Lost Opportunities

*Our Children Are **Not** Rehabilitated When They Are Treated And Incarcerated As Adults*

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INTRODUCTION

Our children are not rehabilitated when they are treated and incarcerated as adults.

During the 1990s, 47 state legislatures and the District of Columbia adopted "get tough" approaches to juvenile crime, focusing on punishment and accountability rather than rehabilitation and treatment.[i] Contrary to 'adult crime, adult time' proponents, this retributive approach did not result in youth crime reduction. Instead, children incarcerated in adult systems are re-offending more quickly and committing more serious crimes when they get out.[ii] Research consistently shows that incarceration in adult facilities greatly increases the probability of recidivism in youth.[iii] On the other hand, rehabilitative programs, which founders designed the juvenile justice system to provide, are more likely to deter re-offending because the adolescent brain is highly receptive to therapeutic treatment.

Teenage offenders who are tried and incarcerated as adults are not tracked separately from the general adult prison population, i.e., they are counted as adults for statistical purposes.[iv] Therefore, few studies exist pertaining to the mental health of juveniles incarcerated in adult prisons.[v] There is, however, statistical information available on the mental health of adolescents in the juvenile justice system.

Juveniles confined with adults compared with juveniles confined in youth facilities: General Trends

In 1997, a random sample of minors in the Georgia Regional Youth Detention Centers found that 61% had mental disorders, including substance abuse disorders.[vi] Nationwide, 50 to 75 percent of incarcerated youth are estimated to have a diagnosable mental health disorder.[vii] Among children with mental health disorders, a high percentage has co-morbid disorders, i.e., two or more simultaneously occurring mental health disorders.[viii]

The suicide rate of youth in adult corrections facilities is eight times higher than in juvenile facilities.[ix] Adolescents' emotional states can quickly change from "normal" to suicidal, and surveillance in adult prisons is insufficient to prevent adolescent inmates from killing themselves.[x] In addition to an increased risk of suicide, youth in adult prisons are 500% more likely to be sexually assaulted, 200% more likely to be beaten by staff and 50% more likely to be attacked with a weapon than youth in juvenile facilities.[xi] A child's exposure to violence, whether observing violence or falling victim to physical or sexual assault, can trigger violent behavior in the child.[xii]

Youth transferred to the adult system are more likely to recidivate than youth who remain in the juvenile justice system, according to a statewide study by the Florida Department of Juvenile Justice. Researchers found that 49% of the transferred youth committed a subsequent felony after reaching the age of 18, compared to 37% for youth who remained in the juvenile system.[xiii] Of the study subjects that committed a subsequent crime, 40% of the re-offending transferred youth committed a felony or violent crime more serious than their initial crime, while 24% of the re-offending youth who remained in the juvenile system committed a more serious felony or violent crime.[xiv]

A 1998 Amnesty International report, "Betraying the Young: Human Rights Violations Against Children in the U.S. Justice System," found that most states provided the same educational, medical, social and mental health services to juveniles incarcerated as adults as provided to adult inmates, which the report found to be insufficient to meet juveniles' needs.[xv] Adult prisons have a record of not providing adequate mental health services to their adult inmates[xvi], so it is no surprise that these same services fall far short of meeting the specialized needs of adolescents with mental health issues.[xvii] Juveniles with co-morbid disorders are at an even greater disadvantage because they often have more complex needs than juveniles who have only a single disorder.[xviii] While mental health services available in the juvenile justice system are widely considered deficient in several respects, the adult court and prison system has even less to offer in the way of mental health services.[xix]

Adolescent Brain Development & the Criminal Defendant

Within the past five years, scientists have discovered that the adolescent brain is far less developed than previously believed.[xx] The inability of adolescents to communicate effectively and make reasoned decisions greatly affects their ability to participate in the criminal justice process.[xxi] Consequently, the adolescent may have difficulty communicating with her lawyer or understanding concepts such as waiver of *Miranda* rights.[xxii] Adolescents are not only ill-equipped to participate in adult criminal trials, but their lack of impulse control and inability to appreciate the long-term consequences of their conduct also diminishes the deterrent value of criminal punishment.[xxiii]

The adolescent brain is also particularly susceptible to psychological trauma. Persistent trauma creates a state of hyper vigilance, anxiety, and impulsivity.[xxiv] Such trauma becomes ingrained in the adolescent's psyche, determining how the adolescent behaves and responds – and possibly even changing the actual physical properties of the brain.[xxv] Traumatic events often experienced in formative years by children in government custody, coupled with the abuse commonly experienced or witnessed by children while imprisoned with adults, can clearly have deleterious effects on their development. The environment in which the juvenile offender is placed, and treatment that she receives (or fails to receive), determines her cognitive capacity.

Teenage Offenders & Their Receptivity to Mental Health Treatment

Failing to provide appropriate mental health services for imprisoned adolescents can decrease the likelihood of them benefiting from other rehabilitative services.[xxvi] A 1996 report by Human Rights Watch decried the lack of educational and counseling services tailored to youth incarcerated in adult prisons, stating "[i]t seems unlikely, however, that teenagers who enter an institution at the age of fifteen and leave as adults at the age of twenty-five will successfully participate in society, after being locked up and ignored."[xxvii] Indeed, Georgia's Sentencing Reform Act of 1994 ("SB440")[xxviii] and similar statutes have been criticized for not allowing a discretionary assessment of whether through rehabilitation a juvenile can be prevented from committing additional crimes.[xxix] Instead, more than half of the states place inmates under 18 in their prisons' general populations or protective custody if needed, according to a 1995 survey of state Departments of Corrections.[xxx] Children placed in general populations become likely victims of rape and assault, while 'protective' isolation guarantees severe mental and physical deterioration.[xxxi]

Although youth are particularly susceptible to psychological damage as a result of trauma, the malleability of the adolescent brain makes the juvenile receptive to rehabilitation, given the right environment, education and support.[xxxii] The opportunity to rehabilitate an individual, in regard to mental health and psychological change, is potentially the greatest during the individual's adolescence.[xxxiii] Taking advantage of this window of opportunity for reform is all the more critical in light of studies indicating that victims of violence are more likely than non-victims to become violent offenders (52% of victims commit subsequent acts of violence while only 17% of non-victims committed subsequent acts of violence during the year-long study).[xxxiv] Prevention of violence, and treatment for victims of violence, therefore is likely to reduce the overall level of youth violence.[xxxv]

Similarly, treatment for adolescent sex offenders not only reduces the risk of the juveniles re-offending but may also prevent numerous persons from becoming victims of sex crimes.[xxxvi] Many adult sex offenders commit their first sex offense as youth, and youth sex offenders are at high risk for committing subsequent sexual and non-sexual offenses.[xxxvii] Since, according to several studies, the average adult sexual offender commits almost 400 sex crimes during his life, early intervention can prevent countless acts of sexual victimization and save immeasurable sums of money that would otherwise be necessary to adjudicate and institutionalize offenders.[xxxviii] Like other types of youth offenders, youth sex offenders are ideal candidates for rehabilitation because deviant patterns of thinking and behavior are less deeply ingrained than in adults.[xxxix]

Conclusion

Laws such as Georgia's SB440 failed miserably at deterring crime by the individual or others in society. The converse is true. Placing adolescent offenders in the adult criminal justice system exacerbates the problem. Incarceration, and the sexual and physical abuse attendant to being an adolescent inmate in an adult prison, has a devastating impact on the youth's mental health and **greatly increases the odds of recidivism**. While the adolescent brain is particularly susceptible to trauma, it is also highly receptive to therapeutic treatment. Because of this receptivity, it is vital that youth receive appropriate mental health services to prevent teenage offenders from developing into adult offenders. Juvenile justice systems and youth rehabilitation programs are designed to provide such restorative treatment. Adult penal institutions are not. Adolescent offenders are more likely to achieve pro-social habilitation in juvenile facilities than in adult prisons.

NOTES

1. [i]. Marc A. Schindler, *Mental Health Issues Facing Adolescents in the Juvenile Justice System: Part II: Prosecution of Juveniles as Adults*, AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY NEWS, Mar.-Apr. 1999, at 47 [hereinafter Schindler].

2. [ii]. State Legislative Hearing on Prosecuting and Imprisoning Children as Adults (January 16, 2003) (testimony of Marc Schindler).

3. [iii]. *See, e.g.*, FLA. DEPT. OF JUV. JUST., JUVENILE TRANSFER TO CRIMINAL COURT STUDY: FINAL REPORT, JANUARY 8, 2002.

4. [iv]. Telephone Interview with Robert Schwartz, Executive Director, Juvenile Law Center (Jan. 23, 2003).

5. [v]. *Id.*

6. [vi]. Understanding the Needs of Youth: Identification of Disabilities and Other Significant Issues, *in* THE SPECIAL NEEDS OF YOUTH IN THE JUVENILE JUSTICE SYSTEM: IMPLICATIONS FOR EFFECTIVE PRACTICE, at 20 [hereinafter Understanding the Needs] (citing F. Marsteller, D. Brogan, L. Smith et al, *The Prevalence of Substance Use Disorders Among Juveniles Admitted to Regional Youth Detention Centers Operated by the Georgia Department of Children and Youth Services*, CSAT FINAL REPORT (1997)).

7. [vii]. *Mental Health Needs of Youth in the Juvenile Justice System, at* http://www.buildingblocksforyouth.org/issues/mentalhealth/factsheet.html.

8. [viii]. Understanding the Needs, *supra* note 6.

9. [ix]. Marty Beyer, *Experts for Juveniles at Risk of Adult Sentences, in* MORE THAN MEETS THE EYE: RETHINKING ASSESSMENT, COMPETENCY AND SENTENCING FOR A HARSHER ERA OF JUVENILE JUSTICE, 1997 A.B.A. JUV. JUST. CTR. (citing Eisikovits & Baizerman, *Doin= Time*, J. OFFENDER COUNSELING, SERVICES & REHABILITATION, Vol. 6 (1983)).

10. [x]. *Id.*

11. [xi]. *Id.* (citing M. Forst, J. Fagan & T. S. Vivona, *Youth in Prisons and Training Schools*, JUV. AND FAM. COURT. J., Vol. 40 (1989)).

12. [xii]. *Adolescent Brain Development and Legal Culpability*, A.B.A. JUV. JUST. CTR. (Winter 2003) [hereinafter *Adolescent Brain Development*].

13. [xiii]. FLA. DEPT. OF JUV. JUST. A DJJ SUCCESS STORY: TRENDS IN TRANSFER OF JUVENILES TO ADULT CRIMINAL COURT (2002).

14. [xiv]. *Id.*

15. [xv]. Kristin Choo, *Minor Hardships: Jailing Youths as Adults is Gaining Ground - and so are its Critics*, A.B.A. J., Sept. 2000.

16. [xvi]. *See, e.g.*, American Civil Liberties Union: Prisoners Rights, *at* http://www.aclu.org/.

17. [xvii]. E-mail from Ira Burnim, Legal Director, Bazelon Center for Mental Health Law (Jan. 28, 2003).

18. [xviii]. Philip Nordness *et al.*, *Screening the Mental Health Needs of Youths in Juvenile Detention*, JUV. AND FAM. COURT. J. (Spring 2002).

19. [xix]. Schindler, *supra* note 1.

20. [xx]. *Adolescent Brain Development*, *supra* note 12.

21. [xxi]. *Brain Development, Culpability, and the Death Penalty*, INT'L JUST. PROJECT [hereinafter *Brain Development, Culpability, and the Death Penalty*].

22. [xxii]. *Id.*

23. [xxiii]. *Id.*

24. [xxiv]. *Id.*

25. [xxiv]. *Id.*

26. [xxvi]. *Understanding the Needs of Youth*, *supra* note 6.

27. [xxvii]. *Modern Capital of Human Rights: Abuses in the State of Georgia*, HUMAN RIGHTS WATCH, (1996).

28. Sentencing Reform Act of 1994 (introduced under the School Safety and Juvenile Justice Reform Act), O.C.G.A. § 15-11-28 (mandating that children 13-17 years old are treated as adults in the State of Georgia for certain crimes).

29. [xxix]. Lisa Cintron. *Rehabilitating the Juvenile Court System: Limiting to Juveniles Transfer to Adult Criminal Court*, 90 NW. U. L. REV. 1254, 1269 (1996).

30. [xxx]. Schindler, *supra* note 1.

31. [xxxi]. Schindler, *supra* note 1.

32. [xxxii]. *Brain Development, Culpability, and the Death Penalty*, *supra* note 21.

33. [xxxiii]. *Id.*

34. [xxxiv]. Jennifer N. Shaffer & R. Barry Ruback, *Violent Victimization as a Risk Factor for Violent Offending Among Juveniles*, JUV. JUST. BULL., Dec. 2002.

35. [xxxv]. *Id.*

36. [xxxvi]. *Id.*

37. [xxxvii]. Victor I. Vieth, *When the Child Abuser is a Child: Investigating, Prosecuting and Treating Juvenile Sex Offenders in the New Millennium*, 25 HAMLINE L. REV. 47, 71 (2001).

38. [xxxviii]. CHARLENE STEEN & BARBARA MONNETTE, TREATING ADOLESCENT SEX OFFENDERS IN THE COMMUNITY 7 (1989).

39. [xxxix]. *Id.* (citing F.H. Knopp Recent developments in the treatment of adolescent sex offenders. In Otey, E.M. & Ryan, G.D. (Eds.), *Adolescent Sex Offenders: Issues in Research and Treatment*, U.S. Dept. of Health & Human Services 1985).