



## FORUM

# The U.S. Criminal Justice System Needs to Start Treating Children Like Children

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On any given day, tens of thousands of incarcerated children are forced to eat, sleep, and learn in juvenile detention centers and adult prisons across the United States.

News stories of children being charged for harmless behaviors have become increasingly publicized, with examples ranging from not completing homework and participating in cafeteria food fights to stealing 25-cent candy. While there are child offenders who commit more serious crimes, they all deserve fair trials and sentences that take into account their young age.

Research from Stanford University shows that children have difficulty understanding the long-term consequences of their decisions and lack cognitive control during emotional situations. Experts also link moral conscience to the prefrontal cortex, which does not fully develop until adulthood and is often delayed in children who experience trauma as a result of being victimized early in life.

When a child is charged with a crime, a court will decide whether they will be tried as a child or an adult based largely on the severity of the crime. Those with less serious offenses are treated as children and have their cases heard by juvenile judges that have the power to remand them to a juvenile detention center while those treated as adults may be remanded to an adult prison with protective custody.

Meanwhile, parents of child offenders are forced to foot the bill for nightly housing in juvenile detention centers. Laws requiring these parental payments were meant to avoid burdening taxpayers and to encourage parents to keep their

children out of trouble. However, the reality is that most of these parents are low-income and incapable of paying. Although some states have decided to end this practice, laws about charging parents are highly decentralized and can vary from county to county, creating large disparities.

To combat the stress of incarceration on young children and their parents, both New York and New Jersey have recently passed legislation to raise the age at which children may be tried in court as adults. However, the fact remains that in 22 states, there are no minimum age requirements for transferring a child into adult criminal courts, meaning that a child of any age in those states could end up in an adult prison for the rest of their life.

The U.S. Supreme Court has acknowledged the issue of excessive sentencing for child offenders in landmark cases Roper v. Simmons (2005) and Graham v. Florida (2009), in which the Court reversed decisions to impose the death penalty on a juvenile offender and to sentence a minor to life without parole for a non-homicidal offense, respectively. The Supreme Court opinions to reverse these prior holdings were made on the grounds that the children's original sentences violated the U.S. Constitution's Eighth Amendment prohibition on "cruel and unusual punishment."

Rights for juvenile offenders were expanded further by the Supreme Court in Miller v. Alabama (2012) and Montgomery v. Louisiana (2016). In Miller v. Alabama, Miller appealed his sentence of life in prison without parole for a homicidal offense on the grounds that punishing a 14-year-old for the rest of his life was cruel and unusual. In a 5-4 decision, the Supreme Court reversed his sentence, with the majority opinion concluding that life without parole is a disproportionate punishment for a juvenile, thus affirming that sentencing for child offenders must be treated as *constitutionally different* from adult offenders.

This decision was reaffirmed in Montgomery v. Louisiana, in which Miller v. Alabama was used as precedent to assert that sentencing schemes that impose mandatory life sentences onto juvenile offenders are unconstitutional. The Court held a 6-3 decision in favor of Montgomery, stating that the Miller decision applied retroactively to Montgomery's case.

In the majority opinion, Justice Kennedy wrote, "In light of what this Court has said in Roper, Graham, and Miller about how children are constitutionally different from adults in their level of culpability, [...] prisoners like Montgomery must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored."

Montgomery, who is 73 years old but was just 17 years old at the time of his crime, is now eligible to be considered for parole. His case has also opened the door for other cases of child offender sentencing decisions to be re-evaluated based on this new standard. Thus far, *Montgomery v. Louisiana* has allowed more than 500 offenders to be released on parole.

However, the Supreme Court ought to recognize the capacity for rehabilitation of child offenders beyond the scope of life sentences. Even short stays in juvenile centers can have a profound negative impact on children due to harsh living conditions. For example, two juvenile correctional facilities in Wisconsin were recently hit with a class-action lawsuit in *J.J. v. Litscher* (2017) for keeping children in solitary confinement, spraying them with mace, and denying them therapeutic programs.

Confinement in juvenile centers has become particularly harmful during the COVID-19 pandemic, which has caused centers to cut visits from families and friends to prevent the spread of the virus, leaving thousands of incarcerated young people feeling extremely isolated.

Despite clear issues, some have argued that punishing minors will serve a positive long-term function by teaching children at a young age that their actions have consequences. The problem is that not all children are subject to the same punishments.

While white children make up the largest share of juvenile detainees in 45 of 50 states in the U.S. as of 2019, children of color — particularly African American children — are disproportionately represented in juvenile detention centers and are referred to juvenile courts at a higher rate than their white peers. This can be attributed to a number of factors, the most troubling of which include racial bias from judges and prosecutors.

In 2018, the Senate reauthorized the Juvenile Justice and Delinquency Protection Act to update national standards on the judicial treatment of minors. The bill, introduced by Senators Chuck Grassley (R-IO) and Sheldon Whitehouse (D-RI) aims to create restrictions on locking children up for statute offenses (eg. skipping school or running away from home), reduce racial disparities in the juvenile justice system, and support alternatives to incarceration for nonviolent offenders. Proposed alternatives include behavior management programs, problem-solving courts, street and home-based services, and drug abuse prevention and education services.

Experts in the fields of psychology and constitutional law have made steps towards affirming that children are not as capable as adults of understanding the

consequences of their actions. Now, federal, state, and local laws must reflect this truth and discontinue practices that are overly punitive and insufficiently rehabilitative towards child offenders who cannot yet fully appreciate the weight of their transgressions.