



ALLOWING JUDGES TO DEPART FROM MANDATORY MINIMUMS WHEN SENTENCING CHILDREN IN ADULT COURT

“There is no keener revelation of a society’s soul than the way in which it treats its children.”
-Nelson Mandela

LEGISLATIVE ISSUE BRIEF

Children Sentenced as Adults

In the late 1980’s and early 1990’s states began passing laws to make it easier to transfer children into the adult criminal justice system which exposed them to harsh mandatory minimum sentences and mandatory sentencing enhancements. By the year 2000, a child as young as 10 years old could be tried as an adult for certain offenses. And by 2010, an estimated 139,000 children were housed in adult prisons and jails across the United States.

Policymakers were driven by the now-debunked “Super-Predator Theory” which stated that a new generation of child predators were coming of age who were more violent and less remorseful than ever before. These children, the authors said, were “Godless, jobless, and fatherless” monsters and urged states to respond by treating them as adults and thereby exposing them to overly punitive mandatory minimum sentences.

An estimated 200,000 children are tried in the adult criminal justice system every year in the United States. These children can face severe punishment that is not age-appropriate and is disproportionate given their young age and lessened culpability relative to that of adults.

Adverse Childhood Experiences

In the vast majority of cases, children who come into conflict with the law are contending with early childhood trauma and unmitigated adverse childhood experiences (ACEs), including psychological, physical, or sexual abuse; witnessing domestic violence; living with family members who are substance abusers, suffer from mental illness or are suicidal, or are formerly incarcerated. Studies have shown that approximately 90% of children in the juvenile justice system have experienced at least 2 ACEs, and 27% of boys and 45% of girls have experienced at least 5 ACEs.

Juvenile Brain & Behavioral Development Science

Studies have shown that children’s brains are not fully developed. The pre-frontal cortex, which is responsible for temporal organization of behavior, speech, and reasoning continues to develop into early adulthood. As a result, children rely on a more primitive part of the brain known as the

amygdala when making decisions. The amygdala is responsible for immediate reactions including fear and aggressive behavior. This makes children less capable than adults to regulate their emotions, control their impulses, evaluate risk and reward, and engage in long-term planning. This is also what makes children more vulnerable, more susceptible to peer pressure, and being heavily influenced by their surrounding environment.

Children's underdeveloped brains and proclivity for irrational decision-making is why society does not allow children to vote, enter into contracts, work in certain industries, get married, join the military, or use alcohol or tobacco products. These policies recognize that children are impulsive, immature, and lack solid decision-making abilities until they've reach adulthood.

Racial Disparities

Black children are disproportionately represented in the adult criminal justice system, comprising 58% of all children confined in adult prisons. In addition, roughly 83% of children prosecuted in the adult criminal justice system are racial minorities. Black children represent 87% of drug cases, 48% of property cases, and 63% of the public order offense cases where children are tried in the adult criminal justice system.

The U.S. Supreme Court

The Supreme Court has emphasized through its cases in *Roper v. Simmons* (2005), *Graham v. Florida* (2010), *Miller v. Alabama* (2012), and *Montgomery v. Louisiana* (2016) that “the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.”

The Court has also found that, “only a relatively small proportion of adolescents” who engage in illegal activity “develop entrenched patterns of problem behavior,” and “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds,” including “parts of the brain involved in behavior control.”

Recommendations

Policymakers should look to enact policies that give judges greater discretion to depart from mandatory minimum and mandatory sentencing enhancements when sentencing children who have been convicted in adult criminal court. These policies should direct judges to consider the mitigating factors of youth as identified by juvenile brain and behavioral development science and the U.S. Supreme Court's landmark decisions of *Graham* and *Miller*, prior to the imposition of any sentence on a child who has been tried as an “adult.”

Sample Bill Language

Judicial Discretion When Sentencing Children.

(1) If a person is convicted as an adult for an offense that the person committed when he or she was less than 18 years of age, in addition to any other factor that the court is required to consider before imposing a sentence upon such a person, the court shall consider the differences between child and adult offenders, including, without limitation, the diminished culpability of children as compared to that of adults and the typical characteristics of youth.

(2) Notwithstanding any other provision of law, after considering the factors set forth in subsection 1, the court may, in its discretion, reduce or depart from any mandatory minimum period of incarceration that the person is otherwise required to serve if the court determines that such a reduction is warranted given the age of the person and his or her prospects for rehabilitation.

(3) Prior to the imposition of any sentence longer than 5 years in prison on a person who was less than 18 years of age at the time of the offense, the court may, after consideration of the factors in subsection 1, depart from any mandatory sentencing enhancement that the court would otherwise be required to impose.