thus needless exposure to fear and trauma. Though we do believe that juvenile incarceration is the lesser of two evils, it is still an evil that ought to be avoided if possible. And it is often possible, as Jerome Miller showed us when he closed Massachusetts' juvenile reform schools and the state saw no increase in delinquency.⁸³ Juvenile justice euphemisms such as "reform school" or "training school" notwithstanding, juvenile prisons are indeed prisons that punish and impose pain on convicted (adjudicated) criminals (delinquents).

An important question that we are unable to resolve empirically is of the generalizability of our results. We have compared correctional facilities across two states only, and the juvenile correctional system in one of these states (New

⁸² DEVAH PAGER, *MARKED: RACE, CRIME AND FINDING WORK IN AN ERA OF MASS INCARCERATION*. (2008); TODD R. CLEAR, *IMPRISONING COMMUNITIES: HOW MASS INCARCERATION MAKES DISADVANTAGED NEIGHBORHOODS WORSE* (2007); MARC MAUER AND MEDA CHESNEY-LIND, *INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT* (2003)

⁸³ Miller, *Last One Over the Wall*, *supra* note __.

York) is currently under federal oversight after failing to protect youth in its custody. Yet as others have noted, deficiencies such as those that required legal intervention in Texas and New York are found in “state after state.”⁸⁴ Though such toxic conditions may not be found in all states’ juvenile correctional institutions, we suspect that our results are typical of most states and hope that future research can consider this question.

On the one hand, these results suggest some reason for tempered optimism, in that adult facilities do not appear to be more violent or substantially worse at service delivery than juvenile or hybrid facilities, as found in prior studies.⁸⁵ Thus, the criminalization of juvenile crime witnessed over the past few decades might not have resulted in as dire consequences as one might have feared, given earlier results about the experiences of youth in adult facilities. Differences in the backgrounds of the youths interviewed, the greater diversity of correctional settings in which the youths were placed, and simply a different era (before the spike in youth violence in the late 1980’s) might explain why the sharp distinctions between juvenile and adult corrections were not evident here. But the answer may also reflect the changes in the institutions of juvenile corrections that have taken place over the past two decades. We speculate that one consequence of the criminalization movement of the 1990s was a lack of attention – indeed, a neglectful inattention – to the conditions of confinement in juvenile facilities. Given such inattention, the spike in the rate of placement of juveniles in underfunded and poorly staffed juvenile correctional settings, as attention and money flowed to expansion of correctional facility bed space rather than quality of programming, might have had substantial effects on conditions of confinement within them. We encourage future studies to consider this question in greater detail.

Though juvenile facilities are neglectful and are at least as likely as adult facilities to expose their residents to crime and violence, they are protective on the important dimensions of psychological well-being and mental health. Adult facilities do much worse at helping young inmates *feel* safe, and the inmates in their charge report much higher levels of psychological trauma than do others. Though we can’t explain the cause of this result, a plausible explanation is that young inmates are scared (and scarred) when placed in large, impersonal adult facilities and surrounded by older, bigger and hardened adult inmates.

Incarceration is painful, regardless of the institutional auspice, though in different ways in different correctional regimes. Incarceration has negative developmental consequences, no matter whether the staff wear uniforms or track suits, or whether the kids were jumpsuits or jeans. Incarcerating young adults exposes them to danger, psychological distress, and few therapeutic services. Despite variation among many of our measures, on the balance it seems that each

⁸⁴ Tigar, *supra* note __, p. 849.

⁸⁵ *See, e.g.*, Forst et al. Youth in Prison and Training School, *supra* note __.

type of facility uniquely hinders the social and psychological development of young adults. In other words, it's the system of incarceration itself that harms youth, not just institutional auspice.

These risks from punishment suggests the need for both normative rethinking of the purposes of punishment and how we use it, and regulatory thinking about how we monitor and manage what is potentially a toxic intervention. Incarcerating youth produces few positive outcomes and many negative outcomes; incarcerating them in adult facilities is even worse, and makes little sense given what we know about cognitive development among youth.⁸⁶ It's time to bring law and policy into line with the science. Of course, we say this realizing that current punitive practices are unlikely to change. For example, at the dawn of the punitive era, those arguing for punishment leaned heavily on Robert Martinson's report that "Nothing Works".⁸⁷ But they got it wrong – a close reading suggests that his was an argument for decarceration. Martinson said that nothing works, *including prisons*, so we should use the least harmful, least costly punishments. Our analyses suggest that this means youth should only be incarcerated when less severe (as well as less costly and less damaging) options are insufficient, and that when this is the case, incarceration in juvenile facilities is the best option.

VI. CONCLUSION

The prior literature on juvenile correctional facilities includes comparisons of juvenile and adult facilities, with a unanimous conclusion that juvenile facilities are less damaging to incarcerated youth than are adult facilities. Yet these studies are limited in making conclusions of kind rather than degree. Our analyses agree in part with this prior conclusion, though we also find that a simple comparison between juvenile and adult facilities may overlook that harm caused by juvenile facilities. By analyzing data from interviews with almost two hundred young adults incarcerated in juvenile and adult facilities, we find – contrary to expectations based on prior research – that adult facilities perform better than juvenile facilities on a number of measures, including protection from criminal victimization. Yet they perform much worse on other measures. Perhaps most importantly, we find that inmates in adult facilities report substantially and significantly greater rates of PTSD and mental illness, and are also much more likely to be afraid for their safety, compared to those in juvenile facilities. Based on these results, we argue that incarceration should be used only as a last resort

⁸⁶ Elizabeth Cauffman and Laurence Steinberg, *(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 BEHAVIORAL SCIENCES AND THE LAW 741-760 (2000)

⁸⁷ Robert Martinson *What Works? – Questions and Answers About Prison Reform*, 25 THE PUBLIC INTEREST: 22-54. (1974)

for juveniles, and that when it is deemed necessary, juvenile correctional facilities represent the lesser of two evils.

Figure 1. Inmates under Eighteen in State Prisons, 1985–2004

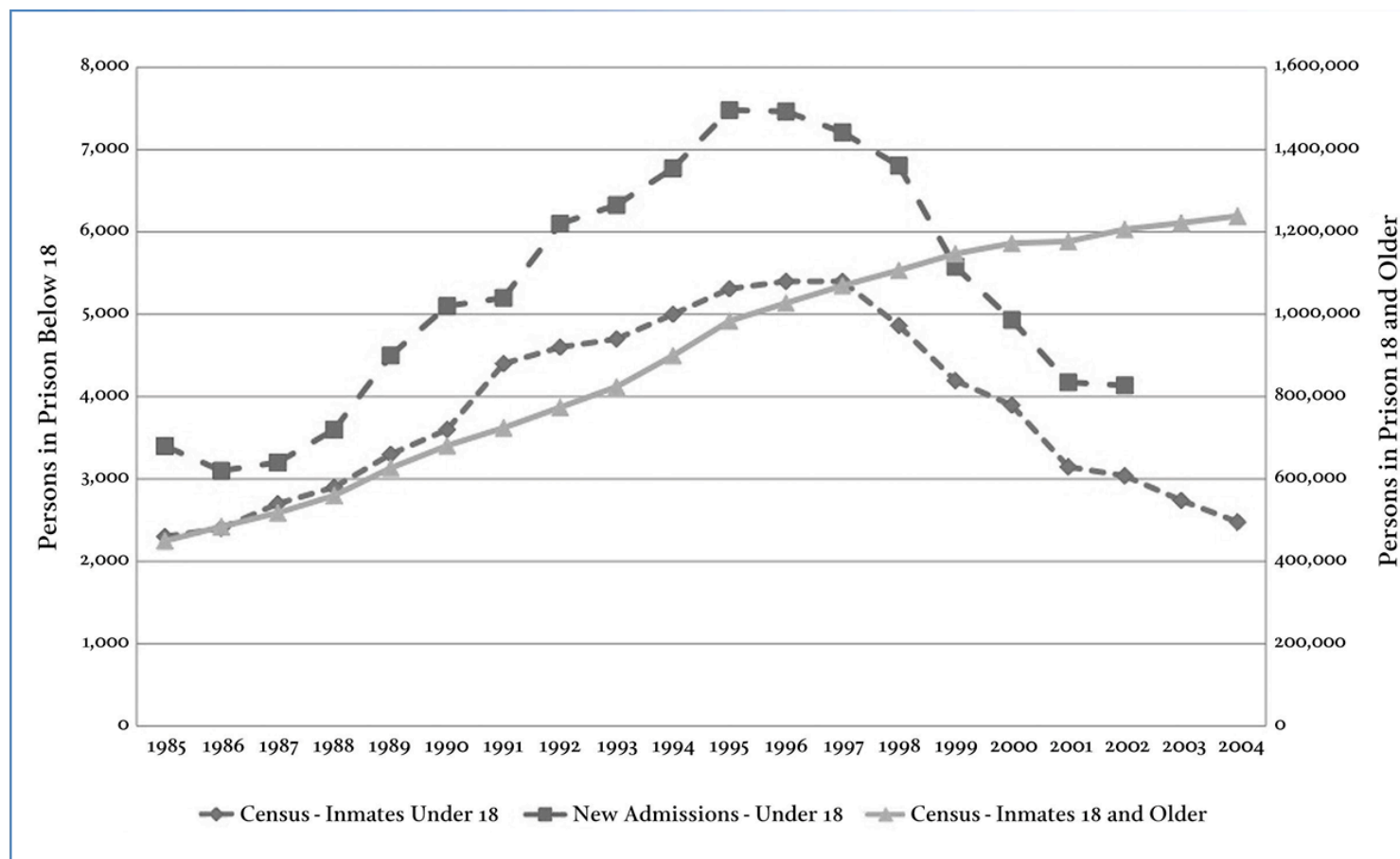


Figure 2. Rate of Juvenile Arrests v. Rate of Juvenile Placements, 1985-2007

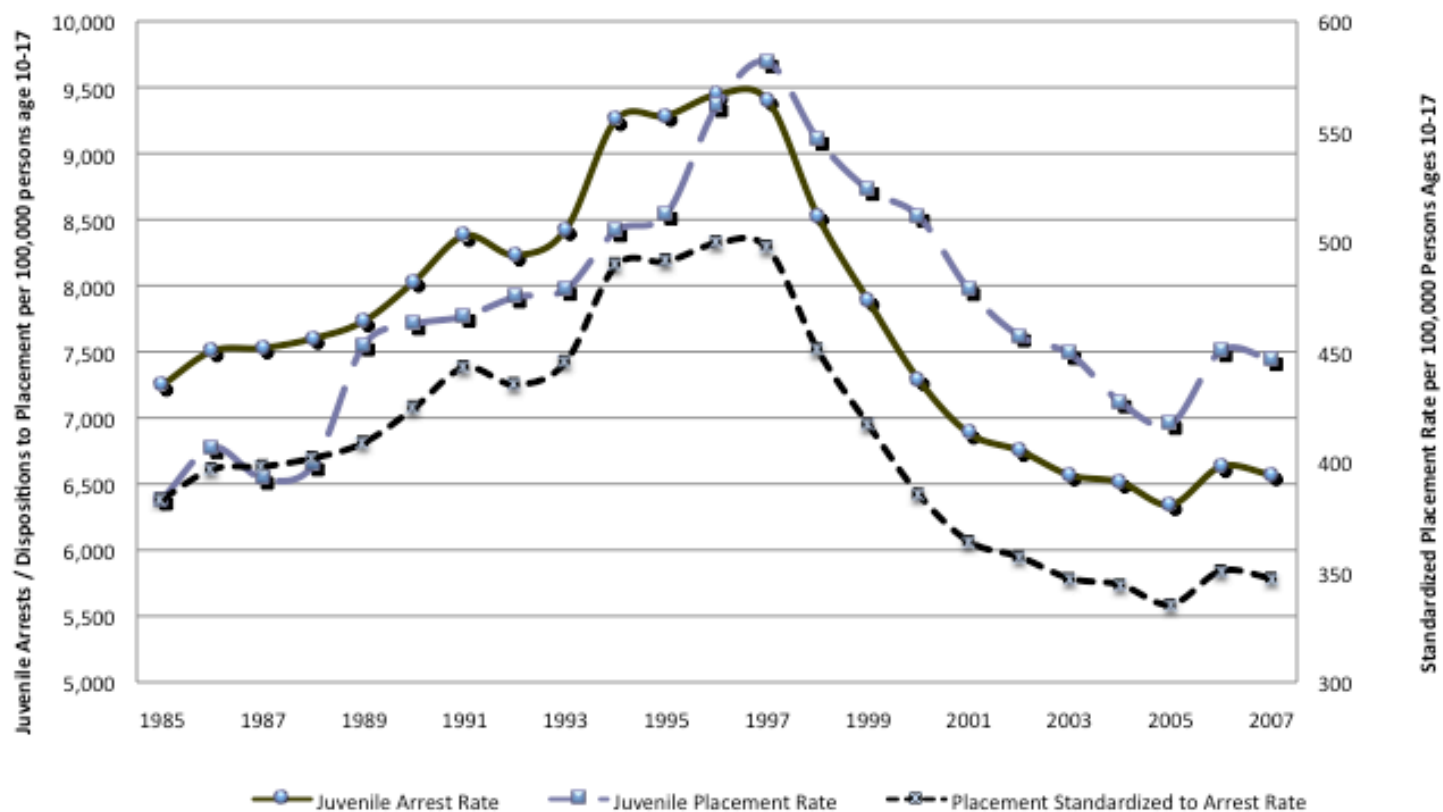


Table 1. Measures of Correctional Experiences and Psychological Functioning				
Index	Construction	N of Items	Sample Items	Reliability (α)
Institutional Services	Sum of the number of services reported to be available	8	is a library/law library available? are religious services available? is drug treatment available?	.836
Procedural Justice	Mean of ratings of school quality	5	staff deal fairly with all kids staff will try to work with almost any kid the rules here are fair	.808
Individualization	Mean ratings of individualized help from staff	5	staff help kids set goals staff arrange help for special problems staff encourage kids to confront personal problems	.838
Witness	Sum of items endorsed on witnessing crime or violence	12	seen someone beat someone up? seen someone threaten someone with a weapon? seen someone take someone else's things?	.873
Victimization	Sum and mean number of reports of victimization	10	how many times have you been threatened with a weapon? how many times have you been beaten up? how many times have you had your things taken?	.783
Crime	Sum and mean number of reports of criminal activity	7	how many times have you threatened someone with a weapon how many times have you beat someone up? how many times have you taken someone else's things?	.849
Drug/alcohol Use	Sum and mean number of reports of drug/alcohol use	4	how many times have you used marijuana? how many times have you used other drugs? how many times have you drunk hard liquor?	.776
BSI Global Index	Mean of individual scales measuring mental illness symptoms	10	Obsessive compulsive scale Depression Scale Anxiety Scale	0.879
PTSD - Intrusion	Mean of intrusion items (about stressful event)	8	reminders brought back feelings of stressful event thought about stressful event when he didn't mean to had dreams about it	0.885
PTSD - Avoidance	Mean rating of avoidance feelings	8	stayed away from reminders of stressful event tried not to talk about it feelings about it were numb	0.799
PTSD - Hyperarousal	Mean Rating of Hyperarousal	6	was jumpy and easily startled had trouble concentrating felt watchful and on guard	0.799

Table 2. Sample Characteristics by Facility Type

	New Jersey		NY OCFS		NY DOCS		Total	
	N	%	N	%	N	%	N	%
Total	91	100	34	100	60	100	185	100
Race								
White	3	3.3	3	8.8	0	0.0	6	3.2
African American	55	60.4	24	70.6	41	68.3	120	64.9
Latino	31	34.1	6	17.6	19	31.7	56	30.3
Other	2	2.2	1	2.9	0	0.0	3	1.6
Committing Offense								
Violent	31	33.3	33	97.1	41	67.2	105	55.9
Property	13	14	0	0	4	6.6	17	9
Weapon-Related	1	1.1	0	0	2	3.3	3	9.6
Drug-Related	23	24.7	0	0	9	14.8	32	17
Probation/Parole Violation	18	19.4	1	2.9	2	3.3	21	11.2
Other	7	7.5	0	0	3	4.9	10	5.3
Social Background								
In a gang?		4.3		0.3		1.8		2.8
Any job training?		4.8		27.3		1.7		7.9
Pretrial Detention?		71		91		84		79
	Mean	SD	Mean	SD	Mean	SD	Mean	SD
Age								
Age at Interview	18.5	1.1	18.6	1.1	20	1.2	19.0	1.3
Age at Incarceration	18.0	1.2	16.6	1.1	19	1.2	18	1.4
Sentence Length	24.5	13.0	64.0	25.8	54	25.8	41.0	26.4

Table 3. Services by Facility Type

	New Jersey		NY OCFS		NY DOCS		Total	
	N	%	N	%	N	%	N	%
Total	91	100.0	34	100.0	60	100.0	185	100.0
Access to Services								
Assigned a caseworker?	75	82.4	29	87.9	60	98.4	164	88.6
See caseworker often?(a)	49	93.1	27	93.1	7	11.7	83	50.2
Attending school?	87	94.6	34	100.0	42	71.2	163	88.1
Encouraged to write?	65	71.4	25	73.5	39	63.9	129	69.4
Participate in job training?(b)	56	60.9	19	55.9	34	55.7	109	58.3
Engaged in Services								
Attend school (c)	85	98.8	32	94.1	42	100.0	159	98.1
Important to get good grades (d)	76	88.4	22	64.7	38	90.5	136	84.0
Try hard in school (d)	74	86.1	27	79.4	36	85.7	137	84.6
Respect your teachers (d)	72	83.7	28	82.4	35	83.3	140	83.3
Do teachers respect students (d)	70	81.4	25	75.7	33	78.5	128	79.5
Satisfied with school (d)	47	54.7	6	18.2	26	63.4	79	49.4
Read often? (a)	85	93.4	30	88.2	58	95.1	173	93.0
Write often? (a)	79	85.9	24	72.7	42	68.9	145	77.9

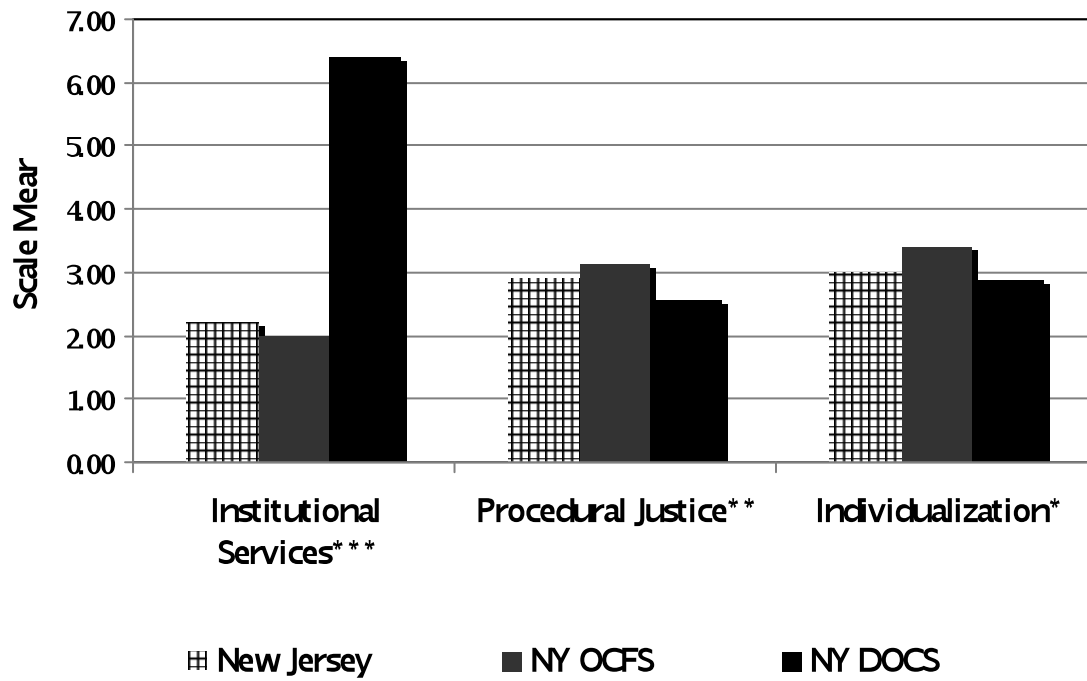
(a) Once a week or more

(b) Either in the facility or in the community

(c) "Pretty often" or "very often"

(d) "Quite a lot" or "extremely important"

Figure 3. Institutional Climate by Facility and Auspice



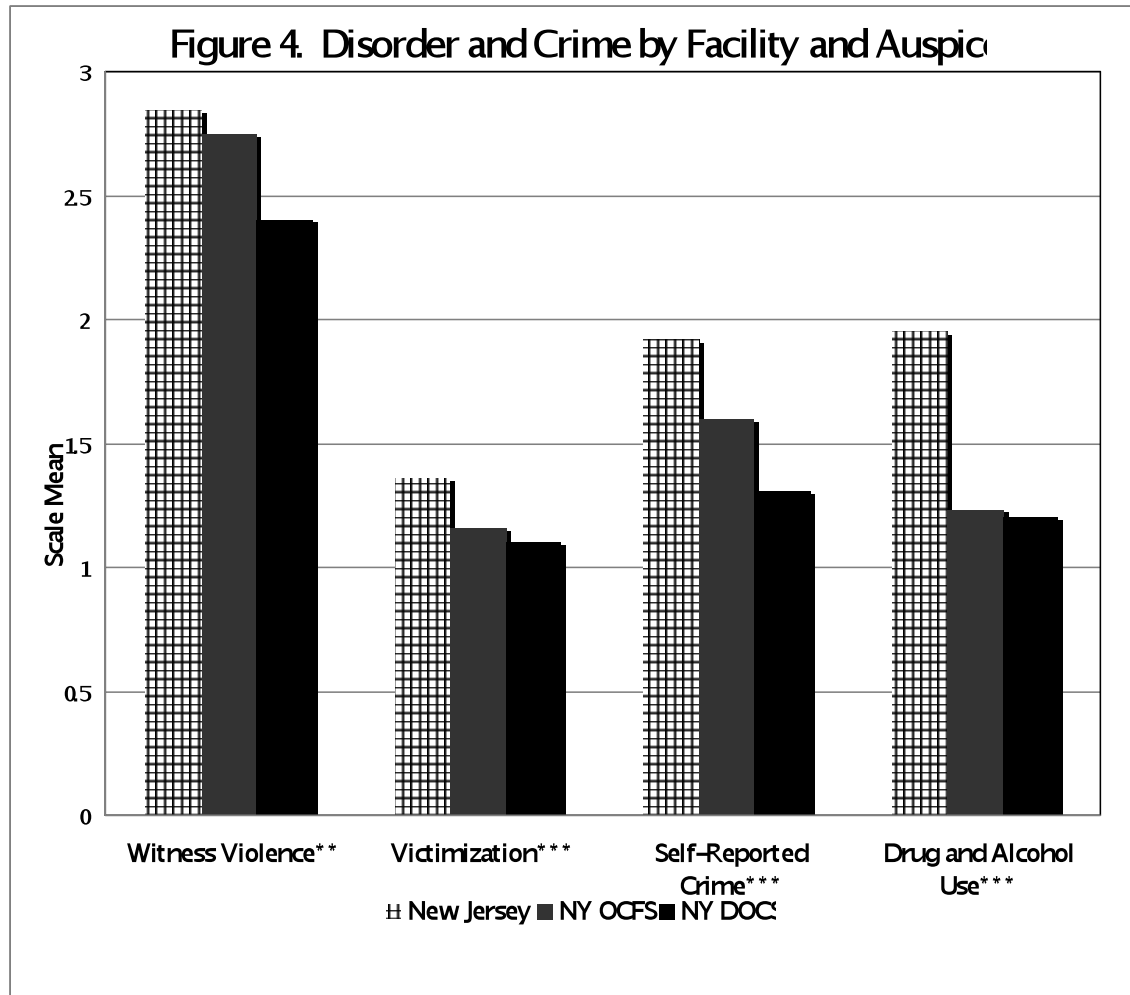


Table 4. OLS Regression of Institutional Climate by Offense and Offender Characteristics

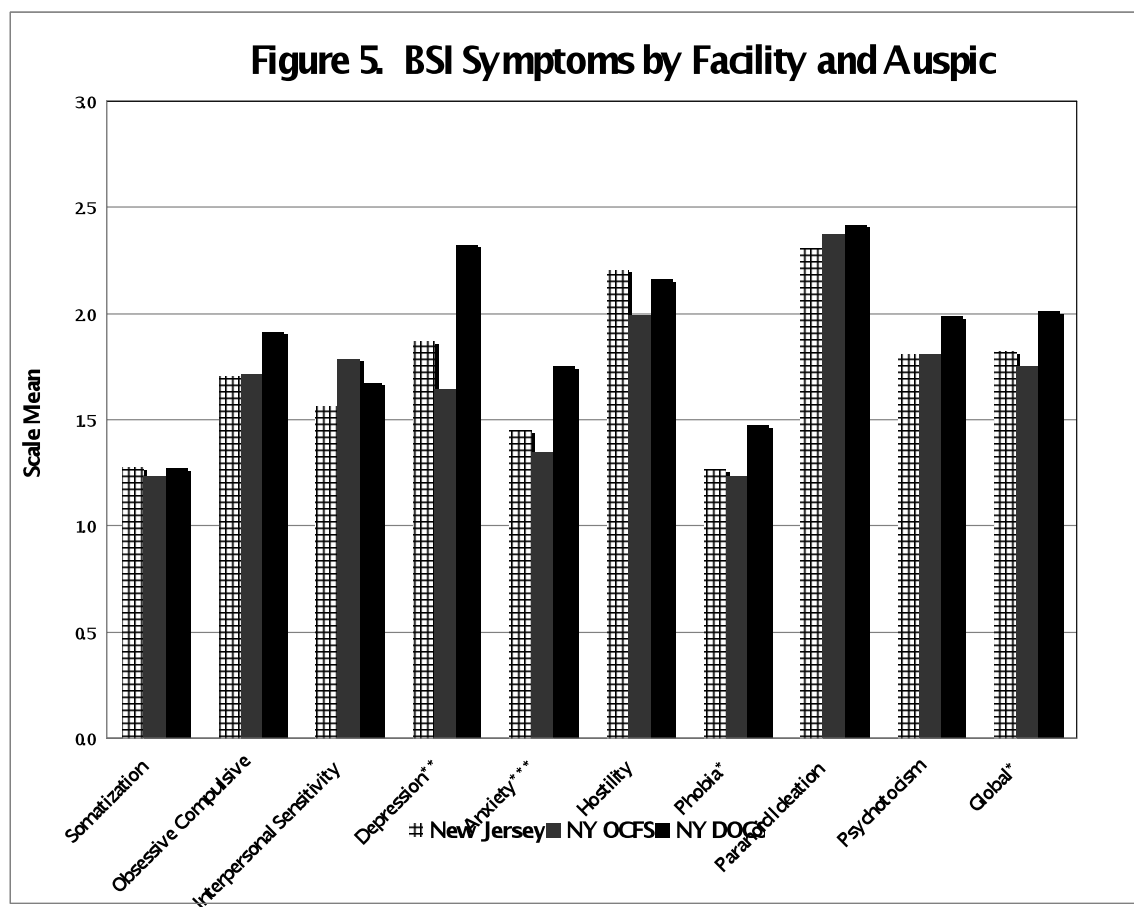
Predictor	Procedural Justice		Individualization		Institutional Services	
	<i>b (SE)</i>	<i>p</i>	<i>b (SE)</i>	<i>p</i>	<i>b (SE)</i>	<i>p</i>
Age at Incarceration	.097 (.055)		.022 (.058)		-.086 (.097)	
African American	-.236 0.133		-.198 (.140)		.172 (.226)	
Violent Offense	-.045 (.149)		.055 (.158)		-.365 (.255)	
Auspice - OCFS	.404 (.207)		.419 (.220)		-.118 (.354)	
Auspice - NY DOCS	-.395 (.159)	*	-.139 (.169)		4.316 (.273)	***
Constant	1.303 (1.002)		2.707 (1.062)		3.783 (1.759)	
Adjusted R2	.064		.024		.646	
F	3.522	**	1.916		67.077	***

Significance: * $p < .05$ ** $p < .01$ *** $p < .001$

Table 5. OLS Regression of Disorder by Offense and Offender Characteristics

Predictor	Witness Violence		Victim of Crime		Criminal Behavior		Drug/Alcohol Use	
	<i>b (SE)</i>	<i>p</i>	<i>b (SE)</i>	<i>p</i>	<i>b (SE)</i>	<i>p</i>	<i>b (SE)</i>	<i>p</i>
Age at Incarceration	-.068 (.054)		.001 (.023)		-.030 (.048)		.004 (.056)	
African American	.166 -0.131		-.111 (.055)	*	.259 (.116)	*	.016 (.135)	
Violent Offense	-.006 (.147)		-.048 (.061)		-.077 (.130)		-.479 (.151)	**
Auspice - OCFS	-.196 (.205)		-.158 (.086)		-.342 (.181)		-.409 (.213)	*
Auspice - NY DOCS	-.397 (.157)	*	-.239 (.066)	***	-.581 (.139)	***	-.586 (.163)	***
Constant	3.958 (.994)		1.431 (.416)		2.325 (.878)		2.029 (1.022)	
Adjusted R2	.041		.104		.117		0.171	
F	2.571	*	5.295	***	5.932	***	8.597	***

Significance: * $p < .05$ ** $p < .01$ *** $p < .001$



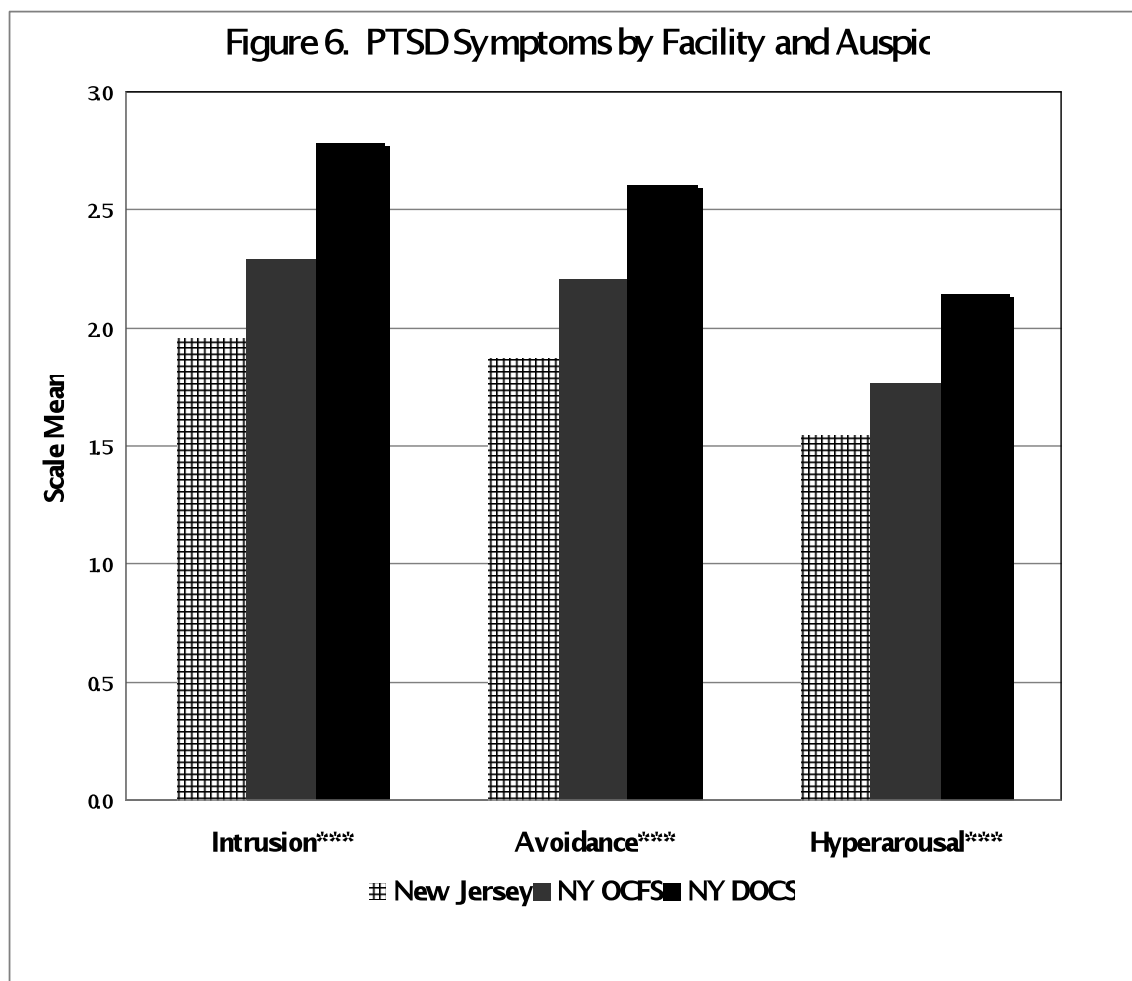


Table 6. OLS Regression of Mental Health Symptom Indices by Offense and Offender Characteristics

Predictor	BSI Global Index		PTSD Intrusion		PTSD Avoidance		PTSD Hyperarousal	
	<i>b</i> (<i>SE</i>)	<i>p</i>	<i>b</i> (<i>SE</i>)	<i>p</i>	<i>b</i> (<i>SE</i>)	<i>p</i>	<i>b</i> (<i>SE</i>)	<i>p</i>
Age at Incarceration	.055 (.040)		.113 (.064)		.096 (.063)		.090 (.051)	
African American	-.167 (.094)		-.177 (.151)		-.030 (.150)		-.235 (.124)	
Violent Offense	.234 (.106)	*	.208 (.172)		.099 (.171)		.092 (.144)	
Auspice - OCFS	-.124 (.148)		.385 (.234)		.418 (.234)		.317 (.189)	
Auspice - NY DOCS	.088 (.113)		.680 (.190)	***	.629 (.189)	***	.512 (.157)	***
Constant	0.856 (.724)		-0.041 (1.170)		.130 (1.148)		.037 (.944)	
Adjusted R2	.049		.121		.090		.111	
F	2.912	*	5.688	***	4.302	**	5.134	***

Significance: * $p < .05$ ** $p < .01$ *** $p < .001$