

Minors Should Never Be Tried As Adults In Criminal Court

Sylvia Nguyen¹

I. INTRODUCTION

Every year, approximately 250,000 youth are prosecuted in the adult criminal system.² Juveniles can be tried as adults for serious offenses such as escaping from a juvenile detention facility, drug crimes, crimes involving guns, kidnapping, rape, robbery with a weapon, and murder.³ Each state has an established “upper age” of original jurisdiction for juvenile courts – ages vary from 15 to 17, depending on the state. There are three basic types of transfer laws that allow juveniles younger than the upper age of juvenile court jurisdiction to be tried as adults. *Concurrent jurisdiction laws* allow prosecutors to use their discretion and decide whether to file a case in juvenile or criminal court. *Statutory exclusion laws* grant criminal courts original jurisdiction over certain classes of cases involving juveniles. *Judicial waiver laws* authorize or require juvenile court judges to remove certain youth from juvenile court jurisdiction to be tried as adults in criminal court.⁴ Most states practice prosecutorial and/or judicial discretion; however, prosecutors still maintain the power to initiate and petition for minors to be tried as an adults.

¹ Sylvia Nguyen, Doctor of Jurisprudence Candidate, May 2015, GOLDEN GATE UNIVERSITY SCHOOL OF LAW.

² *Campaign for Youth Justice, Key Facts: Youth in the Justice System*, CAMPAIGN FOR YOUTH JUSTICE, <http://www.campaignforyouthjustice.org/documents/KeyYouthCrimeFacts.pdf> (last visited Feb. 12, 2015) (citing Neelum Arya, *State Trends: Legislative Victories from 2005 to 2010 Removing Youth from the Adult Criminal Justice System*, CAMPAIGN FOR YOUTH JUSTICE (2011)).

³ *Juvenile Delinquencies*, CALIFORNIA COURTS, THE JUDICIAL BRANCH OF CALIFORNIA, <http://www.courts.ca.gov/selfhelp-delinquency.htm> (last visited Feb. 12, 2015).

⁴ Benjamin Adams & Sean Addie, *Delinquency Cases Waived to Criminal Court, Fact Sheet*, U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, 1 (2011), <http://www.ojjdp.gov/pubs/236481.pdf>.

Although both state and federal legislation allow this option for juvenile offenders, prosecutors should promote a nationwide policy to never try minors as adults in criminal court. Due to their age, lack of maturity, and limited ability to fully understand the consequences of their actions, minors should be afforded the opportunity to be rehabilitated in a juvenile detention facility. This kind of opportunity is far less likely to exist once they enter in the adult prison system. This paper presents sociological and constitutional arguments as to why juveniles should never be tried as adults and solutions that could contribute to the success of not trying juveniles as adults.

II. STATISTICS

- Since 1992, 45 states have passed or amended legislation making it easier to prosecute juveniles as adults.⁵
- For every 1,000 petitioned delinquency cases, an average of 10 will be judicially waived to criminal court and juvenile offenders will be tried as adults.⁶
- Approximately 8 out of 10 juvenile dispositions in adult court result in a conviction.
- Over the past decade the number of youth under the age of 18 in adult prisons has more than doubled.⁷
- A 1996 Florida study found that youth transferred to adult prisons are 30% more likely to become repeat offenders than youth who stayed in the juvenile system.⁸
- According to an American study done in 1980, the suicide rate of juveniles in adult jails is 7.7 times higher than that of juvenile detention centers.⁹

III. SOCIOLOGICAL ARGUMENT

Sociological studies have shown that a person's environmental surroundings have a substantial effect—mentally, physically, and psychologically—on their development. This is

⁵ *Juveniles in Adult Prisons and Jails, A National Assessment*, U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE, <https://www.ncjrs.gov/pdffiles1/bja/182503.pdf> (last visited Feb. 12, 2015).

⁶ See Adams & Addie, *Delinquency Cases Waived to Criminal Court*, at 1.

⁷ See *Juveniles in Adult Prisons and Jails, A National Assessment*

⁸ Catherine A. Gallagher, *Juvenile Offenders in Residential Facilities*, U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, (last visited Feb. 12, 2015), <https://www.ncjrs.gov/pdffiles1/fs9996.pdf>.

⁹ Vincent Schiraldi & Jason Zeidenberg, *The Risks Juveniles Face When They Are Incarcerated with Adults*, JUSTICE POLICY INSTITUTE (1997), http://www.justicepolicy.org/uploads/justicepolicy/documents/97-02_rep_riskjuvenilesface_jj.pdf.

especially true with young children. Depending on the kind of environment a child is in and what that environment exposes them to, the child's knowledge and understanding of what is right and wrong is can possibly deviate from what society deems normal. This is most commonly seen in underprivileged communities where crime, drugs, and violence are normal parts of everyday life. Common exposure to illegal activities can alter a child's belief in what is "okay" and what is not.

A statistic that exemplifies this reality is that "one-third of all violent crimes committed by juvenile offenders occur during after-school hours, between 3pm and 7pm."¹⁰ This speaks volumes about the importance of adult supervision and after-school programs as effective ways to reduce juvenile crime, but it also highlights the fact that both of these things are less attainable in underprivileged, struggling communities where income is low and government program funding is almost nonexistent. Minors should not suffer unjustly because of environmental factors they have no control over.

These sociological factors contribute to a child's susceptibility and exposure to crime. Children, unlike adults, do not possess the mental capacity to fully grasp concepts such as the short and long-term consequences of their actions. This is why a separate juvenile criminal system was created in the first place.¹¹ Juvenile courts are more concerned and careful when it comes to minors, employing special procedures relating to issues such as involuntary confessions. Children are easily susceptible to manipulation, deception, and influence, and therefore, should not be held to the same standards and punishments as adults.

¹⁰ *Juveniles, Fast Facts*, NATIONAL INSTITUTE OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, <http://www.nij.gov/topics/corrections/recidivism/Pages/welcome.aspx#statistics> (last visited Feb. 12, 2015).

¹¹ See, *The History of Juvenile Justice*, ABA DIVISION OF PUBLIC EDUCATION, available at <http://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJpart1.authcheckdam.pdf>

IV. CONSTITUTIONAL ARGUMENT

Trying and sentencing juveniles as adults should be considered cruel and unusual punishment, violating the Eighth Amendment of the United States Constitution. In 2005, the U.S. Supreme Court declared in *Roper v. Simmons* that death by execution was unconstitutional under the Eighth Amendment for juveniles.¹² Before this ruling, 365 juveniles had been executed in the United States.¹³ Later, in 2010, the Court decided in *Graham v. Florida* that life-without-parole sentences could no longer be imposed on juveniles convicted of non-homicide offenses.¹⁴ In 2012, the Supreme Court held in *Miller v. Alabama* that mandatory life-without-parole sentences for all children 17 or younger are unconstitutional.¹⁵ The Court further stated, that when considering life-without-parole sentences for minors, courts must consider “children’s diminished culpability and heightened capacity for change.” This, the Court reasoned, should make such sentences “uncommon.”¹⁶ Although progress has slowly been made, the trying and sentencing of minors as adults still violates the Eighth Amendment.

Cruel and unusual punishment occurs the moment a minor is sentenced to adult prison. In adult prison, a juvenile is five times more likely to be sexually assaulted or raped than in a juvenile institution.¹⁷ Criminologists have found that the “prototype” prison rape victim is someone young, if not the youngest inmate within the institutional system.¹⁸ A Columbia University professor explained that “because they are physically diminutive, they [juveniles] are

¹² *Donald Roper v. Christopher Simmons*, 543 U.S. 551 (2005).

¹³ *Death in Prison Sentences for Children, Children in Adult Prison*, EQUAL JUSTICE INITIATIVE, (last visited Feb. 12, 2015), <http://www.eji.org/childrenprison/deathinprison>.

¹⁴ *Graham v. Florida*, 560 U.S. 48 (2010).

¹⁵ *Miller v. Alabama*, 132 S.Ct. 2455, 2012 WL 2368659 (2012); *Jackson v. Ray Hobbs*, 132 S.Ct. 2455, 2012 WL 2368659 (2012).

¹⁶ *See Death in Prison Sentences for Children, Children in Adult Prison*.

¹⁷ *See Schiraldi & Zeidenberg*.

¹⁸ *Id.*

subject to attack.”¹⁹ Because juveniles sent to adult prison are the youngest inmates on the block, they face the greatest risk of being sexually assaulted. This is not acceptable.

Although inmates in adult prisons are the biggest concern for juveniles sentenced as adults, there is also an increasing trend in the number of reported assaults by prison staff against minors in adult prisons as well.²⁰ Despite these alarming statistics, experts believe that the reported number of these incidents likely still remain on the conservative side.²¹ Juveniles may be too ashamed to report things like sexual attacks, or prison staff may alter facts and report “inmate assaults” instead of rape. Nonetheless, these facts *should* make clear to the criminal justice system that adult prisons and jails are in no way equipped to protect young offenders. The dangers these juveniles face in adult prisons are contributing factors to the inexcusably high number of juveniles that commit suicide in adult prisons (7.7 times more likely), compared to those in juvenile institutions.²² Furthermore, experts have found that juveniles who are victims of these prison assaults are twice as likely to become more violent and aggressive themselves, increasing the likelihood of recidivism.²³

The numbers and facts exist and many are well aware of the high risks of danger for juveniles in adult prisons. Such dangerous and vicious abuse is forbidden in society, yet minors are subject to this treatment almost immediately when they arrive in adult prisons. Because of this patently unfair result, it is time the Court recognizes this to be a violation of the Eighth Amendment.

¹⁹ *Id.*

²⁰ *See* Schiraldi & Zeidenberg.

²¹ *Id.*

²² *Id.*

²³ *Id.*

V. SOLUTIONS

Unlike adult prisons, where deterrence is the main purpose of punishment, juvenile detention institutions should function around the concept of rehabilitation. Because of a minor's age, they have a better chance than adults to turn their lives around and trying them as juveniles is what gives them that opportunity.

There are three solutions that can contribute to the success of prosecutors adopting a policy to not try minors as adults: (1) create a contingency where juveniles convicted of homicide-related crimes are to serve their time at a juvenile facility until the maximum statutory limit, but during the last year must face a "Youth Offender Panel" that consist of therapists, psychologists, and youth counselors to determine whether the juvenile still remains a high-risk to society and should be released, (2) create a separate facility for juvenile offenders convicted of extremely egregious first-degree murders with little to no mitigating factors, and (3) creating a maximum limit on the number of years a juvenile can serve, instead of using the limit of the age of the juvenile.

(1) Maintain the maximum statutory limit in juvenile detention, but add a Youth Offender Panel to determine final release eligibility.

Despite the optimistic hopes society holds for the youth of today, it would be foolish to say juveniles never commit outrageous and heinous crimes. Nevertheless, children cannot be held to the same expectations and standards as adults. The first solution to avoid trying minors as adults, no matter the crime, is to maintain the statutory maximum under juvenile detention. Additionally, to mandate that approximately one year prior to scheduled release, the juvenile must face a "Youth Offender Panel" that consists of therapists, psychologist, and youth counselors to determine whether release would be sufficient. Factors the panel would consider include the juvenile's behavior and progress during his entire time at the facility, whether the

juvenile has proven (after years of counseling sessions) his readiness to succeed in society, and whether the juvenile still poses a high-risk to society. The information the panel would use to evaluate each minor would be comprised of the years of notes and counseling the juvenile has received with the institution's professionals. If a juvenile does not pass the final assessment, a new hearing would be initiated and the court would determine what kind of further sentencing would be appropriate, whether it be transfer to adult prison, release on probation, or some other course of action.

(2) Create a separate facility for juvenile offenders convicted of extremely egregious first-degree murders with little to no mitigating factors.

Another option to prevent the trying and sentencing of minors as adults is to create a separate facility for juvenile offenders who are convicted of first-degree murders with few or no mitigating factors at the time of sentencing. The biggest concern expressed about juvenile criminals relates to those who have committed homicide. These minors are seen as dangerous to society and people don't mind turning a blind eye to the cruel and unusual abuse these children will suffer in an adult prison. Trying these young offenders as adults will not resolve anything. However, because they are considered a high risk to society, it would be beneficial to other juvenile offenders and society itself, to place them in a separate facility to serve their own sentence, no matter how long it might be. In this kind of situation, the juveniles are away from adult prisons, but the arrangement still solves the concerns of incredibly dangerous minors.

(3) Create a maximum number of years a juvenile can serve in juvenile detention, instead of putting a limit dependent on the age of a juvenile.

Currently in California, the maximum sentence for juveniles is up to the age of 23. This is a concern to many because juveniles may potentially be released on their twenty-third birthday, no matter how long (or short) their term of incarceration in a juvenile detention

facility. To resolve this issue, instead of putting the maximum limit on the age of an individual, courts should apply year limitations (that have a maximum of 10) just as adults do, except the sentence will be served entirely in a juvenile detention facility. Doing this will allow prosecutors and victims to feel as though justice has been served without forcing minors to be transferred to dangerous adult facilities. Furthermore, the timeframe is still reasonable to give juveniles a chance to be rehabilitated and create a better life for themselves upon release.

VI. CONCLUSION

Overall, children and juveniles are incredibly young—too young to be tried as adults and held to the same expectations and standards as adults. Although this idea may seem to endorse a radical overhaul of the criminal justice system, by completely focusing on the rehabilitation of minors, things can be changed for the better—not just for the juvenile offenders, but for society as a whole. The main goal has traditionally been to put juveniles through the adult criminal system and remove them from society in order to protect society from these individuals; however, little thought has been given to the kind of individuals this type of system will produce once they are released. In many ways, the current paradigm creates an even greater danger to communities, than the change proposed here. Minors should never be charged as adults. Minors should remain at juvenile detention centers, which provide them with professional help and guidance. The success rate of this process will not be perfect—but at least society can increase the likelihood that juvenile offenders can become cooperative and stable members of society.