

COMMENT



Children's rights as a unifying framework to remedy our failing youth justice system

 Elizabeth Barnert¹✉, Scott Henderson², James Dold³ and Jonathan Todres⁴

© The Author(s), under exclusive licence to the International Pediatric Research Foundation, Inc 2023

Pediatric Research; <https://doi.org/10.1038/s41390-023-02752-6>

The United States (US) incarcerates a greater proportion of its youth than any other nation in a legal system that harms young people's health across the life course.¹ Black, Latino, and Indigenous youth receive inequitable treatment at every stage along the carceral continuum, whereas white youth have more chances to receive supportive care outside of the carceral system, which should be the standard for every youth.² The overpolicing and harsh sentencing of youth creates profound lifelong health effects through a racialized erasure of childhood, particularly for youth of color, as revealed in Human Rights for Kids' (HRFK) report, "Crimes Against Humanity: The Mass Incarceration of Children in the United States." The report shows that more than 32,000 people reside in US prisons for crimes committed as children, with glaring racial/ethnic disparities.² On a given day in the United States, more than 2,400 children under 18 are confined in adult prisons,³ which is a direct violation of international human rights law, including Article 10 of the International Covenant on Civil and Political Rights (ICCPR), a treaty the US ratified in 1992.⁴ Article 10 mandates that anyone deprived of their liberty must "be treated with humanity and with respect for the inherent dignity of the human person," and stipulates that all children who are incarcerated must be separated from adults. Related, Article 14 of the ICCPR states that for "juvenile" offenders, the state must "take account of their age and the desirability of promoting their rehabilitation". The HRFK report highlights that thousands of children have received life and de facto life sentences, which can be considered a violation of the rehabilitative and tailored approach to children demanded by the ICCPR and other human rights treaties.

Instead of funneling our most marginalized children through a school-to-prison pipeline that violates children's basic human rights, we must develop true safety nets—restorative, supportive systems that give every young person the chance to thrive. *Children's rights* is an urgently needed framework for transforming youth justice and fostering health equity. Other nations have successfully applied children's rights to youth justice. For example, Ireland's sole youth detention center, Oberstown, utilizes a children's rights approach to design and implement holistic, individualized rehabilitative services delivered to youth in a safe, secure environment aimed at optimizing the care, well-being, and development of each youth.⁵ In contrast, the US carceral system lacks a children's rights frame and fails to meet the standards set forth by the ICCPR and children's rights treaties. This essay

explains the applicability of a children's rights framework to pediatrics so that child health professionals can lead the way in confronting the impact of the youth justice system on children, especially youth of color, and ensuring child wellbeing.

A UNIFYING FRAMEWORK

The United Nations adopted the Convention on the Rights of the Child (CRC) in 1989 as an international standard to protect the human rights and wellbeing of all children. Although the US remains the only nation not to have ratified the treaty, the treaty's principles offer a cohesive approach that can mobilize child health professionals around health equity and youth justice.⁶ The CRC delineates fundamental rights of children across social, developmental, and political domains, with Articles 37 and 40 specifically addressing children involved in the youth justice system. Crucial aspects of Articles 37 and 40 prescribe using arrest, detention, or imprisonment only as a *last resort* for youth; ensuring access to prompt, fair legal services; and requiring that *alternatives* to incarceration be pursued whenever possible, including counseling and other services that support children's wellbeing.⁶ The UN Committee on the Rights of the Child, the entity that oversees countries' implementation of the CRC, has called for the *prevention* of juvenile delinquency via safe, equitable standards of living with particular care for vulnerable and at risk youth, prioritizing diversion and only utilizing judicial proceedings as a last resort, prohibition of the death penalty and life without parole for children, and a minimum age of criminal responsibility of at least 14 years old.⁶ Beyond the youth justice context, the CRC establishes additional standards that support healthy youth development, including protection from discrimination, a mandate that decision-makers prioritize the best interests of the child, and a requirement that states respect young people's inherent right to life, survival, and development, and their rights to education, leisure, and recreation.⁶ Finally, the CRC recognizes that children have a right to be heard on matters that affect their lives.

RELEVANCE TO PEDIATRICS

The CRC's principles can serve as grounding for a children's rights framework for child health professionals to understand and augment their role in promoting a healthier youth justice system. Anchoring healthcare and other sectors in a children's rights

¹Associate Professor, Department of Pediatrics, UCLA David Geffen School of Medicine, Los Angeles, CA, USA. ²Kaiser Permanente School of Medicine, Pasadena, CA, USA. ³CEO and Founder of Human Rights for Kids, Washington, DC, USA. ⁴Distinguished University Professor and Professor of Law, Georgia State University College of Law, Atlanta, GA, USA. [✉]email: ebarnert@mednet.ucla.edu

Received: 28 June 2023 Accepted: 9 July 2023

Published online: 28 July 2023

Table 1. International human rights law mandate on youth justice^a.

ICCPR/CRC Article or General Comment	Mandated Policies	Current US Children's Rights Violation (as of June 2023)
ICCPR Article 10	The ultimate goal of the juvenile justice system is rehabilitation	Punitive measures are widespread and often prioritized over rehabilitative services 22 states permit life without parole sentencing ^b
	Juvenile offenders must be separated from adults with appropriate age-based treatment	All 50 states permit children to be tried as adults ^c
ICCPR Article 14	Judicial proceedings must take into account the age and ongoing rehabilitation of youth offenders	Punitive measures often prioritized 22 states permit life without parole sentencing ^b
CRC Article 37	No life imprisonment without parole sentencing	22 states permit life without parole sentencing ^b
	Arrest/imprisonment should only be used as a last resort	Punitive measures are widespread and often prioritized over rehabilitative services
CRC Article 40	When imprisoned, children must be separated from adults	47 states permit children to be incarcerated in adult facilities ^d
	Legal action must consider child's age and societal reintegration	7 states do not permit early discharge from parole for children ^d
	Establishment of a minimum age of criminal responsibility	24 states have no established minimum age of criminal responsibility ^e No states meet standard minimum age recommendation of ≥14 years ^e
CRC General Comment 10	Alternatives to judicial proceedings must be considered in relation to child's circumstances and crime severity	Punitive measures are widespread and often prioritized over rehabilitative services
	Prevention of juvenile delinquency through ensuring safe, equitable standards of living and vibrant communities with comprehensive social support	Punitive measures often prioritized Widespread well-documented school-to-prison pipeline, racial injustices in policing practices, and other inequities in social determinants
	Special attention and care for vulnerable and at risk youth	Widespread well-documented school-to-prison pipeline, racial injustices in policing practices, and other inequities in social determinants Socioeconomic and racial disparities throughout all aspects of youth justice system
	Judicial proceedings as a last resort with prioritization of diversion to social services	Punitive measures often prioritized Widespread well-documented school-to-prison pipeline, racial injustices in policing practices, and other inequities in social determinants
	Prohibition of life imprisonment without parole and death penalty for children	22 states permit life without parole sentencing ^b 32 states lack state laws codifying the US Supreme Court ruling that the death penalty is not permissible for children ^f
	Children who turn 18 years old in the carceral system may continue to remain in the youth justice system without immediate transfer to adult facilities	46 states include an upper age limit for remaining in the juvenile legal system (as opposed to adult criminal legal system) beyond age 18. For example, in 34 states when young adults turn 20 they are no longer under juvenile court authority ^g
CRC General Comment 24	Early and proactive childhood interventions to support youth prior to coming into contact with justice system	Punitive measures often prioritized Widespread well-documented school-to-prison pipeline, racial injustices in policing practices, and other inequities in social determinants
	Prioritizing diversion as opposed to judicial proceedings	Punitive measures often prioritized

CRC Convention on the Rights of the Child, ICCPR International Covenant on Civil and Political Rights.

^aThe table covers international human rights law mandates on youth justice per the ICCPR, a treaty ratified by the United States, and per the CRC, the most comprehensive treaty on children's rights. While other human rights guidelines are relevant such as the Beijing Rules, the Riyadh Guidelines, and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, we focus on the ICCPR because it has been ratified by the US and on the CRC because its relevance to pediatricians who can advocate for CRC ratification and/or implementation in the US.

^bSource: The Campaign for the Fair Sentencing of Youth. States that Ban Life without Parole for Children; 2023.

^cInter-American Commission on Human Rights. Children and Adolescents in the United States' Adult Criminal Justice System; 2018.

^dSource: Human Rights for Kids. State Rating Report: The Roadmap to Change; 2022.

^eSource: National Juvenile Justice Network. Raising the Minimum Age for Prosecuting Children. June 2023.

^fSource: The Sentencing Project. Juvenile Life Without Parole: An Overview. April 2023.

^gSource: US Department of Justice Office of Juvenile Justice and Delinquency. Jurisdictional Boundaries; 2019.

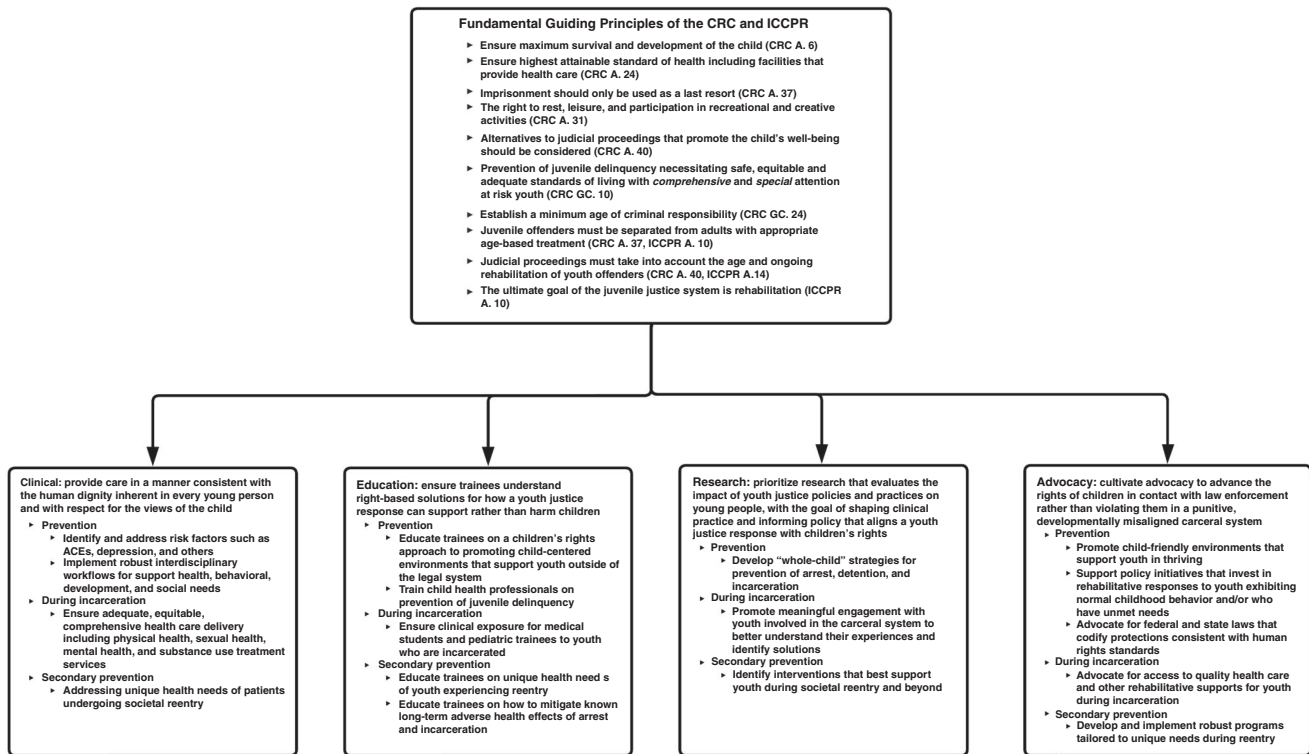


Fig. 1 Application of a children's rights framework to inform a pediatric response to youth justice. The panel in the first row indicates "Fundamental Guiding Principles of the CRC and ICCPR" (CRC, Convention on the Rights of the Child, ICCPR International Covenant on Civil and Political Rights). In the second row (from left to right), the panels list areas of focus for the field of pediatrics to advance youth justice through a rights-based lens in the domains of clinical practice, education, research, and advocacy.

framework can provide an overarching policy and paradigmatic scaffold for ensuring the rights and wellbeing of all children. Several fundamental principles of the CRC can guide child health professionals in their approach to supporting youth interfacing with the youth justice system. For example, the Committee on the Rights of the Child endorses the use of imprisonment only as a last resort (Article 37), the establishment of a minimum age of criminal responsibility (General Comment 24), and prioritization of diversion via alternatives to judicial proceedings (Article 40) in order to best protect the rights and wellbeing of children. Table 1 demonstrates the current failures of the US to comply with the ICCPR standards (which has been ratified by the US) as well as the fundamental principles of the CRC that can guide pediatricians in supporting youth prior to, during, or following their contact with the youth justice system. Additionally, Fig. 1 outlines opportunities child health professionals have to advance children's rights and wellbeing, through multiple domains including clinical, education, research, and advocacy.

Clinical

The Committee on the Rights of the Child, through its General Comments (authoritative statements on the content and requirements of the CRC), calls for the prevention of "juvenile delinquency" through safe, adequate, and equitable living conditions for all children along with comprehensive services to support their development. Healthcare falls under the umbrella of "comprehensive" services and must be comprehensive to meet the ever-changing needs of patients to enable children to thrive. In doing so, the Committee urged that particular attention be paid to vulnerable youth. These principles can manifest within the clinical environment in several ways and center on the concepts of prevention, delivery of quality care before and during incarceration, and attending to the unique health needs of patients experiencing societal reentry after incarceration. Regardless of

whether a youth is incarcerated, the goal should be to provide care in a manner consistent with the human dignity inherent in every young person and with respect for the views of the child.

Education

Medical educators committed to advancing children's rights (and thereby health equity) can ensure trainees understand rights-based solutions for how to support rather than harm children who have unmet needs that may bring them to the attention of law enforcement. Clinical exposure to youth who are confined is essential, as is focused instruction on children's rights and their particular relevance in the youth justice context.

Research

Research priorities center on understanding the impact of youth justice policies and practices on young people so as to shape clinical practice and policy that aligns with children's rights. Researchers could examine optimal screening and prevention strategies, interventions for mitigating adverse effects of incarceration on health outcomes, ways to improve workflows and practices for supporting youth undergoing reentry, and opportunities for community partner-engaged scholarship to better understand the lived experiences of youth.

Advocacy

From a child development lens, recognizing that all children deserve the right to healthy development, pediatricians can serve as vital allies and change agents in advocating for the promotion of children's fundamental rights. Pediatricians can also leverage their standing to create opportunities for young people to express their views and for them to be heard. Partnering with local, regional, and national organizations aimed at dismantling discriminatory carceral policies and creating new children's rights legislation that aligns with the CRC is imperative.

CONCLUSION

The US carceral system's policies and practices have failed to protect our nation's children and their fundamental rights and have had particularly devastating consequences for young people of color. The US system violates global standards on human rights—including the ICCPR and CRC—every day that it continues to dehumanize our nation's children. Irrespective of future ratification, the principles of the CRC offer a framework which can be adapted to the US context to inform pediatricians' approaches to ensuring the protection of children's rights and wellbeing. In doing so, it can bring the US closer to complying with ICCPR standards, which it is already legally bound to follow. With public safety foremost in mind, we can apply principles of human rights to envision a path forward where young people minimally interface with the legal system, avoiding it whenever possible, for a healthier response that ensures every child and adolescent has the opportunity to thrive, and to heal from trauma rather than be further traumatized.

DATA AVAILABILITY

The human rights treaties analyzed for this article are publicly available and can be found on the United Nations website [<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>; <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>].

REFERENCES

- Barnert, E. S. et al. How does incarcerating young people affect their adult health outcomes? *Pediatrics* **139**, 2016–2624 (2017).
- Human Rights for Kids, Crimes Against Humanity: The Mass Incarceration of Children in the United States. May 2023.
- Sayer, W., Wagner P. Mass Incarceration: The Whole Pie 2023. Prison Policy Initiative. March 2023.
- UN General Assembly, International Covenant on Civil and Political Rights, December 16 1966. United Nations. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.
- Killkelly, U. et al. Annual Report 2021. Oberstown Children Detention Campus. July 2022.
- UN General Assembly, Convention on the Rights of the Child and General Comments, United Nations. <http://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

ACKNOWLEDGEMENTS

We would like to thank the youth justice advocacy community for all of their efforts to protect and advance children's rights.

AUTHOR CONTRIBUTIONS

E.B. and S.H. contributed to the drafting of the article. J.D. and J.T. served as conceptual experts and editors.

FUNDING

E.B. effort was supported by the National Institute on Drug Abuse (K23DA045747) and the UCLA Children's Discovery and Innovation Institute. The information, content and/or conclusions are those of the authors and should not be construed as the official position or policy of, nor should any endorsements be inferred by NIH, the U.S. Government, or our institutions.

COMPETING INTERESTS

E.B. volunteers on the Board of Directors of the National Commission on Correctional Health Care (NCCCHC) and on the Advisory Board of Human Rights for Kids. J.D. is the Founder & CEO of Human Rights for Kids. The authors have no other relevant affiliations or financial involvement with any organization or entity with a financial interest in or conflict with the subject matter or materials discussed in the manuscript apart from those disclosed.

ADDITIONAL INFORMATION

Correspondence and requests for materials should be addressed to Elizabeth Barnert.

Reprints and permission information is available at <http://www.nature.com/reprints>

Publisher's note Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.