

Title: Should First-Time Juvenile Offenders Be Incarcerated With Adults?

Name: Kathleen Overleese

## I. Introduction

Our juvenile courts and criminal justice systems within the United States are filled to capacity with young offenders. The U.S. Bureau of Justice Statistics during the past ten years reports that between 90,000 and 105,000 juveniles are incarcerated in the U.S. every year. On an average about 85% are male and 15% female. This document will explore the importance of placing first time juvenile offenders in detention centers versus their counterparts, incarceration with adults.

### A. Background

Juveniles that are incarcerated are categorized. At the onset of the incarceration it is determined if the juvenile is a status offender -- which means the crime they committed is not an adult crime but is a chargeable offense and accordingly, the penal code allows that an arrest be made. Although the information gathered is submitted to the district attorney's office for approval to prosecute, the offenses for first time juvenile offenders have consequential outcomes which can ultimately imperil a young offender for the rest of his/her life. Such offenses include but are not limited to "consensual sexual acts, truancy from school, smoking cigarettes, curfew violations, drinking alcohol, running away from one's residence, chronic disobedience of parents and/or guardians and/or other authority figures, waywardness, and ungovernability."<sup>11</sup>

The next level of offenses falls within the category of felonies which consists of more serious offenses to that of violent acts including but not limited to: murder, robbery, assault with a deadly weapon, rape and other sex offenses.

Incarceration with adults is not a mechanism that allows error. At the onset when the arrest takes place, the process is followed by detention, adjudication, and incarceration. Statistics show that minority youths are treated in a more severe manner than caucasian youths even though similar crimes were committed. Equally imbalanced are the sentencing laws. Due to the racial makeup of the prison population being doubled, rehabilitation efforts within the institution do not create success upon release.

B. Thesis Statement: While the juvenile detention system has all but vanished, the impact of incarcerating juveniles with adults in the 21st Century has created a new implosion of irreversible injustices.

The merits of our judicial system are questionable as to the benefits of the people it serves. Due to crimes becoming more violent and the offenders becoming younger, the age at which young offenders are placed into jail cells servicing older adults with hard core attitudes is alarming. The attitudes alone provide injustices and inequalities and the fears of not surviving in such a stigmatized domain is far from false.

Juvenile offenders have to face transitional stages in their lives and their years of development have not been aptly met. They are too young to reach the level of maturity as seen in the adult criminal system. Due to cutbacks in economic funding, modifications are being employed and implemented, resulting in new which are met with fear, trepidation, and terror.

## II. Impact of Public Opinion

The infamous phrase “tough on crime” has developed new attitudes and public opinions which allow law makers to prepare and develop referendums in an effort to make the communities a safer place to live in. California, in 1995, instituted a “Three Strikes Law” imposing a life sentence to individuals convicted of three or more serious criminal offenses.

Social media and news media organizations have kept the popularity of juvenile crimes in the forefront. If there is a reduction in youth crimes, it is not exploited on the airwaves. Conversely, it is a great headliner and a quick way to exploit youth offenders. As a result, new organizations such as “Advocates for Juvenile Justice Reform” are working diligently to reverse public opinion and relinquish the fear that is felt among so many.

In a recent report by the Federal Office of Juvenile Justice and Delinquency Prevention and U.S. Department of Justice, “Survey of Youth in Residential Placement: Youth’s Needs and Services,” it was reported that 70% of youth that were incarcerated witnessed something very bad or terrifying take place either due to an injury or being killed. Unfortunately, many first time offenders display attention problems and difficulties in school. The ability to learn while being incarcerated is rarely an option.<sup>[21]</sup>

Another problem is the fact that mental illnesses are increasing in volume among our youth. Being born without the ability to develop cognitive skills or emotional skills prohibits their ability to learn, progress, and blend into society's mainstream as a result of being birthed with an addiction from either alcohol or substance abuse, thereby creating an influx of self-injury or suicide behind prison walls. Many of our youth experience special needs and due to failing grades in school, the inability to read, write and do arithmetic disappear as remedial education does not provide incentives to learn or return to school. Alternatively, returning to what is familiar -- the streets -- encourages unemployment, serious health issues, low income, shortened life spans and a threat to our communities and its public safety.

As a result of our legislators pushing for referendums, in 2001, California voters passed Proposition 21 converting the jurisdiction of our detention centers from juvenile jurisdictions to adult criminal jurisdictions thereby creating automatic sentencing of youth between the ages of 14-17 in an adult judicial system setting.

#### A. First Time Juvenile Offenders Incarcerated With Adults

The greatest fear of placing first time juvenile offenders in jail with adults is due to the fact the adults are very poor role models and as such, the fear of being raped, assaulted and committing suicide appears to be a greater risk while being incarcerated. Familiar stories are: "In Ohio, a 15-year-old girl is sexually assaulted by a deputy jailer after she is placed in an adult jail for a minor infraction; in Kentucky, 30 minutes after a 15-year-old is put in a jail cell following an argument with his mother, the youth hangs himself; in one year, four children being held in Kentucky jails "for offenses ranging from disorderly conduct, to non-offenses, like running away from home" committed suicide."<sup>[3]</sup>

Professor Jeffrey Fagan of Columbia University's School of Public Health states "because they are physically diminutive, they [juveniles] are subject to attack.... they will become somebody's 'girlfriend' very, very fast."<sup>[4]</sup> And a corrections officer was quoted on saying, ". . . a young inmate's chance of avoiding rape were "almost zero . . . He'll get raped within the first twenty-four to forty-eight hours. That's almost standard."<sup>[5]</sup>

1. Maturity: Are juveniles mature enough to see the outcome of their actions?

It is not easy to prove the rationality of juveniles. What is apparent is that juveniles may be less developed and as a result, their behavior becomes impulsive. As such, does that impulsiveness support the adage "if they are old enough to kill,

then they are old enough to be held responsible” or “if they are old enough to pick up a gun and shoot it, then they are old enough to be responsible for their actions.” Secondly, society does not view adolescents as being mature people.

The downside to this argument lies in the fact that “adolescents are emotionally immature to be tried as adults.” If the adolescents lack cognitive immaturity, then the strong peer pressure surrounding them and their innate attitudes towards risk, supports the opinion that although children know the difference between right and wrong, they oftentimes make irresponsible decisions supporting the idea that their actions are not less blameworthy than their adult counterpart.

## B. Attorney Opinions Regarding First Time Juvenile Offenders Incarcerated With Adults

Attorneys are supportive of young offenders being sentenced under the adult criminal system because it is their belief if the young offenders are incarcerated, then the crime waves will reduce, and the deterrents to the crime will be behind bars no longer posing a threat to society. However studies compiled from criminologists have not been able to support this supposition but effective legislation has been able to redirect youth offenders committing murder (at the age of 13) into the adult criminal court system and violations of rape, robbery, assault, and burglary (at the age of 14) into the adult criminal system as well.

### 1. Do juvenile delinquents benefit from being tried as adults?

In all probability, violent juvenile felons will be able to receive a trial by jury and in the court of law the accusations may be much less transparency.

The downside to delinquents benefitting from being tried as adults is the fact that children that are sentenced to life without the possibility of parole feel helpless and suicide is a thought away from their mind. Their hope of living the rest of their life behind prison walls shatters any and all motivation to turn their behavior around, improving their mental state, and trying to be rehabilitated.

## II. Legislative Barriers

Transitional developmental phases between childhood development and adulthood development is known to mankind. Originally it was thought that if your child displayed delinquent behavior, it was due to neglectful parenting and rehabilitation was the answer. But in the early 1970s it was learned that the methods put into place to support juvenile treatment was not effective and consequently, transferring the juveniles into the adult system was approved and accepted. Legislators wanted

their communities to know that if safety mechanisms were going to be effective, a change in the court judicial system needed to take place. Their fight allowed them to make the appropriate changes and today's judicial system allows youths to be tried as adults and incarcerated with adults.

As seen in Thompson v Oklahoma, 487 US 815 (S.Ct. 1988), the line between childhood and adulthood is viewed differently by each state.<sup>[6]</sup> It was discussed that a 16-year old could not marry, a 15-year old could not drive without parental consent, and that in most states with legalized gambling, the minor could not participate without parental consent either. However, legislation was in agreement that juvenile court jurisdiction's maximum age should be no less than 16 and that a normal 15-year-old is not capable of assuming full responsibilities as is an adult.

#### A. Youth v Adult Sentencing Statutes

Today's children invoke fear. We live in a society of violence, implementation of self-centered ethics and morals, and lack of respect for human life and respect for others. Traditional values have disappeared and our next generation of children bring harm to one another.

We now have the capability to install home security systems and from your computer at work, you can check your house to see if it is being burglarized. Many people have handguns (registered and unregistered) and hoping that if they are robbed, the gun will deter the robber from stealing or assaulting their person. We can agree that we live in an out-of-control world. But when our youth commit crimes, their representation of that crime goes beneath the first layer of existence and there is a "why" that needs to be explored.

Dr. Drew, a renowned psychiatrist for Celebs, stated on national television that first time offenders should not be incarcerated with adults but should go to juvenile detention centers where they can receive proper therapy and treatment to work on becoming rehabilitated. They have a future ahead of them and incarcerating them with adults takes away the chance of them receiving intervention and rehabilitation. Dr. Drew went on to say that our youth are impaired with either an antisocial personality, sociopathy personality, or psychopathy personality and although they know the difference between right and wrong, they do not feel guilt or remorse but with treatment, these variables can be addressed and treated. Clinical symptoms include but are not limited to: "Failure to conform to social norms; deceitfulness, manipulateness; Impulsivity, failure to plan ahead; Irritability, aggressiveness; reckless disregard for the safety of self or others;

consistent irresponsibility; and lack of remorse after having hurt, mistreated, or stolen from another person. (Fishbein, 2000). <sup>[7]</sup>

As seen in Nelson v. Heyne, 491 F. 2d 352 (Court of Appeals, 7th Circuit 1974), a "right to treatment" involved acceptable standards pursuant to the care and treatment for juveniles. It was identified that each individual need would differ and that not all juveniles could be rehabilitated in which case they would be warehoused and their detention rights terminated -- thereby defeating society's interests, the state's interests and most of all, their interests. <sup>[8]</sup> In McKeiver v. Pennsylvania, 403 U. S. 528 (1971) juveniles have no right to a jury trial because the state maintains "a parens patriae interest in preserving and promoting the welfare of the child." <sup>[9]</sup> In Santosky v. Kramer, 455 U. S. 745, 766 (1982), a juveniles proceeding is "fundamentally different from an adult criminal trial." <sup>[10]</sup>

### 1. Would adult sentencing act as a deterrent?

Deterrence does work but statistics do not support the magnitude of its workability. The support is made within each underlying community through leaders, teachers civic duties and interacting with social groups, churches, schools, getting the message out of importance of building strong moral and ethical guidelines.

The argument to this activity is that deterrence does not work – however when juveniles are charged with serious crimes as adults, the message of incarceration is not lost and is shared by and between families, classmates, neighborhoods, communities and the lessons to be learned and spoken of are the implementation of programs to offset the destruction of one's own life.

#### A. High Risk First Time Juvenile Offenders

### 1. Adult Jurisdiction for Juveniles – what are its benefits?

Juveniles have rights and within those boundaries are supportive judicial systems with a jury, judge and representation. However, in the juvenile system, there are no juries and therefore being tried as an adult provides a playing field in which a jury can help make an appropriate decision for the alleged crimes committed.

The downside to this argument is that if the juvenile is tried as an adult, then the juvenile faces the possibility of death as their penalty. Generally speaking, more children are sentenced to death under the penal system than not.

### 2. Does the adult system work better as far as putting suspects in prison?

Incarceration occurs as a punishment and if sentenced to an adult institution, the applied service behind bars would undoubtedly increase. As seen in In re Gault, 387 US 1 (S.Ct. 1967) certain basic constitutional protections enjoyed by adults accused of crimes also apply to juvenile procedural rights in the juvenile court system. Certain rights are granted to adults that are not available to juveniles thereby supporting the claim that juveniles should be under the guise of the adult court system. Without such transition, juveniles are not entitled to bail, an indictment by a grand jury, or a public trial by a grand jury. The rules governing juvenile arrests and interrogations are not allowed to be observed either. <sup>[11]</sup>

The argument would be that to prevent extra years being added to a sentence, the juvenile should be tried as a juvenile under the juvenile system. Alienable rights differ on one platitude but in another, the juvenile would be about by the time he is 21 years of age, with proper attention to mental issues (which would not be received under adult incarceration), and undergoing training as to what society expects, a reversal of the attitudes can be incorporated into the juvenile's daily routine incorporating a life style change.

### C. Policymaker Interests in Reducing Crime and Recidivism

Recidivism is a topic of grave concern to law makers. The hope that when a youth is released from jail his repeated behavior towards criminal activity will stop. In support of lowering incarceration methods, substance abuse programs are on the rise and youths can opt out to enter into treatment programs in lieu of incarceration. Public safety once again is of primary importance and accountability to the public cannot be overlooked. Consideration of the offender's values among society needs should be supported by a positive environment. Participants need to become tomorrow's role models and in their reflectiveness, they need to consider the harm brought to their community, the harm to their victims, and the harm brought to their parents.

#### 1. Are adult trials going to improve rehabilitation and/or recidivism?

Rehabilitation techniques are not applicable to every crime. Recidivism basically means the rearrest, reconviction, or reincarceration of former youths that were previously inmates. Recidivism or re-admission back into the system supports the mindset that lessons were not learned, behavior did not change, and taxpayers must support additional crimes.

The opposition to this argument would be that there is no point in rehabilitation in some cases. If a juvenile is sentenced to life without parole, then a rehabilitation program would not be effective.

## V. Conclusion

Through developmental studies, children born into high-risk environments, i.e., poverty, families with alcoholism, drug abuse, physical and sexual abuse, and mental illness grow into success stories by learning to be confident, competent and caring persons. Coping skills are learned behaviors that if introduced into daily activities, open group discussions can allow for transitional learning skills from rage and anger to peace and harmony.

Our teachers, educators and community providers have enabling skills and can help produce environments that will encourage resilience and stimulate emotional and mental growth. They have the opportunity to model every day a caring relationship or demonstrate positive beliefs; they can discuss issues of expectations or trust; and they can incorporate opportunities within the classroom and community environments ways to decipher between better and best decisions, what-if scenarios, and create dialogues supporting creativity.

Parents, although an option, have difficulty openly communicating with their children. Through a passage of disconnective features between parent and child, either through the existence of poverty, family issues, environmental issues, media influence, or social morality, it has impacted growth and stability within the family unit. Psychiatrists infamously put a label on the problem as mental illness in which prosecutors refute such labeling to excuse the commission of a crime.

All in all, first time offenders need consideration to turn their lives around and not be subjected to cruel and unusual punishment within the criminal justice system. Although this is not a perfect solution, it is a solution that will hopefully entitle them to a reconstructive future for a past that went awry. Tomorrow is not promised and all we can do is build on today.

<sup>FN1</sup> Williams, Vergil L. Dictionary of American Penology. Second Edition. Greenwood Publishing Group, 1996. 213. Retrieved from Google Books on August 23, 2010. ISBN 0-313-26689-1, ISBN 978-0-313-26689-8.

<sup>FN2</sup> "Survey of Youth in Residential Placement: Needs and Services". Journalist's Resource.org.



<sup>FN3</sup> Soler, Mark I. (June, 1997) Remarks before the Senate Youth Violence Subcommittee, Senate Judiciary Committee, on the core requirements of the Juvenile Justice Act and the "Violent Juvenile and Repeat Offender Act of 1997"

<sup>FN4</sup> Donaldson, Stephen. (July, 1995) "Rape of Incarcerated Americans: A Preliminary Statistical Look." 7th Ed, Stop Prison Rape, New York, New York.

<sup>FN5</sup> Fishbein, D. (2000). (ed.) The Science, Treatment, and Prevention of Antisocial Behaviors. Kingston, NJ: Civic Research Institute.

<sup>FN6</sup> Thompson v Oklahoma, 487 US 815 (1988). The case discusses the basis for distinction between juveniles and adults.

<sup>FN7</sup> Nelson v. Heyne, 491 F. 2d 352 (1974), discussing the juveniles right to treatment.

<sup>FN8</sup> In re Gault, 387 US 1 (1967) constitution protections for adults accused of crimes applies to juveniles as well.

<sup>FN9</sup> McKeiver v. Pennsylvania, 403 U. S. 528 (1971) (no right to jury trial). The State has "a parens patriae interest in preserving and promoting the welfare of the child,"

<sup>FN10</sup> Santosky v. Kramer, 455 U. S. 745, 766 (1982), which makes a juvenile proceeding fundamentally different from an adult criminal trial.

<sup>FN11</sup> placing youth in adult institutions accentuates criminal behavior after release. 1 n, D.C.: Building Blocks For Youth, [http://www.soros.org/initiatives/usprograms/focus/justice/articles\\_publications/publications/public\\_opinion\\_youth\\_20011001/advocacyguide.pdf](http://www.soros.org/initiatives/usprograms/focus/justice/articles_publications/publications/public_opinion_youth_20011001/advocacyguide.pdf), retrieved 2009-11-06