

Fair Sentencing for Juvenile Offenders: A Better Understanding of Juvenile Justice Theory & Adolescent Brain Science

Executive Summary

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Robert E. Wollack, Jr. brings a unique and important perspective to the issue of appropriate sentencing and rehabilitation of juvenile offenders due to his personal background and a lifetime career devoted to serving this population. He grew up in an at-risk, low income neighborhood in Brooklyn, NY, engaged in criminal activity as a juvenile, worked as an NYPD undercover police officer, was incarcerated at a federal penitentiary as a young man, received his MSW from the University of Michigan School of Social Work, and is the founder and architect of one of Michigan's largest and most effective provider of treatment services for juvenile offenders - Wolverine Human Services.

Juvenile offenders, most of whom have a significant history of trauma - including neglect and abuse - are being further victimized in the adult prison system when better alternatives are available. According to the Michigan Council On Crime And Delinquency, 20,000 juveniles have been detained in the adult system during the past decade. More than 50% of these youth are non-violent, first time offenders with no prior criminal record. We are indiscriminately sending these young people to adult programs where they do not receive developmentally appropriate support. Instead they often experience violence and abuse. There are more humane and effective options for our youth.

Our current treatment of juvenile offenders in Michigan is based on flawed criminal justice theory that has proven false and is unsupported by the facts. In the 1990's, former Princeton professor John Dilulio developed the "super-predator theory." The theory predicted an alarming spike in juvenile crime at the turn of the millennium. This idea meshed well with the "get tough on crime" movement of the time and reshaped public policy toward juvenile offenders. However, Dilulio's prediction proved false. Juvenile crime decreased, criminal justice experts rejected it, and he backtracked from his own theory five years after proposing it. Today in Michigan - nearly 20 years after the fact - our policies and treatment of juvenile offenders are still based on this discredited theory.

Recent findings in neuroscience provide evidence that adolescents are different from adults in terms of their overall brain development and therefore require a different approach with regard to sentencing and rehabilitation in our criminal justice system. Research now indicates that brain development isn't complete until age 25-30. This gives us a better, more comprehensive understanding of adolescent behavior than we possessed even ten years ago. It helps explain why adolescents often act impulsively and irrationally, and it provides a sound basis for rethinking our methods when dealing with this population.

It is time to reform our approach to dealing with juvenile offenders in Michigan, ensuring these youth receive age appropriate services and support. We must take action and do the following:

- **Raise the age of automatic adult jurisdiction from 17 to 18**
- **Ensure that youth 17 and under are no longer sent to adult prisons**
- **Prohibit youth 14 and under to be waived to the adult system except in extraordinary cases**

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In 1822, when prison reformers in New York proposed the nation's first juvenile institution, they saw the need to keep children separate from adults as "too obvious to require any argument."

Dana Liebelson, Huffington Post

I have been a part of the criminal justice system my entire life. I grew up in a low income, crime infested neighborhood in Brooklyn, New York. As a juvenile, I witnessed and engaged in criminal activities on these mean streets. Later I worked as an undercover police officer for the NYPD. Then I hit a low point in my young life, becoming addicted to drugs and eventually, being sentenced to serve prison time at the Federal Correctional Institution at Milan, Michigan.

Fortunately, I was able to access vital support services while incarcerated at Milan. Education, group counseling and the mentorship of a University of Michigan School of Social Work professor were provided. I experienced a full, genuine rehabilitation that included an unexpected, early parole after serving two years of a six year sentence. Five years later, after ardent study and work in the field as a direct youth care worker, I earned a Master's degree in Social Work from the University of Michigan.

Following graduate school, I continued to focus my career efforts with juvenile offenders, working for several non-profit juvenile justice agencies, as well as the Michigan Department of Mental Health. Then in 1987, I founded and launched Wolverine Human Services - developing this agency into one of Michigan's largest and most effective provider of treatment services for juvenile offenders. Because of my life

experiences, I believe I have a unique and important perspective to bring to the public discussion regarding proposed legislation to modify sentencing requirements for juvenile offenders.

First, I strongly support the proposed legislation to raise the age when a juvenile can be considered an adult in Michigan's criminal justice system. Second, it is my judgement that under no circumstance should minors age 17 or younger serve prison time in an adult facility when there are better, more viable options. As mentioned, I spent time in an adult prison, and it is no place for kids. Our youth can - and should be - treated in age appropriate juvenile facilities. As noted by Dana Liebelson in her Huffington Post investigative report "Cruel And All-Too Usual Punishment," juveniles who are provided with age appropriate treatment are far less likely to reoffend than those who are sent to the adult system,

"One study, reviewed by the Centers for Disease Control and Prevention, tracked what happened to minors in custody for similar crimes. After they were released, those who had served in the adult system were 77 percent more likely to be arrested for a violent felony than those who were sent to juvenile institutions."

A recent article in the *Detroit Free Press* noted that Michigan is one of only nine states that automatically prosecutes 17 year olds as adults. Since 1988, thousands of juveniles ages 12 to 17 have essentially been discarded in our state, sent away to adult prisons where they become easy targets of violence and abuse. In a 2014 report - "Youth Behind Bars," the Michigan Council on Crime and Delinquency (MCCD) noted,

"Over the past ten years, more than 20,000 young people under 18 have been convicted as adults in Michigan, mostly for non-violent offenses with no prior juvenile record."

Furthermore, no consideration is given to culpability in sentencing juvenile offenders. As University of Michigan Law School professor Kimberly Thomas observes,

“The most sympathetic 15-year-old accomplice to a felony-murder and the most sociopathic adult serial killer will receive the same sentence, without any judicial ability to take stock of the difference between the two for sentencing purposes.”

This is outrageous! Our current policy is simply unfair and a waste of taxpayer money. Too many youth are being sent to adult prisons where they are being exploited, physically assaulted, sexually abused and psychologically tortured.

This is the tragic outcome of a policy was enacted at a time in which many criminal justice experts and lawmakers predicted juvenile crime would reach unprecedented, irreversible levels. It never happened. Furthermore, we did not yet possess at the time vital, scientific information on the adolescent brain that has since been discovered.

In the mid 1990’s, the Michigan legislature passed a package of bills that resulted in significant change to our juvenile justice system. The justification for this change was summed up by the former chair of the Senate Judiciary Committee at the time:

“It doesn’t matter so much whether it’s 12 or 14 or 50 or 60. The juvenile justice reform act’s basic finding was that if you do the crime you do the time.”

“Do the crime, do the time.” This catchphrase articulates the “get tough on crime” bandwagon of the 90’s that shaped a national approach not only to juvenile justice but criminal justice in general.

Unfortunately, these bills approved during the mid 90's by both democrats and republicans in the legislature were a rush to judgement and constitutionally inappropriate.

It's one thing to waive a young person who has committed violent crimes such as first degree murder or rape (even then we must tread very carefully). It's another thing to send non-violent juveniles to prison for drug possession, drug distribution, larceny, incorrigibility etc. - those crimes that do not result in any violent consequences to the victim. Regardless of the offense, each case should be examined carefully on an individual basis. We must be careful about unfairly prosecuting juveniles. For example, should a young person be sent to adult prison because they happened to be riding along with someone in a stolen vehicle even though they were not aware of it? I don't think so.

The philosophical underpinnings of our current policy can be largely traced to a theory proposed by John Dilulio - former professor at Princeton University and now professor of political science at the University of Pennsylvania. In his 1996 book, "Body Count," Mr. Dilulio sounded a false alarm, warning America of the impending juvenile "superpredator" crisis. He stated:

"Based on all that we have witnessed, researched and heard from people who are close to the action, here is what we believe: America is now home to thickening ranks of juvenile 'superpredators' -- radically impulsive, brutally remorseless youngsters, including ever more preteenage boys, who murder, assault, rape, rob, burglarize, deal deadly drugs, join gun-toting gangs and create serious communal disorders."

The superpredator theory suggested that a massive increase in juvenile crime was looming at the turn of the century. Therefore, local, state and federal government lawmakers ought to prepare for this crisis by implementing policies that cracked down

on juvenile crime. Unfortunately at the time, the unfounded theory stuck and caught on, quickly reaching a tipping point that reshaped government policy on juvenile crime. Michigan legislators jumped on board and swallowed the bait. The fact that incarcerating juveniles would also save the state money in the short run certainly didn't hurt the advancement of this theory either.

The problem? The theory was false, and the rise of the supposed "superpredator" never happened. In fact, juvenile crime actually began to *decrease* in the late 90's and into the twenty-first century. Yet tragically, this fear-based theory still influences how we treat juvenile offenders in our state on this very day! We've allowed the superpredator theory to take root and guide our approach to juvenile justice even though Professor Dilulio rejected his own theory a mere five years after proposing it.

In a 2001 interview with the New York Times, he stated:

"If I knew then what I know now, I would have shouted for prevention of crimes,"

And regarding his attempt to put the brakes on how his theory that was reshaping government policy on juvenile he stated:

"I couldn't write fast enough to curb the reaction,"

and...

"I'm sorry for any unintended consequences,"

Other experts on juvenile crime also spoke out against the superpredator theory in the NY Times article. Concerning Dilulio's theory, Franklin E. Zimring, law professor at the

University of California at Berkeley and director of the university's Earl Warren Legal Institute said this:

'His prediction wasn't just wrong, it was exactly the opposite.' *"His theories on superpredators were utter madness."*

Jerry Miller, president of the nonpartisan National Center on Institutions and Alternatives added,

"The superpredator thing led to horrific legislation."

The Supreme Court has since handed down three landmark rulings to reverse this trend. In *Roper v. Simmons* (2005), it was ruled unconstitutional for a youth under 18 years old at the time of his or her crime to receive a death penalty sentence. In *Graham v. Florida* (2010), it was ruled that sentencing a juvenile to life without the possibility of parole for a non-homicidal crime violated the Eighth Amendment. The ruling required that states give juveniles a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." In *Miller v. Alabama* (2012) the Supreme Court made it unconstitutional to sentence someone who was under the age of 18 at the time of the crime to mandatory life without parole. Judges must take into consideration the age of the offender before sentencing him or her to life without parole. Clearly, we see the pendulum shifting back in the right direction.

Yet here we are - nearly 15 years after the superpredator theory has been rejected by its own creator, experts in criminal justice and the U.S. Supreme Court - embracing it.

Yet we still allow these outdated and unsuccessfully concepts to dictate the way we treat juvenile offenders in our state.

Recent findings in neuroscience on the adolescent brain provide a sound basis for changing the legislation regarding the sentencing of juvenile offenders. Delinquency is a complicated mixture of many factors. However, with recent advancements in science, we now know that environmental elements coupled with the undeveloped adolescent brain are primary contributing factors to delinquency. Recent brain studies confirm that adolescents do not have the ability or conscience structure to make the same decisions as adults 25 years of age or older. This isn't just my opinion, there is wide consensus on the matter supported by the best and brightest scientists and physicians in the world.

In a 2008 article appearing in *Harvard Magazine* entitled "The Teen Brain" Debra Ruder wrote,

"Research during the past 10 years, powered by technology such as functional magnetic resonance imaging, has revealed that young brains have both fast-growing synapses and sections that remain unconnected. This leaves teens easily influenced by their environment and more prone to impulsive behavior, even without the impact of souped-up hormones and any genetic or family predispositions."

In the same article, Harvard Medical School neurology professors Frances Jensen and David Urion note,

"Human and animal studies...have shown that the brain grows and changes continually in young people—and that it is only about 80 percent developed in adolescents. The largest part, the cortex, is divided into lobes that mature from back to front. The last section to connect is the frontal lobe, responsible for cognitive processes such as reasoning, planning, and judgment. Normally this mental merger is not completed until somewhere between ages 25 and 30."

Juvenile justice experts have been conducting some of their own research based on these and other findings on the adolescent brain, looking for specific insights and

applications that lead to a better approach to dealing with teenage delinquent behavior. In their highly regarded text, *Juvenile Delinquency: Theory, Practice, and Law*, Larry Siegel and Brandon Welsh reference groundbreaking research on adolescent aggression conducted by psychiatrist Frank Guido:

“Research psychiatrist Frank Guido finds that aggressive teen behavior may be linked to the amygdala (an area of the brain that processes information regarding threats and fear) and with a lessening of activity in the frontal lobe (a brain region linked to decision making and impulse control). Guido’s research indicates that reactively aggressive adolescents - most commonly boys - frequently misinterpret their surroundings, feel threatened, and act overaggressively. They tend to strike back when being teased, blame others when getting into a fight, and overreact to accidents. Their behavior is emotionally hot, defensive and impulsive.”

This then leads to the logical question: How should recent developments in our understanding of the adolescent brain inform and influence our approach to treating juvenile offenders? In his article, “Should the Science of Adolescent Brain Development inform Public Policy?” distinguished Temple University psychology professor Laurence Steinberg provides some guidance,

“..studies of adolescent brain anatomy clearly indicate that regions of the brain that regulate such things as foresight, impulse control, and resistance to peer pressure are still developing at age 17. Evidence that the adolescent brain is less mature than the adult brain in ways that affect some of the behaviors that mitigate criminal responsibility suggests that at least some of adolescents’ irresponsible behavior is not entirely their fault. This is why I have argued that adolescents should be viewed as inherently less responsible than adults, and should be punished less harshly than adults, even when the crimes they are convicted of are identical.”

Throughout my career as a social worker, teacher and advocate dedicated to helping troubled youth, I have observed and explained delinquent adolescent behavior as being attributed in part to poor reality testing and a lack of impulse control. This has been my position for decades. Now we have scientific proof that these observations were correct.

Within the last decade there have been the groundbreaking discoveries scientists have made with respect to the adolescent brain these past two decades, but that would belabor the point. It is important to note, however, that these discoveries were made during the same time period we have been operating with a “treat adolescents the same as adults” model in our criminal justice system. However, adolescents are not the same as adults as the research indicates.

How do we achieve long term success? What steps can we take to treat juvenile offenders in a manner that is humane and developmentally appropriate? I'd like to offer some suggestions.

First, we need to update and reform our juvenile justice system to reflect current research, trends and needs rather than falling prey to presumption, fear and myth. This means we should not even consider putting adolescents into prison unless they've committed a heinous crime, and even in these cases young people should be secured in a juvenile facility until age 21. If necessary, they can then be transferred to the adult system. Professionals - not politicians- should make this decision.

Second, we need developmentally appropriate treatment programming at every level of care for juvenile offenders - from community based treatment for first time nonviolent offenders to non-secure residential treatment for repeat and/or more serious non-violent offenders to high secure treatment for chronic and/or more violent offenders. Dana Liebelson states,

"Because adolescents' brains are still developing, their patterns of behavior not yet fixed, they have a far better chance of being rehabilitated than adults."

In light of our current understanding of juvenile justice theory, adolescent brain development, and effective treatment approaches to rehabilitating juvenile offenders, I urge you to take action and support legislation that include the following measures:

- *Raise the age of juvenile jurisdiction from 17 to 18 years of age*
- *Prohibit all youth to be housed in any adult correctional facility*
- *Ensure that age-appropriate rehabilitation services are accessible to all youth in the juvenile justice system*
- *Require equal consideration of all mitigating factors prior to waiving jurisdiction in traditional juvenile waiver cases*

In addition to the above proposed bills, I would also like to recommend the following:

- *Prohibit youth under the age of 14 to be waived to adult jurisdiction except in the extreme cases of murder, rape or mayhem.*

It's time for us to act sensibly with regard to sentencing juvenile offenders. Needlessly, these youth are being exposed to violence and abuse in the adult prison system. Instead we must provide them with developmentally appropriate support and services. In doing so, we will promote genuine rehabilitation rather than lifelong criminal behavior, while at the same time exercising fiscal responsibility.

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Addendum

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As a social scientist with 40+ years of experience working with juvenile offenders, I have observed firsthand what treatment approaches are effective when treating this population. Our Michigan based programs at Wolverine Human Services (WHS) have successfully treated juvenile offenders at every level of care for nearly three decades. Throughout our history, approximately 90% of those youth placed with us for an appropriate amount of time have completed their program. I believe this number would be even higher if state and county agencies did not discharge kids prematurely because of budgetary constraints.

Moreover , the research indicates that juveniles who are provided with age appropriate treatment are less likely to reoffend than those who are waived to the adult system. Our experience also validates that residential treatment from 6 months to 1 year (and in some cases 2 years depending on the offense) along with sound follow up (e.g. independent living, in-home care and adolescent foster care) - works. Professional treatment at every level of care is the better, more sensible option for our youth. This remains especially true with those agencies that provide a full continuum of care. Thus if we ensure that children are provided with excellent treatment in a trustworthy program that offers a continuum of care they are more likely to succeed.

At WHS we understand that it takes time to break old habits and build new ones, and our programs are structured accordingly. Adolescents respond to peer pressure, so we

utilize groups to help provide support, establish a new mindset, and develop essential skills and habits. From the point of entry into our programs, youth learn “The Seven Principles” - Reality, Responsibility, Respect, Communication, Negotiation, Education & Love. These values provide the foundational building blocks of our programs, outlining our expectations of clients and staff and setting the tone for the type of environment we aim to establish.

With appropriate structure and a Seven Principles based culture in place, we are then able to provide effective professional individual and group counseling and therapy to meet the specific needs of each client, identifying reasonable goals and objectives based on their aptitude. Toward this end, WHS has partnered with the highly regarded Beck Institute and Indiana University to implement a unique one-of-a-kind cognitive behavioral treatment (CBT) agency wide treatment model. Research shows that CBT is a highly effective treatment intervention that helps facilitate behavioral change in adolescents. Therefore, we decided to go directly to the source of CBT and partner directly with its creator - Dr. Aaron Beck. We are proud and excited to be the first juvenile justice agency in the world to collaborate with the Beck Institute in a one of a kind 3-5 year CBT treatment initiative aimed at transforming how juvenile offenders think and behave. This project demonstrates our ongoing commitment to provide the best possible treatment interventions for juvenile offenders that facilitate genuine transformation.

We - along with our colleagues in the Association of Accredited Child and Family Agencies (AACFA) - know what it takes to help Michigan’s most troubled youth turn their lives around instead of prematurely committing them to an adult system that often leads to victimization and criminal indoctrination. As mentioned, more than 20,000 youth under 18 have been sentenced as adults in Michigan during the past decade. The majority of these youth were convicted for nonviolent offenses and had no prior juvenile record! Dana Liebelson notes,

“A nationwide sample of cases sent from juvenile to adult court in 2013 shows that about half were related to property, drug or public order crimes, not serious violent offenses. The decision to direct cases to the adult system is largely left to individual judges or prosecutors, who are often affected by their own “hidden biases” - about skin color, economic class, parental history and other factors - that have little to do with public safety.”

Meanwhile juvenile agencies better equipped to serve this population have shrunk or gone away. This is outrageous!

In his book, *Social Deviance and The Human Services*, University of Michigan professor Charles Wolfson discusses the significance of role modelling. When kids are surrounded by negative adult role models they identify with those adults. Then they imitate and replicate their behavior. The final step in this process is internalization whereby the young person assumes a criminal identity. This explains why - as mentioned earlier - 77% of juveniles sent to adult prisons are more likely to be arrested for a violent felony than those sent to a juvenile facility. The difference in outcome is staggering.

Yet that is what happens when we put kids in prison during a critical development period in their life. Prison simply does not work for this population! Criminals - rather than professional counselors - become their role models thereby increasing the likelihood that they will become lifelong criminals. It is time for us to reverse this trend. It is time for us to rethink and reform how we sentence and treat juvenile offenders.