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SENTENCING JUVENILE OFFENDERS: A BRIEF REVIEW OF THE LITERATURE

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Finding a compromise between punishment and rehabilitation for juvenile offenders is a dilemma that the United States has had to face since the inception of its judicial system. After declaring independence from Britain, the United States modeled its legal system after the one established in the United Kingdom. This meant that, in the eyes of the law, little distinction was made between children and adults. Children as young as the age of seven could be tried as adults, if warranted by their crime. Near the end of the 18th century, psychologists and sociologists “began to recognize the emerging notion of adolescence as a developmentally distinct period of life” (PBS 1) and the idea of handling adolescent offenders outside of adult court became more widely accepted. Keeping in line with the idea that juvenile delinquents require special care and treatment, the Society for the Prevention of Juvenile Delinquency opened the first facility for troubled youth in 1825. The New York House of Refuge was created as a rehabilitative option for juveniles who had committed crimes that would have likely earned them time in jail if tried as adults (American Bar Association 5). In 1899, the first juvenile court in the United States was established in Cook County, Illinois. The rationale behind forming a separate justice system for youths was based on the British doctrine of *parens patriae*, meaning state as parent. As stated by Sickmund and Snyder, “the doctrine was interpreted to mean, because children were not of full legal capacity, the state had the inherent power and responsibility to provide protection for children whose natural parents were not providing appropriate care or supervision” (2). The judicial system viewed inadequate parenting as part of the problem with delinquent youth and reasoned that, with appropriate interventions, troubled juveniles could be put back on the path towards becoming law abiding, productive members of their communities.

By 1925, 48 states had accepted that juvenile delinquents required alternative care and established courts designated specifically for offenders under the age of 18 (PBS 1). The juvenile court’s approach to rehabilitation remained unquestioned until the 1960’s, when social activists started to doubt the effectiveness of trying and sentencing children separately from their adult counterparts. Juvenile detention centers were starting to seem more like holding areas for youths, as opposed to centers for education to reintegrate children back into the community. After going largely unregulated for decades, the laws around juvenile corrections changed drastically following a series of Supreme Court cases in the 1970’s. Mainly, these changes were centered around the idea of due process and afforded juveniles new rights including the right to an attorney, protection against self incrimination, and the need for their guilt to be proven beyond a reasonable doubt (Sickmund and Snyder 3). In 1974, the Juvenile Justice and Delinquency Prevention Act was passed, requiring the deinstitutionalization of juvenile status offenders and

the separation of adults and juveniles within prison settings (PBS 2). Since the implementation of the aforementioned act, the United States has shifted to adopt a tougher approach to the consequences of juvenile offenders. The idea of rehabilitation seems to have dissipated and been replaced with a stricter attitude, leaning towards punishments more similar to those given to adult offenders.

Given the notion that punishment needs to be stricter for juvenile offenders, it is not surprising that every state currently has transfer laws in place that make it possible for youths to be tried as adults in criminal court. The requirements for juvenile courts to waive a case up to criminal court vary greatly between states. Some states have statutory exclusion laws, which allow certain, usually violent, crimes to automatically be transferred to criminal court. Most states require more of a process to allow juvenile courts to waive their rights, often including a formal hearing and permission from the juvenile court judge (Adams, Addie, Firestine, and Griffin 2). Of all the cases handled in juvenile court, only one to two percent are transferred to criminal court. The majority of such transfers are 17 year old, African American males who have committed person offenses (Redding 128). In 2008, there were roughly 160,000 juvenile offenders in residential placements. When looking at the group of detained youth offenders, between 70 and 95 percent of those individuals have at least one diagnosable psychiatric illness. Many of those illnesses can be attributed to trauma and abuse the offenders suffered earlier in childhood. Also partly due to unstable childhoods, one third of all juvenile offenders have special education needs, often falling below their expected grade level in reading comprehension, spelling, and math (Lambie and Randell 449-451). Amongst social activists, there is a movement pushing to get back to the idea of rehabilitation by placing juveniles in the least restrictive environment possible in order to facilitate academic and social learning, which will ideally lead to their positive reintegration into the community. Opposed to the notion of more flexible rehabilitation are those individuals that believe juveniles do not deserve special treatment, especially in the cases where violent crimes have been committed.

Although there are a multitude of opinions on how to sentence and manage juvenile offenders, there is little empirical evidence to support that prison stays result in better outcomes than stays in juvenile detention centers. The turn back towards incarcerating juveniles has, in part, been to appease the public, who simply want dangerous offenders off the streets of their cities and towns. Incarceration also eases the concerns of those individuals who feel that juvenile detention sentences are too easy and that violent juvenile offenders need to be held to the same standards as adult offenders. Throughout the past two decades, the “American public demanded the conservative ‘get tough’ approach” (PBS 2), which is a mentality that is still widely accepted in juvenile corrections. Supporters of such an approach believed that juveniles can be scared straight in adult facilities. The youths will see the terrible way of life in prison and will not want to reoffend. The hope is that the adult jails will deter the youths from reoffending. By putting juveniles in prison, supporters also believed the psychological and medical treatment offered would help to keep children out of the penal system in the future.

In more recent years, however, the small amount of research done has shown that “incarceration fails to meet the developmental and criminogenic needs of youth offenders and is limited in its ability to provide appropriate rehabilitations” (Lambie and Randell 448). Juvenile offenders, as noted earlier, have special needs in regards to living and learning environments.

Many of them require extra attention during academic learning, especially if they aim to overcome their educational deficiencies. Smaller classes and related programming simply cannot be provided in overcrowded prisons that are already inadequately resourced due to an overwhelming number of inmates. In addition to needing specialized academic environments, adolescents also require modified social training. Juvenile offenders are not yet mature individuals and are still learning how to interact with their peers and communities. Ideally, adolescents need to have pro-social behaviors modeled for them by parents or other community members. In prison, there is little, if any, chance for positive social interaction with individuals on the outside. Since adolescents are heavily influenced by their peers and crave social approval (Lambie and Randell 450), those in prison will likely adopt the negative and often violent ways of the other inmates in order to gain respect or simply to fit in. Learning such anti-social habits will not help these juvenile offenders stay out of prison. Often, these aggressive behaviors are what lead to juvenile reincarceration later. In fact, “recent large scale studies indicate that juveniles tried in criminal court have higher recidivism rates after release than juveniles tried in juvenile court”. The two-year recidivism rate for juveniles transferred to criminal court was 58%, compared to 42% for juveniles who were not transferred out of juvenile court (Redding 134-135). Not only do incarcerated juveniles receive inadequate programming and experience increased recidivism rates, they are also at a much greater risk of committing suicide. Teens in prison are eight times more likely to commit suicide than teens in the community (Redding 139), largely in part to the lack of contact with family, physical and sexual abuse from older inmates, and lesser supervision from adults. From the empirical studies done so far, there seem to be few rewards, but many consequences for sentencing youths to adult prisons.

Looking at the available data, it appears that a juvenile detention facility is a much better option for youth offenders than jail or prison. There is no question that dangerous individuals need to be removed from community involvement but they should not necessarily be detached permanently. Since juvenile offenders have not completely matured, they are the best candidates for rehabilitation and reintegration. There are many steps that need to occur before a youth offender can function appropriately in the community and juvenile detention centers are the most well equipped facilities to aid in the process of treatment and education. Because “incarceration may interfere with the reestablishment of a pro-social lifestyle and limit the likelihood of positive outcomes” (Lambie and Randell 451) rehabilitation centers allow juvenile offenders a second chance at becoming positive members of the community. As described by Redding, Virginia has a model juvenile rehabilitation program in which every incoming youth is screened for both medical and psychological issues. They are then issued an individualized treatment plan, with reintegration as the final goal. The program offers comprehensive services, including counseling, support groups, addiction education, anger management, and social skills training (Redding 140). While not all adolescent programs are of the same caliber as the one described in Virginia, they still appear to be the best option for the management of juvenile offenders.

The majority of the empirical data available points to juvenile detention centers as a better sentencing option for youth offenders than adult correctional facilities for their rehabilitation qualities. Before any final conclusions can be drawn, however, many more research studies need to be conducted to more accurately determine which of the two options really is the most beneficial for teen offenders. A longitudinal study would be effective, especially when evaluating the recidivism rates for juvenile offenders placed in adult facilities

compared to those in juvenile detention centers. Such a study would allow researchers to see if there is a significant deterrent effect on juveniles who spend time in prison. It would also provide an insight into the type of therapeutic progress made in juvenile detention facilities. Studying recidivism for juveniles in different placements may pose a problem when trying to compare similar individuals. Since the most violent offenders are often the ones incarcerated, their recidivism rates may not be on par with a youth who committed a non violent property offense and was sent to a detention center. To control for a number of variables, like offense type or psychological conditions, would be the biggest challenge to creating a reliable, longitudinal study on recidivism of juvenile offenders.

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