



CHARGING YOUTH

**The Human Rights
Violations Presented
By Charging Youth as
Adults**

**A REPORT BY THE SEATTLE
HUMAN RIGHTS
COMMISSION**

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Charging Youth: The Human Rights Violations Presented By Charging Youth as Adults - A Report by the Seattle Human Rights Commission

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About the Seattle Human Rights Commission

The Seattle Human Rights Commission advocates for justice and equal opportunity by advising the City of Seattle on human rights issues. It also collaborates with private and public sectors in order to educate them on methods to prevent and eliminate discrimination city-wide. The goals of the commission are to elevate community voices to our elected leaders, ensure there is greater public awareness for human rights concerns, and create actionable objectives for local officials.

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THE ADOLESCENT BRAIN



Adolescence is the period of development between childhood and adulthood that is marked by increased experimentation and risk-taking (National Research Council, 2013). An individual's brain does not fully develop until they reach their early 20s, yet by mid-adolescence most individuals can distinguish right from wrong and reason similarly to adults. The key distinction between adolescents and adults is the ability to make sensible choices spontaneously in stressful conditions (Feld, 2012). This difference in cognitive ability can be explained by the notable changes in brain structure and function that occur during adolescence. Therefore, it is important that adolescents are supported in a way that aligns with their developmental needs in order to promote healthy psychological maturation.

Why Adolescent Behavior Differs from that of Children and Adults

- Adolescents have less capacity for self-control in emotionally charged contexts, relative to adults.
- Adolescents have an increased sensitivity to proximal external influences, such as peer pressure and instant gratification, relative to both children and adults.
- Adolescents demonstrate less ability to consider future consequences when making decisions when compared to adults (NRC, 2013).
- Adolescent decisions are heavily influenced by emotions, relative to adults.

- Adolescents are in the process of developing an integrated sense of the self, while children and adults are not (Feld, 2012).

The Propensity for Risk-Taking

Due to the cognitive patterns previously presented, adolescents are more likely to engage in risky behavior than children or adults (NRC, 2013). The

proclivity of adolescents to discount long-term consequences in favor of immediate rewards is further heightened by emotions like excitement and stress. In addition, adolescents are in the process of developing personal identities and separating from their parents. Therefore, they are more sensitive to peers and other social influences, who often share the same propensity for risk-taking (Feld, 2013). The interaction of these factors can be observed in the high rates of accidents, drug use, unsafe sex, and reckless driving for this age group (National Research Council, 2012)(Feld, 2013). However, this phase of experimentation is believed to serve a number of adaptive purposes despite its risks.

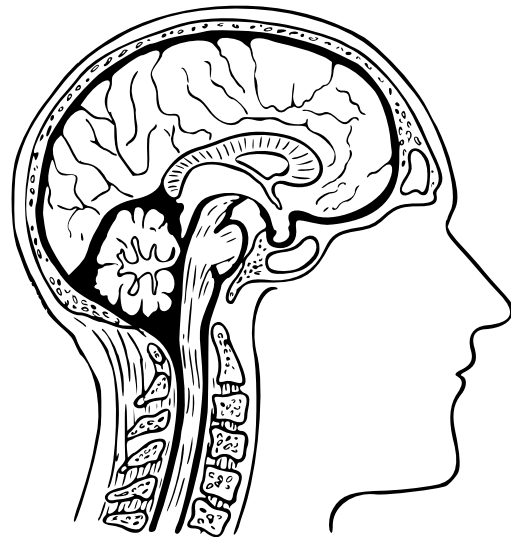


It is also significant to note that for most youth, this phase does not extend beyond adolescence as the identity becomes fully formed and the brain matures. Therefore, most adolescents who engage in criminal activity are unlikely to reoffend as adults (National Research Council, 2012).

Adolescent Brain Development

Adolescent criminal behavior is often affected by the poor judgment skills and propensity for risk-taking that marks this stage of development (Feld, 2013). Research strongly suggests that these cognitive tendencies are linked to imbalanced rates of development in brain structure and function and the overall biological immaturity of the adolescent brain (National Research Council, 2012). The two major neurobiological systems that regulate decision making, the prefrontal regulatory system and the limbic system, grow at different rates, causing adolescents to behave differently than both adults and children.

The limbic system, which controls emotional and reward-seeking behavior, develops much more quickly than the prefrontal regulatory system, which is responsible for judgment and impulse control. The prefrontal regulatory system, which includes the prefrontal cortex of the brain, does not undergo significant myelination



and synaptic pruning until myelination and synaptic pruning increases cognitive function, reasoning ability, and impulse control.

Without this stage having begun yet, adolescents rely more heavily on the limbic system, or their instincts. In addition, the presence of peers stimulates greater neural activity in the reward centers of the brain. This causes adolescents to rely even more heavily on their pleasure-seeking and emotional reward systems when around peers, which explains why adolescents are more likely to engage in risky behaviors or criminal activity when with friends (Feld).

Healthy Psychological Development

It is important to note that engagement in criminal activity is not a typical aspect of healthy adolescent development. However, adolescent brain science can explain why some youth commit crimes when analyzed in conjunction with the environmental influences that individuals are exposed to before and during adolescence. The probability and seriousness of offending, as well as the effectiveness of various interventions, are strongly impacted by the adolescent's interactions with their parents, peers, school, and community. **It is also important that the adolescent propensity to engage in risky behaviors is understood so that youth can be deterred from crime.** There are three conditions that are often necessary for healthy psychological adolescent development and avoidance of delinquency:

- The presence of a parent or parent figure who engages with the adolescent and values their successful development.
- Inclusion in a peer group that values and models prosocial behavior and academic success.
- Engagement in activities that involve autonomous decision making and critical thinking, as well as activities that promote healthy risk-taking (National Research Council, 2012).



RISK FACTORS FOR JUVENILE DELINQUENCY

The risk factors for juvenile delinquency are individual traits or environmental conditions that increase a youth's risk for engaging in criminal activity. This risk and the probability of continuing to offend into adulthood heightens with earlier and longer exposure to risk factors and as the number of risk factors increases. It is important to note that some risk factors are dynamic, and can be addressed before they contribute to delinquent behavior; while some are static, and can not be changed. An example of a dynamic risk factor would be poor school attendance, while an example of a static risk factor would be criminal records in the family. These risk factors can also be organized into five domains: individual, peer, family, school, and community.

Individual-Level Risk Factors and Indicators

- Antisocial behavior
 - Ex: attempted suicide, previous arrests, gang involvement, etc.
- Gun possession
- Drug use
- Problem behaviors
 - Ex: aggressive/violent behavior, dropping out of school, etc.
- Exposure to violence
- Mental/behavioral health disorders



Family-Level Risk Factors and Indicators

- Family history of criminality or problem behaviors
 - Ex: family members in alcohol or drug treatment programs, family members with criminal records, incarcerated family members, etc.
- Family management problems
 - Ex: Lack of parental involvement or supervision.
- Poor family attachment
 - Ex: youth in foster care, single-parent homes, death of a parent, etc.
- Child victimization
 - Ex: child abuse, unpaid child support, etc.
- Pattern of high family conflict and/or violence
 - Ex: divorce, domestic violence, etc.
- Sibling antisocial behavior
- Low parental education level



Peer-Related Risk Factors and Indicators

- Gang involvement
- Peer alcohol and drug use
- Association with delinquent or aggressive peers

School-Level Risk Factors and Indicators

- Low academic achievement
- Negative attitude toward school
 - Ex: suspensions/expulsions
- Inadequate school climate
 - Ex: exposure to bullying/crime/violence, distrust between teachers, students, etc.
- School dropout
 - Ex: truancy



Community-Level Risk Factors and Indicators

- Availability of alcohol and drugs
 - Availability of firearms
 - High crime neighborhood
-
- Community instability
 - Ex: low home ownership rates, high rates of mobility
 - Poverty
 - Ex: food stamp program recipients, living without health insurance, unemployment, etc.
 - Social disorder
 - Ex: vandalism, feeling unsafe in the neighborhood, etc. (Office of Juvenile Justice and Delinquency Prevention, 2015)

JUVENILE JUSTICE REFORM AND ITS IMPACT ON DECLINE

Approaches to juvenile crime have evolved over time. From the 1960s to the 1990s, there was a major shift from rehabilitation and acting in favor of a child's best interests to a focus on public safety and punishment.



During this time there were major increases in the number of adolescents prosecuted in adult courts and housed in adult prisons. **While the severity of responses to adolescent criminal behavior increased, so did the number of Black youths entangled in the justice system. This shift was due to inaccurate perceptions of juvenile delinquents as largely being Black. These perceptions were to a great extent impacted by media depictions of juvenile crime and the 'superpredator' narrative, which led to White support of "get tough" youth justice policies, like widespread decline into adult court.**

Although these punitive policies and their disproportionate impacts still persist today, there has been recent interest in more developmentally-appropriate responses to adolescent crime.

The First Stage of Reform: The 1800s to the 1960s

In the United States:

Before the creation of the juvenile justice system, youthful offenders were subject to adult punishments like banishment, whippings, public humiliation, and incarceration in adult correctional facilities. It was not until the 19th century that the perception of delinquent children and adolescents shifted from being miniature adult offenders to being physically and cognitively immature individuals in need of rehabilitative treatment (Day, 1992) (Pickett, 2012). This perception led to the creation of a juvenile justice system with wide discretion and the ability to deny youth procedural rights, like the right to an attorney, due to its portrayal as civic and non-punitive (Day, 1992) (National Research Council, 2012). However, the perception of youthful offenders as being innocent products of their environments was not extended to children of color (Pickett, 2012) (National Research Council, 2012). These children were either excluded from juvenile justice institutions or were provided with significantly less rehabilitative services (Pickett, 2012).

In Washington State:

Washington State's juvenile justice system was created in 1913 in accordance with the tradition of socialized justice for juveniles (Day, 1992). It had wide discretion due to the lack of statewide sentencing standards for juvenile offenders, yet its practices were based on what was believed to be in the child's best interest, rather than public safety or punishment (Lacourse, 1998).

"However, the perception of youthful offenders as being innocent products of their environments was not extended to children of color"

The Second Stage of Reform: The 1960s and 1970s

In the United States:

In the mid-1960s, constitutional concerns regarding the intent and function of the juvenile court resulted in fundamental reforms (Day, 1992). Many believed that the court was simply utilizing its rehabilitative mission as a justification to deny juveniles procedural rights (National Research Council, 2012). With the landmark Supreme Court cases *Kent v. United States* in 1966 and *in re Gault* in 1967, youthful offenders were finally granted the procedural rights afforded to adults (Day, 1992). However, this decision reflected a shift back towards punitive policies, which was largely influenced by the Civil Rights Movement and the racialization of juvenile crime and violent victimization (Pickett, 2012).

Kent v. United States (1966)

This Supreme Court ruling permitted juvenile court judges to decline youth sixteen or older who had been charged with a felony to adult court. It also outlined the factors that judges must take into consideration when making a transfer decision and mandated due process safeguards for the affected youth. These determinative factors are listed below.



Factors relating to the crime:

1. **Seriousness:** the seriousness of the alleged offense to the community and whether the protection of the community requires declination.

2. **Manner committed**: whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.
3. **Persons or Property**: Whether the alleged offense was against persons or property, greater weight being given to offenses against persons, especially if personal injury resulted.
4. **Merits**: the merit of the complaint (probable cause).

Factors relating to the juvenile:

1. **Adult co-suspects**: the desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults.
2. **Sophistication and maturity**: the sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude, and pattern of living.
3. **Offense History and Contacts**: the record and previous history of the juvenile, including previous contacts with law enforcement agencies, juvenile courts, prior periods of probation, or prior commitments to juvenile institutions.
4. **Prospect for Rehabilitation v. Protection**: The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the



juvenile by the use of procedures, services, and facilities currently available to the Juvenile Court (assuming he is found to have committed the alleged offense). (*Kent v. United States*, 1966)

***In re Gault* (1967)**

In response to findings that juveniles were often subject to harsher punishments than adults for the same crime, *In re Gault* granted juveniles a series of due process rights, like the right to appointment of counsel and the privilege against self-incrimination (Day, 1992). However, the court did not address whether youth are competent enough to exercise the rights granted to them by the 14th Amendment and the Bill of Rights (National Research Council, 2012).

In Washington State:

In the 1960s, Washington State's juvenile crime rate increased rapidly, which resulted in pressure to crack down on youthful crime and the Juvenile Justice Act of 1977. This Act provided due



due process guarantees for youthful offenders and included harsher sentencing provisions. It required a mandatory declination hearing for youth charged with serious crimes, where the youth's background and mitigating factors would be taken into account. However, once transferred to adult court, consideration of a youth's gender or social, economic, and ethnic background was prohibited when determining a sentence (Day, 1992).

***State v. Williams* (1969)**

This decision required that Washington courts conducting discretionary and mandatory decline hearings must take into account the eight factors laid out in *Kent v. United States*. It is important to note that these factors only provide focus and guidance; not every factor needs to support transfer (*State v. Williams*, 1969).

The Third Stage of Reform: The 1980s and 1990s

In the United States:

In response to rising youth violence and homicide rates in the late 1980s, many states adopted “get-tough” laws in order to transfer more and younger youth to criminal court (Feld, 2012). However, despite decreasing youth crime rates in the mid 1990s, juvenile justice policies continued to become increasingly harsh, particularly for Black youth. The 1994 Violent Crime Control and Law Enforcement Act, the largest crime bill in American history, increased funding for law enforcement agencies significantly and implemented harsher sentencing guidelines for youth and adults (Allen, 2020). This Act’s punitive focus can be explained by the public’s intense fear of victimhood fueled by media representations of Black youth as “superpredators” and the justice system as being too lenient (Allen, 2020) (National Research Council, 2013).

The Judicial Transfer of Youth to Adult Court

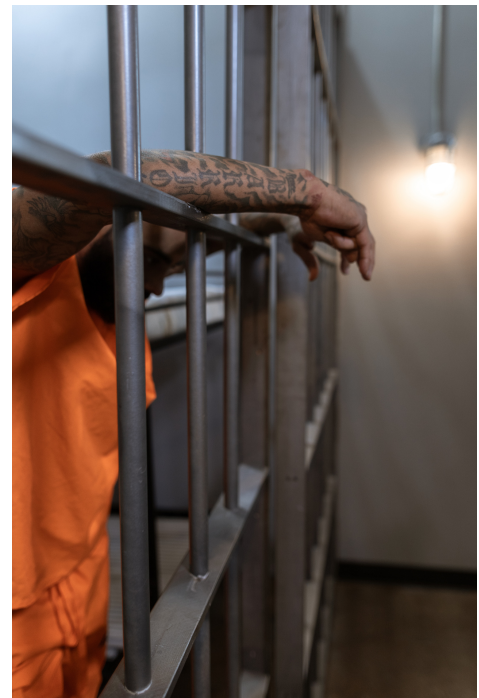
The “get-tough” laws of this period resulted in a massive increase in the number of adolescents tried in adult court and incarcerated in adult facilities (Allen, 2020). In many states, there was no minimum age of transfer and

"It seemed as though the juvenile justice system's foundational belief that youth were different from adults, and therefore should be treated differently in response to criminal activity, had completely disappeared."

believed that the juvenile justice system should be abolished altogether. It seemed as though the juvenile justice system's foundational belief that youth were different from adults, and therefore should be treated differently in response to criminal activity, had completely disappeared.

Considerations of a youth's maturity level and their amenability to treatment were insignificant in comparison to considerations of the gravity of the crime committed. In fact, many states expanded the category of offenses that made youth eligible for transfer to adult court to include nonviolent felonies. Traditionally, youth were only transferred for serious violent felonies like murder, rape, and kidnapping, yet by the end of the 1990s, more than half of the youth incarcerated in adult facilities were convicted of property and drug offenses (National Research Council, 2013).

In addition, the power to waive youth to adult court was shifted from juvenile court judges to the prosecutor, who was not required to take into consideration the individual's culpability or competence. These factors were also not taken into consideration at sentencing. In addition, policies regarding sentencing for adolescents became more harsh with the implementation of mandatory minimum sentences and mandatory life without the possibility of parole sentences for homicide convictions. Execution was also a reasonable punishment for youthful offenders at this time. In fact, the Supreme Court case *Stanford v. Kentucky* (1989) acknowledged that most youthful offenders were less culpable than adults, yet upheld the death penalty for sixteen and seventeen year olds if the jury found execution to be an appropriate punishment (Feld, 2012).



The Demonization of Black Youth



The punitive juvenile justice policies that defined this time period were justified by the superpredator thesis, or the idea that Black youth would

wreak havoc on society if they were permitted to mature into seasoned criminals. This idea was pushed by the media's disproportionate portrayal of Black youth as criminal in both fictional television and the news. **As a result, the majority of the public held the inaccurate belief that juvenile crime was out of control, that the perpetrators were mostly Black, and that the juvenile court's leniency encouraged youth to commit crimes.** These inaccurate perceptions of Black youth caused the reforms of this time to disproportionately impact youth of color (Allen, 2020). Racial stereotypes tarnished assessments of culpability and the seriousness of crimes committed (Feld, 2012), which caused youth of color to become more likely to be taken into custody, be formally charged in juvenile court, be declined to adult court, and be incarcerated than their White counterparts (Allen, 2020). Life without the possibility of parole sentences were also imposed more frequently on Black youth during this time (Feld, 2012).

In Washington State:

From the mid 1980s to the mid 1990s, juvenile arrests for

murder, rape, robbery, and possession of weapons all increased significantly in Washington State. This resulted in the passing of House Bill 3900, a bill intended to increase accountability and deterrence through more punitive sentencing guidelines. The purpose of this bill, made effective in 1997, was to prevent adolescent offenders from becoming career criminals. Some of the major provisions of HB3900 are described below.



1. Simplified Juvenile Sentencing Grids and Increased Sentences

- a. The sentencing guidelines of the Juvenile Justice Act of 1977 were perceived to be too rigid and complex, so this bill expanded sentencing options for judges and prosecutors and focused on simplifying sentencing decisions.
 - i. Permitted incarceration for minor or first-time offenders if warning signs of future criminal activity were present.
 - ii. Required sentencing to be based solely on the seriousness of the current and prior offenses.
 - iii. Increased sentencing guidelines for violent and repeat offenders.

2. Expanded Automatic Decline for Juveniles Accused of Violent Crimes

- a. The use of automatic decline, or the transfer of juveniles into the adult court system without a hearing, was expanded.

3. Juvenile Prior Convictions Made to Count in the Adult System

- a. Made the process of sealing juvenile records more difficult.
- b. Based on the belief that career criminals do not deserve a break on their records (Lacourse, 1998).

The Fourth Stage of Reform: The 2000s to the Present

The most recent period of reform has been led by an interest in a less punitive response to youth crime. This interest has been sparked by the financial cost of incarceration, evidence that harsh sentences for adolescents do not reduce recidivism or contribute to public safety, and emerging adolescent brain science research. **Research has found that incarcerating adolescents may actually increase the likelihood of recidivism, and that developmentally-appropriate treatment programs in non-secure settings are a much more effective and inexpensive approach to reducing crime. Behavioral studies have indicated that adolescents engage in criminal activity due to peer pressure, poor impulse control, and a difficulty to focus on long-term consequences rather than immediate excitement and rewards.** Therefore, it is widely believed that youthful criminal offenders are not “superpredators”, but the result of their environment and brain development.



In addition, there has been recent recognition of the racial disproportionality that resulted from the tough on crime policies implemented in the 1980s and 1990s.

In response to these changing perceptions towards juvenile crime on a nation-wide scale, many states have repealed automatic transfer laws, narrowed the category of offenses eligible for transfer, have raised the age of eligibility for adult criminal court, and have banned life without the possibility of parole sentences for youth. Many states have also made efforts to decrease the number of incarcerated youth through shifting resources to community-based programs. These developmentally-appropriate programs seek to improve the youth's social environment while providing them with the skills they need to overcome the aspects of their of their environment that resulted in their criminal behavior. These programs are very effective in reducing recidivism and are much less expensive than incarceration. This shift towards a less punitive response to juvenile

"These developmentally-appropriate programs are very effective in reducing recidivism and are much less expensive than incarceration"

crime can also be seen in recent Supreme Court decisions that address what constitutes cruel and unusual punishment for juveniles (National Research Council, 2013). These decisions are based on emerging adolescent brain science research, have banned the use of the death penalty for youth, and have limited the usage of life without the possibility of parole (LWOP) sentences for juveniles (Rovner, 2021).

In the United States:

Roper v. Simmons (2005)

In the decision *Roper v. Simmons*, the United States Supreme Court found that execution constituted cruel and unusual punishment for crimes committed by individuals younger than 18. This decision overturned *Stanford v. Kentucky* (1989) (Feld, 2012), and was based

largely on emerging adolescent brain science research (National Research Council, 2013). Three major aspects of adolescent psychology caused the court to determine that the use of the death penalty for youth violated the Eighth Amendment:

- The immaturity of the adolescent brain results in limited self-regulation skills. Youth are more likely than adults to act impulsively and disregard the future consequences of their behavior.
- Adolescents are more susceptible to peer pressure, are more dependent on their parents, and are usually unable to escape criminogenic environments.
- The personalities of youth are more transitory and are not fully developed. Therefore, juvenile criminal behavior is not an indicator of likelihood to engage in adult criminal behavior (Feld, 2012).

Graham v. Florida (2010)

The Supreme Court decision *Graham v. Florida* found that the usage of LWOP sentences for youth convicted of non-homicide offenses constituted a violation of the Eighth Amendment. This decision extended the diminished responsibility rationale utilized in *Roper v. Simmons* (Feld, 2012), as it was largely based on research findings that adolescents are less mature and therefore less culpable than adult offenders (National Research Council, 2013). The



court also based their decision on the fact that LWOP for an adolescent and an older adult are very different sentences. In effect, an adolescent is being sentenced to many more decades in prison than an adult, even if they have committed the same crime (Rovner, 2021). However, this decision did not completely ban the use of life sentences for youth; it only provided a meaningful opportunity to obtain release for youth sentenced to life in prison for non-homicide offenses (Feld, 2012).

"*Miller v. Alabama*, decided in conjunction with *Jackson v. Hobbs*, determined that mandatory LWOP sentences for crimes committed by youth constitute cruel and unusual punishment"

***Miller v. Alabama* (2012)**

Miller v. Alabama, decided in conjunction with *Jackson v. Hobbs*, determined that mandatory LWOP sentences for crimes committed by youth constitute cruel and unusual punishment (Rovner, 2021). Due to the adolescent propensity for risk-taking and inability to fully appreciate future consequences, it is important that judges take into account the individualized characteristics of a juvenile defendant and the unique

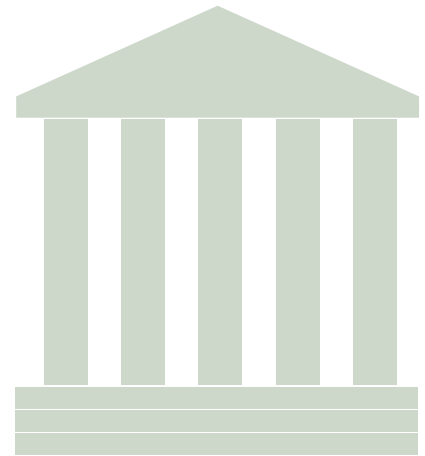
circumstances of their crime before sentencing them to LWOP (Feld, 2012). Factors that the Supreme Court recommended be taken into consideration are:

- The offender's age at the time of offense;
- the offender's level of participation in the offense;
- the offender's intellectual capacity;
- the offender's ability to appreciate the risks and consequences of his or her conduct;

-
- the degree of familial or peer pressure exerted upon the offender in the commission of the offense;
 - the offender's familial and community environment;
 - the offender's educational history;
 - any history of trauma in the offender's life;
 - the offender's faith and community involvement;
 - the offender's involvement in the child welfare system;
 - the offender's potential for rehabilitation;
 - the outcomes of a professional mental health examination of the offender;
 - and any other mitigating factors (Kent Factors, 2014).

Montgomery v. Louisiana (2016)

This Supreme Court decision made *Miller v. Alabama* retroactive. In other words, the court ordered that all individuals serving mandatory LWOP sentences imposed before 2012 for crimes committed as a juvenile must have their sentences reviewed or be granted a new sentence. Many states responded to this decision by permitting parole hearings for individuals given mandatory JLWOP sentences, rather than reviewing and/or resentencing every case. Although this decision significantly decreased the JLWOP population, and many states have banned juvenile life without the possibility of parole all together, the United States is still the only country in the world that sentences youth to LWOP (Rovner, 2021).



In Washington State:

Washington v. Zyion Houston-Sconiers (2017)

In 2012, two adolescents, 17 year old Zyion Houston-Sconiers and 16 year old Treson Lee Roberts, were

sentenced in adult court to sentences of 31 and 26 years for threatening trick-or-treaters with a gun on Halloween. These lengthy sentences were a result of their automatic decline into adult court and the imposition of mandatory minimum sentences. In Washington State, prosecutors are required to charge adolescents as adults if they commit a serious crime or if they have a criminal record, which meant at this time that these youth were subject to adult punishment. Although the judge on this case knew that

"The case was appealed to the state Supreme Court, which decided that judges must be permitted to consider a defendant's youth and immaturity when determining a sentence"

these sentences were excessive, he was restricted from changing them by state law. The case was appealed to the state Supreme Court, which decided that judges must be permitted to consider a defendant's youth and immaturity

when determining a sentence (Kiefer, 2021), whether in adult or juvenile court (*Washington v. Zyion-Houston-Sconiers*, 2017). This decision extended *Miller v. Alabama*'s requirement that a juvenile's unique characteristics be taken into account before being sentenced to LWOP to all crimes and sentences. *Washington v. Zyion Houston-Sconiers* acknowledged that children and adolescents are capable of compassion, remorse, and growth (Oliver, 2021), and therefore these characteristics must be taken into consideration by sentencing judges for all youth convicted of any crime, regardless of whether they are being sentenced in juvenile or adult court (*Washington v. Zyion-Houston-Sconiers*, 2017).

SB6160 (2018)

SB6160, a bill regarding offenses eligible for auto-decline and the jurisdiction of the juvenile court, was signed into

by the governor in 2018. This bill transfers certain offenses committed by sixteen and seventeen year olds from the exclusive jurisdiction of the adult court to the exclusive jurisdiction of the juvenile court. It also increases the age limit for juvenile correctional activities and juvenile court jurisdiction over serious cases to age 25 (SB6160, 2018).

In re Said Ali and In re Endy Domingo-Cornelio (2020)

These recent Washington Supreme Court cases determined Washington v. Zyion Houston-Sconiers to be retroactive, or that youth convicted as adults before 2017 must be permitted to have their sentences reviewed (Oliver, 2021). This decision granted 935 Washington inmates the opportunity to request a new sentence that takes into consideration their youthfulness at the time of the original crime (Kiefer, 2021). It is also significant to note that this decision is a crucial step in remedying the harm done by the tough on crime laws of the 1990s, in terms of mass incarceration, excessive sentences, and racial disproportionality. 46% of the inmates affected by this decision are Black, and over 80% are people of color (Oliver, 2021).



Washington v. Cristian Alexander Quijas (2020)

In this case, Quijas, a Hispanic teenager, appealed his decline to adult court on the grounds that youth of color are disproportionately rejected from juvenile court jurisdiction. Quijas also alleged that the judge made his decision solely on the seriousness of the crime, and did not take into account his youthfulness and background. The court did not decide on the racial bias argument but determined that the judge took into account all the factors necessary to make his decision. However, this case is significant because it demonstrates recent recognition of the impact of racial disproportionality on decline decisions (*Washington v. Cristian Alexander Quijas*, 2020).

CONSEQUENCES OF TRYING YOUTHS AS ADULTS

In line with its problematic origins and history, the practice of trying youths as adults produces problematic and far-reaching consequences.

In particular, given the reality of racial bias and how the criminal justice system currently operates in relation to the adolescent brain, the practice of trying youths as adults effectively undermines the corrective and judiciary purposes of the criminal justice system and worsens racial disparities.

Not only does the practice of charging youths as adults deprive them of access to appropriate resources for rehabilitation and place them in a position of endangerment, but it also contributes to more severe forms of coercive plea-bargaining. The practice in context of the institutionalized racism in both the judicial system and society also disproportionately affects people of color at every stage of criminal justice and afterwards, thus contributing to a worsening cycle of racial disparity.

These various consequences violate basic human rights to rehabilitation, safety, criminal justice, and equal protection and standard of living.



I: Charging youths as adults undermines the corrective and judiciary purposes of the criminal justice system

As outlined previously, youths are developmentally different from adults. Thus, when youths are charged as adults, they are processed through legal and prison systems that are simply not equipped nor designed to manage nor consider their developmentally different needs and propensities, and the issues that arise from them. As a result, **youths charged as adults are deprived of access to a fair trial and appropriate resources for rehabilitation and placed in positions of endangerment**, the consequences of which often engender further criminality in youths. This not only violates human rights to rehabilitation, safety, and criminal justice, but also undermines the corrective and judiciary purposes of the criminal justice system.

Charging youths as adults deprives them of access to effective resources for rehabilitation

While most adult prisons feature a number of programs for rehabilitation and restoration, very few offer similar resources specifically designed for the developmental state of their adolescent inmates (Austin et al., 2000; Ng et al., 2012). Such



resources can range from counselors specializing in adolescent mental health to a curriculum of youth-oriented Aggression Replacement Training that have shown to be effective means for rehabilitation (“Treatment Programs”). This often means

that youths charged as adults, and consequently sent to adult prison, are deprived of access to such resources and the opportunity for effective rehabilitation and restoration into society following release.

In fact, the process of charging youths as adults itself undermines the rehabilitative and corrective purpose of criminal justice itself towards youths. This is because being labeled and processed as an adult criminal during the developmental stage of adolescence often results in an internalization of criminality as youths embrace the criminal identity first

"Being labeled and processed as an adult criminal during the developmental stage of adolescence often results in an internalization of criminality"

imposed on them by the court process and then later have few developmentally appropriate resources in adult prison to dismantle it (Rios, 2006).

Furthermore, supporting research has shown that youths charged as adults have higher rates of recidivism compared to those processed through the juvenile court system which, unlike the adult system, is tailored to meet the developmentally specific needs of youth rehabilitation and criminal justice (Howell, 2009; Shook, 2005; Drake, 2013). As such, the practice of charging youths as adults stands as not only a developmentally inappropriate means of pursuing rehabilitative criminal justice for youths, but also an ineffective means of carrying out the judiciary and corrective purposes of the criminal court system.

Charging youths as adults places them in positions of endangerment

Adult prisons stand as incredibly violent and dangerous environments that pose an even greater threat of endangerment for the youths incarcerated in them as a result of being charged as adults. Because of their young



age, they often become prime targets for abuse, assault, and uncontrolled violence by predatory inmates and staff (Austin et al., 2000; Levit, 2010; Ahlin and Hummer, 2019). Although many states, including the State of Washington, require

youths in adult prisons be held in separate facilities, implementation can range from separate wings for youths to prolonged solitary confinement where they become particularly vulnerable to psychological harm (Bell, 2012; Birckhead, 2015; Kysel, 2012).

As such, the practice of charging youths as adults, often resulting in their placement in adult prisons that often do not feature appropriate facilities to handle the unique safety issues due to their age, clearly violates human rights to safety. This is further emphasized by research that has shown that youths held in adult prisons are more likely to commit suicide than those in correctional facilities specifically designed to house youths (Austin et al., 2000; Delisi et al., 2010; Murrie et al., 2009). Positioned in such a dangerous environment, not only are youths deprived of their right to safety but also again, their right

to effective rehabilitation which naturally requires a safe environment.

The practice of charging youths as adults also contributes to further misconduct and violence while in adult prison as their placement in such dangerous environments often encourages such behavior as a means of survival (Leigey and Hodge, 2013; Tasca et al., 2010; Kuanliang et al., 2008). For example, a former convict recounted how he once assaulted a staff member to secure protection from a prison gang to avoid being targeted as a youth in adult prison. This resulting deviant behavior clearly not only violates youths rights to safety and effective rehabilitation, but again, also undermines corrective purposes of the criminal justice system that seeks to steer offenders away from further criminality.

Charging youths as adults contributes to coercive plea-bargaining

Youths who are charged as adults are especially susceptible to coercive plea bargaining where youths are coerced to plead guilty, even when they are not, by the threat of both the long trial process and the harsh sentences presented by being found guilty as an adult. This is because the developing adolescent mind often focuses on short-term benefits over long-term consequences (Cabell and Marsh, 2020; Helm et al., 2018). As such, when youths are charged as adults, they are presented with plea deals, they are



forced to make such biased and complex decisions without the full mental capacity to understand their significance.

This is especially problematic because these plea deals are often recorded as adjudications in an individual's criminal history that can directly contribute to harsher sentences in future trials (2020 Washington State). However, unable to comprehend such complex implications, youths often unknowingly take these plea deals for their short-term benefits (Helm et al., 2018; Fountain and Woolard, 2018). For example, one former convict recounted how as a youth, he took a plea bargain for a crime he did not commit, being promised he could return home immediately rather than remain in holding and not understanding that this incorrect adjudication would automatically add a decade to a sentencing later in his life.

As such, the practice of plea bargaining conduces youths to make legal decisions they are not developmentally ready for

"One former convict recounted how as a youth, he took a plea bargain for a crime he did not commit, being promised he could return home immediately rather than remain in holding"

and often directly contributes to situations of unfair sentencing. It is made worse by the practice of charging youths as adults which inherently disregards their developmental capability to make such decisions and further confounds adjudications against their favor in the present and in the future (Daftary-Kapur and Zolloti, 2014; Fountain and Woolard, 2018). Because of its direct link to coercive plea bargaining, the

practice of charging youths as adults thus deprives them of their right to effective criminal justice and undermines the criminal justice system.

II: Charging youths as adults disproportionately affects people of color and directly worsens racial disparities

The criminal justice system operates within and contributes to a reality of racial bias and institutionalized racism. Thus, people of color are disproportionately impacted and affected at every stage of the criminal justice system, while youths of color in particular are doubly impacted compared to white youth due to their risk of being charged as an adult. As a result, youths of color are disproportionately impacted and punished compared to their white counterparts by the practice of charging youths as adults; and also suffer from disproportionate lasting ramifications. This not only violates human rights of youths of color to equal protection in criminal justice, but also an equal standard of living, thus worsening a cycle of racial disparity.



Youths of color are disproportionately charged as adults

Due to a culture of racial bias, research has demonstrated that youths of color are disproportionately perceived as adults and charged as such; compared to their white counterparts from the first stage of criminal justice. This



disparity in perspective largely stems from juvenile justice reforms in the 1980's-1990's that intensified the practice of charging youths as adults by demonizing youth of color as "superpredators" as outlined in a previous

section (Shook, 2005; Rios, 2006; Howell, 2009). As a result, the practice of charging youths as adults was disproportionately employed to victimize youth of color and continues to be so because of a legacy of racial bias.

Relatedly, research that has shown that **people of color, of all ages, are disproportionately perceived as violent and dangerous, and responded to as such, by the police** (Reskin, 2014; Shook, 2005; Rios, 2006). Such general racial bias is significant in that the aforementioned juvenile justice reforms automatically require youths with violent charges, a judgment made by the police and prosecutors following them up, to be charged as adults (RCW 13.04.030, 2020). As such, compounded with the legacy of the "superpredator," youths of color are disproportionately charged as adults, and thus victimized by the practice, compared to their white counterparts.

This disparity between how youths of color are processed in criminal justice compared to their white counterparts as a result of the practice directly violates human rights to a fair trial and equal protection in criminal justice. While the practice itself may appear racially neutral, its racist origins

and the consequentially racially biased society and system that it operates out of results in its racially disproportionate impact on youth of color. Thus, the context renders the practice a weapon of institutionalized racism inherently violating human rights to criminal justice and equal protection particularly towards youth of color.

Youths of color charged as adults receive disproportionate adjudications and sentences

Racial bias is also deeply embedded in the trial and sentencing stages of criminal justice, creating racial disproportionalities that are worsened by the practice of charging youths as adults particularly towards youths of color. This can be seen in research showing that between all youths charged as adults, those of color are significantly more likely to be incarcerated than their white counterparts (Thomas and Wilson, 2018; Barrett et al., 2010). Similar research has demonstrated that youths of color are also more likely to be perceived as repeat offenders and prosecuted as such than similarly situated white youths by prosecutors (Leiber et al., 2020, Shook, 2005; Reskin, 2014).

Furthermore, not only are people of color disproportionately charged and then found guilty, but research has also demonstrated that people of color regularly receive longer sentences than their white counterparts (Johnson and Lee,

"While the practice itself may appear racially neutral, its racist origins and the consequentially racially biased society and system that it operates out of results in its racially disproportionate impact on youth of color"

2013; Fischman and Schanzenbach, Max, 2012). This is especially problematic for youths of colors who are charged as adults because adult sentencing standards cover a much wider range than juvenile sentencing standards that naturally limit the racial disparity arising during sentencing and following incarceration (RCW 13.04.0357). As such, the practice of charging youths as adults often results in youths of color often receiving incredibly disproportionate sentences compared to their white counterparts.

As the disproportional rates of how youths of color are charged as adults is compounded with the disproportional sentences people of color receive compared to their white counterparts, youths of color doubly affected by the racial disparities presented by trying youths as adults. This exacerbation of racial disparity in the criminal justice system violates the rights of youths of color to a fair trial and equal protection in criminal justice. As such, while the institutionalized racism causing such disparities is embedded in the criminal justice system itself, the practice of trying youths as adults unquestionably worsens them and victimizes youths of color the most.

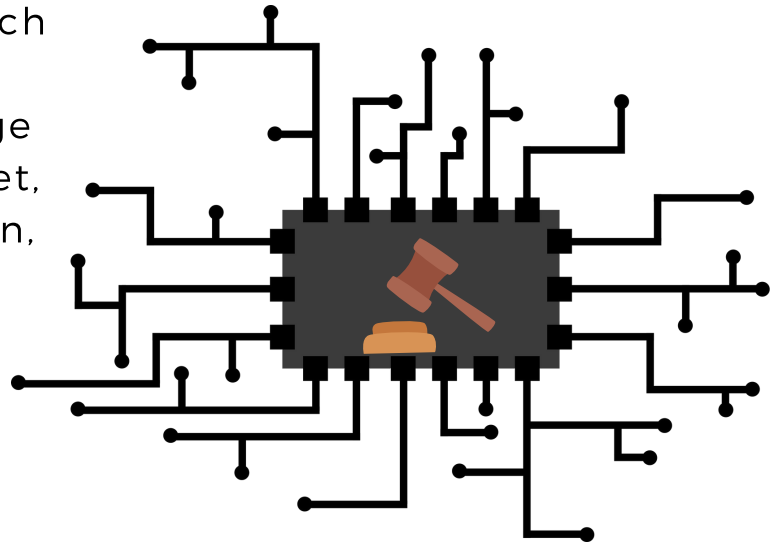


Youths of color suffer disproportionate lasting ramifications from being charged as adults

While all persons previously incarcerated suffer lasting ramifications upon re-entrance to society, people of color suffer disproportionate

ramifications from incarceration, being compounded by institutionalized racism. Research has revealed that incarceration ensures an ensuing disadvantage of black men in the labor market, credit market, civic participation, and access to some economic safeguards compared to their white counterparts, ultimately resulting in severe racial economic disparities that often further produce risk factors

for criminality (Reskin, 2012; Lyons, 2011). This network of discrimination and the cycle of racial disparity it develops is called *uber* racism (Reskin, 2012).



As a result, the practice of charging youths as adults creates disproportionate ramifications for youths of color compared to their white counterparts as the impacts of the issues arising from the practice on them are worsened by *uber* racism. For example, while the trauma of being incarcerated in adult prison as a youth might disadvantage any youth in finding steady employment following release, youth of color have the further disadvantage in the labor market because of racial discrimination. These disparities in ramifications are further racially disproportionate as they naturally affect following economic and social prospects.

Additionally, because youths of color are disproportionately charged as adults, the resulting disproportionality in economic and social prospects directly contribute to worsening racial disparities that further cycles of disparate opportunity, economic prospects, and criminality for people

of color (Reskin, 2012; Shook, 2005; Pettit and Gutierrez, 2018). As such, the practice of charging youths as adults violates the rights of both youth and people of color to an equal standard of living. Again, while institutionalized and uber racism does stem solely from this practice, it is unquestionably directed by it, and as such, should be regarded as so.

CONCLUDING SUMMARY

I: Charging youths as adults undermines the corrective and judiciary purposes of the criminal justice system

- Charging youths as adults deprives them of access to effective resources for rehabilitation
- Charging youths as adults places them in positions of endangerment
- Charging youths as adults contributes to coercive plea-bargaining

II: Charging youths as adults disproportionately affects people of color and directly worsens racial disparities

- Youths of color are disproportionately charged as adults
- Youths of color charged as adults receive disproportionate adjudications and sentences
- Youths of color suffer disproportionate lasting ramifications from being charged as adults

POLICY RECOMMENDATIONS AND REFORM

“We know that the current system doesn’t work, the way that we’ve approached criminal justice, especially for our youth is wrong, if the supreme court agrees with us, if the science agrees with us, let’s codify that into law ... It makes sense to treat youth differently, it also acknowledges the fact that we have a better understanding of brain development now than we did before,”

Senator Joe Nguyen

When it comes to a better future for the juvenile justice system, a different path needs to be taken. Experts might have different ways to achieve this, but this all overlaps with the perspective of taking a developmental approach or restorative justice. The history and background in the beginning of this report explains cases that started to push this notion that the youth are indeed different from adults and should be handled differently. Cases like *Roper v. Simmons* and in Washington, *Washington v. Zyion Houston-Sconiers* opened the door significantly to how adolescents should be understood with regards to science and highlighted the laws that were problematic. This new path involves taking the new science involving brain development, understanding the racial disparities, recognizing and incorporating over-policing, and the lack of resources that impact youth in the justice system.

I: Acknowledging the limitations of reform and the call for abolition

After interviews with experts and organizations in the field, a common resolution to the legal and racial systematic issues within the system is abolition. In other words, this current system, although improbable of being removed or changed in the near future, does not have the full ability to make all the necessary changes to accommodate the changing values in regards to the juvenile court. So we must turn to reform. The word reform often means to focus and place funds into something potentially beneficial, and this isn't ideal as most would think. Whether the reforms are not sufficient or not enforced, it's not a perfect solution when the system still holds problematic values. Even with this realization, this doesn't dismiss the fact if done correctly, it has a significant impact in the system and communities.

II: Promising bills and direct policy recommendations

There has been a recent collection of bills proposed in the State of Washington that were quite promising for amending some of these issues. Although, three of the five mentioned here were not passed, there's value in mentioning and being aware so future progress can be made involving or building off these proposals. The Seattle City Council and King County Council should use these bills to craft local policy. The goal of existing legislation was to redefine what it means to be a youth offender and how sentencing should work (Cheam, 2021). These bills were inspired by cases *Miller v. Alabama* and *Washington v. Zyion Houston-Sconiers*, which are considered to be crucial in the sentencing and racial disparities found in the juvenile court.



(Witness LA)



House Bill No. 1413

In the current system, previous felony convictions can be used as “points” that can be used for longer sentences and be used to influence the court. The purpose of the bill was to remove the ability of the court to use juvenile felonies to factor in adult sentences, and allow adults to be re-sentenced if that occurred to them (Cheam, 2021).

Senate Bill No. 5164

This bill was one that was passed and it aims to address the “Three Strikes” law in Washington. The purpose of this bill is to remove second-degree robbery from the Washington Three Strikes Law, which results in life sentences without parole after three felonies (Cheam, 2021). This will be transformative for the number of adults that were given life sentences without parole for actions in their youth.

House Bill No. 1344

There’s been a series of cases that have shown that re-evaluation and re-sentencing is needed due to the age of the offenders during the time of the crime. This bill would be proposing to expand the number of people eligible to have their sentences reviewed if they were under 18 and tried as an adult when the crime was committed (Cheam, 2021). In addition to that, this bill also pushes the age limit and extends the review process to the age of 25 and under.

House Bill No. 1282/Senate Bill No. 5285

This bill is in regards to the release time and the calculation of “earned release time”. Earned release time is the time one can earn based on good behavior. The current ERT was at 15% and this bill pushes for a 33% of the total sentence. This will

significantly cut sentences for many offenders who have had good performance and deserve to be released.

Senate Bill No. 5120

The concept of the development approach and realizing that one's youthfulness should be considered manifested in this bill. The purpose of this bill is to put into law a Washington Supreme Court decision that "youthfulness and age be considered as mitigating circumstances in sentencing and allow judges discretion instead of relying solely on standard sentencing ranges and mandatory minimums" (Cheam, 2021). With this, judges are not held to the word of the law and standards but have freedom for discretion.

"This pressure from the prosecution is problematic when youth are accepting unfair deals and their cases are not being assessed by the court."

Reform in court practices

In addition to sentencing and understanding how adolescent development should play a role into the juvenile justice system, there are specific issues when it comes to plea bargaining in court that should be addressed. This was mentioned previously in the report and any background information is to serve as more context. Proposals have been made by the King County's Department of Public Defense (DPD) and it's critical to include as part of possible reform. In their proposal, they describe the current practice of adolescents, who are around 12 to 17 years of age, being charged with more serious charges, additional charges, and higher sentencing if they choose their right to a trial. This pressure from the prosecution is problematic when youth are accepting unfair deals and their cases are not being assessed by the court. The DPD proposes for courts to

proceed with the recommendations by the Juvenile Justice Act which states prosecutors should file charges that describe the nature of the crime and should not press for a guilty plea. The recommendations that will be mentioned here are all suggested by the Department of Public Defense (DPD) to reform this specific part of the system and offer three needed changes:

1

The first issue they discuss is deposition. The length of a sentence influences a juveniles decision to plead guilty or not guilty significantly. What the DPD proposes is for lengthy incentives not to depend on whether one plead guilty or not. According to them, this will allow juveniles to exercise their constitutional rights.

2

Similarly, charge based incentives should not depend on whether one chooses to go to court to not. It is a common practice for prosecutors to threaten higher charges if a juvenile chooses to go to court.

3

Lastly, the final recommendation regarding this is to remove the practice of discouraging attorneys from negotiating and investigating. Attorneys should have sufficient time to collect information and evidence for there to be a fair proceeding and sentence.



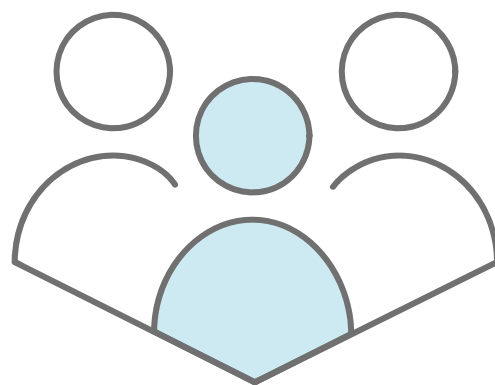
III. Impact through community

Changes or reforms in laws, court practices, and long held beliefs are crucial for creating a system that best suits juveniles in the justice system. With that said, it's also important to see the value of community. Instead of convicting a youth to the adult court, having community alternatives was a key component to reform that was suggested by the interviewees that helped formulate this report.

Community based programs, investment in communities, and removing the school-to-prison pipeline completely is an important element to create a better system, understanding that youth offenders are different, and to reduce the racial disparity that exists within the system.

Investment and community programs

As the research in the beginning of this report illustrates, there exist extreme racial disparities and marginalization within the juvenile system. Certain communities are less invested in, have less resources, and are over policed. These communities and youths live with tensioned relationships with law enforcement, where they experience constant surveillance rather than being protected (Jones, 2014). This type of environment is toxic to any adolescent as they are growing and maturing. This isn't simply an issue of individuals making certain choices that are against the law but an issue of certain communities not being supported as they should be to begin with.



In our interview with Crystal Hall with the University of Washington, she discussed how it is beneficial to focus on the environment rather than just focusing on the individual. This is a case in which the context and constraints of poverty and scarcity play a large role. There are multiple routes that can be taken to tackle this but focusing on allocating resources and giving more attention to communities that are lacking support will greatly reduce the conditions that might lead juveniles to make certain choices or reduce those juveniles being targeted by police and the systematic issues within it, for example. This is not meant to be worded and suggested as something that can be simply done. There needs to be major changes, and the urgency for this is not only supported by the impact it will have in communities and the future system or its values, but it will also work to amend the numerous issues that come with over policing and poverty.



Along with this, it's important to mention how the juvenile criminal system should move towards community alternatives rather than declining juveniles or other modes of sentencing. Through the research conducted for this report, we have had the opportunity to interview individuals who work with a number of programs such as Collegiate Community Transitions, Choose180, Creative Justice, and Echo Glen Children's Center. These programs serve to, and have shown to, account for the fact that adolescents are different from adults and provide a space for healing and prevention. Some of these programs are within the system and some are made to be separate, but

all serve with the purpose to break the cycle that comes with trauma, whether it's from direct family, the justice system, or the years of experienced systematic racism in their lives. In an interview Carmen Rivera from Seattle University, she explained that the justice system is rooted with the value of responding to negative behavior with negative consequences. But in reality, positive reinforcement has shown to be more effective and the key factors that continue to fuel this to remain are the misconceptions and systematic racism that still exists.

It's crucial that if funding through reform is to occur, it should go to programs such as these, but there is still plenty to do in regards to how these should be funded and administered. Many of the programs mentioned have a slight to major differences in perspectives of how to administer these community programs. For example, there are elements of Echo Glen Children's Center that some find problematic. Echo Glen removes the children from their community and family for rehabilitation and other programs, some find that to be an issue. This is being brought up for the sake of understanding

that there needs to be more discussion and focus on these programs to truly make a difference in how to carry out justice with juveniles. The solution for crime does not lie with incarcerating youth and increasing the prison population.

"But in reality, positive reinforcement has shown to be more effective and key factors that continue to fuel this to remain are the misconceptions and systematic racism that still exists."

Stopping the school-to-prison pipeline

A school's purpose is to provide education and a place where children are nurtured to become an active participating citizen in the community. But schools and education systems have become the opposite. It has become a “major source of referrals to the juvenile justice system” (“Reform Trends: Community-Based Alternatives”). Examples of this are having zero tolerance policies, schools having constant law enforcement, searches, drug tests, and filing delinquency referrals for misconduct or disturbance (Kim, Catherine et al. 2010). A student could be reported and be held responsible for missing school after a number of days with the current truancy law. In other words, school misconduct is being criminalized. In addition to this being traumatizing to children and as we already understand of the juvenile justice system, there is a serious racial disparity in these practices with students of color and minorities being impacted the most.



"The National Association for the Advancement of Colored People (NAACP) Legal Defense Fund depicts the pipeline as 'funneling of students out of school and into the streets and the juvenile correction system perpetuates a cycle known as the 'School-to-Prison-Pipeline,' depriving children and youth of meaningful opportunities for education, future employment, and participation in our democracy'".

- Rehabilitation Enables Dreams (RED)

In Washington, there have been promising changes within the last years. There has been a focus on hiring staff with more diversity in schools, funding for behavioral and mental health services for students, and making sure certain communities are not deprived of funds ("Truancy"). While this is promising, these practices are still occurring at a rate that we should not feel comfortable with. This can be improved by expanding on laws, like the 2010 legislation in Washington on keeping kids in school, getting rid of zero tolerance policies in the name of "safety", and if necessary, focusing on community based alternatives, such as but not limited to evidence-based treatment programs ("Reform Trends: Community-Based Alternatives").

IV. Conclusion and the call for the complete removal of auto decline

The largest obstacle against youth receiving restorative justice is the court's ability to "decline" youth offenders. And again, this is the ultimate goal of this report. The additional reforms suggested are to make the



system better, but this is what would make it transformative. This refers to the court being able to transfer someone from the juvenile court to the adult criminal system (Elsberry, 2019). Recently in Washington State law in 2019, there's been changes made to juvenile auto decline laws and it limited the phenomenon in some forms. It made it possible to transfer a case back to the juvenile court. But we would like to propose that this isn't enough. If the science of the adolescent brain is to be taken in consideration, as it's

starting to be, and for the court to truly take a restorative justice pathway that juveniles need, this needs to be completely removed. Adolescents cannot be viewed as adults and as one of our interviewees said in regards to this that charging youth as an adult, it's truly an end to a life.

Three Overall Recommendations

This report had the objective to give a foundation of the history and inner-workings of the juvenile justice system and the problematic practice of auto decline or charging a child as an adult. It's understandable to read all this information, and feel overwhelmed and not sure where to start, especially on which possible reforms that should be pursued. But from all this information, it can be condensed to three recommendations, which are:

- **Direct policy changes to push the complete removal of auto decline and to improve court practices**
- **Invest in communities and use alternative community programs instead of prison**
- **Removal of the current culture and practice of the school-to-prison pipeline through policy and school environment**

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