

PUNISHING TRAUMA

Incident Reporting and Immigrant Children in Government Custody

EXECUTIVE SUMMARY



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Children who have arrived at the U.S. border without a parent or legal guardian are particularly vulnerable to lasting harm from time spent in U.S. government custody. The federal government's Office of Refugee Resettlement (ORR) is legally required to care for them and does so through its network of congregate care facilities, where children and youth navigate complex rules and levels of restriction as they await reunification with their families or transfer to long-term foster care. During their time in custody, many children incur "Significant Incident Reports" (SIR), forms that ORR uses to document a wide array of incidents ranging from disclosures of past abuse or neglect to minor rule infractions within ORR facilities, as well as behavioral challenges.

ORR policies and procedures have created a system in which a range of behaviors, words or actions, regardless of their seriousness or significance, trigger SIRs on a daily basis. ORR facilities are incentivized to over-report, with facility staff erring on the side of reporting many minor and trivial incidents to ensure that they are complying with ORR policies. For example, in the fiscal year of 2019, ORR facilities submitted over 100,000 SIR forms for less than 70,000 children in custody, using over 34,000 hours (or the equivalent of over 4 years) of staff time.

While ORR policy states that SIRs "ensure that significant incidents involving [unaccompanied children] are documented and responded to in a way that protects the best interests of children in ORR care," SIRs rarely indicate an individualized response by ORR to an incident to address the needs of the child, such as a change in the child's individual care plan, the provision of additional services, or even a consideration of whether the child may need an accommodation or screening for disability. Instead, the government relies on SIRs to move children to more restrictive placements while in custody, prolong detention, and/or deny children legal relief from deportation. At the same time, children are rarely notified of SIRs and do not have a say in their content, even though they may cause a child lasting harm.

Often, SIRs are written up for behavioral incidents that could likely have been avoided with the implementation of effective crisis prevention and de-escalation techniques tailored to the unique needs and challenges of the child. But rather than encourage de-escalation and conflict resolution, SIRs may lead to a call to local police and, in some cases, the arrest of children. These arrests can have severe, long-term consequences for children and can significantly harm their immigration cases.

In 2021, the Young Center for Immigrant Children's Rights and the National Immigrant Justice Center conducted a survey of dozens of service providers to document the impact of SIRs. Our survey revealed:

- ORR facilities engage in over-reporting of incidents. Many SIRs do not document serious incidents that threaten the safety and health of children. Instead, they frequently document minor rule infractions or developmentally-appropriate child or adolescent behavior. For example, SIRs are often filed where children fail to follow facility rules, test boundaries, appropriately express frustration, or engage in horseplay or recreational activities.

- SIRs frequently fail to contextualize children's behavior within the stressful circumstances they are navigating, conditions and length of time in government custody, or the trauma they have experienced. For example, children expressing a desire to reunite with their family or be released from custody often incur SIRs and are labeled "flight risks." Some children – particularly those who endure the longest periods in government custody – are also caught in a vicious circle, where they act out due to detention fatigue and then receive an SIR which is used to prolong their stay in ORR custody.
- SIRs keep children in more restrictive settings, punishing children for their mental health conditions, disabilities, or confidential disclosures. Children often grieve or experience symptoms of trauma in custody due to the harms they escaped in their home country, during their journey, or upon separation from family when they are apprehended by border officials. SIRs turn children's experiences, mental health conditions, and confidences into justification for prolonged detention in facilities that exacerbate their trauma and behavioral needs.

Despite the central role that SIRs play in the ORR system, very little information about SIRs is publicly available. ORR does not publish data on SIRs and does not proactively share SIRs with children's legal service providers or attorneys. This lack of transparency has created a system with little accountability or oversight, despite its grave consequences for children.

Based on our survey and analysis, we conclude that a complete overhaul of ORR's incident reporting system is necessary to ensure that it aligns with ORR's mandate to ensure the safety and health of children in its care and to prioritize reunification with family. The following recommendations are urgently needed to begin the process of realigning ORR's incident reporting system with its child welfare mission in its every day operations and care for unaccompanied children. We recommend that ORR:

1. Center trauma-informed care in all aspects of its system, in order to prevent and reduce the occurrence of serious incidents;
2. Prioritize the use of incident reporting to evaluate and monitor children's needs, staff response, and facility-wide issues that impact children's behavior;
3. Limit incident reporting to serious incidents and prevent over-reporting through new policies, comprehensive training, and rigorous oversight;
4. Prevent incident reports from being used as a form of discipline or punishment and instead conduct a holistic review of a child's file and needs when making placement or reunification decisions;
5. Implement safeguards to ensure that children have an opportunity to be heard on incident reports, including promptly notifying and providing copies of SIRs to the child, the child's attorney, and their child advocate, if one has been appointed;

6. Prevent the disclosure of SIRs and other confidential information in children's files to the Department of Homeland Security and other agencies that is contrary to children's best interests.

We further recommend that ORR engage child welfare experts, child psychologists, de-escalation and crisis prevention experts, and former unaccompanied children, to inform a new approach to incident reporting. These stakeholders can provide critical feedback on what types of incidents are appropriate to document in incident reports, as well as effective staff training, oversight and accountability mechanisms, data and tracking needed (e.g., race, ethnicity, gender, disability, language, etc.), and best practices for the provision of holistic, trauma-informed care and crisis prevention.

Read the Young Center and NIJC's report [HERE](#).

Un día salir
y vivir una vida
hermosa por seguir.

Afuera estar y
una vida nueva
formar con mi familia
quiero estar.¹



To get out one day
and live a beautiful
life going forward.

To be outside and
form a new life
I want to be
with my family.

¹ Excerpt from Un día salir/To get out one day, poem by unaccompanied child held in secure custody, in Seth Michelson, Dreaming America: Voices of Undocumented Youth in Maximum-Security Detention (Settlement House, 2017), 102-103 (translation directly from book).