

THINKING ABOUT THE YOUTH: EXPLORING JUVENILE INCARCERATION SENTENCING

*Thomas McCahill, Staff Editor, Vol. 31*¹

Over the past many decades, the Criminal Juvenile Justice System experienced many changes.² Beginning in the late nineteenth century, there was the creation of the first Juvenile Court in Chicago, Illinois.³ This was created as a way to rehabilitate youth offenders younger than age sixteen, instead of focusing on severe punishment like the adult court.⁴ Although there was this shift, even today, all fifty States and the District of Columbia allow for juvenile prosecution in adult criminal court by one or more transfer mechanisms.⁵ When a youth offender is tried and subsequently charged as an adult, this subjects them to the many consequences and dangers that stem from these adult prisons.⁶ There is ample research that determines a youth's brain is not fully developed and constantly changing during adolescence.⁷ This research enforces the idea that

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² *Age Boundaries of the Juvenile Justice System*, OFFICE OF JUVENILE AND DELINQUENCY PREVENTION, <https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/age-boundaries-of-the-juvenile-justice-system#6-0>, (Mar. 2024).

³ *Id.*

⁴ *Id.*

⁵ “Judicial waiver, statutory exclusion, and direct file are three mechanisms used to transfer juvenile offenders to adult court. Judicial waiver is the most popular method; 47 States and the District of Columbia provide judicial discretion to waive certain juveniles to criminal court. Thirty-seven States and the District of Columbia have one or more statutory exclusion provisions, and 10 States and the District of Columbia have direct file provisions.”

Juvenile Justice Reform Initiatives in the States 1994-1996, OFF. OF JUV. AND DELINQ. PREVENTION, https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/reform2/ch2_j.html#:~:text=Today%2C%20all%2050%20States%20and,transfer%20mechanisms%2C%20according%20to%20GAO.&text=The%20most%20common%20mechanism%20is,cases%20to%20adult%20criminal%20court (last visited July 30, 2024).

⁶ See Amanda M. Kellar, Note, *They're Just Kids: Does Incarcerating Juveniles With Adults Violate The Eighth Amendment?*, 40 SUFFOLK U. L. REV. 155, 173 (2006).

⁷ The brain finishes developing and maturing in the mid-to-late 20s. The part of the brain known as the prefrontal cortex is responsible for skills like planning, prioritizing, and making good decisions. Studies show that this is the last part of the brain to mature. *The Teen Brain: 7 Things to Know*, NAT'L INST. OF MENTAL HEALTH, <https://www.nimh.nih.gov/health/publications/the-teen-brain-7-things-to-know#:~:text=The%20brain%20finishes%20developing%20and,prioritizing%2C%20and%20making%20good%20decisions> (last visited Aug. 16, 2024).

juveniles who are tried as adults do not hold the same mental capacity as adults and ultimately will be punished too harshly instead of receiving the rehabilitation needed. This article will discuss the implications of juvenile transfers to adult court and the negative impact and effects that it has on a juvenile offender.

I. JUVENILES IN ADULT PRISONS

The United States defines a “juvenile” as “a person who has not attained his eighteenth birthday.”⁸ Furthermore, “juvenile delinquency” is defined “[as] the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult.”⁹ As of 2021, the number of juveniles in the United States adult prisons is as low as 2,250, which is a decline from the peak of 10,420 in 2008.¹⁰ Although there was a decline in recent years, there is an argument to be made that this is not enough and the number should drop even more drastically.

A. *The (un)constitutionality of Juveniles in Adult Prisons*

The Supreme Court of the United States hears many cases that revolve around the issue of the constitutionality of harsh prison sentences on offenders under the age of eighteen.¹¹ The Eighth Amendment states that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”¹² The Court found that “the concept of proportionality is central to the Eighth Amendment.”¹³ The Court established two general classifications of this: the first considers all the circumstances of the case to determine whether the sentence is

⁸ 18 U.S.C. § 5301.

⁹ *Id.*

¹⁰ Zhen Zeng et al., *Just the States, Juveniles Incarcerated in U.S. Adult Jails and Prisons, 2002-2021*, BUREAU OF JUST. STAT. (June 2023), <https://bjs.ojp.gov/juveniles-incarcerated-us-adult-jails-and-prisons-2002-2021>.

¹¹ *See* *Graham v. Florida*, 560 U.S. 48 (2010); *see also* *Roper v. Simmons*, 543 U.S. 551 (2005).

¹² U.S. CONST. amend. VIII.

¹³ *Graham*, 560 U.S. at 59.

unconstitutionally excessive; while the second uses categorical rules to define the Eighth Amendment standards.¹⁴

In *Graham v. Florida*, the Court found that life in prison without the opportunity of parole for a youth offender was in violation of the Eighth Amendment.¹⁵ The Court further held that the Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit a homicide.¹⁶ However, the Court decided that federal courts do not impose that a State need to guarantee the offender's eventual release, but rather must provide them with some realistic opportunity to obtain release before the end of that term.¹⁷

In deciding this, the Court relied on the national consensus on punishment for juvenile offenders.¹⁸ Additionally, the Court relied on precedent to show states that authorized the transfer of juveniles to adult court. The Court reasoned that although the transfer laws consider a fifteen-year-old to be old enough to be tried in criminal court for serious crimes, it does not show anything about the judgment the states make regarding the appropriate punishment for those youthful offenders.¹⁹ Just because a state can transfer an offender to be charged in an adult court does not justify a judgment that states intended to subject them to the same sentences as adult offenders.²⁰

II. JUVENILES V. ADULTS

Courts should consider the difference in culpability between a youth and an adult. "The judicial exercise of independent judgment requires consideration of the culpability of the offenders

¹⁴ *Graham* at 59-60.

¹⁵ *See id.*

¹⁶ *Id.* at 82.

¹⁷ *Id.*

¹⁸ "Six jurisdictions do not allow life without parole sentences for any juvenile offenders. Seven jurisdictions permit life without parole for juvenile offenders, but only for homicide crimes. Thirty-seven States as well as the District of Columbia permit sentences of life without parole for a juvenile nonhomicide offender in some circumstances." *Id.* at 62.

¹⁹ *Id.* at 66 (quoting *Thompson v. Oklahoma*, 487 U.S. 815 (1988)).

²⁰ *Graham*, 560 U.S. at 66.

at issue in light of their crimes and characteristics, along with the severity of the punishment in question.”²¹ Juveniles are seen to have a “‘lack of maturity and an underdeveloped sense of responsibility’; they are ‘more vulnerable or susceptible to negative influences and outside pressures, including peer pressure’; and their characters are ‘not as well formed.’”²² Psychologists explain that it is difficult to differentiate between a juvenile who reflects unfortunate yet transient immaturity and a juvenile whose crime reflects irreparable corruption.²³ In light of this, a juvenile cannot be classified among the worst offenders.²⁴

A. *The Harm Caused to Juveniles Incarcerated with Adults*

The Court uses the proportionality test to determine whether the Eighth Amendment prohibits the incarceration of juveniles in adult courts.²⁵ Statistics show that juvenile imprisonment with adults is an extremely severe form of punishment.²⁶ Juveniles in adult prisons are eight times more likely to commit suicide, 200 times more likely to be beaten by staff, and 500 times more likely to be sexually assaulted.²⁷

Juveniles often also experience disruptions in development during their late adolescence due to being incarcerated in adult prison.²⁸ These youth offenders are spending a crucial point of their development in adolescence in an environment that does not support this growth.²⁹ Adult prisons are not able to provide the services and support to juveniles that they would otherwise be

²¹ *Graham*, 560 U.S. at 67.

²² *Id.* at 68 (quoting *Roper v. Simmons*, 543 U.S. 551, 569-70 (2005)).

²³ *Id.*

²⁴ *Id.*

²⁵ Kellar, *supra* note 6, at 176.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Edward P. Mulvey & Carol A. Schubert, *Transfer of Juveniles to Adult Court: Effects of a Broad Policy in One Court*, JUV. JUST. BULL. (Dec. 2012), <https://ojdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/232932.pdf>.

²⁹ *Id.*

able to receive from a juvenile institution.³⁰ These institutions provide programs and resources specifically designed for juvenile development, while adult prisons subject juveniles to an environment where adult offenders become their teachers.³¹

1. The Purpose of Juvenile Incarceration

The main goals of penal sanctions that are recognized are retribution, deterrence, incapacitation, and rehabilitation.³² In order for real retribution to occur, the criminal sentence must be directly related to the personal culpability of the criminal offender.³³ As previously noted, because juveniles lack the maturity that adults have,³⁴ they are less culpable than the adult offender.³⁵ Similarly, deterrence does not justify a harsh sentence from an adult court; juveniles are less likely to take a possible punishment into consideration when making decisions.³⁶ Statistics compiled from fifteen states revealed that juveniles prosecuted in adult court and released from state prisons were rearrested eighty-two percent of the time, while their adult counterparts were rearrested sixteen percent less.³⁷

Incapacitation as a form of penal sanction also does not justify an excessive sentence on a juvenile.³⁸ Although a juvenile may have committed a serious crime and is an immediate risk, incapacitation in such will deny the juvenile offender a chance to demonstrate growth and

³⁰ Nicole Scialabba, *Should Juveniles Be Charged as Adults in the Criminal Justice System?*, AM. BAR ASS'N (Oct. 3, 2016), <https://www.americanbar.org/groups/litigation/resources/newsletters/childrens-rights/should-juveniles-be-charged-adults-criminal-justice-system/>.

³¹ Scialabba, *supra* note 29.

³² *Graham v. Florida*, 560 U.S. 48, 71 (2010).

³³ *Id.*

³⁴ *Id.* at 68.

³⁵ *Id.* at 72.

³⁶ *Id.*

³⁷ Scialabba, *supra* note 29.

³⁸ *Graham*, 560 U.S. at 72.

maturity.³⁹ Lastly, rehabilitation is “a penological goal that forms the basis of the parole system.”⁴⁰ Rehabilitation in an adult prison does not offer the services that a juvenile offender needs at this time in his/her life.⁴¹ Juvenile rehabilitation allows for programs such as behavioral therapy, education, vocational training, family support, and life coaching.⁴² As the Court in *Graham* explained life without parole for a juvenile non-homicide offender, “penological theory is not adequate to justify [it].”⁴³

“An offender’s age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.”⁴⁴ Juvenile offenders must be offered a chance to demonstrate maturity and reform.⁴⁵ Often prisons are seen as a school of crime, raising the likelihood that an offender will commit future crimes, instead of lowering the risk.⁴⁶ Juveniles will likely learn from those in the adult prisons, rather than working to become better themselves.⁴⁷ Some prisons enact a policy that withholds counseling, education, and rehabilitation programs for those who are ineligible for parole consideration.⁴⁸ An institution that practices this will not be a place for a juvenile to get the services and rehabilitation they need.

³⁹ *Graham*, 560 U.S. at 72.

⁴⁰ *Id.* (quoting *Solem v. Helm*, 463 U.S. 277, 300 (1983)).

⁴¹ See Mulvey & Schubert, *supra* note 27.

⁴² *Juvenile Justice: Rehabilitation vs. Disciplinary Action*, WILSON COLL. ONLINE BLOG (Jan. 3 2024), <https://online.wilson.edu/resources/juvenile-justice-rehabilitation-vs-disciplinary-action/>.

⁴³ *Graham*, 560 U.S. at 74.

⁴⁴ *Id.* at 76.

⁴⁵ *Id.*

⁴⁶ Jamie Santa Cruz, *Rethinking Prison as a Deterrent to Future Crime*, JSTOR DAILY (July 18, 2022), <https://daily.jstor.org/rethinking-prison-as-a-deterrent-to-future-crime/>.

⁴⁷ *Id.*

⁴⁸ *Graham*, 560 U.S. at 79.

III. CONCLUSION

Since the creation of the juvenile court, statistics show a dramatic decrease in the number of juveniles in adult prisons.⁴⁹ But realistically, there has not been enough. Juvenile offenders need the resources that the juvenile institutions can provide to allow for their maturity and culpability to grow. Rather than being sentenced to an adult prison with violent offenders where a juvenile will not thrive, juveniles need to be offered the support to help them mature and continue their development. As someone who is navigating through the legal field, I hope I will be able to advocate for juvenile offenders to receive the services in juvenile institutions they need and help decrease the number of juveniles in adult prisons.

⁴⁹ Zeng et al., *supra* note 10.