



Jeff Deskovic

Juvenile Justice System In State Of Disrepair

Amidst all of the deserved discussion about deficiencies in the criminal justice system, there exists a hidden world that is often over-

looked that has its own deficiencies, the Juvenile Justice System. In this article, I intend to explore the subject, relying on some of my own experiences as well as information which I have learned. In response to more children committing adult crimes, many states, including New York, in their attempt to deter juvenile crime, have adopted the misguided practice of charging children as adults and treating them that way throughout

every stage of the criminal justice process. This has led to manifest injustices and problems that will be illustrated in the course of this article. Given that I was 16 years old when I was arrested and charged as an adult, and 17 when I was sent to prison, I believe that my perspective on this issue is both relevant, and first-hand.

Firstly, the underlying thinking of the change in laws which is now commonplace, rests upon a goal which is largely unreachable, *deterrence*. Most juvenile offenders are not aware that if they commit certain crimes they could be charged as an adult. Similarly, it is doubtful that they are aware of the sentence they may receive. Therefore, under the theory of deterrence, there is no way that this policy can truly be justified.

Another penological theory under which this practice fails is *retribution*. An important component of retribution is fairness. Handing out adult sentences to children, as if they are adults, with minds fully devel-

oped, and values fully imparted by their parents, and fully matured and not as easily influenced, is clearly unfair for a variety of reasons.



According to the National Juvenile Justice Network, in a paper entitled **Using Adolescent Brain Research to Inform Policy: A Guide for Juvenile Justice Advocates**, the article states, "Brain development takes place in stages and is not fully complete in adolescence. The frontal lobe, especially the prefrontal cortex, is one of the last parts of the brain to fully mature, and undergoes dramatic development during the teen years. It is this 'executive' part of the brain that regulates decision making, planning, judgment, expression of emotions, and impulse control. This region of the brain may not be fully mature until the mid 20s.

The limbic system, which helps to process and manage emotion, is also developing during adolescence. Despite the fact that the limbic system is not yet fully mature, it stands in for the underdeveloped frontal lobe to process emotions. This causes adolescents to experience more mood swings and impulsive behavior than adults. Levels of dopamine production shift during adolescence.

Dopamine is a chemical produced by the brain that helps link actions to sensations of pleasure; its redistribution can raise the threshold needed for stimulation that leads to feelings of pleasure. As a result, activities that once were exciting to youth may not be so as they enter adolescence, and thus they may seek excitement through increasingly risky behavior.

During adolescence, gray matter in the brain begins to thin as synapses (links between neurons that transmit and receive information) undergo a process of "pruning." Unused synapses are pruned away, while those that are used frequently become stronger. Additionally, neurons are strengthened through "myelination," which improves the connectivity between neurons and thereby speeds up communication between cells. Pruning and myelination demonstrate that changes to the adolescent brain can have long-term consequences: parts of the brain that are used frequently will be strengthened, while other parts that are used less frequently will weaken and die off.

When adolescents make choices involving risk, they do not engage the higher-thinking, decision-and reward areas of the brain as much as adults. This can lead adolescents to actually overstate rewards without fully evaluating the long-term consequences or risks involved in a situation. How Does This Affect Young People's Behavior? Because of the changes in the emotional and decision-making centers of the brain, adolescents behave differently in circumstances of "hot cognition" (situations of high emotional context) and "cold cognition" (situations of lower emotional context).

For example, a teen surrounded

by friends in a loud, stimulating environment may make a more emotionally-based decision versus a teen in a calm, quiet environment with her parents, who may make a more intellectual, consequence-based decision. The effect of hot cognition is increased by other changes taking place.

Hormonal changes related to developing sexual maturity and psychosocial changes manifest themselves in adolescents' emphasis on the importance of peer groups, need for autonomy from parents and guardians, and development of self identity. Youth's decision making is heavily influenced by context. Youth's intellectual capabilities can be as developed as adults; they are capable of making reasoned decisions and often will make better decisions than adults. However, when youth are placed in environments where they may be susceptible to peer pressure, where there is pressure to make a decision quickly, where there is an opportunity for risk seeking behavior, and/or where there is high emotionality, they have increased potential for their judgment to be driven by emotion rather than by reason.

This may explain why youth are often arrested for violent acts in groups. Youth may be more prone to making risky choices because of the shifting levels of dopamine in their brains. This can be exacerbated in a situation involving peer influence. Youth who are victims of emotional or physical trauma may suffer from a delay in brain maturation because of the disruption in brain development.

According to an article entitled **Children Sentenced As Adults**, more than 200,000 children are prosecuted in adult courts each year. All 50 states can prosecute a child, under the age of 16, as an adult. Unfortunately, there are many problems in practice.

Children are deemed to be



adults in New York State for purposes of being able to legally waive their rights and speak to police without an attorney present, at the age of 16. At a young age, they are very susceptible to police influence, and are particularly vulnerable to coercion by police or other authority figures. This has sometimes led to false confessions, which in turn often lead to wrongful convictions. The case of **Tyler Edmonds, in West Point, Mississippi, is instructive:**

Edmonds was 13 years old when he was tried, convicted and sentenced to life with parole at age 65 for the crime of murdering his brother-in-law. The confession was coerced by his own sister, who is now on death row for the murder of her husband.

Appeals to the Mississippi Court of Appeals were denied and case was presented to the Mississippi Supreme Court, which overturned his conviction and granted him a new trial; a new trial under a different judge and jury. Tyler was found not guilty. Tyler had spent around six years in prison for a crime he never committed.

False confessions by others who were a little bit older, as in teenagers, are not uncommon. The case of Marty Tankleff, who served 17 years for allegedly murdering his stepparents, was based upon a false confession. In my own wrongful conviction, which resulted in 16 years in prison for a murder and rape which I did not commit, the only direct evidence was a coerced, false confession, extracted from me at age 16.

In addition to the Edmonds case supporting the point of vulnerability to coercion, does not the fact that he was sentenced to remain in prison until he was 65 years old, at the age of 13, seem somewhat insane? How is that justice, even if he was guilty? Who could honestly say, upon reflection, that 52 years in prison was not an excessive punishment? Would he really need to be incarcerated for that long a time in order to be rehabilitated?

The situation is worse yet, incredible as that may seem, in cases where children have been sentenced to life without parole. The premise that a

child definitively can be said to be past the point of rehabilitation, and that such a determination is made at a young age, seems unconscionable. Thus the policy of treating children as adults fails the penological *theory of rehabilitation* as well, which holds that punishment should be calculated to the amount of time necessary to change the ways of the offender.

New York State, and other states, send children who are charged and convicted as adults to adult maximum security prisons. According to the same article *Children Sentenced As Adults*, "Between 1992 and 1997, forty two states and the District of Columbia enacted legislation to enable juvenile offenders to be transferred to adult prisons. Missouri and Indiana lowered the minimum age for transfer to an adult facility from 16 years of age to the incredibly young age of ten. Twenty two states and the District of Columbia no longer require a minimum age for a child to be transferred to an adult prison."

The problems with so doing are obvious. Children are particularly vulnerable in adult prisons. They are unable to physically defend themselves. They are at risk of being raped, extorted, murdered, and assaulted. Yet another problem is that they could easily take bad role models and learn more about crime, and thus be turned into more violent offenders.

At the age of 17, I was imprisoned with adults. I always felt vulnerable; after all, I was incarcerated with grown men, a good number of whom were guilty. As grown men, some of whom worked out, they were of course much stronger than I was. I was very fearful that the prisoners would discover that I was incarcerated for rape. In the vigilante mentality of some of the prisoners, it would serve as motivation on their part to assault me, and that being a teenager who did not weigh very much I would not be able to protect myself. That fear never left my mind. There were times in my incarceration that I was, in fact, beaten.

Throughout my time in prison, I sometimes saw other prisoners who were teenagers. Especially among the young African American and Latino prisoners, I would often see

gangs involved in recruiting them. If they refused they would sometimes be assaulted or cut with razors or shanks. At other times, those same teenagers would turn to gangs out of fear of being in a man's prison, or ironically out of fear of eventually becoming a victim of the very gang they joined.

Additionally, I believe another reason they sometimes joined was out of a desire to feel that they were a part of something, that there were people that they could identify with, and socialize with, who would care about them, and would provide protection.

However, it was a false loyalty, because the higher-ups would view them as expendable, and would often send them on a fool's mission to hurt another prisoner, with no regard for the consequences they would suffer from authorities, or of even being hurt by their intended victim.

If they refused, the gang would turn on them. One incident that I still look back on and feel hurt about involved a young man who I had played chess with and spoken to on a number of occasions. He was "ordered" to carry out an attack with a weapon on a target. He managed to sneak the weapon out to the recreational area, and attempted to carry out his attack.

His much older target overpowered him with drastic results. In addition to that, he got caught by the correction officers with the weapon. He was arrested for possession of the weapon and thus got more time added to his sentence, as well as being sent to the special housing unit, known in prison lore as "the box", and to the public as "the hole".

Clearly, a lot of futures are being thrown away by the practice of charging children as adults, and sending them to adult prisoners. When I think about the injustices

of the practice, I think about the fact that they are not incorrigible, hardened offenders, but are instead children who went wrong for whatever reason, but are not necessarily beyond rehabilitation or hope. I think about how

they are sons and daughters. I think about, but can't imagine, how their parents must feel. I think about how their futures are sent down the toilet. I think about how it simply serves no purpose, other than a brutal revenge, to condemn them to life sentences or ridiculously long sentences.

I also think about how, as a society, we lose out on whatever contributions they might have made, and about what it was like for me, to be young and in a prison cell. And, from that vantage point, I project what it would be like for children, who are even younger than I was, to be sentenced as adults and imprisoned in an adult facility.

I think about being kept away from my younger brother, and being absent during the remaining years of my grandmother's life. I also think about my mother and remember the feeling of being in a strange, violent, and frightening place. I literally shudder to think about what it would be like for those even younger than I was, irrespective of the important issue of guilt or innocence.

As I see it, these policies and practices need to change. If they are not changed, what will that say about us as a society? What kind of message does it send to those citizens whose young relatives are caught up in such unfair practices? I can only imagine the feelings of helplessness they must feel. It is clear that, in order to maintain its moral authority, both the government and the laws it creates must be fair. This principle was articulated in the famous dissent by former US Supreme Court Judge Butler, in the case *Olmstead v United States*, "If the government becomes the lawbreaker, it breeds contempt for the law. It invites every man to become a law unto himself; it invites anarchy" ■

GFN	
GALLO, FEINSTEIN & NAISHTUT, LLP	
ATTORNEYS AT LAW	
TONY CASTRO	
OF COUNSEL	
tcastro@gfnlaw.com	
T 914.939.0002 211 S. RIDGE ST. RYE BROOK, NY 10573	T 203.629.5074 28 SOUND VIEW DRIVE, BOX 4845 GREENWICH, CT 06830