

## A b s t r a c t

*The United Nations Convention on the Rights of the Child (CRC) can be used as a framework to examine issues regarding psychiatric institutionalization of juveniles in the United States. The current U.S. system allows children diagnosed with relatively mild, non-psychotic disorders or exhibiting delinquent behaviors to be placed in institutions. Failure to regulate treatment in these facilities also results in abuses by the treatment providers. Parents can institutionalize a child under the guise of mental health "treatment" because they disapprove of the child's lifestyle choices. In some states, parents can waive the child's right to an impartial hearing before institutionalization. The serious social, mental, and physical health consequences of erroneous deprivation of liberty are discussed. Recommendations include that the U.S. ratify the CRC, guarantee due process for juveniles faced with institutionalization, conduct systematic treatment reviews, and correct institutional abuses.*

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*La convention des Nations Unies sur les droits de l'enfant peut servir de référence lors de l'examen des questions relatives à l'internement psychiatrique des mineurs aux Etats-Unis. Le système américain permet aux enfants diagnostiqués comme ayant des désordres non-psychotiques et bénins ou des tendances délinquantes d'être placés en institution. Mais l'absence de règlements au sein de ces structures peut également mener à des abus par le personnel de soin. Il est possible que les parents fassent interner leur enfant sous le prétexte du traitement de sa santé mentale alors que cette démarche est motivée par une désapprobation de son style de vie. Dans certains états américains, les parents peuvent même renoncer au droit de l'enfant à un examen impartial avant son internement. Cet article examine les graves conséquences sur la santé physique, mentale et sociale d'un mineur qui peuvent résulter d'une privation abusive de sa liberté. Diverses recommandations peuvent être formulées, comprenant la ratification par les Etats-Unis de la convention des Nations Unies sur les droits de l'enfant, la mise en place de garanties procédurales pour les mineurs sujets à un internement, ainsi que la conduite systématique de révisions des traitements en cours et le redressement des abus en milieu institutionnel.*

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*La Convención de las Naciones Unidas sobre los Derechos del Niño (CRC) se puede utilizar como un marco para examinar temas con respecto a la institucionalización psiquiátrica de jóvenes en los Estados Unidos. El sistema actual en los EE.UU. permite que los niños diagnosticados con leves trastornos no-psicopáticos, o niños que presentan un comportamiento delincuente, sean colocados en instituciones. La falta de reglamentación sobre el tratamiento que se provee en estas instituciones también resulta en abusos por parte de los proveedores del tratamiento. Los padres pueden institucionalizar al niño bajo el pretexto de "tratamiento mental" simplemente por no estar de acuerdo con su estilo de vida. En ciertos estados, los padres pueden suspender los derechos del niño a una audiencia imparcial preve a la institucionalización. Las serias consecuencias sociales, mentales y físicas de esta errónea privación de libertad se encuentran bajo discusión. Entre las recomendaciones están las siguientes: que los EE.UU. ratifique la Convención, garantice el procedimiento establecido por ley para jóvenes que se enfrentan a la institucionalización, elabore revisiones sistemáticas del tratamiento, y corrija los abusos institucionales.*

# JUVENILES AND PSYCHIATRIC INSTITUTIONALIZATION: Toward Better Due Process and Treatment Review in the United States

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**E**xamining the system of psychiatric institutionalization of juveniles in the United States, using the United Nations Convention on the Rights of the Child (CRC) as a framework, it is clear that the rights of juveniles are being violated.<sup>1,2</sup> In many cases, inpatient treatment for severely mentally ill children may well be in their best interest; however *inappropriate* deprivation of liberty under the guise of mental health treatment can have serious social, mental and physical health consequences. Using the CRC as a framework for analyzing governmental responsibility, one can propose that the U.S. government enact federal and state legislation and ensure compliance so that (1) juveniles are treated as individuals and guaranteed rights to due process (similar to that for adults) with impartial authorities and legal representation in matters of psychiatric institutionalization; (2) psychiatric facilities, both state-run and private-run, are subject to periodic reviews of both the treatment provided to juveniles and of all other circumstances of juvenile placement; and (3) appropriate action is taken to correct any violations found during the reviews. Included in this article will be a summary of the issue of for-profit psychiatric hospitals marketing their services to the parents of adolescents who have generous insurance benefits, as well as a description of abuse that can occur once juveniles are within the institutions.

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Personal stories will be recounted of juveniles who were deprived of liberty because their lifestyle choices and/or behaviors did not agree with those of their parents, and who were subsequently severely maltreated through the current system. A comparison will be made of existing U.S. laws and policies (including the results of a 1979 United States Supreme Court decision) with each of the principles of the CRC relevant to this issue. Finally, recommendations will be given regarding actions that the U.S. government should take in order to stop these human rights violations, including that the United States should join the 187 States Parties who, as of April 15, 1996, have signed and ratified the first nearly globally ratified international human rights treaty in history—the CRC.

## **Background**

The profit-making sector of the psychiatry field in the United States has been under fire since 1991, especially those hospitals which market heavily to parents of young children and adolescents covered by substantial insurance benefits. Hospitals and other treatment centers have been charged with altering case information to pass inspections, changing diagnoses for insurance purposes, using unlicensed staff for therapy, paying psychiatrists for keeping quotas of patients in treatment, using morally and legally questionable schemes for filling hospital beds, among other abuses. Congresswoman Patricia Schroeder, a Democrat from Colorado who chaired the U.S. House Select Committee on Children, Youth and Families, testified in April 1992 that thousands of adolescents as well as adults have been hospitalized for psychiatric treatment they did not need, that psychiatrists are being pressured by the hospitals to alter diagnoses to increase profit, and that psychiatric hospitals and clinics are defrauding government programs and private insurers of hundreds of millions of dollars annually.<sup>3</sup> A U.S. Defense Department study found that among more than 500 patients, mostly adolescents and young children admitted in 1990 to psychiatric hospitals that serve military families (who traditionally have very comprehensive health insurance coverage), many received poor or dangerously deficient care. The study concluded that in 33 percent of the cases, the medical records indicated that admis-

sions were medically unnecessary or could not be substantiated. Records of an additional 31 percent of the cases indicated that lengths of stay were longer than necessary or could not be justified by the records reviewed. Further intensive reviews of eight hospitals showed that the problem was unnecessary admissions rather than poor documentation.<sup>4</sup> In a study conducted at the University of Michigan, Schwartz and Belton examined discharge diagnoses of 20,300 juveniles institutionalized in over 1,000 hospitals nationwide. Their report claims that about two-thirds of the juveniles were diagnosed with “relatively minor personality disorders and non-addictive drug use.” Nearly 4,000 (19 percent) were diagnosed with “adolescent adjustment reaction,” which is by medical definition a minor and transitory disturbance.<sup>5</sup>

### **Parents—Why Institutionalize?**

Parents may prefer to have their children labeled as emotionally or psychiatrically disturbed rather than as “delinquent.” The former characterization invokes pity for the family of the “sick” child, even though it jeopardizes future opportunities for the child and violates the principle of providing treatment that is in his or her best interest. The label of delinquent, on the other hand, implies that the parents have failed in some way in raising the child. Psychologist Gary Melton of the University of Nebraska said to *Newsweek*: “Most of these kids get into the system because they are troubling to someone else—not because they are troubled.”<sup>6</sup> Examples of some typical diagnoses given these children include “conduct disorder,” “adolescent adjustment reaction,” or “oppositional defiant disorder.”<sup>7</sup> Child advocates in California report that a diagnosis called “gang behavior disorder” is now being applied to adolescents admitted to inpatient psychiatric facilities.<sup>8</sup> This diagnosis is used to describe adolescents who join with peers in high-crime areas and often commit acts of violence.

Some for-profit psychiatric facilities take advantage of the troubled emotional state of parents who feel their children are out of control, *if* the parents have money and/or generous insurance benefits. Parents who had put their children in these institutions and later decided that they had been victimized by these same institutions reported that admitting

psychiatrists indicated that they would take the child, make him better, and that the parents had not done anything wrong. Alternatively, certain parents were told that they were failures, but that the doctors or professionals could help. Further, they were told that if the child didn't stay, he would never get the help he would need. Initially this relieves stress for the parents, who often hold the general belief that anything "therapeutic" cannot hurt, until they are asked to sign a contract and pay \$30,000 per month in fees, nonrefundable, for their child's stay. It appears that once the parents' insurance money runs out, the adolescents are sent home. Hospitals advertise that they can cure everything from failing grades to running away to drug and alcohol addiction among adolescents.<sup>9</sup> Psychiatric treatment facilities advertise in mainstream upscale publications. For example, *Sunset*, the "Magazine of Western Living," as it describes itself, lists residential treatment facilities in its camp and school directory. The ads include such catchy slogans as "When you can't talk to your kids anymore, talk to us," or "Defiant Teenager? Innovative transitional & flexible programs to treat OUT OF CONTROL teens."<sup>10</sup> According to this magazine's media department, its readers have an average household income of \$80,100, 94 percent own their own homes, and the average age is 42. Obviously these advertisements are targeting middle-to upper-income parents of adolescents. Unwilling adolescents can be taken to psychiatric facilities by "teen shuttles" or "ambulette services," hired by parents to literally capture their children. Such businesses are not illegal; they are protected by statutes that say reasonable force may be used in restraint, especially if the need for restraint is "medically indicated," and there is parental consent.

Sometimes parents decide to commit a child to a psychiatric institution not because he or she are delinquent and "out of control," but because the parents do not agree with the child's lifestyle choices. A salient example of this phenomenon involves gay or lesbian youth. The Diagnostic and Statistical Manual (DSM) is used throughout the field of psychiatry in the United States to name mental illnesses. Until 1973, DSM listed homosexuality as a mental disorder.<sup>12</sup> The classification no longer exists, but there are still people in the psychiatric profession who believe homosexuality can be

cured as a developmental disorder. Although the so-called treatment, often called “reparative treatment” is given to adults only on a voluntary basis, juveniles can be subjected to such procedures based on “voluntary” commitment by their parents, with little or no recourse to refuse. Attorney Shannon Minter of the National Center for Lesbian Rights reports that she has been contacted by dozens of teens who have been institutionalized for exhibiting gay or lesbian tendencies, and then diagnosed with disorders such as “gender identity disorder” or “borderline personality disorder.” Inside the institutions they are told that their homosexuality is abnormal and are subjected to homophobic counseling (to instill fear of and/or hatred of homosexual people), use of psychoactive drugs, and hypnosis.<sup>13</sup>

The following are excerpts from published stories about Lyn Duff, a teenager who was sent to a residential treatment center at age 15 because she exhibited lesbian behavior. (The center specializes in treating youth with “sexual impulse disorders”).

...In Duff's case, her already rocky relationship with her mother was sent into orbit when Mrs. Duff read a poem that Lyn, age 15 at the time, had written in her diary—a love poem to another girl. After a series of visits to psychiatrists and attempted institutional placements, things seemed to settle down for a while, and the younger Duff moved back into her mom's South Pasadena apartment. But the calm was an illusion. On Dec. 19, 1991, her mother and grandfather tricked her into getting into the family car and virtually kidnapped her, taking her to an institution known as Rivendell of Utah, located outside Salt Lake City. What followed was a [six-month] nightmare of ‘treatment’ that, as Duff describes it, sounds like something out of an old B movie: isolation rooms, heavy use of powerful psychoactive drugs, hypnosis, word associations in which ‘sex’ is equated with ‘the pits of hell,’ and punishments that included scrubbing floors with a toothbrush. ‘I felt like I was being raped,’ she says now of the ‘therapy’ to which she was subjected. ‘I felt like I was being violated.’<sup>14</sup>

...You would sit in a room with a shrink. I was being shown pictures of people having sex—every kind of sex, sex with animals, everything. They test how turned on you get. With guys they put a rubber band around [their penises]. For girls it's different; they put these suction cups all over your body, on your chest, on your back.

I remember the first time looking at [these drawings] and I remember this electronic box with digital numbers, and they were going up quickly. After that this other kid told me, 'Don't look at the pictures, just look right *above* the pictures. They think you're looking at the pictures, but you don't get turned on and they think it's working.' So I did that after the second time, and my test scores dropped and they were so proud of me. I felt like such a shitty person. I mean, here I was convincing everyone that I was a heterosexual. But that was the only way to get out.<sup>15</sup>

The following are excerpts from an interview with another former patient of Rivendell of Utah, a 16-year-old male (who reportedly committed suicide shortly after the interview).<sup>16</sup>

*How old were you when you first got locked up?*  
Fourteen. I'm 16 now.

*What preceded you being sent to Rivendell?*  
My mom walked in on me while I was having sex with a boy. We were in a bedroom and the door was closed.

*What happened then?*  
Well, she was really upset. I went to see a therapist because all my family wanted me in therapy. The therapist was the one who told her about Rivendell.

*What was Rivendell like?*  
Hell, absolute and total hell. I thought I'd never get out.

*Did they treat you for being gay?*  
Yeah. That's what it was all about. My doctor used a plethysmograph. That's a machine that tested how turned on you got. Electrodes were put on our private parts and then they'd show pictures.

*What kind of pictures?*  
All sorts. Of men having sex with men. Of women having sex with women. Of rape. Of men and women. Threesomes. People having sex with dogs, little children. It was the most violent stuff I had ever seen. I mean, really, to show a 14-year-old that stuff. 'Cuz that's how old I was at the time. They call me crazy 'cuz I'm queer.

*So, what would happen when they showed pictures?*  
It would tell if you got turned on. When it registered that you were attracted to people of the same sex, it gave you a shock.

*Where did it shock you?*

On your penis. Just stung a little.

*Why was the doctor so opposed to your sexuality?*

He was Mormon. They all were. Rivendell would have missionaries come talk to us. They'd say that homosexuality was wrong and could be changed through God.

*What other types of things did you see in Rivendell?*

A lot of mistreatment. People getting diagnosed based on what their insurance would pay for. People staying a long time, 'til their insurance ran out. People there for stupid reasons.

*Can you give me an example?*

Yeah, well, other than me. It was, like, for disagreeing with your parents. One boy was there because his parents were getting a divorce and he didn't want to live with his mom because he didn't like his stepdad. So they put him in Rivendell. Stupid reasons like that.

*Were there a lot of gay teenagers there?*

Well, it was all teenagers. All the gay ones were there because of their sexuality or because, like, they got accused of being too sissy or whatever if they were a boy. Or 'cuz they were, like, too athletic or whatever if they were a girl.

*Seems like they wanted everyone to fit stereotypes of how boys and girls are supposed to be.*

Yeah, but more than that. I mean, they'd make a girl wear a dress. But it was more than that. They'd say she was crazy if she didn't. Like it was that she was bad. They'd screw with your mind so you didn't know what to believe anymore.

*Like how?*

O.K., my doctor would be, like, you do this and we let you out. So I do it. And then he denies promising it.

*How did you finally get out?*

Duh, my insurance ran out. How else?

## **Institutional Abuses**

Once juveniles are institutionalized, they may be subjected to further violation. For example, in Utah psychiatric facilities, it is legal to treat institutionalized youth using aversion therapy, denial of food, behavior modification with painful stimuli, seclusion, and hospitalization.<sup>17</sup> Other punitive behavior modification methods include censoring mail and restricting or prohibiting visits or use of a telephone.<sup>18</sup> Youths



may be treated with unnecessary antipsychotic medications producing negative side effects that persist for weeks or months after treatment.<sup>19</sup>

A psychiatrist formerly employed by private psychiatric hospitals in North Texas reported that these hospitals routinely practiced what was called "rage reduction therapy," a treatment that has no professionally recognized validation. It involved one or more adults holding down the juvenile patient while others verbally taunted the patient and beat him or her in the rib and chest area. Often, the result was severe pain and bruising, including tissue injuries in the nipple and breast areas of female preadolescents and adolescents. After the psychiatrist came forward with the reports, one hospital's executive committee wrote a letter to the Texas Medical Association asserting that the psychiatrist was mentally ill himself.<sup>20</sup> In a Houston newspaper, a 19-year-old female teenager, who was institutionalized for a year after a fight with her adoptive mother, described the two-hour session of rage reduction therapy she received at the National Medical Enterprises Inc. Psychiatric Institute of Fort Worth. She was told that this therapy would "release her anger directed at her biological mother":

...my whole body was covered with people touching me and holding me down...[my] doctor and another hospital staffer would make a fist and stick out their knuckles and bore and grind into my ribs. I was screaming bloody murder because it hurt so bad....It was torture....I was crying and hyperventilating....they had their hands over my nose and mouth so I couldn't breath. They were attempting to muffle my screams. I stopped breathing twice....when I started breathing again they would slam me back down on the mat....When finished, I had burst blood vessels on my face and chest...I was all purple, like a big old grape from waist to face.<sup>21</sup>

A lengthy investigation of Texas institutions, completed in 1992, uncovered other abuses: systematically keeping juveniles awake for several nights in a row to "break them down," strapping patients by their wrists and ankles into beds or wheelchairs, sometimes for weeks at a time; prohibiting showers; or "shackling a teenager at the ankles, knees, waist, chest and arms, with a netting pulled over him, for a full year."<sup>22</sup>

Juvenile patients who report abuse have their credibility questioned because they are doubly disenfranchised—first, because they are children, and second, because they are diagnosed as severely emotionally disturbed. Abuses that are reported to child protection agencies are rarely investigated thoroughly.

Erroneous institutionalization as well as physical abuse within the facilities can leave juveniles with serious physical and emotional scars. For example, physical health problems can result from unnecessary use of psychopharmacology. Child and adolescent psychiatric patients are often placed on neuroleptic drugs for both psychotic and nonpsychotic diagnoses. When used properly with patients suffering from severe mental illness, the drugs have a demonstrated therapeutic effect. However, these drugs have also been associated with movement disorders such as Parkinson's-disease-like symptoms, akathisia, tardive dyskinesia, and tardive dystonia. In a study of 104 child and adolescent psychiatric inpatients, 59 percent were receiving neuroleptics. Of these 61 patients, 34 percent had Parkinsonism and 12 percent had tardive dyskinesia.<sup>23</sup> Physical complications of tardive dyskinesia include dental problems such as traumatic ulceration and infection of the tongue, cheeks, and lips, as well as muffled speech, swallowing disorders, gait disturbances, and even respiratory disturbances.<sup>24</sup> Although relatively rare, seizures, both petit mal and grand mal, have been associated with the use of high doses of psychotropic drugs in psychiatric patients with no prior conditions predisposing to seizures.<sup>25, 26</sup> Physical abuse within the institutions such as the "rage reduction therapy" described above has obvious negative consequences for patients' physical health as well.

The emotional impact of inappropriate psychiatric hospitalization is vast. Studies of people who have been tortured or imprisoned under inhumane conditions have shown that denial of human dignity and liberty has a tremendous, long-term negative effect on one's physical, social, and mental well-being.<sup>27</sup> In addition, the physical manifestations of psychopharmacology can have serious psychosocial consequences such as stigmatization, shame, guilt, anxiety, anger, and depression.<sup>28</sup> There are also significant social consequences to being labeled as a person who has been institutionalized for

psychiatric problems. For example, someone who has been institutionalized with a psychiatric diagnosis may find it more difficult to be admitted to the law bar, to become a teacher, to join the army, to run for political office, or to receive medical insurance. It has also been suggested that it may work against a person involved in court cases such as custody hearings or in pressing charges against a rapist.<sup>29</sup>

### **International Law—Can It Help?**

The Convention on the Rights of the Child was adopted by the United Nations (UN) General Assembly on November 20, 1989. It entered into force on September 2, 1990. The decision to draft a convention was made by the UN Commission of Human Rights and a working group who spent ten years drafting the Convention. Previous to the CRC, there had been declarations from the League of Nations (1924) and the UN (1959) about children's rights, which, although not legally binding on states, had some weight internationally. Opponents argued that the rights of children were already covered under the major human rights treaties. Proponents of the creation of a separate convention insisted that the existing human rights documents were not adequate to address the special needs of children. Reports of infant mortality and of children suffering specific human rights violations resulting from deficient health care, lack of education, exploitation, imprisonment, and refugee status made it clear that a treaty specific to children's rights was necessary.<sup>30</sup> People had also become more aware that the interests of children were not always concordant with the interests of their parents or guardians, especially in cases of maltreatment within the home.<sup>31</sup> The CRC addresses in one treaty the relevant issues of child rights, divided into four broad categories: survival rights, development rights, protection rights, and participation rights.

The CRC is a treaty between governments, or States Parties, as is used in the document's language. The CRC says that each government that ratifies the treaty is obligated to ensure that the principles of the convention are put into practice in its country, and to report at regular intervals to an expert committee on steps it has taken to comply with the principles. The convention does not impact violations com-

mitted directly by individuals but rather the laws, practices, actions, and inactions of governments. Conditions for children are often wrongly put outside the political agenda in most countries, resulting in other interests receiving greater attention. A children's rights movement first took root after World War I, shortly after progress was made toward establishing equality for women. Typically, it was women struggling for their own equal status who also began the children's rights movement. One of the main messages of the CRC is that children's issues *are* political and should be high on the political agenda, relevant to the situation in each country.<sup>32</sup>

The CRC does not take away the rights of parents to decide what is in their children's best interests. However, in issues that affect the child, it is explicit in putting the best interests of the child above the interests of the state or of the parents. It also gives children the right to have their opinions heard. It gives them the right to protection from harm, including protection from abusive or exploitative family environments. It encourages all people, children and adults, to work together for a safe, healthy, and productive future for children.<sup>33</sup>

As of April 15, 1996, 187 countries, including most industrialized countries, have ratified the CRC, making it the first international treaty to be almost universally ratified. In the United States, President Clinton signed the CRC, but since it is a treaty, two-thirds of the members of the U.S. Senate must consent to it before it is officially ratified, which, as of the writing of this article, has not been achieved.

In U.S. law, the concepts of what parents should do for their children ("parental duties") and their discretion to act regarding their children ("parental rights") appear to be defined not by the positive principle of what is good for children, but by the negative principle of protecting children from harm. Thus parents often have the right to employ control over their children whether or not it turns out to be in the children's best interests.<sup>34</sup> Laws regarding parental rights are meant for the preservation of life and health and to protect the adult the child will become. The system as it currently stands leaves openings for parents to take nonemergency actions such as committing a juvenile to a psychiatric institu-

tion for lifestyle choices with which the parent does not agree.<sup>35</sup>

In the United States, it must be proven by due process of the law that parents have failed to meet legal standards of child care before the best interests of the children become open to judicial or administrative assessment. In other words, family must be proven dysfunctional before the children's rights are isolated and protected. Under this system, the government should not interfere if the parents have not been proven to be negligent. Parents have the authority to refuse to supply their child with an attorney during legal hearings, and it is within the parents' authority to determine what medical care their child needs, including psychiatric care.<sup>36</sup> Juveniles who protest commitment to psychiatric facilities are not entitled to the same due process as adults, namely review hearings and other procedural protection. They are classified as "voluntary patients" since their *parents* voluntarily placed them in detention. For example, the State of Georgia denies hearings to juveniles institutionalized by their parents on the premise that parents are acting in their children's best interests and thus may waive their children's due process rights.<sup>37</sup> This policy is in direct violation of Article 12 of the CRC: "...the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."<sup>38</sup>

Some argue that the prospect of an adversary hearing before admission may deter parents from seeking medical help for children who are indeed mentally ill. In fact, psychiatrists in the United States have used this argument in combative libel litigation against outspoken critics of psychiatric institutionalization, which resulted in reducing the media attention directed at for-profit psychiatric institutions.<sup>39</sup> Using the CRC as a framework, however, juveniles, as individuals, are entitled to due process before being deprived of their liberty as a human right. Article 37 of the convention states, "...Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, inde-

pendent and impartial authority and to a prompt decision on any such action."<sup>40</sup> Rights of children must supersede fears that parents may become timid if faced with hearing procedures. If the hearing process to determine whether or not a juvenile should be institutionalized for psychiatric treatment does indeed include "competent, independent and impartial authorities," then those children who really need help will be treated as such.

In 1977, children being treated in a Georgia state mental hospital brought a class action suit against mental health officials, charging that the state's procedures for voluntary commitment of children under the age of 18 to state mental hospitals violated the due process clause of the Fourteenth Amendment of the U.S. Constitution and requesting that an injunction be placed against the future enforcement of commitment procedures. This clause of the Fourteenth Amendment says that "...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The Federal District Court of Georgia held that "Georgia's statutory scheme was unconstitutional because it failed to protect adequately the appellees' due process rights and that the process due included at least the right after notice to an adversary-type hearing before an impartial tribunal."<sup>41</sup>

However, the decision was overturned on appeal to the United States Supreme Court in 1979 (*Parham v. J. R.*). The following are excerpts from the opinion of the Court, delivered by Chief Justice Warren E. Burger:

(b) *Notwithstanding a child's liberty interest in not being confined unnecessarily for medical treatment, and assuming that a person has a protectible interest in not being erroneously labeled as mentally ill, parents-who have traditional interests in and responsibility for the upbringing of their child-retain a substantial, if not the dominant, role in the decision, absent a finding of neglect or abuse.* [emphasis added]

(d) *The risk of error inherent in the parental decision to have a child institutionalized for mental health*

care is *sufficiently great* that some kind of inquiry should be made by a “*neutral fact-finder*” to determine whether the statutory requirements for admission are satisfied...The need for continuing commitment must be reviewed periodically. [emphasis added]

(e) Due process does *not* require that the neutral fact-finder be law trained or a judicial or administrative officer; nor is it necessary that the admitting physician conduct a formal or quasi-formal adversary hearing *or that the hearing be conducted by someone other than the admitting physician.*<sup>42</sup> [emphasis added]

The Court’s decision was not unanimous. Justices Brennan, Marshall, and Stevens, disagreed with several sections of the decision. The following is an excerpt from their written dissent:

...In the absence of a voluntary, knowing, and intelligent waiver, *adults facing commitment to mental institutions are entitled to full and fair adversary hearings in which the necessity for their commitment is established to the satisfaction of a neutral tribunal.* [emphasis added] At such hearings they must be accorded the right to “be present with counsel, have an opportunity to be heard, be confronted with witnesses against [them], have the right to cross-examine, and to offer evidence of [their] own.” *...Indeed, it may well be argued that children are entitled to more protection than are adults.* [emphasis added] The consequences of an erroneous commitment decision are more tragic where children are involved. Children, on the average, are confined for longer periods than are adults. Moreover, childhood is a particularly vulnerable time of life and children erroneously institutionalized may bear the scars for the rest of their lives.<sup>43</sup> [emphasis added]

Despite the eloquence of the dissent, this 1979 Supreme Court decision set a precedent, leaving state governments free to determine their own laws and their own levels of oversight and scrutiny in terms of the psychiatric institutionalization of juveniles. According to Article 4 of the CRC, governments are obligated to “...undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in this Convention....”<sup>44</sup> Clearly, the United States is not taking all appropriate measures to assure that due process procedures with impartial authorities are guaranteed rights of children. Variations in state laws and practices encourage parents who live in states

with strict laws to bring their children to states where institutions are not as tightly regulated. This is why it is possible for almost fifty students from Los Angeles public schools in the state of California to be taken out of school each year and placed in locked psychiatric institutions in the state of Utah, often at the expense of California taxpayers.<sup>45</sup> In California, the students would have the right to a hearing, but in Utah they do not. In addition, there are no California laws that prohibit parents from forcing their children across state lines to Utah where they have no guarantee of an impartial hearing.<sup>46</sup>

### **Recommendations/Conclusions**

The following is a summary of recommendations for U.S. government actions relevant to psychiatric institutionalization of children and adolescents, using the CRC as an analytic framework. Juveniles must be better protected by federal legislation guaranteeing due process.

- CRC Articles 12 and 37(d) clearly state that children should have the right to hearings with *impartial* authorities. With proper judicial proceedings, the children who truly need psychiatric care in locked facilities will be recognized and given medical attention. This recommendation is the easiest to implement as a similar system is in place for adults.
- In accordance with CRC Article 19, which concerns the protective obligations of States Parties, there should be measures taken by the U.S. government to protect children from injury, abuse, neglect, or negligent treatment once inside an institution.
- CRC Article 25 makes clear that the U.S. government should put in place systems for the periodic review of treatment and institutionalization procedures for juveniles and that appropriate actions must be taken to correct violations. This should apply whether an institution is run by the state health department or operating as a for-profit private enterprise.
- Finally, In accordance with Article 37(b), institutionalization of children should be used only after



all other types of treatments have been tried, and deprivation of liberty should be for the shortest appropriate period of time.

It is estimated that in the United States today, at least a quarter of a million juveniles are institutionalized for psychiatric treatment. There are serious health and human rights issues surrounding the lives of these young people. Many are legitimately mentally ill and in need of effective psychiatric care and medical treatment. Some may be so troubled that they are a threat to their own safety as well as to the safety of their families and others. However, the U.S. system of juvenile institutionalization is extremely troubled itself. The 1979 challenge to Georgia's voluntary commitment procedures sought to guarantee juveniles the same due process accorded to adults. However, this guarantee was not the result. Instead, the laws of some states allow for-profit psychiatric treatment facilities to market inpatient services to well-insured or wealthy parents of juveniles, to institutionalize children without a proper hearing, to use diagnoses that are considered "minor and transitory" to keep them locked up, and to use questionable treatment procedures once the youths are inside. Psychiatric institutionalization should be reserved for persons with *serious* psychiatric illness, not used to punish juveniles for delinquent behavior or for lifestyle choices with which their parents disagree.

The current system which allows such human rights violations to occur must be reformed. Representative Pat Schroeder made this point, "...the big business of treating young minds has not policed itself and has no incentive to put a stop to the kinds of fraudulent and unethical practices that are going on...federal and state oversight should be increased."<sup>47</sup> It is currently up to the Senate whether the United States will join the 187 countries who have taken on the obligations outlined in the CRC. Perhaps ratification of the United Nations Convention on the Rights of the Child with its intrinsic obligations will provide the incentive for the United States to reform its commitment procedures and take greater responsibility for the protection of the health and human rights of children.

## Acknowledgement

The author would like to thank Sofia Gruskin and Lyn Duff for their valuable and insightful contributions to this article.

*This article received the 1995 François-Xavier Bagnoud Student Essay Award given annually at the Harvard School of Public Health*

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