Juvenile Justice Aff Masterfile

Notes

Juvenile Justice Aff – CCPTW?? 2020

1AC

Plan

The United States federal government should prohibit the sentencing of children under the age of 18 in the federal judiciary system.

1AC Natives Adv

Advantage one is Natives -

First, the Federal Juvenile Delinquency Act places indigenous children as young as 13 in the federal adult judiciary system

Rolnick 16 (Addie, inaugural Critical Race Studies Fellow at UNLV School of Law, JD from UNCLA School of Law; *Untangling the Web: Juvenile Justice in Indian Country*, pp. 100-104, 2016, William S. Boyd School of Law, http://scholars.law.unlv.edu/facpub/980)//ddv [edited for gendered language]

B. Federal Jurisdiction On most reservations, the federal government has concurrent jurisdiction over certain crimes committed in Indian country. Various federal criminal statutes, including the Major Crimes Act, the Indian Country Crimes Act, and the Assimilative Crimes Act, establish this jurisdiction. These statutes, however, do not cover non-major crimes committed by Indians against other Indians230 or crimes committed by non-Indians against other non-Indians.231 The federal courts thus have jurisdiction only over interracial crimes (Indian against non-Indian and vice versa) and over major crimes between Indians. In the federal courts, juvenile delinquency jurisdiction is **derivative of criminal jurisdiction**. The federal government generally does not have civil regulatory jurisdiction over internal tribal matters in Indian country.232 Federal courts thus only have jurisdiction over a limited subset of juvenile offenders, and juveniles handled in a non-criminal system fall outside the scope of federal power. 1. Sources of Federal Power The Federal Juvenile Delinquency Act ("FJDA") establishes federal jurisdiction over acts of juvenile delinquency and sets forth the procedures for prosecuting juveniles "alleged to have committed" a "violation of a law of the United States committed by a person prior to [their] ~~his~~ eighteenth birthday which would have been a crime if committed by an adult."233 Without the FJDA, the federal courts would have **no juvenile delinquency jurisdiction** and could try juveniles only if they were charged with adult crimes in district court. The FJDA does not create any separate substantive offenses, so in order for a juvenile to be prosecuted under it, [they] he must have committed an offense defined elsewhere by federal criminal law. The primary basis for federal criminal jurisdiction in Indian country is territorial. Federal jurisdiction over adult crimes in Indian country is premised on three statutes: the General Crimes Act,234 the Major Crimes Act,235 and the Assimilative Crimes Act.236 Together, these statutes provide for federal jurisdiction over all major crimes committed by Indians, all crimes committed by Indians against nonIndians, and all crimes committed by non-Indians against Indians. The federal government also exercises criminal jurisdiction over anyone anywhere who commits a limited category of federal crimes,237 and so an Indian who commits a federal crime on a reservation may be prosecuted without the use of Indian country statutes.238 Prosecution of a juvenile alleged to have committed any of these offenses would still be governed by the FJDA. The General Crimes Act ("GCA") extends federal enclave law to Indian country, clarifying that Indian country is considered federal lands for purposes of criminal prosecutions. The law was intended primarily to permit federal prosecution of crimes between Indians and whites occurring within the boundaries of a tribe's territory.239 Recognizing tribes' sole authority over internal criminal matters on their reservations,240 however, Congress included three exceptions to federal jurisdiction in the statute: it does not apply to crimes committed by an Indian against the person or property of another Indian, it does not apply to Indian offenders who have already been punished by the local law of tribe, and it does not apply where a treaty has reserved exclusive jurisdiction to the tribe.241 The Assimilative Crimes Act ("ACA") fills a gap that is left in federal enclaves when federal law does not define a particular substantive offense. It simply provides that state-law definitions should be incorporated to define any offenses not spelled out by federal law.242 Although not specific to Indian country, it is made applicable through the General Crimes Act,243 and permits prosecution of a full range of crimes where jurisdiction is otherwise authorized by the General Crimes Act. The Major Crimes Act ("MCA") addresses a different gap, providing for the prosecution of Indian offenders who commit certain major crimes.244 In its current form, it permits federal prosecution of Indians who commit murder, manslaughter, kidnapping, maiming, felony sexual abuse, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, assault against a minor under the age of sixteen, felony child abuse or neglect, arson, burglary, robbery, and felony theft (where the property taken is worth over $1000 or where the property is taken directly from the person of another).245 The MCA does not contain the same statutory exceptions as the GCA, so federal jurisdiction over the enumerated crimes exists even if the victim is an Indian. There is also no bar against prosecuting offenders who have already been tried in tribal court or offenders over whom the tribe has treaty-recognized jurisdiction. The law was intended to reach intra-Indian crimes that had previously fallen under sole tribal jurisdiction, so it applies irrespective of whether the tribe has jurisdiction.246 2. Concurrent Federal and Tribal Jurisdiction in Practice Concurrent federal-tribal jurisdiction is not coextensive. Only tribes have jurisdiction over one category of offenses: those involving an Indian offender and an Indian victim and that are not listed in the Major Crimes Act. Tribes also have concurrent jurisdiction over all other offenses committed by Indians (regardless of the victim).247 Indeed,

according to the terms of the GCA, the federal government lacks jurisdiction over a particular non-major crime committed by an Indian once the juvenile has already been punished by the tribe, even where the victim is non-Indian.248 The statutory language of the GCA suggests that tribes should be the first movers, with the federal government prosecuting only those whom the tribes choose not to prosecute. The MCA, premised on the idea that tribal justice is insufficiently punitive and therefore inadequate, was clearly intended to override the decisions of tribal justice systems, and it contains no similar language prohibiting overlapping prosecutions.249 Given the shortage of law enforcement resources at both the federal and tribal levels, however, it would be practical and consistent with tribal self-determination policy for federal prosecutors to defer to tribal prosecutors who wish to deal with certain offenders.250 In practice, however, juveniles can be prosecuted in both tribal and federal courts for offenses covered by the MCA, sometimes resulting in more time incarcerated or in conflicting dispositions.251 Under the procedure set forth in the FJDA, a juvenile may not be tried in federal court until the Attorney General certifies that the state lacks or is unwilling to take jurisdiction over the case, the state does not have adequate programs or services for the juvenile in question, the juvenile has committed a serious violent offense or a drug-related offense, or there is a substantial federal interest involved.252 Despite the strong preference for state jurisdiction embodied in this requirement, it has not been interpreted to require the Attorney General to defer to tribal prosecution.253 Instead, the certification requirement is met in Indian cases by a certification that the state lacks jurisdiction over Indian country.254 3. Juveniles in Adult Court The FJDA permits a juvenile who is at least fifteen years old to be transferred to adult court after a hearing.255 For certain violent and drug-related crimes, the minimum age of transfer is **thirteen**.256 Here, the Act makes specific provisions for Indian juveniles, who may not be transferred if they are younger than fifteen unless the tribe has elected to have the adult-transfer provisions of the FJDA apply to their children.257 **Transfer to adult court is mandatory,** however, for all juveniles over the age of sixteen who are alleged to have committed certain crimes of violence or drug-related offenses and who already have records that include at least one drug-related or violent offense.258 Once in the custody of the Bureau of Prisons ("BOP"), a juvenile may be placed on probation or committed to a contract facility under the supervision of the Bureau. Indian youth prosecuted in the federal system are more likely than other federally prosecuted youth to be placed in secure confinement, but they may be less likely to be charged as adults.259 On the whole, Indian youth in the federal system tend to spend more time in secure confinement than do their counterparts in state systems.260

And, the plan solves – federal amendment of FJDA allows native self-governance

Rolnick 16 (Addie, inaugural Critical Race Studies Fellow at UNLV School of Law, JD from UNCLA School of Law; *Recentering Tribal Criminal Jurisdiction*, pp. 1679-1688, 2016, UCLA Law Review, HeinOnline)//ddv

V. JUVENILE DELINQUENCYJURISDICTION Another grey area concerns the scope of juvenile delinquency jurisdiction, which many tribes exercise but which neither Congress nor the federal courts have carefully considered. The outside in approach to criminal justice in Indian country is compounded in this area by a general lack of attention to delinquency among Indian law scholars. Even the few articles and reports focused specifically on juvenile justice tend to treat it as a subset of criminal jurisdiction, assuming that the same rules, criticisms, and solutions apply.237 Partly as a consequence of this inattention, tribal juvenile justice systems have developed **in response to nontribal priorities** instead of being driven by tribal priorities."' Juvenile justice is a unique area, however, with specific laws that govern its jurisdictional web. The Federal Juvenile Delinquency Act (FJDA) establishes federal jurisdiction over acts ofjuvenile delinquency and sets forth the procedures for prosecuting any juvenile "alleged to have committed a[]" "violation of a law of the United States... prior to his eighteenth birthday which would have been a crime if committed by an adult."'239 Without the FJDA, **the federal courts would have no juvenile delinquency jurisdiction** and could tryjuveniles only if they were charged with adult crimes in district court. The FJDA does not create any separate substantive offenses, so in order for a juvenile to be prosecuted under it, the juvenile must have committed an offense defined elsewhere by federal criminal law. 40 If an Indian juvenile commits any offense defined by federal law, including Indian country offenses, the FJDA applies.241 The FJDA embodies an outside in approach to juvenile justice in that it **largely ignores the existence of tribal juvenile jurisdiction**. The statute aims to keep juveniles out of federal court, so it strongly defers to state jurisdiction: A prosecutor may not proceed against a juvenile in federal court until the Attorney General certifies that the state lacks or is unwilling to take jurisdiction over the case, the state does not have adequate programs or services for the juvenile in question, the juvenile has committed a serious violent offense or a drug offense, or there is a substantial federal interest involved.242 Yet, it does not require the Attorney General to similarly defer to tribal prosecution.243 Instead, the certification requirement is met in Indian country cases by a certification that the state lacks jurisdiction over Indian country.'44 By failing to acknowledge tribal juvenile courts and focusing only on the relationship between federal and state courts, the law leaves

room for duplicative federal prosecutions that can undermine the efforts of tribal juvenile courts.245 Recent critiques of juvenile justice in Indian country similarly begin with a focus on federal and state systems, emphasizing the harm done to Native youth by those systems.246 This harm is real. **Youth prosecuted in the federal system spend more time locked up than their counterparts in state systems**, because federal sentences are longer and the federal system does not include **diversion**, **parole**, and other alternatives. 247 Because the federal government does not run any juvenile facilities, Native youth are placed in state or local facilities under contract agreements, often far from home.248 Where states have Indian country jurisdiction, Native youth end up submerged in state juvenile justice systems, where they are often treated more harshly, but are rarely provided programs or support tailored to their unique needs.249 Moving toward an approach that cen ters tribal courts, recent critiques seek to strengthen and expand tribal juvenile justice systems and correspondingly narrow the role of non-tribal governments in 250 Indian country. Yet, even while strengthened tribal jurisdiction is offered as a promising solution to the juvenile justice crisis, the tendency toward an outside in analysis has resulted in little sustained attention to the jurisdictional boundaries of tribal juvenile courts and the unique opportunities and obstacles they face. 21 Failure to acknowledge tribal governments as the primary drivers of Indian country juvenile justice has had serious consequences. For example, in a recent analysis of federal funding and juvenile incarceration trends in Indian country from 1998 to 2013, I found that tribes operating their own juvenile justice systems are in many cases mirroring the dominant approach of federal and state governments by investing in juvenile prison construction and incarcerating juvenile offenders for relatively minor offenses.252 One explanation for this is that tribes have been following the money as they strengthen their juvenile systems. Federal funding for facility construction, facility operation, and delinquency programming strongly favored incarceration-as opposed to treatment, restorative justice, or alternative programs-during this time period.2 " 3 Tribal justice systems have been planned and built in response to the models and financial priorities of other governments, rather than according to the tribe's needs and philosophies.2 4 To a large extent, they have been built from the outside in to fill gaps left by, and to adopt the structures of, other governments. A truly inside out approach to Indian country juvenile justice would not begin by mirroring federal and state systems. It would begin by **examining both the potential scope of tribal juvenile jurisdiction** and the range of choices available to tribes in **determining how to implement that power**, with federal and state jurisdiction significant only to the degree they can support **tribal choices**. A simple way to implement this approach would be **amend the F**ederal **J**uvenile **D**einquency **A**ct **to require federal courts to defer to tribal prosecution** in the same way they defer to state prosecution.>' A more significant intervention would be to **avoid the assumption that juvenile delinquency jurisdiction is just like adult criminal jurisdiction**, or that it is criminal at all. While juvenile delinquency jurisdiction is often assumed to be a subcategory of criminal jurisdiction,2 6 criminal and juvenile jurisdiction are not necessarily identical, and the differences have important implications. Juvenile delinquency jurisdiction-disciplining, **controlling**, **teaching**, and caring for children-is a **key aspect of tribes' inherent authority**,2 7 so tribes today retain their jurisdiction to address juvenile delinquency except to the extent that it has been **limited or divested by federal law.** Whether juvenile jurisdiction has been limited and to what extent is complicated by the fact that the scope of modern tribal criminal jurisdiction is different from the scope of modern tribal civil jurisdiction, and juvenile jurisdiction falls in a grey area between criminal and civil regulatory jurisdiction. If a tribe retains the power to criminally punish adults, a power that is broader than many assume, it also retains the power to adjudicate juvenile delinquents absent some express language to the contrary. As described in Part III, tribes have criminal jurisdiction over tribal members.. and "nonmember Indians,"259 and the latter category likely includes unenrolled community members as well as anyone enrolled in another federally recognized tribe.26° Tribes thus have jurisdiction over juvenile offenders who are tribal citizens as well as those who might otherwise qualify as Indians.261 Their jurisdiction may reach beyond reservation borders in certain cases, as described in Part IV.262 If a tribe chooses to approach juvenile delinquency as a species of child welfare (instead of as a species of criminal law), **the scope of that jurisdiction maybe even less constrained.** Because of the differences between juvenile courts and criminal courts, the limits that federal law clearly imposes on tribal criminal jurisdiction are less significant in juvenile cases than in adult cases. The Indian Civil Rights Act (ICRA) requires tribal courts to comply with most of the same basic due process requirements applicable to federal and state courts. 263 If a juvenile defendant in tribal court faces adversarial proceedings and a potential deprivation of liberty on par with that faced by an adult criminal, as juveniles do in non-tribal systems, the tribe must guarantee most of the same rights that are required in its criminal court. In the context of state juvenile courts, the Supreme Court has held that nearly all of the procedural rights guaranteed to adults are also required in juvenile proceedings, including the right to notice of charges,264 the privilege against selfincrimination,265 the right to confront and cross-examine witnesses,266 the right to proof beyond a reasonable doubt,267 and the protection against double jeopardy.268 For sentences of one year or less, tribes are not required to provide indigent defendants with free

attorneys. 69 In addition, neither states nor the federal govemnment are required to guarantee the right to a jury trial in juvenile proceedings.' Thus, while ICRA guarantees the right to a jury trial for any offense that could result in imprisonment,271 it can be argued that this right does not extend to tribal juvenile proceedings because the Sixth Amendment, after which the ICRA jury trial requirement was modeled, has not been interpreted to cover state juvenile proceedings.272 Juveniles appearing before tribal courts, then, have all the rights enjoyed by adults in state criminal systems except that they do not have a right to free legal counsel and may not have a right to a jury trial. The ICRA also restricts sentence length. 273 The effect of the sentence limitation on juvenile adjudications is not entirely clear, however, as juveniles are not always sentenced to a term of years. Instead, some juvenile courts employ indeterminate sentencing in which a juvenile may be sentenced to a broad range of years or is placed under juvenile court jurisdiction for the duration of his or her minority.2 74 Where a young offender in tribal court faces potential incarceration of up to one year for a single offense, either because tribal law specifies a term of one year or because the juvenile will age out of juvenile court jurisdiction within a year, there is no question that the sentence would comply with the ICRA. Where a juvenile faces a determinate sentence of greater than one year or where he or she was remanded to tribal custody for an indeterminate period (and will not age out of juvenile court jurisdiction for many years), however, the ICRA may require that tribal courts specify an outside limit on any term of incarceration in a way that a state court would not be required to do.275 Of course, a tribe that has opted into the enhanced sentencing provisions would have more flexibility to retain jurisdiction over a juvenile who has been adjudicated delinquent without running afoul of federal law. American juvenile courts have their roots in the idea that children are less culpable and more open to reform, and therefore require a system focused on rehabilitation and treatment, rather than retribution and punishment.2 76 Juvenile justice policy has at times favored a more criminal approach,277 but the past two decades have seen courts and legislatures reemphasize the idea that children are different, relying on research on adolescent brains to conclude that children are less culpable and more amenable to rehabilitation and treatment.278 While juvenile courts today share many similarities with criminal courts,279 the historical development of state juvenile courts and current thinking regarding adolescent development at least raise questions about whether juvenile delinquency jurisdiction is appropriately categorized as criminal or civil regulatory jurisdiction. Outside of the tribal context, this is more a policy debate than a legal one. Juveniles are entitled to most of the same due process protections during their adjudication as adults are, and all that remains is how best to address their offenses. For tribes, though, this question is much more significant because civil regulatory jurisdiction is not limited by the same statutes and cases limiting tribes' exercise of criminal jurisdiction. The question whether a tribe's exercise of juvenile delinquency jurisdiction will be considered criminal or civil hinges mainly on how the tribe conceives of and exercises its power over children. Delinquency is in many ways an extension of child welfare: Many of the same children who are involved in the child welfare system end up in the delinquency system,2 ° and research indicates that harm suffered by children is a **significant risk factor for later delinquency**.21 A tribe could choose to treat its young people as children **in need of care by placing young offenders in rehabilitative**, **educational**, or **treatment programs** and by eliminating or significantly reducing the criminal aspects of delinquency adjudications (for example, incarceration or other deprivation of liberty, use of juvenile records to enhance adult sentences, and collateral consequences involving the loss of rights such as voting, child custody, or access to housing). The precise character, and therefore scope, of tribal juvenile jurisdiction would be determined by a **tribe's choices about how to address delinquency**. These choices would in turn be guided by the tribe's philosophies of child-rearing and discipline and by the needs of youth and community members. A system like this is more likely to be viewed as an exercise of a tribe's power to care for its children. That power is an exercise of civil jurisdiction, and it is not governed by the same rules that govern tribal criminal power. If all, or most, of a tribe's exercise of juvenile jurisdiction can be categorized as civil regulatory jurisdiction, a tribe may retain jurisdiction over juvenile justice **even if** it lacks such jurisdiction over adult criminals. The limits described above would not apply.282 Sentence length is not a limitation in a system that does not involve incarceration or a similar deprivation of liberty. Indian status may matter, but there is no categorical rule against a tribe's exercise of power over non-Indians within their territory.2 " 3 Territorial limits would not apply. Indeed, courts have specifically recognized that tribes retain civil jurisdiction over certain matters involving their members, including domestic relations and child custody, even outside Indian country.284 Moreover, Congress has specifically confirmed tribes' extraterritorial power over their children in child welfare matters.2 5 In addition, because the Supreme Court has held that Public Law 280 did not transfer civil regulatory jurisdiction to states, 26 those states subject to the law would not be able to regulate delinquency matters unless delinquency was an area over which the state specifically assumed jurisdiction.2 7 It is not entirely clear how a court would view a tribe's argument that delinquency jurisdiction is noncriminal. Although the juvenile justice system is nominally distinct from the criminal justice system under federal and state laws, most juvenile courts today operate very much like criminal courts, and most of the youth adjudicated in juvenile court have the same procedural protections as adults in criminal court. If presented with the question, a federal court might determine, for example, that tribal juvenile proceedings are subject to exactly the same procedural and jurisdictional limitations as tribal criminal proceedings. No federal court has fully considered the scope of modern tribal juvenile jurisdiction, however, in part because tribal juvenile courts tend to resemble criminal courts, especially in that they employ incarceration. If a tribe were to choose not to incarcerate juveniles, it could more persuasively argue that its delinquency jurisdiction were civil. Whether all delinquency matters can be characterized as civil jurisdiction remains an unanswered question, but there is one area of delinquency jurisdiction that is clearly noncriminal-status offenses. Status offenses are acts for which youth may be found delinquent but which would not be illegal if they were committed by adults.8 These include: running away, some offenses involving sexual activity by a minor, possession or consumption of alcohol by a minor, and catchall offenses like incorrigibility or child in need of supervision.2 9 Federal law prohibits locking up youth for these offenses, and they are generally treated today as noncriminal matters. 90 A tribe's adjudication of status offenses should clearly be governed by the rules concerning civil regulatory jurisdiction, not criminal power. An inside out approach, which asks why tribes need to

exercise delinquency jurisdiction and what they seek to achieve with its exercise, could have important consequences for funding and policy as well. If tribes are free to determine the purpose, scope, and substance of their own juvenile delinquency systems, they might choose to design systems that look very different from their state counterparts. Only by carefully designing their own systems can tribes ensure that they will not inadvertently reproduce an outside model that prioritizes incarceration. **Congress and federal agencies could redirect funding to support the specific needs of tribal juvenile systems, prioritizing alternative approaches and reducing overreliance on incarceration.**

Next, the federal judiciary separation of native children from their homes causes psychological trauma and harms sovereignty

Seelau 13 (Ryan, Senior Researcher at National Congress of American Indians, JD from University of Arizona; *REGAINING CONTROL OVER THE CHILDREN: REVERSING THE LEGACY OF ASSIMILATIVE POLICIES IN EDUCATION, CHILD WELFARE, AND JUVENILE JUSTICE THAT TARGETED NATIVE AMERICAN YOUTH*, pp. 90-96, 2013, 37, HeinOnline)//ddv [edited for gendered language]

C. Assimilation Through Criminal Justice Policy The criminal justice system is a powerful assimilative mechanism because criminal laws (and the police and courts that enforce them) **define what behavior is and is not acceptable within a community**. The criminal justice system is both a mechanism of **norm creation** and **norm** 212 **reinforcement**. When an outside culture controls the criminal justice system of another society, the outside culture can **define and promote its own norms within the other society**. This is what the United States has done to Native nations for more than a century.213 While all Native Americans are affected when the federal government uses the criminal justice system to create, impose and reinforce norms, **Native youth are particularly vulnerable**. The criminal justice system routinely exposes Native juveniles to **foreign courts**, and often acts to **separate them from their families**, **cultures**, and **nations**. Native youths frequently end up in state or federal systems. Once in those foreign systems they are treated **more harshly than their non-Native counterparts**.2 14 Under the current jurisdictional scheme, Native juveniles often fall under the control of the state. For instance, if a youth commits a delinquent act outside of Indian Country, Native nations automatically lack jurisdiction, regardless of where the Native juvenile is domiciled. 2 15 In such cases, it is the state that regularly has jurisdiction.2 16 In such cases Native youths are subject to state law and the state juvenile justice system. Similarly, the majority of Alaskan Native juveniles are subject to state jurisdiction under the reasoning articulated by the Supreme Court in Alaska v. Native Village of Venetie Tribal Government.217 When Native nations lack the judicial, financial or treatment resources to properly handle juvenile delinquents, they often transfer jurisdiction to the state and contract for use of the state's judicial and treatment systems.2 18 For some Native nations, the alternative to turning their juvenile delinquents over to the state is to merely return them to their homes without any formal processing or treatment whatsoever.219 Native juveniles can also fall under federal jurisdiction. For instance, federal courts have jurisdiction over any crime committed in Indian Country that is listed in the Major Crimes Act.2 2 0 Federal courts also have jurisdiction over crimes that fall under the Indian Country Crimes Act,2 2 1 or the Assimilative Crimes Act.222 These two Acts apply only when a Native individual commits a crime against a non-Native in Indian Country, and even in those circumstances, their applicability is limited.223 Finally, the Federal Juvenile Delinquency Act ("FJDA")224 allows federal courts to **assert jurisdiction over Native juveniles** who violate any federal law prior to their "eighteenth birthday[,] which would have been a crime if committed by an adult," 225 with Attorney General certification. Certification requires the Attorney General, after investigation, to certify to a federal district court that in that particular case: **state courts have no jurisdiction or refuse to assume jurisdiction; or the state does not have adequate services for the juvenile in question; or there is a substantial federal interest in adjudicating the juvenile in the federal system.** 2 26 In such cases, the Attorney General's certification need not address the issue of tribal jurisdiction or tribal juvenile services. 22 7 There are therefore multiple ways that a Native juvenile might be pulled into the state or federal system. When this happens, Native nations are unable to apply their "traditions and customary rehabilitative" processes to their own children.228 Instead, foreign procedures and values are imposed upon Native youth. To complicate matters further, once a juvenile enters an outside system, [they] ~~he or she~~ might end up being placed in an off-reservation residential treatment facility, separated from [their] ~~his or her~~ family and community. This occurs frequently in federal juvenile proceedings because the federal government neither owns nor operates any juvenile detention facilities. Thus, "American Indian youth are often shipped to public and private facilities hundreds of miles from their homes." 22 9 In such cases Native nations have no say in the decisions that greatly affect their own youths. Tragically, there is strong evidence that when

outside governments make decisions about juvenile delinquents, they **do not treat all races equally**.230 Native Americans are disproportionately represented at all levels of the juvenile justice system, indicating systemic **biases against Native children**. 2 3 1 For instance, although Native youth make up approximately 1.4% of the juvenile population, they are arrested at rates significantly higher.232 If a juvenile continues through the system after arrest, there are two primary options available: diversion or detention (which generally leads to formal processing).23 3 At this stage, the more lenient option of diversion occurs **10% less often** for Native Americans than it does for whites, and detention occurs **10% more often** for Native Americans than whites.23 4 Native juveniles are adjudicated23 5 at a higher rate than any other race,2 36 and after adjudication, Native youth are put on probation at a lesser 237 rate than any other race. Rather, they are more likely to receive the most punitive sanction - out-of-home placement.23 8 Native Americans make up 2.3% of all out-of-home placements and they are at **least 50% more likely than whites to be removed from their home and placed in a residential treatment facility.** 23 9 In addition to adjudication, in some circumstances juveniles can be entirely removed from the juvenile justice system and **tried as adults.** Removing a minor from a juvenile court is very serious as it exposes [them] ~~him or her~~ to possible **prison time**. Of all races, Native Americans are the most likely to be removed to adult court, and they are 50% more likely to be tried as an adult than their white counterparts.240 Once a Native youth is tried as an adult, [they] ~~he or she~~ is almost twice as likely as a white youth to end up in a state adult prison.241 In some states, the rate of Native juvenile imprisonment is more than fifteen times that of whites.242 Native youths do not fare any better when removed and treated as adults in federal court. Between 1994 and 2001, more than 60% of all incarcerated youth in the federal system were Native.243 Some of this overrepresentation can be explained by the fact that the federal courts have jurisdiction over certain crimes when they occur in Indian Country, but social factors also contribute to the over-representation. 2 44 Native over representation in the federal system coupled with harsh federal sentences reveals that Native juveniles are being treated differently, and more severely, **due to their status as Indians**.245 As indicated, federal policies have routinely separated Native youths from their families, and then allowed non-Native institutions such as schools, non-Native families, juvenile placement facilities, or federal prisons to impose **outside norms on those same youth**. Generally, these norms have **nothing to do with the youth's Native culture and understanding of the world**. They obviously **harm Native nations' sovereignty and right to preserve their own peoples and cultures**; but they also have very real impacts on the families who are victims of these policies.246 Humans are social beings by nature. In order to develop properly, young children must have opportunities to establish meaningful attachments to their parents or caregivers.247 Many Native communities use extended family and kinship relatives to raise a child, ensuring that such attachments occur because even if a "child's parents are not emotionally or physically available, these other extended family or community members may become critical 'objects of attachment' for the child."24 8 Research indicates that 249 **brain development is hampered without these attachment opportunities**. Additionally, a child who has no critical object of attachment is more likely to **lack essential social skills** (including the ability to feel empathy and remorse), lack the ability to understand [their] ~~his or her~~ own feelings, lack the ability to adjust to change, act defensively, and have a lower IQ than other children.250

Additionally, juvenile ‘justice’ for natives is a continuation of horrendous historical legacies – forced imprisonment came with colonization and houses institutional racism

Thampapillai 18 (Rachel, LLM from UC Berkeley School of Law, BA and LLB from Australian National University; *The Colourful Truth: The Reality of Indigenous Overrepresentation in Juvenile Detention in Australia and the United States*, pp. 237-239, 12-21-2018, American Indian Law Journal)//ddv

III. INCARCERATION PAST AND PRESENT The historical narratives of Native Americans and Indigenous Australians is important because they **contextualize** the **mass incarceration** of Native and Indigenous youths in the present day. Aboriginal and Torres Strait Islander minors have been historically of overrepresented in the juvenile justice system in Australia.42 Even though less than six percent of young people aged ten to seventeen in Australia are Indigenous, nearly half (forty-eight percent) of minors aged ten to seventeen under supervision in 2015– 16 were Indigenous.43 This proportion was even higher for Indigenous juveniles in detention, which make up fifty-nine percent of the incarcerated juvenile population. 44 In 2015–16, the rate of supervision of Indigenous minors aged ten to seventeen was 184 per 10,000 compared with eleven per 10,000 for non-Indigenous young people.45 The sad

reality is that Indigenous young people aged ten to seventeen are seventeen times more likely to be under supervision than non-Indigenous young people.46 Across Australia, police formally charge Aboriginal youth at a rate of five to ten times more than they do non-Aboriginal offenders aged ten to fourteen. 47 The number of Aboriginal children apprehended by the police in the Northern Territory in 2015 was 1,766, 48 which is in stark contrast to the 334 non-Aboriginal children apprehended in 2015.49 Minority races in the United States, which encompass African American, Latin American, and Native American/Alaskan Natives, accounted for **sixty-nine percent** of youth in residential placement in 2015. In 2013, Native American juveniles were nearly **four times as likely to be committed compared** with white juveniles.50 Approximately ninety percent of Native American juveniles live in twenty-six states. In twenty-four states, less than one percent of youth are Native American.51 As such, state-by-state data concerning Native American juveniles is obscured on account of their relatively small number.52 However, data compiled during 2013 from three states—Minnesota, Illinois and Vermont—show that Native American youth are more than **ten times as likely as white juveniles to be committed**.53 From data collected between 2012 and 2014, Native Americans in the city of Minneapolis are **7.7 times** more likely to be arrested than white youth.54 The data raise a number of fundamental questions, one being whether these disparities result from implicit or explicit racism within systems of justice or from the fact that juvenile Native Americans and Indigenous Australians are committing more crimes than their white counterparts. This section will attempt to answer this question by exploring whether structural disadvantages and implicit and explicit racism perpetuate the cycle of disproportionate crime rates and rates of incarceration. Another question which deserves consideration is whether the criminalization of the conduct of Indigenous Australian and Native American youth can be seen agnostically as a result of bad policy decisions or a deliberate policy to control indigenous peoples via criminalization. The idea that criminal justice systems have been instituted as a form of racial control has found expression in a vast amount of persuasive legal scholarship. For instance, Professor Rolnick posits that "in the United States, imprisonment has . . . been a primary means of **containing**, **controlling** and **'reforming' oppressed classes**, including . . . indigenous peoples." 55 Disempowered groups have been contained through other means as well, such as child welfare. But the use of criminal imprisonment has increased in importance as other methods of control have declined.56 A theory posed by Michelle Alexander in The New Jim Crow is that mass incarceration is perhaps a mere **replacement of Jim Crow laws**, which is a **replacement of slavery**.57 She espouses that it is simply a different legal method, **steeped in the acceptable semantics of the day**, deployed to guarantee the continued subordination and control of African Americans.58 Luana Ross posits that criminal justice is a **mechanism for racial control over Native Americans**.59 She writes of Native Americans, "we are reminded . . . that **Indian country had no prisons" before colonization.**60 **Tribal communities administered criminal justice through methods like restitution and banishment**.61 Arguably, the same can be argued in the context of Australia regarding its Indigenous population.

The result is over-punishment of vulnerable populations – the aff connects today's struggles of child abuse and domestic violence to historical traumas of colonization and wars

Rolnick 16 (Addie, inaugural Critical Race Studies Fellow at UNLV School of Law, JD from UNCLA School of Law; *Untangling the Web: Juvenile Justice in Indian Country*, pp. 78-82, 2016, William S. Boyd School of Law, http://scholars.law.unlv.edu/facpub/980)//ddv

B. The Reality: **Vulnerable and Over-Punished** The gloomy statistical picture of Native youth is by now well rehearsed. In the past decade, several scholarly and government publications have described how Native youth, as a group,118 **suffer disproportionately** (compared to other groups and compared to the general youth population) in almost **every area identified as a risk factor for delinquency.** They are **poorer**.119 Many live in communities with few social-safety-net services.120 They are likely to face physical121 and mental122 health problems.123 They are more likely to drop out of school124 and less likely to attain higher education.125 They are likely to struggle with drug and alcohol use.126 They are likely to contemplate and commit suicide.127 They are likely to be abused128 or to be victims of violent crime.129 Native youth are particularly likely to be exposed to some form of **violence** in their lives, including being victims of **child abuse**, witnessing **domestic violence**, and observing interpersonal violence in their communities.130 The flip side of their high risk factors is that Native youth disproportionately experience the **harshest sanctions for their misbehavior** and the most draconian interventions in the name of helping them. They are over-represented in foster care,131 in arrests for status

offenses132 and alcohol-related offenses,133 in out-of-home delinquency placements,134 in secure detention,135 and among youth prosecuted in the adult criminal system.136 The two recent reports underscore these points, linking present trauma (such as **child abuse**, **domestic violence**, and **community violence**) with the impact of historical traumas experienced by Native communities (**forced removal from homelands**, **targeted killing**, **wars**, **disease outbreaks**, brutal boarding schools designed to **forcibly disconnect Native children from their cultures**, and **family ties broken** or damaged through adoption and relocation).137 Both reports contrast the **incredible vulnerability of Native** youth with the **overly harsh sanctions to which they are subjected once they enter the legal system**.138 The Commission report describes the juvenile justice system in Indian country as "compromis[ing] traumatized, vulnerable young lives, ruptur[ing] Native families, and weaken[ing] Tribal communities."139 Despite widespread agreement in the juvenile justice community and among many in Indian country that incarceration is more likely to harm vulnerable youth, Native juveniles continue to be locked up at **remarkably high rates**.140 Youth who are prosecuted in federal court are more likely to be incarcerated, usually far from home, and less likely to receive treatment or rehabilitation services than are their counterparts in other systems.141 Native youth are also over-represented in many state juvenile justice systems, especially among those who are placed in secure confinement.142 Less frequently discussed but equally concerning is the fact that the number of juvenile confinement facilities under tribal jurisdiction has steadily increased over the past fifteen years, and tribes continue to push for funding to build even more.143 Only a small minority of the youth in these facilities are violent offenders.144 Substance-abuse related crimes such as driving under the influence, public intoxication, and other drug offenses are far more common.145 Yet, resources for alternatives to incarceration have not increased at the same pace as resources for incarceration.146 Indeed, the Attorney General's Task Force found that many tribal systems incorporate a "heavy reliance on detention," and opined that tribes' "continued common use of detention for children having such extreme rates of exposure to violence is another infliction of violence on these children."147 Instead of creating a self-determined juvenile justice system designed to meet local needs, which for most tribes would mean a treatment-based system, tribes must work around a patchwork of external policies and authorities. The result has been a lopsided focus on incarceration and sparse (at best) resources for treatment and rehabilitation services. In other words, **juvenile justice in Indian country is the reverse of what it should be**. The following Parts examine the reasons for this disjuncture and demonstrate that fixing the system will require more than simple exhortations to increase tribal control and help vulnerable youth.

More specifically, children are subject to abuse and trafficking – they're tried in the federal system which places them in haphazard, harsh, and traumatizing federal prisons

WVEC 16 (WVEC Staff, ABC affiliated news station; "Native American girls fall through the cracks," 3-26-2016, 13newsnow, https://www.13newsnow.com/article/news/nation-now/native-american-girls-fall-through-the-cracks/291-102889651, accessed: 6-20-2020)//ddv

They're **poor**, more likely to be **sexually abused**, end up in foster care, drop out of school, become homeless. **They're often the prey of traffickers.** American Indian and Native Alaskan girls are a small fraction of the population, but they are **over-represented in the juvenile justice system**, whether they are living on or off the reservation. Native American girls have the **highest rates of incarceration of any ethnic group**. They are nearly **five times more likely than white girls to be confined to a juvenile detention facility**, according to the U.S. Office of Juvenile Justice and Delinquency Prevention. There are programs on tribal lands that work with Native girls who have been caught up in the system, using federal funds. But American Indian girls often find themselves without state or local social service programs tailored to their cultural backgrounds and experiences, which are distinct from other girls living in or on the edge of poverty. "As Indian people, our greatest hope is our children. And our kids are really at risk," said Carla Fredericks, director of the American Indian Law Clinic at the University of Colorado Law School in Boulder. "The only way we can help these girls is if we do it cooperatively, with the states, federal government and within our own communities." A rare example of that kind of collaboration is the Minnesota Indian Women's Resource Center in Minneapolis. In Minnesota, American Indian girls have **18 times** the incarceration rates of white girls. They are often disconnected from family who themselves may be battling addiction and mental health problems. Native girls who are **extremely poor** and **lack stable housing** often get involved with **gangs and drug and sex trafficking**, said Patina Park, the center's executive director.

The center's programming seeks to combat those trends using a combination of state, federal and private funds to create culturally specific programs, including case management, support groups, housing and mental health services for American Indian women and girls and their families. The center also has youth-specific programming for girls ages 11 to 21, many of whom have been sexually assaulted, involved in sex trafficking or are at high risk. The idea is to keep girls in school, off drugs and alcohol and focused on a future with a career, rather than turning to crime to make ends meet. The program, which is run with the help of the Fond du Lac Band of Lake Superior Chippewa, provides Native girls who've been cut off from their cultural heritage with a sense of community and purpose, Park said. Less than a quarter of American Indians live on tribal lands. Since 1977, the White Buffalo Calf Woman Society on the Rosebud Reservation has been working with American Indian women and girls to address issues of sexual assault and domestic violence. Many Native juvenile girls are also victims of **sexual abuse** and **family violence**. But there are no such programs at the state and local level. Targeted programming coupled with more federal and state funding could make a huge difference in other cities and states with significant American Indian populations, Park said. "You could really change the disparity within the Native community fairly quickly and dramatically." Few Programs for Girls Juvenile justice advocates who work with delinquent girls say they face challenges that boys don't, and there aren't enough programs that meet their needs. For example, girls are more than **four times as likely** as boys to have been physically or sexually **abused**, according to the National Women's Law Center. Delinquent girls are more likely than other girls to end up in the adult criminal justice system and are more likely to be dependent on social safety nets, according to Nona Jones of the PACE Center for Girls in Florida. They also are more likely to have children who end up in child protective services and the juvenile justice system. Girls who spend time in juvenile detention facilities are nearly **five times more likely to die before age 29.** American Indian girls who collide with the juvenile justice system are particularly vulnerable, say legal advocates such as Terri Yellowhammer, an attorney with the Indian Child Welfare Law Center in Minneapolis who represents Native youth. Native girls are **40 percent more likely than white girls to be referred to a juvenile court for delinquency**; **50 percent** more likely to be detained; and **20 percen**t more likely to be adjudicated, according to the Office of Juvenile Justice. They are also more likely to face harsher sentences for the same offenses, said Joshua Rovner of The Sentencing Project. American Indian girls in Wyoming have the highest rates of commitment to juvenile facilities (1,302 per 100,000), followed by Iowa (860), South Dakota (656), Oregon (568) and North Dakota (535). In general, juvenile offender boys greatly outnumber girls, and that is true for Native boys, as well. But the disparities between American Indian boys and white boys aren't quite as great. Many Native girls are geographically segregated and isolated, particularly if they're living in urban areas away from their communities, advocates say. They're more likely than white girls to be arrested for crimes that are only crimes because they are underage, so-called status offenses, such as drinking alcohol or running away from home. They're also more likely to be arrested for family disputes, Yellowhammer said. And once they are arrested, they get tangled in a web of state, local and tribal jurisdictions, said Erik Stegman, executive director of the Native American Youth Center at the Aspen Institute in Washington, D.C. Law enforcement in Indian Country is uneven and exceedingly complicated, which hurts Native girls who run into trouble, he said. According to the Tribal Court Clearinghouse, a database project of the Tribal Law and Policy Institute, tribal communities **don't have adequate funding** to train law enforcement personnel and fund social service programs to combat juvenile delinquency. Another complicating factor: Some tribes prosecute crimes and others do not, depending on tribal resources and capacity. As a result, Native girls often are prosecuted in the federal system, which **doesn't have a juvenile division**. And if girls are arrested in the state system, the state usually doesn't have to notify their tribes. "We don't have a system that's nuanced enough to fit Native girls," Yellowhammer said. Stegman of the Native American Youth Center agreed: "When a young girl is traumatized, what she needs is a variety of interventions at the community level. Unfortunately, children end up bearing the brunt of a **very haphazard c**riminal **j**ustice **S**ystem." A Legacy of Trauma

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Advantage two is psychological harm-

First, hundreds of thousands of children are wasting their lives in adult prisons---only federal action can solve

NJJDPC 14---National Juvenile Justice and Delinquency Prevention Coalition are activists for juvenile justice, 2014,<MGreen>("Promoting Safe Communities: Recommendations for the Administration OPPORTUNITIES FOR JUVENILE JUSTICE & DELINQUENCY PREVENTION REFORM", https://www.sentencingproject.org/wp-content/uploads/2015/12/NJJDP-Coalition-Promoting-Safe-Communities-2013.pdf)

Remove Youth from the Adult Criminal Justice System 14 The Administration and OJJDP must do more to help and motivate states to roll back broad transfer policies that treat too many youth as adults**. Across the U**nited **S**tates, an estimated 250,000 youth are **tried, sentenced, or incarcerated** in the **adult** criminal justice system **every year**.41 Trying youth as adults is bad for public safety and for youth. Youth prosecuted in the adult criminal justice system are more likely to reoffend than similarly situated youth who are retained in the juvenile system, and these offenses tend to be **more violent**. In December, 2012, after a year-long exhaustive study, the Attorney General's Task Force on Children Exposed to Violence issued comprehensive recommendations to the Attorney General on reducing children's exposure to violence, including a recommendation to abandon policies that prosecute, incarcerate or sentence youth under 18 in adult criminal court. According to the report, "**We should stop treating juvenile offenders as if they were adults, prosecuting them in adult courts, incarcerating them as adults, and sentencing them to harsh punishments that ignore their capacity to grow**."42 The Task Force's recommendation reflects the policies of major professional associations representing juvenile and adult criminal justice system stakeholders such as the American Correctional Association, the American Jail Association, the Council of Juvenile Correctional Administrators, the National Partnership for Juvenile Services, and the National Association of Counties that highlight the harm youth are subjected to in the adult criminal justice system. And the Task Force's recommendation is consistent with the latest state law reforms according to an August, 2012 report, "Trends in Juvenile Justice State Legislation 2001 - 2011" released by the National Conference of State Legislatures (NCSL), showing that numerous states have undertaken policy reforms in the last decade to remove youth from the adult criminal justice system and from adult jails and prisons. **Studies across the nation have consistently concluded that juvenile transfer laws are ineffective at deterring crime and reducing recidivism**. OJJDP and the federal Centers for Disease Control and Prevention have sponsored research highlighting the ineffectiveness of juvenile transfer laws at providing a deterrent for juvenile delinquency and decreasing recidivism. Additionally**, youth in the adult system are also at great risk of sexual abuse and suicide when housed in adult jails and** prisons. The National Prison Rape Elimination Commission found that "more than any other group of incarcerated persons, **youth incarcerated with adults are probably at the highest risk for sexual abuse**." 43 Youth are also often placed in isolation, locked down 23 hours a day in small cells with no natural light, and these conditions cause **anxiety, paranoia, and exacerbate** existing **mental disorders and heighten the risk of suicide**. The ACLU and Human Rights Watch recently issued a report, "Growing Up Locked Down," that estimated nearly **10,000 youth are in adult jails or prisons** on any given day.44 In fact, **youth** housed in adult jails are **36 times more likely** to commit suicide than are youth housed in juvenile detention facilities.45 15 The majority of youth tried in the adult system are charged with **non-violent offenses**,46 and yet still suffer the lifelong consequences from their experience with adult court. Youth are often denied employment and educational opportunities, 47 which significantly restricts their life chances. If sentenced to an adult prison, approximately 80 percent of youth convicted as adults will be released from prison before their 21st birthday, and 95 percent will be released before their 25th birthday.48 **Many of these youth will not have been provided with the education and services they need to make a successful transition to productive adulthood. The Administration** should provide strong leadership for states to reduce and eventually eliminate their harmful and dangerous reliance on trying youth as adults. In light of Graham, Miller, and JDB, establishing that youth status must be a consideration in matters of justice, youth justice policies that ignore the differences between youth and adults now must be reexamined. The Obama Administration should take these developments seriously and **play a leadership role to ensure that federal policies hold young people accountable in age-appropriate ways that guarantee their safety and focus on rehabilitation and reintegration into society.** The federal statutes governing juveniles and the procedures of the Justice Department in prosecuting and advocating during the sentencing of juveniles conflict with both the letter and the spirit of the Supreme Court's 2012 decision in Miller v. Alabama.

In Miller, the Court held that it is unconstitutional to sentence someone to life without parole if that defendant was a juvenile at the time of his or her offense, and the sentence was mandatory. Yet current application of the Federal Sentencing Guidelines to youth in the federal system allows for imposition of mandatory life sentences for juveniles. Importantly, the Miller decision also reemphasized the Court's continuing commitment to the idea that juvenile offenders are fundamentally different than other defendants. **Federal law and the DOJ procedures must be amended to recognize these current realities**.

And, children in the federal system are especially subject to abuse – sexual assault and mental illness are exacerbated in federal prisons

Wood, 20 -- articles editor for the Emory Law Journal. (Andrea Wood, Cruel and Unusual Punishment: Confining Juveniles with Adults After Graham and Miller, Emory University School of Law, 2020, 6-19-2020, https://law.emory.edu/elj/content/volume-61/issue-6/comments/cruel-and-unusual-punishment.html)//OD

Juveniles confined in jails and prisons face serious threats to their health and well-being. Juveniles in adult facilities face a high risk of physical and sexual abuse from guards and other inmates, and this abuse may have devastating and long-term consequences for the victimized juvenile. 25 Juveniles confined in adult facilities also have dramatically higher rates of suicide than do their counterparts housed in juvenile facilities. 26 While confined in adult facilities, juveniles lack access to services critical to their continued development and are particularly vulnerable to criminal socialization. 27 Juveniles face significantly higher rates of physical and sexual abuse in adult facilities than do adult inmates in the same facilities or juveniles housed in juvenile facilities. 28 This abuse often begins immediately, within the first forty-eight hours of a juvenile's entry into an adult facility. 29 Juveniles are five times more likely to be sexually assaulted in adult facilities than in juvenile facilities. 30 Although juveniles made up only .2% of the prison population in 2005, they made up almost 1% of the substantiated incidents of inmate-on-inmate sexual violence in prisons that year. 31 Juveniles constituted less than 1% of the jail population in 2005, but they made up 21% of all victims of substantiated incidents of inmate-on-inmate sexual violence in jails. 32 In total, juveniles made up 7.7% of all victims of substantiated acts of sexual violence in prisons and jails carried out by other inmates, even though they made up less than 1% of the total detained and incarcerated population. 33 Sexual assault and rape may result in severe physical consequences, potentially exposing the victim to HIV/AIDS, hepatitis, and other sexually transmitted infections. 34 Sexual activity between men, which constitutes the vast majority of prison rape, accounts for more than 50% of all new HIV infections in the United States. 35 Rates of HIV and confirmed AIDS are more than five times higher among those incarcerated in prisons than in the general population of the United States. 36 Sexual abuse has severe and long-term emotional and psychological consequences for juveniles that may last well into adulthood. 37 Sexual abuse can lead to major depression and posttraumatic stress disorder. 38 Juveniles who have been sexually abused may face problems with anger, impulse control, flashbacks, dissociative episodes, hopelessness, despair, and persistent distrust and withdrawal. 39 Sexual abuse can increase tendencies toward criminal behavior and substance abuse in juveniles. 40 Upon release from prison, victims of prison rape are more likely to become homeless or require government assistance due to the physical and psychological impacts of rape than are those who were not raped in prison. 41 Congress recognized the significant risks that juveniles face in adult facilities when it passed the Prison Rape Elimination Act of 2003 (PREA). 42 PREA, which unanimously passed in the House of Representatives and Senate and was immediately enacted into law by President George W. Bush, sought to draw attention to and address the issues of rape 43 and sexual victimization of individuals in custody. 44 The findings section of PREA highlights the increased risk of rape that juveniles face: "Young first-time offenders are at increased risk of sexual victimization. Juveniles are 5 times more likely to be sexually assaulted in adult rather than juvenile facilities—often within the first 48 hours of incarceration." 45 PREA requires prison officials to keep more thorough internal records on rape, and it created a commission to propose standards to improve prison management. 46 Although an important symbolic step, PREA has failed to eliminate or reduce sexual abuse in correctional facilities or to demonstrably change public attitudes toward rape in custodial settings. 47 Numerous factors contribute to why juveniles face significant dangers when confined with adults. In a Department of Justice report that described characteristics that make an individual more likely to be sexually abused while incarcerated, many of the listed characteristics are common in juveniles, including small size and inexperience with the criminal justice system. 48 Additionally, juveniles, who have not fully matured physically, cognitively, socially, or emotionally, are less capable of protecting themselves from sexual advances and assault. 49 These juveniles generally also lack the experiences to cope in predatory environments, and expressions of fear may be taken as indications of weakness. 50 Staffing differences may also contribute to the high rates of sexual abuse in adult detention and correctional facilities because juvenile facilities generally have a much higher staff-to-inmate ratio than do adult facilities. 51 Juvenile detention facilities generally have a ratio of one staff member to every eight youths, while an average adult jail has a staff-to-inmate ratio of one to sixty-four. 52 The additional staff members in juvenile facilities may provide increased supervision and may also offer assistance and support to juveniles in a more focused manner. 53 Incidents of sexual assault in jails and prisons are underreported, 54 and juveniles may be particularly discouraged from reporting sexual abuse as a

result of developmental, emotional, and systemic barriers. 55 The ramifications of disclosure include shame, stigma, not being believed, and retaliation, which impact juveniles more significantly than adults. 56 Juveniles may not be willing to undergo the intense scrutiny needed to determine the accuracy of a report of sexual assault. 57 Once faced with formal interviews and investigation, juveniles may feel intimidated by the perpetrator, try to suppress the pain stemming from the abuse by denying it ever occurred, change their story, or refuse to cooperate with investigators. 58 Juveniles incarcerated in adult facilities are also at a high risk of committing suicide. 59 One study indicates that a juvenile housed in an adult jail is five times more likely to commit suicide than is a juvenile in the general population and eight times more likely to commit suicide than is a juvenile housed in a juvenile facility. 60 Other studies suggest that a juvenile's increased risk of suicide in adult jails may be far higher. 61 Not designed to meet the special needs of juveniles, adult facilities may seriously compromise a juvenile's healthy development, and surveys of adult facilities indicate that they generally lack specialized or developmentally appropriate programming for juveniles. 62 Adult facilities are generally far less equipped than juvenile facilities to meet the educational needs of juveniles. 63 In 95% of juvenile facilities, one teacher is employed for every fifteen inmates, in contrast to one teacher for every one hundred inmates in adult facilities. 64 Unlike in adult facilities, the educational staff members in juvenile facilities are generally full-time employees. 65 In addition to an overall higher staff-to-inmate ratio and more teachers, most juvenile facilities also include classroom spaces and do not have the same physical-space restrictions faced by many adult facilities. 66 Juveniles confined in adult facilities, especially those in pretrial detention awaiting adjudication, face a high risk of falling more behind in their education. 67 Juvenile facilities are better able to provide developmentally appropriate healthcare, rehabilitative services, and programming than are adult facilities. 68 Adult facilities may fail to provide juveniles with the appropriate nutrition or dental and vision care, which are especially critical for developing adolescents. 69 Staff members at juvenile facilities typically receive special training to work with juveniles not generally received by the staff at adult facilities. 70 Many adult facilities fail to provide juveniles with even basic services, including prison-survival skills and counseling. 71 In two-thirds of juvenile facilities, one counselor is employed for every ten juveniles, and in 85% of juvenile facilities, at least one counselor is employed for every twenty-five juveniles. 72 A direct comparison to the number of counselors available in adult facilities is difficult because most adult facilities group all "professional and technical" personnel in one category, which includes all medical and classification staff. 73 This staff-to-inmate ratio is one to twenty-five. 74 Given their incomplete development, juveniles are significantly impacted by the lack of appropriate services and care in adult facilities. 75 Juveniles' developmental stage and malleability make them particularly vulnerable to criminal socialization when incarcerated with adults. 76 Generally sensitive to peer pressure as a group, juveniles confined in adult facilities are "especially likely to engage in violent behavior and to develop identities linked to domination and control." 77 While confined in adult facilities, juveniles lack models for building a positive identity, honing productive life skills, and solving problems and disputes. 78 Rather, juveniles may spend considerable amounts of time with experienced adult offenders, who may pass along new methods and techniques related to criminal activity and the avoidance of detection. 79 Juveniles may also adopt violent practices to mask their vulnerable status. 80 To survive the violence they encounter in adult facilities, juveniles have reported that they often attempt to fit in to inmate culture. 81 Many juveniles can only adjust to life in adult prisons or jails by "accepting violence as a part of daily life and, thus, becoming even more violent." 82 A body of evidence suggests that incarcerating juveniles in adult correctional facilities not only places the juveniles in a demonstrably more hazardous living situation but also does not fulfill commonly accepted purposes of punishment. Research indicates that incarcerating juveniles with adults, an often more experienced criminal population, may neither deter juveniles from future criminal activity nor improve public safety. 83 In 2007, the Task Force on Community Preventive Services, supported by the Centers for Disease Control and Prevention, systematically evaluated published studies that dealt with the effectiveness of policies that result in the transfer of juveniles to criminal court. 84 The task force scrutinized the design suitability, methodologies, execution, and outcomes of these studies. 85 In its analysis of six studies examining specific deterrence, 86 all of which controlled for selection bias, the task force noted that four studies found that transferred juveniles subsequently committed more violent and cumulative crime than their counterparts who remained in the juvenile justice system. 87 These four studies indicate that transferred juveniles were 33.7% more likely to be re-arrested than juveniles who remained in the juvenile justice system. 88 The task force concluded that "juveniles transferred to the adult justice system have greater rates of subsequent violence than juveniles retained in the juvenile justice system" and that "[t]ransferring juveniles to the adult justice system is counterproductive as a strategy for deterring subsequent violence." 89 This increase in recidivism may be partially attributable to confinement in adult facilities, given that juveniles are held with more experienced adult offenders and lack the rehabilitative opportunities available in juvenile facilities. 90 Some researchers have concluded that incarceration with adults may have "brutalizing effects" on juveniles, in which the violent experiences that juveniles witness and experience in adult facilities normalize violent and criminal conduct. 91 Research is generally inconclusive as to whether conviction in criminal court and incarceration in adult facilities deters potential juvenile offenders. 92 Most evidence indicates that transfer to criminal court and incarceration in adult facilities has little or no general deterrent effect. 93 Accordingly, an accumulating body of evidence suggests that incarcerating juveniles in adult facilities fails to demonstrably deter future crime, and perhaps even increases recidivism rates in juvenile offenders, while dramatically increasing the risk of serious harm faced by these vulnerable wards of the state. Although some seek to justify the confinement of juveniles with adults by pointing to the need for increased criminal sanctions for certain hardened juvenile offenders, many juveniles who are convicted of criminal offenses and confined in adult facilities serve sentences comparable in length to the

ones that they would have served if held in juvenile facilities. 94 Seventy-eight percent of juveniles incarcerated in adult facilities are released before they turn twenty-one; ninety-five percent are released before they turn twenty-five. 95 The average time that these juveniles serve on their sentences is two years and eight months. 96 Additionally, some jurisdictions have implemented systems in which a juvenile convicted in criminal court can serve his sentence in a juvenile detention facility until he reaches the age of eighteen, at which time he can be transferred to an adult facility to serve the remaining time of his sentence if necessary. 97 Juveniles housed in adult facilities face extreme risks to their health and well-being without the benefit of developmentally appropriate services and rehabilitative programming. Exposed to alarmingly high rates of physical and sexual abuse, these children face the real possibility of developing psychological and emotional disorders, contracting sexually transmitted infections, or even committing suicide. Adult facilities, with often dramatically lower staff-to-inmate ratios than juvenile facilities, are not equipped to handle the special educational, developmental, physical, and emotional needs of juveniles, and thus deprive them of critical opportunities for rehabilitation. In fact, confinement in adult facilities may foster more violent behaviors, facilitate opportunities for criminal socialization, and increase recidivism.

Next, the imprisonment of children with adults creates mental illness and psychological trauma

EJI, 17 -- nonprofit human rights organization (EJI, 2017, 6-19-2020, https://eji.org/wp-content/uploads/2019/10/AllChildrenAreChildren-2017-sm2.pdf)//OD

Children under the age of 14 are protected in virtually every area of law, except when it comes to the criminal justice system. Over last 25 years, very young children have been prosecuted as adults in increasing numbers and subjected to very harsh adult sentences. Prosecuting underage children as adults is not only incompatible with capabilities of young children, but also traumatizing abusive, crud, and unusual. Young children are developmentally incapable of exercising the judgment, maturity, and knowledge necessary to competently defend themselves against criminal prosecution in adult court. The U.S. Supreme Court has developed clear guidelines for insuring that adults are competent before they are subjected to criminal prosecution, but courts have not developed rules that address the unique characteristics of children, leaving child defendants vulnerable and at great risk in adult court Children as young as eight have been prosecuted as adults. Some states set the minimum age at 10, 12, or 13. EJI believes that the adult prosecution of any child under age 14 for any crime should be banned. Some 95,000 children are housed in adult jails and prisons in America each year. Unquestionably, **jailing children while adults needlessly puts young people at great risk. Children are five times more likely to be sexually assaulted in adult prisons than in juvenile facilities. Children are much more likely to commit suicide after being housed in an adult jail or prison than incarcerated adults or children incarcerated in juvenile facilities.** Youth in adult facilities get little to no access to age-appropriate services like school, mental health, and in-person family visits. u. But a majority of states still permit the practice and thousands of young people have been assaulted, raped, and traumatized as a result. Every state in the country maintains juvenile facilities or could segregate juveniles from adults, but many refuse to do so. Prison c**onfinement Of children With adults is indefensible, cruel, and unusual, and it should be banned.** At the age of 13, Joe Sullivan was arrested and prosecuted as an adult. He was convicted and initially sentenced to die in prison. After arriving at an adult prison in Florida, he was repeatedly subjected to sexual violence and assaults. By the age of 27, he began showing signs Of multiple sclerosis that experts believe was in part induced by trauma and abuse he suffered in prison. Now 37, he is confined to a wheelchair. EJI recently won a reduced sentence for Joe and is now providing him With support services. Ian Manuel was 13 when older teens directed him to commit a robbery, during which a woman suffered a nonfatal gunshot wound. After Ian turned himself in, his attorney told him to plead guilty and he would be sentenced to 15 years. Ian accepted responsibility and pleaded guilty but was sentenced to life imprisonment without parole. His lawyer never appealed or withdrew the plea. When he arrived at prison processing in Central Florida, he was so small that no prison uniform fit him. Within months, Ian was sent to one of the toughest adult prisons in the state, where because of his size and age he was placed in solitary confinement. He remained there for 18 years. He has lived most of his life in a closet-size concrete box, getting his food through a slot in the door, never seeing another inmate, with only limited reading materials. Isolation led him to repeatedly attempt suicide. EJI recently won Ian's release from prison and he is now in our specialized re-entry program. At the age of 14, Trina Garnett was arrested and prosecuted as an adult. She was convicted and sentenced to life imprisonment without parole. Shortly after her arrival at the adult Prison in Muncy Pennsylvania, she was raped by a male guard and became pregnant. After she delivered the child, the baby was taken from her and she became increasingly mentally ill officer who raped her was never criminally prosecuted. At 50, Trina suffers from multiple sclerosis and uses a wheelchair. EJI is currently challenging Trina's sentence. Fourteen-year-old George Stinney was arrested in Clarendon County, South Carolina. on March 23, 1944. An all-white jury convicted him of murdering two white girls after a one day trial. Just days 81 days later the 5-foot-1-inch, 95 boy was in the electric chair. The adult-sized face mask slipped reveling his wide open and saliva coming from his mouth. He was the

youngest person executed in US in the 20th century. EJI has represented dozens of children facing execution in Alabama, which had the nation's highest death-sentencing rate for juveniles. Children continued to be sentenced to death and executed in the United States until 2005, when the Supreme Court finally banned the execution of juveniles in Roper v. Simmons.

The impacts of adult facilities are horrific – range from sexual assault to suicide.

Wood, 20 -- articles editor for the Emory Law Journal. (Andrea Wood, Cruel and Unusual Punishment: Confining Juveniles with Adults After Graham and Miller, Emory University School of Law, 2020, 6-19-2020, https://law.emory.edu/elj/content/volume-61/issue-6/comments/cruel-and-unusual-punishment.html)//OD

Juveniles confined in jails and prisons face serious threats to their health and well-being. Juveniles in adult facilities face a high risk of physical and sexual abuse from guards and other inmates, and this abuse may have devastating and long-term consequences for the victimized juvenile. 25 Juveniles confined in adult facilities also have dramatically higher rates of suicide than do their counterparts housed in juvenile facilities. 26 While confined in adult facilities, juveniles lack access to services critical to their continued development and are particularly vulnerable to criminal socialization. 27 Juveniles face significantly higher rates of physical and sexual abuse in adult facilities than do adult inmates in the same facilities or juveniles housed in juvenile facilities. 28 This abuse often begins immediately, within the first forty-eight hours of a juvenile's entry into an adult facility. 29 Juveniles are five times more likely to be sexually assaulted in adult facilities than in juvenile facilities. 30 Although juveniles made up only .2% of the prison population in 2005, they made up almost 1% of the substantiated incidents of inmate-on-inmate sexual violence in prisons that year. 31 Juveniles constituted less than 1% of the jail population in 2005, but they made up 21% of all victims of substantiated incidents of inmate-on-inmate sexual violence in jails. 32 In total, juveniles made up 7.7% of all victims of substantiated acts of sexual violence in prisons and jails carried out by other inmates, even though they made up less than 1% of the total detained and incarcerated population. 33 Sexual assault and rape may result in severe physical consequences, potentially exposing the victim to HIV/AIDS, hepatitis, and other sexually transmitted infections. 34 Sexual activity between men, which constitutes the vast majority of prison rape, accounts for more than 50% of all new HIV infections in the United States. 35 Rates of HIV and confirmed AIDS are more than five times higher among those incarcerated in prisons than in the general population of the United States. 36 Sexual abuse has severe and long-term emotional and psychological consequences for juveniles that may last well into adulthood. 37 Sexual abuse can lead to major depression and posttraumatic stress disorder. 38 Juveniles who have been sexually abused may face problems with anger, impulse control, flashbacks, dissociative episodes, hopelessness, despair, and persistent distrust and withdrawal. 39 Sexual abuse can increase tendencies toward criminal behavior and substance abuse in juveniles. 40 Upon release from prison, victims of prison rape are more likely to become homeless or require government assistance due to the physical and psychological impacts of rape than are those who were not raped in prison. 41 Congress recognized the significant risks that juveniles face in adult facilities when it passed the Prison Rape Elimination Act of 2003 (PREA). 42 PREA, which unanimously passed in the House of Representatives and Senate and was immediately enacted into law by President George W. Bush, sought to draw attention to and address the issues of rape 43 and sexual victimization of individuals in custody. 44 The findings section of PREA highlights the increased risk of rape that juveniles face: "Young first-time offenders are at increased risk of sexual victimization. Juveniles are 5 times more likely to be sexually assaulted in adult rather than juvenile facilities—often within the first 48 hours of incarceration." 45 PREA requires prison officials to keep more thorough internal records on rape, and it created a commission to propose standards to improve prison management. 46 Although an important symbolic step, PREA has failed to eliminate or reduce sexual abuse in correctional facilities or to demonstrably change public attitudes toward rape in custodial settings. 47 Numerous factors contribute to why juveniles face significant dangers when confined with adults. In a Department of Justice report that described characteristics that make an individual more likely to be sexually abused while incarcerated, many of the listed characteristics are common in juveniles, including small size and inexperience with the criminal justice system. 48 Additionally, juveniles, who have not fully matured physically, cognitively, socially, or emotionally, are less capable of protecting themselves from sexual advances and assault. 49 These juveniles generally also lack the experiences to cope in predatory environments, and expressions of fear may be taken as indications of weakness. 50 Staffing differences may also contribute to the high rates of sexual abuse in adult detention and correctional facilities because juvenile facilities generally have a much higher staff-to-inmate ratio than do adult facilities. 51 Juvenile detention facilities generally have a ratio of one staff member to every eight youths, while an average adult jail has a staff-to-inmate ratio of one to sixty-four. 52 The additional staff members in juvenile facilities may provide increased supervision and may also offer assistance and support to juveniles in a more focused manner. 53 Incidents of sexual assault in jails and prisons are underreported,

54 and juveniles may be particularly discouraged from reporting sexual abuse as a result of developmental, emotional, and systemic barriers. 55 The ramifications of disclosure include shame, stigma, not being believed, and retaliation, which impact juveniles more significantly than adults. 56 Juveniles may not be willing to undergo the intense scrutiny needed to determine the accuracy of a report of sexual assault. 57 Once faced with formal interviews and investigation, juveniles may feel intimidated by the perpetrator, try to suppress the pain stemming from the abuse by denying it ever occurred, change their story, or refuse to cooperate with investigators. 58 Juveniles incarcerated in adult facilities are also at a high risk of committing suicide. 59 One study indicates that a juvenile housed in an adult jail is five times more likely to commit suicide than is a juvenile in the general population and eight times more likely to commit suicide than is a juvenile housed in a juvenile facility. 60 Other studies suggest that a juvenile's increased risk of suicide in adult jails may be far higher. 61 Not designed to meet the special needs of juveniles, adult facilities may seriously compromise a juvenile's healthy development, and surveys of adult facilities indicate that they generally lack specialized or developmentally appropriate programming for juveniles. 62 Adult facilities are generally far less equipped than juvenile facilities to meet the educational needs of juveniles. 63 In 95% of juvenile facilities, one teacher is employed for every fifteen inmates, in contrast to one teacher for every one hundred inmates in adult facilities. 64 Unlike in adult facilities, the educational staff members in juvenile facilities are generally full-time employees. 65 In addition to an overall higher staff-to-inmate ratio and more teachers, most juvenile facilities also include classroom spaces and do not have the same physical-space restrictions faced by many adult facilities. 66 Juveniles confined in adult facilities, especially those in pretrial detention awaiting adjudication, face a high risk of falling more behind in their education. 67 Juvenile facilities are better able to provide developmentally appropriate healthcare, rehabilitative services, and programming than are adult facilities. 68 Adult facilities may fail to provide juveniles with the appropriate nutrition or dental and vision care, which are especially critical for developing adolescents. 69 Staff members at juvenile facilities typically receive special training to work with juveniles not generally received by the staff at adult facilities. 70 Many adult facilities fail to provide juveniles with even basic services, including prison-survival skills and counseling. 71 In two-thirds of juvenile facilities, one counselor is employed for every ten juveniles, and in 85% of juvenile facilities, at least one counselor is employed for every twenty-five juveniles. 72 A direct comparison to the number of counselors available in adult facilities is difficult because most adult facilities group all "professional and technical" personnel in one category, which includes all medical and classification staff. 73 This staff-to-inmate ratio is one to twenty-five. 74 Given their incomplete development, juveniles are significantly impacted by the lack of appropriate services and care in adult facilities. 75 Juveniles' developmental stage and malleability make them particularly vulnerable to criminal socialization when incarcerated with adults. 76 Generally sensitive to peer pressure as a group, juveniles confined in adult facilities are "especially likely to engage in violent behavior and to develop identities linked to domination and control." 77 While confined in adult facilities, juveniles lack models for building a positive identity, honing productive life skills, and solving problems and disputes. 78 Rather, juveniles may spend considerable amounts of time with experienced adult offenders, who may pass along new methods and techniques related to criminal activity and the avoidance of detection. 79 Juveniles may also adopt violent practices to mask their vulnerable status. 80 To survive the violence they encounter in adult facilities, juveniles have reported that they often attempt to fit in to inmate culture. 81 Many juveniles can only adjust to life in adult prisons or jails by "accepting violence as a part of daily life and, thus, becoming even more violent." 82 A body of evidence suggests that incarcerating juveniles in adult correctional facilities not only places the juveniles in a demonstrably more hazardous living situation but also does not fulfill commonly accepted purposes of punishment. Research indicates that incarcerating juveniles with adults, an often more experienced criminal population, may neither deter juveniles from future criminal activity nor improve public safety. 83 In 2007, the Task Force on Community Preventive Services, supported by the Centers for Disease Control and Prevention, systematically evaluated published studies that dealt with the effectiveness of policies that result in the transfer of juveniles to criminal court. 84 The task force scrutinized the design suitability, methodologies, execution, and outcomes of these studies. 85 In its analysis of six studies examining specific deterrence, 86 all of which controlled for selection bias, the task force noted that four studies found that transferred juveniles subsequently committed more violent and cumulative crime than their counterparts who remained in the juvenile justice system. 87 These four studies indicate that transferred juveniles were 33.7% more likely to be re-arrested than juveniles who remained in the juvenile justice system. 88 The task force concluded that "juveniles transferred to the adult justice system have greater rates of subsequent violence than juveniles retained in the juvenile justice system" and that "[t]ransferring juveniles to the adult justice system is counterproductive as a strategy for deterring subsequent violence." 89 This increase in recidivism may be partially attributable to confinement in adult facilities, given that juveniles are held with more experienced adult offenders and lack the rehabilitative opportunities available in juvenile facilities. 90 Some researchers have concluded that incarceration with adults may have "brutalizing effects" on juveniles, in which the violent experiences that juveniles witness and experience in adult facilities normalize violent and criminal conduct. 91 Research is generally inconclusive as to whether conviction in criminal court and incarceration in adult facilities deters potential juvenile offenders. 92 Most evidence indicates that transfer to criminal court and incarceration in adult facilities has little or no general deterrent effect. 93 Accordingly, an accumulating body of evidence suggests that incarcerating juveniles in adult facilities fails to demonstrably deter

future crime, and perhaps even increases recidivism rates in juvenile offenders, while dramatically increasing the risk of serious harm faced by these vulnerable wards of the state. Although some seek to justify the confinement of juveniles with adults by pointing to the need for increased criminal sanctions for certain hardened juvenile offenders, many juveniles who are convicted of criminal offenses and confined in adult facilities serve sentences comparable in length to the ones that they would have served if held in juvenile facilities. 94 Seventy-eight percent of juveniles incarcerated in adult facilities are released before they turn twenty-one; ninety-five percent are released before they turn twenty-five. 95 The average time that these juveniles serve on their sentences is two years and eight months. 96 Additionally, some jurisdictions have implemented systems in which a juvenile convicted in criminal court can serve his sentence in a juvenile detention facility until he reaches the age of eighteen, at which time he can be transferred to an adult facility to serve the remaining time of his sentence if necessary. 97 Juveniles housed in adult facilities face extreme risks to their health and well-being without the benefit of developmentally appropriate services and rehabilitative programming. Exposed to alarmingly high rates of physical and sexual abuse, these children face the real possibility of developing psychological and emotional disorders, contracting sexually transmitted infections, or even committing suicide. Adult facilities, with often dramatically lower staff-to-inmate ratios than juvenile facilities, are not equipped to handle the special educational, developmental, physical, and emotional needs of juveniles, and thus deprive them of critical opportunities for rehabilitation. In fact, confinement in adult facilities may foster more violent behaviors, facilitate opportunities for criminal socialization, and increase recidivism.

Additionally, the plan spills over - raising the age that children can be tried in adult court is the first step to moving toward a rehabilitation model

Vera Institute, 19 -- is an independent nonprofit national research and policy organization in the United States (Activists And, Vera Institute, Vera, 6-19-2020, https://www.vera.org/state-of-justice-reform/2019/youth-justice)//OD

From raising the age at which children may be tried in adult court to re-examining the conditions under which they can be held in custody, jurisdictions across the country have considered ways to address the unique needs of children and young adults in the criminal justice system.1But there is still progress to be made. As Monique Morris explored in her 2019 documentary Pushout: The Criminalization of Black Girls in Schools, children and young adults of color—especially Black children—as well as LGBTQ youth are disproportionately impacted by justice system contact.2In 2019, states on the Pacific Coast took actions to address these concerns and reform their juvenile justice systems. California made changes to fundamentally alter the philosophical underpinnings of the state's juvenile justice system from a focus on punishment to a focus on support and assistance, with the state's governor, Gavin Newsom, vowing at the beginning of 2019 to "end juvenile imprisonment . . . as we know it."3Newsom announced he was moving the state's Division of Juvenile Justice out of the California Department of Corrections and Rehabilitation—which has a history of harsh treatment of children in its custody—and into the California Health and Human Services Agency in order to focus on rehabilitation over punitive detention.4 The new Department of Youth and Community Restoration, to be established in July 2020, will include a training institute for corrections officers and an internal oversight division.5Advocates mostly hailed the decision, noting that "when the systems are connected to agencies that have an emphasis on health, healing and a connection to resources that can assist in that . . . they are able to do a better job."6However, a few have cautioned that the move needs to be more than "simply a change in the letterhead."7The reorganization will be bolstered by the January 2020 implementation of a 2018 law that sets the minimum age for prosecution even in juvenile court—except in cases of murder and rape—at 12 years old.8 Newsom signed a number of other bills into law that are anticipated to decrease youth involvement in the criminal justice system, including limiting school suspensions, providing avenues for cases to be returned to juvenile court, expanding the upper age limit for juvenile detention to age 24, and increasing access to educational opportunities for incarcerated youth.9But he vetoed a bill that would have increased the fees that counties must pay the state to send youth to state detention.10Proponents had hoped that stiffer costs for incarceration would encourage counties to keep justice-involved youth out of state detention and near their homes and communities, improving their chances for success.11In vetoing the bill, the governor indicated that he agreed with the principles behind it, but thought it would undermine the proposed Department of Youth and Community Restoration.12 Advocates hope the overhaul will help the state in its efforts to decarcerate the long-troubled youth justice system, which is still feeling the effects of Proposition 21, a "tough-on-crime" initiative pushed through in 2000 largely thanks to efforts from the California District Attorneys Association.13From 2003 to 2018, more than 11,500 youth aged 14 to 17 were tried in adult court under the auspices of Proposition 21, with the effects being felt particularly by Black and Latinx communities.14Proposition 21 was passed largely in response to a perceived "crime wave" in the mid-1990s that had already ended by the time the legislation hit the books.15Between 1980 and 2016, arrests in the state declined by 84 percent for juveniles while decreasing much more slowly or even increasing for other age groups.16This has left youth detention centers largely empty.17 Some cities in California have been independently reforming their youth justice systems. In August in Los Angeles, the Board of Supervisors voted to convene a Youth Justice Work Group to determine which department in the county is best placed to assist justice-involved youth

currently overseen by the probation department—or whether an entirely new agency should be established for this purpose.18And in San Francisco, both the public defender and the district attorney supported a measure passed in June to close the city's juvenile hall, which was 65 percent empty in June.19In lauding the decision to decarcerate, advocates noted that while the city's population is only 5 percent Black, 60 percent of the children held in juvenile hall are Black.20 Other places on the West Coast made juvenile justice reforms in 2019. King County (Seattle), Washington, continued its drive to reduce youth detention to zero.21There has already been success: a 25 percent drop between 2017 and 2019 in the number of youth held on any given day, and a 24 percent drop in total admissions of youth to detention.22In addition, the county had 35 percent fewer referrals to the juvenile legal system for low-level or misdemeanor offenses over the same time period.23The county's strategy calls for a series of steps to reduce youth justice involvement, with the first being to address institutional racism and bias in the system: in 2018, youth of color were 6.6 times as likely to be detained as white youth.24The remaining objectives are to prevent justice system contact, divert youth who are already in the system to more appropriate resources, support justice-involved youth to improve family and community relationships, and align the multiple systems with which youth are in contact to improve their odds of accessing the right resource at the right time.25As part of the initiative, the county is replacing its current youth detention center with a facility that it describes as "more developmentally appropriate"—but which opponents say is still a jail.26 And in Oregon, the state corrected its course on youth justice, retracting an initiative approved by voters more than two decades ago in the midst of the "tough on crime" era that mandated adult charges for anyone 15 or older who was accused of certain felonies.27In the years since, Oregon has had the second-highest juvenile incarceration rate in the nation.28A 2018 report showed that the measure was three times as likely to impact Black youth—who were indicted on these charges at a rate five times higher than their percentage of the population—and that Latinx and Native American youth were also disproportionately represented in the system.29In July, Governor Kate Brown signed into law a bipartisan youth justice reform bill that, among other things, eliminates the practice of automatically prosecuting 15- to 17-year-olds as adults if they have been accused of serious crimes such as rape, murder, robbery, and assault.30The law, which went into effect January 1, 2020, creates a presumption that these youth will be tried in juvenile court and requires prosecutors to request a hearing before their cases can be heard in adult court.31 The new law, which was backed by leaders from the Oregon Department of Corrections—but opposed by the Oregon District Attorneys Association—also eliminates life without parole sentences for juveniles.32Anyone convicted of a crime committed when they were younger than 18 will get a chance to seek parole after 15 years, and juveniles will also be given the opportunity for a second look hearing halfway through their sentences to determine whether they can be released from prison under community supervision.33The law also adds a level of judicial review before transferring young people to adult prisons.34 Oregon's action continues a national trend of reducing the number of young people under 18 who are handled as adults in the criminal legal system. After years of work by the national "Raise the Age" movement to set 18 as the age of criminal responsibility in all 50 states, nearly every state handles youth under 18 in juvenile court, although most such laws have conditions under which children may still be tried as adults.35Michigan joined these states in 2019, voting to raise the age of who is considered an adult in the criminal legal system from 17 to 18. Anyone under 18 will be treated as a minor in juvenile court and receive the rehabilitation services that are offered in the state's juvenile justice system; prosecutors, however, may still charge juveniles as adults for certain violent offenses.36The Michigan law leaves only three states—Georgia, Texas, and Wisconsin—that have not acted to raise the age to 18. Meanwhile, on the East Coast, advocates are hopeful that the transfer of young people to the adult system is just one of many issues that a new task force will review in Maryland.37In 2019, Governor Larry Hogan signed Senate Bill 856/House Bill 606 establishing the Juvenile Justice Reform Council (JJRC).38The JJRC will "[use] a data-driven approach to develop a statewide framework of policies to invest in strategies to increase public safety and reduce [youth recidivism], research best practices for the treatment of juveniles who are subject to the criminal and juvenile justice systems, and identify and make recommendations to limit or otherwise mitigate risk factors that contribute to juvenile contact with the criminal and juvenile justice systems."39

And, don't even try - no silly crime Das – the plan is key to reducing recidivism

Scialabba 16 (Nicole Scialabba is a staff attorney at Legal services of Central New York in its New York office.), 10-3-2016, "Should Juveniles Be Charged as Adults in the Criminal Justice System?, "American Bar Association, https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2016/should-juveniles-be-charged-as-adults/// Eagan EL

. Trying Juveniles as Adults, supra . Some may have reverse waiver laws that allow juveniles who are charged in adult court to petition that court to have the case transferred to juvenile court; in these cases, the burden is on the juvenile to prove why the case should be transferred to juvenile court. Id. Last, there could be a blended sentence law under which juvenile courts have discretion to impose adult sentences or adult courts have discretion to impose juvenile dispositions. Id. The increase in laws that allow more juveniles to be prosecuted in adult court rather than juvenile court was intended to serve as a deterrent for rising youth violent crime. As such, it is important to evaluate what happens to juveniles who go through the adult court system to determine if they

are “deterred” from future crime. A comprehensive literature review was completed by the University of California, Los Angeles (UCLA) School of Law’s Juvenile Justice Project in July 2010 that reviewed the impact of juvenile cases prosecuted in adult court. The report, The Impact of Prosecuting Youth in the Criminal Justice System: A Review of the Literature, ultimately found that there has been little to no deterrent effect on juveniles prosecuted in adult court, and in many states, recidivism rates have actually increased. Statistics compiled **from 15 states** revealed that juveniles prosecuted in adult court and released from state prisons were rearrested **82 percent of the time**, while their adult counterparts were rearrested **16 percent less.** Id. Meanwhile, studies have shown that juveniles prosecuted in juvenile court benefit from the services made available to them through that process, as juvenile institutions provide programs and resources specifically designed for juvenile development. Id. Juveniles in adult court often do not have the opportunity to acquire critical skills, competencies, and experiences that are crucial to their success as adults; rather, they are subject **to an environment in which adult criminals become their teachers**. Id. “As a crime control policy, placing more young people in criminal court appears to symbolize toughness more than it actually delivers toughness, and that symbol may have a high price.” Line Drawing, supra. The effects of being “tough on crime” mean that there is likely to be longer delays in the court process, longer time spent in pre-incarceration, exposure of juveniles to adult offenders, problems with controlling prison populations, and denial of needed services to juveniles. Id. The Office of Juvenile Justice and Delinquency Prevention report evaluated a study of outcomes for juveniles prosecuted in adult court rather than in juvenile court and found that there were counter-deterrent effects of transfer laws. Trying Juveniles as Adults, supra . A summary of six studies found that there was greater overall recidivism for juveniles prosecuted in adult court than juveniles whose crimes “matched” in juvenile court. Id. Juveniles in adult court also recidivated sooner and more frequently. Id. These higher rates of recidivism can be attributed to a variety of reasons, including lack of access to rehabilitative resources in the adult corrections system, problems when housed with adult criminals, and direct and indirect effects of a criminal conviction on the life chances of a juvenile. Id. The reason that juvenile courts were originally created in the nineteenth century was because society recognized that juveniles did not have the cognitive development that adults had, would benefit more from rehabilitative services to prevent recidivism, and needed more protections. Sociological and political shifting of attitudes caused legislators to believe they needed to be “tough on crime,” and transfers of juveniles to adult court became more frequent. Results of those policies demonstrate that they have failed as recidivism rates for juveniles increased when prosecuted in adult court versus juvenile court. Reforms need to occur just as swiftly as the reforms to prosecute more juveniles in adult court began, so that the emphasis can shift back to focusing on the best interests of the child when juveniles are charged with crimes. Juveniles need resources to equip them to succeed when they are released from juvenile facilities, rather than face the devastating effects of being housed in adult prison systems. Juveniles should be treated as juveniles in the court justice system, **with a focus on rehabilitating rather than simply punishing.**

Fortunately, the plan solves excluding juveniles from the adult system prevents psychological harms

Elizabeth S. Scott and Thomas Grisso 1997 “The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform” https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6944&context=jclc [6/22/20]//cblasi

The developmental evidence supports a conclusion that, as a general matter, younger teens are sufficiently different from adults in cognitive and psychosocial development that they should not be tried or punished in the adult criminal justice system. First, the argument for diminished responsibility is more compelling as applied to younger teens. Subjecting thirteenyear-old offenders to the same criminal punishment that is imposed on adults offends the principles that define the boundaries of criminal responsibility. Beyond this, the research indicates a substantial risk that many (perhaps most) younger adolescents may be substantially less competent to stand trial [Vol. 88 JUVENILE COURTS than are their adult counterparts. 17° Thus, concerns about procedural fairness and about diminished culpability both

point in the direction of a categorical exclusion of younger adolescents from adult criminal adjudication. The procedural fairness issue deserves further comment. The debate about juvenile justice reform has rarely focussed on this dimension of the trend toward trying ever-younger defendants as adults. Upon reflection, it presents formidable problems. The prohibition against trying incompetent defendants historically has been raised in cases involving mentally ill defendants, who, upon a finding of incompetence to stand trial, typically are hospitalized so that they may be restored to 172 competence. It is quite unclear what should happen to a youthful defendant who is unable to participate adequately in his defense due to developmental immaturity. Should the criminal adjudication be suspended for some indefinite period of time until he matures? During the intervening period, should he be confined, even though he has not been convicted of a crime? If not, what is the alternative? The questions posed suggest the difficult issues that will arise if younger adolescents are routinely subject to adult criminal adjudication. It seems far wiser to minimize the problem by categorically excluding from adult criminal adjudication younger teens, whose immaturity is most likely to impair their competence to function as defendants in criminal courts.

Additionally, when weighing impacts, actively prioritize psychological pain.

Biro 10 — David Biro, Associate Clinical Professor of Dermatology and Medical Humanities at the State University of New York Downstate Medical Center, holds a Ph.D. in English Literature from Oxford University and an M.D. from Columbia University, 2010 ("Is There Such a Thing as Psychological Pain? and Why It Matters," *Culture, Medicine and Psychiatry*—a cross-cultural peer-reviewed medical journal, Volume 34, Issue 4, December, Available Online at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2952112/, Accessed 09-14-2018)

Introduction

"They say passing a kidney stone is the worst pain you could ever have. They're wrong. Sure it was bad. I remember whimpering like a baby in the Emergency Room. But it was **a joke** compared to this pain which never passes. It just keeps on going and eating me up inside. I still feel it now, intense as ever, 10 years later." Dan Vento is talking about the time his daughter suffered a relapse of an uncommon form of cancer called osteosarcoma. Jennifer was nine, the youngest of his three daughters. Dan and his wife Mary thought they had weathered the storm. The initial round of chemotherapy seemed to work. But a year later, Jennifer's left knee began to swell and hurt again, then her thigh, then her back. The cancer not only had returned but was now all over Jennifer's body, and it had happened so quickly that even the doctors were caught off guard.

Naturally the Ventos tried everything, even a bone marrow transplant. But the cancer could not be stopped. Metastatic tumors invaded Jennifer's bones, obstructed her airways and destroyed her vision. Overnight, their little girl had become unrecognizable, from the cancer and from the aggressive treatments—a swollen, lumpy mass with tubes and IV lines hooked up to beeping machines. The worse part was that there was nothing they could do to help. They stood by, feeling as if the cancer were ripping through their bones too.

Less than 2 months after the relapse Jennifer died. It was almost a relief at first; the Ventos couldn't bear watching their daughter suffer another day. But when they saw Jennifer in the little coffin, when they saw the coffin lowered into the ground, when they saw the earth covering the coffin—from that day on, their pain would never end.

"I tried to be strong for my wife and kids," Dan Vento explained. "If they saw me crumble, how would they be able to keep going?" But despite the strong facade, Vento was crumbling. "I felt weak and lightheaded all the time, like I might pass out, and needed to grab onto something—a chair, the wall, anything—to keep from falling."

Vento had always been tough. Though not physically imposing—he was short and stocky—he was a self-made man from the Bronx who owned a successful chain of grocery stores and always got whatever he wanted, at work and at home. When Jennifer died, however, he didn't seem to want much anymore and found it increasingly difficult to concentrate. His life began to unravel. **There was only pain**.

Diverging Views

Is what Dan Vento experienced–as he watched his daughter suffer, when he buried her, and now, 10 years later, still entangled in grief—pain? He certainly thinks so and uses the word just as he did when he spent an agonizing night in the ER with kidney stones. So do many other people who undergo similar trauma, as well as those who suffer "pain" in psychiatric illnesses like depression and schizophrenia.

Most professionals, however, would disagree. Scientists who study pain and doctors who treat pain consider the experience a **strictly physical phenomenon**, in the sense that it can only be caused by injury to the body. Pain occurs when receptors on nerve cells in the skin and internal organs detect potentially damaging stimuli, a pinrick, for example, or high temperatures (Melzack and Wall 1983, pp. 81–108). The nociceptors (from the Latin nocere, to injure) then signal the brain, which assesses the threat and coordinates a series of protective responses. We pull the arm away from the flame; we rest the broken leg. This highly effective biological warning system that prevents further damage and aids in healing is something we can't live very well without. Just think of patients who are unable to feel pain, those with genetic defects and those with diseases that affect nerve transmission like diabetes and leprosy; the benefits of life without pain are easily outweighed by the negatives of progressive injury to the body and premature death (see Brand and Yancey 1997).

Dan Vento has suffered no physical injury. Nor have patients who experience the psychic pain that accompanies acute depression. Nor have cancer patients (and their parents) who experience the overwhelming fear and anxiety and isolation that accompany the physical symptoms of their illnesses. Their nociceptors, at least with respect to these particular feelings, remain silent, sending no distress signal to the brain. Therefore, their feelings are not really pain but something categorically different, what the professionals prefer to call suffering or anguish (Cassell 1991, pp. 30–46). And therefore, one will find no mention of grief or depression in medical classification schemes of pain.

Even psychiatrists are wary of speaking about pain in their patients, reserving it only for those rare and strange cases of psychogenic pain or somatoform pain disorder—that is, physical-like pain localized to a part of the body that has not been injured, the modern-day equivalent to what Freud termed hysteria or conversion reaction (DSM 3, rev.; American Psychiatric Association 1987). The bottom line is that the psychological pain experienced by Dan Vento and millions of patients with acute depression is an oxymoron or, at best, a metaphor. It simply does not exist.1

The Subjective Argument

How can there be such a gulf between the layperson and the expert, especially with regard to such a common part of life? And if the experts are right, how could ordinary people like Dan Vento as well as our language professionals—celebrated writers like William Styron and Joan Didion, for example, who wrote so eloquently about pain in depression (Darkness Visible) and grief (The Year of Magical Thinking)—have gotten things so wrong?

Unless of course they haven't. Unless it's not the layperson but the expert who is confused. Perhaps one's instinctive tendency to see pain more broadly, as a category that incorporates both physical and psychological varieties, may be more enlightened than the expert's narrower conception. Perhaps there are good reasons for speaking of pain in the setting of grief or depression or schizophrenia or divorce or the nonphysical suffering that accompanies illness.

Let's examine the evidence. In the first place, there is **a wealth of subjective evidence**—what people feel and think and then convey to others through language. When we ask people about certain aversive emotional experiences and listen to their words, we find that they not only use the generic word "pain" to label these experiences, but also describe them in **the same ways they describe physical pain**. Now pain of any kind is notoriously difficult to express. There are problems conceptualizing the experience because it is perceptually inaccessible (we can't see or touch pain) and because, unlike other inner states, it is not always linked to external objects that we can see or touch (like the person who makes us angry or the dog that makes us scared) (Scarry 1985, pp. 161–162; Biro 2010, pp. 11–47). As a result, one is forced to think about pain indirectly, through metaphor: we imagine a more knowable object linked to the pain and then speak of the experience in terms of that object.

By far the most common metaphor used to describe physical pain is the weapon (Scarry 1985, pp. 15–19). We say that a pain is shooting or stabbing. Lengthy lists of similar adjectives can be found on the McGill Pain Questionnaire, created in the 1970s to help patients communicate their feelings to doctors. Pain can be described as piercing, drilling, burning, grinding, throbbing, stinging, squeezing, and so on. Each of the descriptors implies the presence of a weapon or weapon-like object that can injure the body—the drill that drills, the fire that burns. And since most

patients have never been stabbed or shot or are not being stabbed or shot at the moment of pain, they are using these terms figuratively to objectify what would otherwise be difficult to pin down and represent; now they could see pain and describe how it feels by talking about knives and guns and the damage they can do the body.

People with psychological pain use **the very same metaphors** to describe their experiences. Dan Vento, silenced for so long by the incapacitating pain of loss, will eventually open up to a psychiatrist. It felt like a bomb, he explained, that exploded inside of him, obliterating everything in his body. At other times, he felt the damage was occurring more slowly and methodically, as if there were a swarm of parasites eating away at his organs. But either way, the result was the same for Vento: he was being emptied out from the inside—"gutted" was the word he used—until all that was left was a big, raw gaping wound.

When her husband died and she was flooded with grief, Joan Didion saw giant waves. In her memoir, she writes that she felt as if she were being battered by "destructive waves, paroxysms, sudden apprehensions that weaken the knees and blind the eyes and obliterate the dailiness of life" (Didion 2005, pp. 27–28). For Kay Redfield Jamison, a psychiatrist who suffers from manic depression, the weapon is a giant centrifuge, containing tubes of her blood. It spins around her mind faster and faster, out of control, until it explodes, splattering blood everywhere (Jamison 1996, p. 80).

Listening to the language of pain of all kinds, we discover **a shared felt structure** that the weapon metaphor effectively captures (Biro 2010, pp. 79–96). Whether triggered by grief and depression or kidney stones and spinal injury, pain reads like a story in three parts:

Weapon --> [to] Injury --> [to] Withdrawal

In pain we feel as if there must be some weapon-like object (bomb, swarm of parasites, giant wave, centrifuge) that is moving toward and threatening us; that when it strikes, it will injure, possibly even destroy us; and that we must get away from it or shield ourselves at all costs. Even when there is nothing coming at us, when there is no injury, when we remain motionless, we feel the movement, the injury and the desire to run.

Whatever happens that makes us feel these things—the loss of a loved one or the physical destruction of cancer—we experience pain.

New Objective Evidence

The subjective evidence for the existence of emotional pain is compelling, especially since there is no objective way to verify and characterize someone else's pain. Although we can attach a person to a functional magnetic resonance imaging (fMRI) device, observe the blood flow to pain centers in the brain and then infer its presence, the only definitive test is a person's word: I feel pain or I don't.

Actually, most experts grudgingly acknowledge the inescapably subjective nature of pain. In an addendum to their universally accepted definition of pain—"An unpleasant sensory and emotional experience associated with actual or potential tissue damage"—the International Association for the Study of Pain (IASP 2007) concedes that people do report pain for strictly psychological reasons and that, since such reports can't be distinguished from instances where there is a physical cause, they should be taken at face value: "If people regard their experience as pain and if they report it in the same ways as pain caused by tissue damage, it should be accepted as pain."

But despite the concession, the IASP does not make room for the pain experienced by Dan Vento, Joan Didion, or Kay Redfield Jamison on their extensive classification schemes of pain disorders. While complex regional pain—which affects somewhere of the order of 6–26 people in 100,000 (de Mos et al. 2007)—appears on the list, the vastly more common pain occurring in grief or depression does not.

For physicians and scientists that will only pay lip service to the subjective argument, however, there is now **mounting objective evidence** for broadening our notion of pain. Since the introduction of gate control theory in the 1960s, the link between tissue damage and pain has progressively weakened. We now have a better understanding why there can be severe injury and no pain (wounded soldiers in battle) and, conversely, no injury and severe pain (migraine, fibromyalgia). This happens, as prominent pain scientists Ronald Melzack and Patrick Wall have explained, because there are psychological factors—one's culture and past experiences, our emotional and cognitive states, the context of pain—that can intensify

or dampen the nociceptor signal before it registers in higher brain centers (Melzack and Wall 1983, pp. 15–33). Moreover, many cases of chronic pain seem to occur without any direct nociceptor stimulation at all. Neuropathic pain results when a dysfunctional nervous system fires spontaneously or misinterprets ordinary sensory stimuli as noxious (Woolf and Mannion 1998). In tic dolouroux, for example, the movement of a feather across the face can trigger spasms of intense pain.

A second strand of evidence comes from our growing understanding of how the brain processes pain. It turns out that pain is an incredibly complex perceptual system with multiple subsystems. Most important for this discussion, there are distinct areas in the brain that process the sensation of pain (its quality, location, intensity) and our feelings about the sensation (the narrative of its aversiveness) (Price 2000). Further, the sensory center (in the somatosensory cortex) and the affective center (in the anterior cingulate and insula cortices) are not only spatially apart but dissociable: that is, a person can have the sensation of pain but not feel pain (Grahek 2007, pp. 29–50). We can observe this in patients undergoing minor surgery with medication that makes them indifferent to being cut with a scalpel. Even more dramatic is a rare group of patients whose affective pain centers (or the connections to those centers) have been destroyed. In the case of pain asymbolia, patients can still sense a needle prick (because the nociceptor signal registers in the somatosensory cortex) but will laugh at its insignificance (because the signal is not processed by the anterior cingulate cortex).

These instances of disconnect between the sensation and the feeling of pain tell us that despite the complexity of pain—which involves sensations and behavior, feeling, cognition and memory—the critical component is feeling. If we don't have the feelings that Dan Vento had when the kidney stone was passing through his ureter—that something bad was happening to him, that that something was damaging his body, and that he must do whatever he could to avoid further damage—then pain loses its biological value. Because they laugh at pain rather than run from it, pain asymbolia patients will likely fare no better than patients with congenital or acquired pain insensitivity. In fact, I would argue that if we don't feel pain, there's no point using the term at all. Leprosy patients, soldiers on the battlefield, sedated patients undergoing surgery, pain asymbolia patients—they may experience unpleasant sensations but they don't feel pain and don't take protective measures. Everything is contingent on the feeling of pain.

If tissue damage is not necessary to feeling pain and if there is a special affective center in the brain devoted to such feeling, why can't that center be activated by means other than the nociceptor pathway? Why isn't it possible that noxious psychological stimuli—stimuli that threaten the emotional well-being of a person, like the loss of a child or the pain of depression or the suffering of cancer patients—find their way to the anterior cingulate gyrus, making us feel the same way we do when we experience physical pain?

This is precisely what scientists are discovering. Naomi Eisenberger and her colleagues at UCLA have recently developed a clever model of psychological pain that can be **studied objectively** (Eisenberger et al. 2003). Normal subjects played a video ball-tossing game while their brains were monitored by fMRI. When the subjects were excluded from the virtual game, they experienced distress that correlated with increased blood flow to the anterior cingular and insular cortices, exactly the same pattern that would have occurred had they been stuck by a needle. The greater the social distress generated, the more active these affective pain centers became. Studies done on saddened and grieving subjects produced similar results (Gundel et al. 2003).

It appears that the layperson's intuition about pain is being borne out by science; psychological pain seems to run on **the same neural tracks** as physical pain. And why shouldn't it? Just as physical stimuli that can damage our bodies prompt certain feelings and responses, **so too should psychological stimuli that can damage our psyche** like the loss of a child or the intrinsic symptoms of depression. Just as we need to rest the body to protect ourselves from further harm, so too should we protect the mind. This more complete and comprehensive warning system certainly makes sense from a biological perspective.

Why Words Matter

Does it matter whether we call Dan Vento's feelings pain or suffering? Is this just a semantic issue, a disagreement between two sets of language users that, in the end, doesn't have any adverse consequences?

Yes, it does matter, and **yes, it has adverse consequences**. It matters because the disagreement reflects a much larger issue: the rigid mindset of the scientific community, which sees the world in a certain way and won't allow for deviation, even from dissenters within its own ranks. Science focuses its spotlight exclusively on the objective world, what can be studied, quantified, and explained. Because it

seems resistant to such inquiry, the subjective realm has been traditionally off limits, something that can only be appreciated on much looser terms by the humanities and the "softer" sciences (e.g., psychology).

This mindset **informs values**, and not just the values of scientists. Because of their position in the intellectual hierarchy, there is **a trickle-down effect**, which carries over to **the practical science of medicine** and to **the culture at large**. In the case of pain, there is only one kind, the real or physical kind that can be objectively verified by observing nociceptor activity or finding lesions on a CAT scan. Other experiences that may feel like pain but cannot be linked to tissue damage are not pain. Much more subjective and less transparently material, they are therefore derivative, less important, and better labeled something else (suffering or anguish).

While psychological pain may be unpleasant, the fact remains that it is "in our heads," not our bodies. As we continue to unfold the logic of the objectivist (and dualistic) paradigm—which has now thoroughly permeated our cultural consciousness—those who suffer without any physical corroboration to show for it inevitably begin to appear **suspect**. They are either crazy (mentally ill), deceitful (because there is no real pain) or weak (everything is painful to such people). They don't need pain doctors or pain medication, but psychiatrists and priests.

Disregarding for a moment that that all pain is "in the head"—even Dan Vento's kidney stone pain, which he localized to the right side of his pelvis—the **truth** is that psychological pain is often **more intense and dangerous** than the "real thing." For Dan Vento, his bout with kidney stones, among the most painful of all medical conditions, was **nothing** compared to the pain of grief. Similarly, Lucy Grealy tells us in her memoir, Autobiography of a Face (1995), that she would much rather face the pain of cancer and its treatments than the far worse pain of feeling deformed and lonely (pp. 7, 170, 186). In fact, many such sufferers welcome, even court, physical pain, feeling that it actually alleviates their emotional pain to a degree. And when, unalleviated, the pain becomes too much to bear, some will choose to end it by ending life. Suicide rates are significantly higher in the setting of grief and depression than they are in the setting of physical pain (Schneidman 1998).

In addition to relegating psychological sufferers to **second-class status**, the prevailing objectivist mindset is also detrimental to another large group of people. Sufferers of chronic pain conditions like migraine, lower back pain, and fibromyalgia find themselves somewhere in limbo between real pain and the derivative, mental kind. On the one hand, their pain seems physical (because it is localized to a part of the body), but on the other, it has more in more in common with psychological distress (because there is no detectable injury). For a long time, medicine had no idea what to do with these patients, and so they drifted from doctor to doctor without finding relief. Although their lives have improved with the introduction of pain specialists and pain clinics, chronic pain patients are still often **tormented** by the insidious logic of the objectivist perspective (see Heshusius 2009, pp. 1–19). Some, in fact, resort to self-mutilation to legitimize their pain in the face of ongoing skepticism from family members and doctors: "You see now," they will say, pointing to their slashed arms, "The pain is not in my head, it's real (see Padfield 2003, pp. 41–43).

I bring up the seriousness of psychological pain and the limbo-like situation of chronic pain conditions because, like the work of a growing number of scientists, it goes against the grain of the prevailing mindset. Perhaps, then, we should **change this mindset** and **broaden our outlook**. Instead of privileging one type of pain over another, let's approach them in a more **inclusive, democratic spirit**, in which all pains are created equal. Or better yet, let's view pain as occurring on a continuum or spectrum that runs from one ideal (pain linked solely to physical injury) to another (pain linked solely to psychological injury).

A spectrum of pain certainly matches our experience more accurately than the conventional paradigm. It accommodates our belief that the feeling of pain can arise from injury to the body as well as injury to the mind. It also accommodates our experience of the considerable overlap between the two varieties, that there is never pure physical or pure psychological pain but always combinations. Those suffering from grief and mental illness often have somatic complaints: Dan Vento felt the loss of his daughter in his gut; William Styron's descent into depression was accompanied by sleeping and breathing problems (Styron 1992, pp. 18, 42–43). At the same time, patients in physical pain inevitably suffer emotionally; cancer patients routinely feel terrified, helpless and lonely (Cherney et al. 1994).

Moreover, the benefits of adopting a broader perspective go beyond **validating and valuing our lived experiences**. There are **practical implications**. For science, it would mean more support for the

transformative work of researchers like Joseph LeDoux and Antonio Damasio into the subjective realm of feelings and emotions (LeDoux 1996; Damasio 1999). After all, these experiences are as material as the beating of the heart and the DNA molecule, even though at the moment we don't precisely know how to translate neural activity (brain language) into mental states (mind language). So too is psychological pain. Now that we know it shares neurological substrates with physical pain, scientists will no doubt look to extend the work of Eisenberger by finding the "nociceptor pathways" of psychological injury: How are feelings of grief or depression detected and transmitted to the anterior cingular cortex? and How could the signals be modifed? This new mindset might also lead to insight about pathological pain states. Dan Vento's prolonged grief—what psychiatrists classify as complicated grief—has much in common with certain chronic pain states. In both instances, the injury has long past and yet the reverberating pain circuit, no longer serving any biological purpose, continues. Are there similar mechanisms at work here, and might they be manipulated to help Vento escape from his self-destructive rut?

There would also be changes in the clinical realm, **improving the way doctors treat pain**. Some patients may require more attention to the body; others, to the mind; the majority, to both. Here too there is room for innovative thinking. Take, for example, the placebo effect in clinical trials, in which a fake pill has been shown to relieve pain on the order of 15–30% of cases. Most investigators view the phenomenon as a contaminant that must be eliminated to assess the efficacy of the "real" drug. But why not switch frames, as Benedetti (2009) has urged, and focus just as diligently on the reality of the psychological factors that are equally effective, in some cases even more so (pp. 6, 30)? Why not try to harness and enhance these factors to help patients? This same novel way of thinking led DeWall et al. (2010) to administer physical pain medication (acetaminophen) to people suffering from psychological hurt, and not unsurprisingly, it seemed to work.

One of the greatest twentieth-century thinkers, Ludwig Wittgenstein, showed that paying attention to ordinary language can help advance philosophy. Perhaps the same holds true for science. He also showed that clinging dogmatically to a certain picture can lead to conceptual illness (Wittgenstein 1958, Sect. 115). If we can thoroughly break with our unhealthy (and inaccurate) dualistic legacy and truly see that mind and body are **inextricably connected**, then we must agree with Dan Vento, Joan Didion, and many other sufferers that **psychological pain exists and is just as important and worthy of our attention as physical pain**. They are **two sides of the same coin** and should be spoken of and treated as such.

Footnotes in this card:

1. I am arguing here neither that psychic distress is any less real than physical pain nor that somatic complaints can accompany psychiatric illness—in fact, 50% of depressed patients report symptoms of physical pain (Katona et al. 2005)—but that psychic distress can itself be painful in a meaningful sense, that it can be phenomenologically akin to physical pain and, therefore, should be categorized under the same rubric.

Your Das are silly and our aff is good- "Extinction first" is a parlor trick that justifies racism and dismisses the psychological pain of hundreds of thousands of people. It's also self-defeating—the intergenerational accumulation of toxic stress from psychological pain is itself an existential risk.

Canali and Porter-Brown 8 — Paul Canali, Director and Co-Founder of the Evolutionary Healing Institute—a unified therapy clinic and teaching center in South Florida, former Director of Health Dynamics—an alternative holistic health center in Miami, Member of the American College of Sports Medicine, holds a Doctor of Chiropractic Medicine and a B.S. in Human Biology from the National University of Health Sciences (Illinois), and Quayny Porter-Brown, Unified Therapy Instructor at the Evolutionary Healing Institute—a unified therapy clinic and teaching center in South Florida, 2008 ("Heal Trauma, Save The World Project," Evolutionary Healing Institute, Available Online at http://www.evolutionaryhealinginstitute.com/Canali_-_Heal_Trauma_Save_the_World_Project.pdf, Accessed 09-09-2018, p. 1-3)

Heal Trauma Save The World Project™ is about ending the cyclical nature of toxic stress and trauma. Traumatic Stress and PTSD is most destructive when passed down from person to person, and through families and institutions. Like a virus, the unconscious carriers can be you and me. Repeating patterns of Traumatic Stress behavior can represent itself in the home, in institutions, and **perpetuates war and violence**. It can express itself as anxiety, depression, rage, and substance abuse. So

often trauma expresses itself as chronic and severe pain, and billions of dollars are spent on irrelevant treatments, causing an excess of unnecessary suffering.

> "The most common complaint in current medical practice – that of persistent and unexplained chronic pain – has its roots in the changes in Brain Circuitry associated with unresolved traumatization. Perpetuation of pain is a dysfunctional survival tool."
>
> -Robert Scaer, MDKa

The Heal Trauma Save The World Project™ is about the healing of humankind's deepest of all wounds: trauma, and its residual by product: Traumatic Stress. Trauma can not only be caused by major accidents, botched medical care, war, or other catastrophic events, but also from physical and emotional abuse, neglect, lack of touch, and many other more subtle forms. Unresolved trauma creates Post Traumatic Stress, which disturbs our biology. Disturbed biology expresses itself in myriad and diverse forms of disease and suffering of both mind and body. One of life's greatest mysteries is how unresolved trauma deeply affects our lives and health, because it is so often a totally unconscious process. It is important to realize that most of the physical and [end page 1] psychological effects of trauma that people experience are the result of non-integrated previous traumatic exposure.

> "Common occurrences can produce traumatic after-effects that are just as debilitating as those experienced by veterans of combat or survivors of childhood abuse Traumatic effects are not always apparent immediately following the incidents that caused them. Symptoms remain dormant, accumulating over years or even decades. Then, during a stressful period, or as the result of another incident, they can show up without warning. There may also be no indication of the original cause. Thus, a seemingly minor event can give rise to a sudden breakdown, similar to one that might be caused by a single catastrophic event."
>
> -Peter Levine, PhD

Post Traumatic Stress has the power to create or mimic almost any kind of symptom and disease including **the most severe neurological and psychological disorders**. This process is deeply unconscious because of the loss of brain body connection due to dissociation. Dissociation is one of the most insidious of all human conditions.

> "Dissociative disorders are usually triggered (precipitated) by overwhelming stress. The stress may be caused by experiencing or witnessing a traumatic event, accident, or disaster. Or a person may experience inner conflict so intolerable that his mind is forced to separate incompatible or unacceptable information and feelings from conscious thought."
>
> -Merck Manual Home Edition
>
> "Evolution of the concept of dissociation led to the description of a constellation of varied clinical manifestations attributed to it, including altered perceptions of physical sensation, time, memory, and the perceptions of self and reality."
>
> -Robert Scaer, MD [end page 2]

Dissociation and in particular somatic dissociation, is the loss of body-based sensory information, and the inability to proactively interface with symptoms or sensations. Dissociation can be the result of a barrage of painful and stressful stimuli to the nervous system without corresponding release and integration. When humans are subjected to these painful stimuli **they activate evolutionary protection and survival mechanisms**. These biological mechanisms **shut down self-awareness** in an effort to numb oneself to the pain. With the loss of this innate biological self-awareness, we lose the ability to advance brain body feedback and therefore are unable to detect early disease states and proactively create change. Dissociation can rob us our very sense of joy and purpose. The true cause of all this suffering is seldom addressed: that is non-dissipated, nonintegrated, traumatic energy. **Frozen traumatic energy arrests higher stages of human development and evolutionary potential**.

Trauma, and its resulting types of dissociation, leaves us with a deep lasting fear of our inner self, including emotions and bodily sensations. It is absolutely essential if humans are to evolve to enlightened state of consciousness and health that they develop the ability to proactively interact with all bodily sensations, symptoms, and diseases without creating fear, arousal and dissociation.

We believe that **there is no greater hindrance to human survival, health and development** than that of unresolved trauma in the individual, which inevitably leads to **continual and unconscious perpetuation of suffering from generation to generation**.

The plan's mechanism solves

Harvard 17---Harvard Law Review is a law review published by an independent student group at Harvard Law School. , 1-5-2017, <MGreen> ("Mending the Federal Sentencing Guidelines Approach to Consideration of Juvenile Status," https://harvardlawreview.org/2017/01/mending-the-federal-sentencing-guidelines-approach-to-consideration-of-juvenile-status/)

This Part provides preliminary recommendations for Congress and for the Commission **to reform** the Guidelines' current treatment of youth status to align with the commands of Roper and its progeny **and the statutory sentencing obligations under § 3553(a).** First, in an ideal world, the juveniles-are-different cases would inspire robust front-end assessment of transfer to adult status and provisions allowing the conviction of juveniles in federal courts. The Court's recent hesitance about the application of formerly accepted penalties to juveniles should not merely lead to narrow consideration of the specific provisions at issue in those particular cases. Instead, Congress should first reconsider now-antiquated, pre-Roper laws that brought juveniles under the jurisdiction of federal courts. Congress should consider reenacting an FYCA–like regime, under which judges could have substantial authority to tailor a sentence to the needs of a particular juvenile offender. Such a scheme could still be tailored to promote uniformity and consistency within the category of youth offenders. Second, Congress should address, **with an additional provision of § 3553**, the issue highlighted in Under Seal. Such a provision would make clear how judges should sentence a juvenile when the statutory minimum penalty cannot be constitutionally applied to that juvenile. A provision could, for example, require a judge to impose a term-of-years sentence unless a juvenile's crimes do not reflect the transience of youth, an approach that might encourage — and honor the Court's preference for — robust consideration of youth status. Third, and relatedly, **Congress should provide a definition for § 3553(a)'s "offender characteristics**" and make clear what factors should be or cannot be considered. At present, a judge is required to apply both the Guidelines and § 3553(a) in developing a penalty, but because § 3553(a) does not make clear what might be considered, it may be neglected as a means of guiding **sentencing**. To be sure, if implemented, these suggestions would require judges to do significantly more weighing of the individual facts of a given juvenile offender's youth status and how that status bears on the offender's culpability, receptiveness to deterrence, and capacity for rehabilitation. But concerns about judges' capacity to weigh such factors evenly can be partially alleviated with a fourth change: the Commission should develop a robust and clear primer on the sentencing of juvenile offenders. The Court has made clear that juvenile status is not just one relevant offender characteristic, but also a particularly powerful characteristic that changes our cultural and legal conceptions of which types of punishments are appropriate and which are wholly off the table. The Commission should excise provisions of the Guidelines that discourage consideration of youth and instead encourage robust consideration of youth, not just in identifying an offender's criminal history score or in coming up with an offense level, but as a process separate from application of the standard sentencing table. Finally, higher courts might use the presumption of reasonableness in appellate review as a means of prompting these changes. As discussed in section I.A, in Rita the Supreme Court held that appellate courts may apply a nonbinding presumption of reasonableness when reviewing within-Guidelines sentences.144×144. Rita, 551 U.S. at 353. Until Congress and the Commission address the tension between Roper and its progeny and the youth-related guidance currently offered in the Guidelines, appellate courts should deny a presumption of reasonableness to within-Guidelines sentences when there is no evidence that a sentencing court considered youth in sentencing an offender who committed a crime as a juvenile. The federal sentencing regime has not yet precisely accounted for the Court's juvenile sentencing revolution. Doing so requires that courts, Congress, and the Commission take seriously both the letter and spirit of these juveniles-are-different cases.

Federal action is key

NJJDPC 14---National Juvenile Justice and Delinquency Prevention Coalition are activists for juvenile justice, 2014,<MGreen>("Promoting Safe Communities: Recommendations for the Administration OPPORTUNITIES FOR JUVENILE JUSTICE & DELINQUENCY PREVENTION REFORM", https://www.sentencingproject.org/wp-content/uploads/2015/12/NJJDP-Coalition-Promoting-Safe-Communities-2013.pdf)

Juvenile justice systems across the United States are in urgent need of reform, and federal leadership is necessary to advance the pace of change. Despite a steady drop in juvenile detention and out-of-home placements over the past decade, there are still far too many young people securely detained and placed away from home who could be handled more effectively in their own communities. Although the number of juvenile arrests accounts for a small portion of the nation's crime and has been on the decline for the past decade, each year, police still make approximately 1 million juvenile arrests;1 juvenile courts handle roughly 1.5 million cases;2 and more than 250,000 youth are prosecuted in the adult criminal justice system.3 On any given night, approximately 70,000 youth are placed in secure confinement**, 4 and 10,000 children are held in adult jails and prisons**.5 Current juvenile justice policies and practices too often ignore children's age and amenability to rehabilitation, cause long-term collateral consequences, waste taxpayer dollars, and violate our deepest held principles about equal justice under the law and the role of the juvenile justice system. Many state systems exhibit racial and ethnic disparities, lack sound mental health and drug treatment services, and apply excessively harsh sanctions for minor and nonviolent adolescent misbehavior. Too often, community safety is jeopardized when states and localities adopt costly and overly punitive approaches that are shown repeatedly to produce the worst outcomes for children, their families, and public safety, including high rates of re-offense and higher severity of offending due to justice system contact.6 These practices and policies continue despite the fact that the United States **Supreme Court has held three times in the last three years that children are different from adults**. In its 2010 ruling in Graham v. Florida, the Court struck down life-without-parole sentences for youth convicted of non-homicide offenses. Two years later, the Court decided in Miller v. Alabama, that mandatory life-without parole sentences imposed on youth violate the 8th amendment ban on cruel and unusual punishment. In 2011, the Court ruled in J.D.B. v. North Carolina that youth status matters in areas of youth justice beyond the context of harsh sentencing policies when it imposed the requirement that law enforcement officials must consider the age of a suspect in determining whether Miranda warnings should be issued. These rulings followed in line with the Court's reasoning in Roper v. Simmons, which outlawed the death penalty for children in 2005, and relied on growing bodies of adolescent development research proving the unique characteristics of children-- their lessened culpability, their unique vulnerability to peer pressure, their lack of understanding of the consequences of their actions and impulse control, and their particular capacity for rehabilitation-- that led the Court to conclude that children are categorically less culpable than adults. As a result, the J 2 parameters for how we treat children in the U.S. justice system are forever changed and require this Administration to reexamine practices that ignore the fundamental differences between children and adults and provide leadership to states that is consistent with these rulings. With strong federal leadership, the pace of juvenile justice reforms can be accelerated. Research over the past 20 years has increased our understanding of what works and how to best approach juvenile delinquency and system reform. Many jurisdictions across the country are implementing promising reforms, and there is an increasingly clear path for moving toward evidence-based approaches to reducing adolescent crime. In August 2012, led by a bipartisan group of state lawmakers and governors, the National Conference of State Legislatures released a report highlighting successful efforts from around the country.7 The Obama Administration has the opportunity and responsibility to restore an effective system of juvenile justice for our youth and should begin by focusing on the following five priority areas: 1) Restore Federal Leadership in Juvenile Justice Policy 2) Support and Prioritize Prevention, Early Intervention, and Diversion Strategies 3) Ensure Safety and Fairness for Court-Involved Youth 4) Remove Youth from the Adult Criminal Justice System 5) Support Youth Reentry I. Restore Federal Leadership in Juvenile Justice Policy Over the past decade, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) **has suffered a drastic depletion of funding and support, and the agency's commitment to both current and core concerns in juvenile justice has steadily waned**.8 **Funding levels for OJJDP have declined more than 90 percent** since 2002. In addition, the Juvenile Justice and Delinquency Prevention Act (JJDPA), authorizing legislation for OJJDP**, is more than six years overdue for reauthorization**. The National Academy of Sciences recently released a report detailing the important federal role of OJJDP and the value of the JJDPA.9 Going forward, the Administration must provide the clear direction and resources needed to facilitate true and impactful reforms in all States, territories and the District of Columbia, building on innovative and evidence-based approaches to create and sustain juvenile systems that cost less in terms of both human suffering and financing, enhance public safety, prevent delinquency and court contact in the first place, and give court-involved youth the best possible opportunities to live safe, healthy and fulfilling lives. Recommendations for the Obama Administration Restore and **Increase Funding for Research-Driven Reforms As a national agency with access to and command of**

national resources, OJJDP is 3 well positioned to focus on identifying, developing and promoting what works to reduce delinquency and advance youth, family and community success. OJJDP should continue to evaluate the evidence base for promising programs, support increased research to explore and develop new evidence-based approaches, **and discontinue federal funding for approaches that are ineffective at protecting public safety and harmful to youth, like boot camps and zero tolerance policies**. We commend the Administration for attempting to reverse proposals to deeply cut and completely eliminate core juvenile justice funding. Yet, there is an absence of a strong voice to support for the juvenile justice formula grants that allow the federal government to partner with all 56 states, territories and DC – to do the greatest good for the greatest number. **Federal funding available to support implementation of the JJDPA and other improvements** by state and local governments **has steadily declined by 83 percent** from 1999 to 201010 and the appropriations caps contained in the Budget Control Act of 2011 have only accelerated the scope of the cuts. We applaud the Administration's FY 2013 budget, which proposed $140 million for three critical juvenile justice programs: $70 million for Title II of the JJDPA; $40 million with no earmarks for Title V of the JJDPA, and $30 million for the Juvenile Accountability Block Grant (JABG). Although this is slightly below the $175 million that we recommended for these programs, it is higher than congressional appropriations for FY12 and comes closer to meeting the needed core support for state juvenile justice systems. In these tight economic times, we understand the importance of investing wisely. These are relatively modest, targeted federal 4 investments in state and local juvenile justice programs that can pay huge dividends in the form of public safety, reduced recidivism, and better outcomes for youth. **The President's budget should continue to recommend appropriations levels that seek to restore juvenile justice funding to its FY 2002 levels, adjusted for inflation, and increase these investments over the next five ye**

Natives – Exts

The problem is specific to the federal system

Indianz 18 (Indianz, Native American news, owned and operated by Ho-Chunk Inc., the economic development corporation of the Winnebago Tribe; "'A hopeful future': Addressing Native youth in the justice system," 9-21-2018, Indianz, https://www.indianz.com/News/2018/09/21/a-hopeful-future-addressing-native-youth.asp, accessed: 6-20-2020)//ddv

In 2016, for example, more than 11,000 young Natives were arrested by state and local authorities, compared to just 20 in the federal system. But the data showed that Native Americans were overrepresented at the federal level. Of all federal youth arrests between 2010 and 2016, **18 percent were Native**, according to the report, even though they comprise just **1.6 percent** of the nationwide population. The Department of Justice explained the disparity to the GAO by noting that the federal government exercises jurisdiction over certain crimes in Indian Country. But that doesn't immediately explain other differences in the way Native youth were treated. For example, offenses among youth of all ethnic groups and races were similar at the state and local level. Property crimes and public order crimes were charged at around the same rates, the data showed. In the federal system, on the other hand, Native youth are most often charged with crimes against another person, such as assaults and sex offenses. Non-Native youth, in comparison, **are more likely to face less serious charges.** The disparity is even more pronounced because **there are more young non-Natives confined in the** Federal Bureau of Prisons (**BOP**) **than Natives**, according to the report. That means **Native youth are more likely to be face harsher punishments in the federal system than their counterparts in both the federal and state systems.** "Native American youth who were sentenced and confined by the federal justice system—in BOP's custody—had longer sentences compared to non-Native American youth from fiscal years 2010 through 2016, according to analysis of available data," the report stated.

Subjecting native juveniles to sentencing guidelines questions tribe sovereignty AND disproportionately imprisons native children

Standefer 00 (Amy, attorney for the Department of Justice, JD from University of Minnesota Law School, MA from American University; *The Federal Juvenile Delinquency Act: A Disparate Impact on Native American Juveniles*, pp. 494-502, 2000, 84:473, HeinOnline)//ddv

II. COMBINING FEDERAL JUVENILE DELINQUENCY POLICY WITH AMERICAN INDIAN LAW: AN UNJUST RESULT Subjecting Indian juveniles to the Sentencing Guidelines based purely on their jurisdictional status **does not serve the interests of justice.** Although punishing Indian juveniles more harshly may be lawful or even constitutional in theory, this practice is in direct conflict with the purpose of the FJDA. 12' Allowing for the transfer of Indian juveniles, regardless of whether their respective tribe is willing and able to assume jurisdiction, undermines the federal government's policy of recognizing juvenile delinquency as a state and local problem and **threatens the remaining vestiges of tribal sovereignty**. 22 The current system not only disregards congressional intent to only adjudicate serious felony offenses, but it also **contradicts** the Sentencing Guidelines' goal of reducing the occurrences in which minority defendants receive longer sentences than white defendants. 123 A. CONSTITUTIONALITY VERSUS PRACTICALITY Although the FJDA is technically constitutional, its effect on Native American juveniles is **neither rational nor reasonable**. The statute provides that the federal government will only assume jurisdiction over the most serious violent felonies. 124 In practice, however, the FJDA subjects most Indian juveniles to federal prosecution-not solely those who have committed serious violent felonies. 125 For example, in United States v. Dion L., Judge Black granted the government's motion for transfer as an adult not because Dion L. had committed the most serious violent crime, but because he did not feel that five years was a sufficient amount of time to rehabilitate Dion and protect the public's safety.126 Exposing Native American juveniles to the harsher penalties of the adult criminal justice system solely because the federal system does not have adequate juvenile facilities 127 or cannot detain the juvenile for an adequate period of time is not rationally tied to the FJDA's overall purpose. Rather than keeping less serious offenders out of the criminal process and prosecuting only the most serious Indian juvenile offenders, the system facilitates the criminal prosecution of mainly Indian

juveniles. Furthermore, while federal adjudication of cases involving a substantial federal interest is justifiable, failure to determine tribal jurisdiction and the availability of tribal juvenile facilities before proceeding against an Indian juvenile committing a less serious offense is unreasonable. Congress expressly provided that as long as **state (or local) authorities are able or willing to exercise jurisdiction over the juvenile and the state has adequate programs for the juvenile's needs, federal courts will continue to defer to state authorities for less serious juvenile offenses**. 128 But because § 5032 of the FJDA does not expressly require a certification as to tribal authority, the federal government readily assumes jurisdiction over Native American juveniles regardless of whether the tribal system is better equipped to handle the youth.129 This practice of taking tribal disputes from the reservation and placing them in federal court deprives Indian juveniles of the benefits of local treatment programs that may be more appropriate for their rehabilitation. 130 B. IN THE INTEREST OF JUSTICE: DID CONGRESS INTEND TO PUNISH NATIVE AMERICAN JUVENILES MORE SEVERELY THAN NON-INDIANS? Although § 5032 provides for federal adjudication of Indian and non-Indian juveniles, Congress did not deliberately intend that the vast majority of juveniles subjected to the federal criminal justice system and the Sentencing Guidelines would be Native American. Neither the Major Crimes Act nor the FJDA contemplated this point. In fact, the FJDA only mentions Native Americans in the context of the tribal opt-in provision. 131 Even though federal authority to prosecute young offenders may have **increased over the years,** the government continues to profess that federal criminal prosecution is not appropriate for most juvenile offenders and that state and local authorities are better equipped to handle juvenile matters. 132 When Congress provides for Indian juveniles to be processed through the federal criminal justice system, and the possibility of transferring a juvenile to adult status applies to all juveniles who fall under the FJDA's jurisdiction, then the federal prosecution of those juveniles becomes at least theoretically possible. 133 It does not necessarily follow, however, that Congress deliberately concluded that it would be appropriate to subject primarily Indian juveniles to the adult criminal justice system. Congress enacted the FJDA for many reasons that were unrelated to the federal prosecution of Native American juveniles. For example, Congress initially enacted the FJDA to provide federal leadership and coordination in the efforts to develop programs for the prevention and treatment of juvenile delinquency. 134 Similarly, when Congress enacted the FJDA it prescribed a preference for state and local treatment, recognizing that juvenile matters are best handled by state authorities. 135 These reasons contradict the notion that Congress believed Indian juvenile matters were best handled by federal prosecutors. 136 Nor is there any evidence that Congress directly considered that the intersection between the FJDA and the Major Crimes Act would lead to the federal prosecution of primarily Indian juveniles. There is no legislative history suggesting that Congress considered this implication when it enacted the FJDA.' 37 Furthermore, the assumption of federal jurisdiction over Indian juveniles invades upon tribal sovereignty. In United States v. Wheeler,138 the Supreme Court held that a federal statute appearing to invade on tribal sovereignty would not be so read, absent a clear statement to the contrary. 139 Thus, even though § 5032 does not expressly provide for certification as to tribal authority, courts should presume that certification is required, absent statutory language or congressional intent to the contrary. Instead of reading congressional silence in favor of tribal sovereignty, Juvenile Male incorrectly held that the federal government could exercise jurisdiction over Indian juvenile matters without requiring certification of tribal authority. 140 Because the statute does not expressly abrogate tribal sovereignty, § 5032 should **only** apply to Native American juveniles if the Attorney General finds that the tribe lacks jurisdiction or adequate juvenile facilities.' 41 **Doing otherwise flouts congressional intent and tribal sovereignty.** Finally, Congress expressly provided that federal courts would only prosecute the most serious instances of juvenile criminal conduct. 42 Again, there is no indication that Congress deliberately intended that Native Americans would be the exception to the rule. The statutory and legislative history are silent in this respect. 43 Without intentionally providing that Native American juveniles would be treated differently under the statute, subjecting Indian juveniles to federal prosecution for typical state law crimes, such as assault or burglary, is not in the interest of justice and **infringes upon tribal sovereignty**.1 44 Furthermore, a primary goal of the Sentencing Guidelines was to address the fact that minority defendants receive longer sentences than their white counterparts.' 45 The disproportionate consequences that Indian juveniles face as a **result of their transfer to adult status within the federal system** directly contradicts this goal and undermines our criminal justice system. III. REMEDIAL OPTIONS: TRIBAL CONSENT AND YOUTHFULNESS AS A MITIGATING FACTOR In order to rectify the disparate impact produced by § 5032, Congress must amend the statute to require tribal authority certification for less serious offenses. Recognizing tribal jurisdiction over Native American juveniles would better reflect the federal government's goal of removing juveniles from less appropriate federal channels and promoting tribal selfgovernance. 146 Congress initially enacted the FJDA to provide for the rehabilitation of juveniles. Today, the federal system has taken a more punitive approach towards juvenile

offenders that may not be in accordance with Indian tribes' cultural or moral values. Currently, the certification provisions respect a state's juvenile delinquency policy, which may be very different than the federal government's policy, but do not grant the same courtesy towards tribal governments. Allowing tribal governments to adjudicate their own youth **promotes the interests of the juvenile and the tribal government's ability to manage its own affairs.** 147 Furthermore, the certification provisions would only require the Attorney General to defer to the tribal government if the tribe had original jurisdiction over the youth and adequate treatment facilities for the treatment or rehabilitation of the juvenile. 148 The federal government would still maintain jurisdiction over violent felony offenses in which the federal government has a substantial federal interest.149 In addition, Congress should provide alternative sentencing options for less serious youthful offenders who are transferred to adult status. Congress could accomplish this by allowing federal judges to formally recognize "youthfulness" as a mitigating factor for less serious juvenile criminal acts. 150 For example, where federal courts would allow the transfer of Indian juveniles primarily because the juvenile system is not able to detain the individual for an adequate period of time, 151 the judge or jury would be able to consider the mitigating effect of the defendant's age in evaluating his culpability and in imposing his sentence. 152 The court would then be **allowed to use youthfulness to provide a more appropriate sentence** without excusing the youth's criminal conduct.153 Protecting juveniles from the full penal consequences of their actions would more accurately reflect federal emphasis on rehabilitation over punishment154 Congress could also create a sentencing formula whereby an Indian juvenile would be required to serve 50-60% of her federal sentence as opposed to 85% of her sentence. 55 For example, the courts could adopt the concept of "youth discount" that represents a sliding scale of criminal responsibility for younger offenders at sentencing. 156 The youth discount approach rests upon the belief that juveniles are less culpable than adult offenders because of their limited capacity to make responsible choices.' 57 This approach would reduce sentencing based on the defendant's age. 158 Accordingly, thirteen year-old juveniles would face shorter criminal sentences than juveniles nearing their eighteenth birthday. 59 In the alternative, Congress could create intermediate sentencing guidelines that would automatically reflect the sentence reduction and would apply only to those juveniles who are subject to federal prosecution based on their jurisdictional status. Both of these options would provide a tighter correlation between the nature of the offense and the rehabilitation potential of the juvenile offender.160 Furthermore, the sentencing alteration would **reduce the disparity between state and federal sentencing of Indian juveniles** and provide for a more **equitable judicial system**. Congress's failure to adopt these measures reflects a misunderstanding of the relationship between the United States and Native American tribes. For example, the Senate Judiciary Committee has argued against increased tribal authority over juvenile offenders because, it claims, it will create sentencing disparities, not uniformity. 16' The Committee asserts that because federal law limits the amount of punishment a tribe may impose on a criminal defendant, 162 persons committing murder, rape, robbery, or burglary in Indian country would receive a maximum of one-year imprisonment.16 3 This, the Committee asserts, is unreasonable and violates the equal protection component of the Fifth Amendment's Due Process Clause.1' 4 What the Committee fails to consider, however, is that Congress could readily prevent this problem by lifting the limitations it has imposed on tribal sentencing and fines. Lifting the limitations would provide further impetus for Congress's efforts to strengthen tribal self-governance and it would allow persons committing more serious crimes to be punished accordingly.

Psychological Harm – Exts

Exts - Framing

National security discourse psychologically conditions debaters to *accept* everyday violence.

Voss 18 (Loren, Harvard Frederick Sheldon Traveling Fellow currently residing in Israel, lawyer with a J.D. from Harvard Law School and an M.A. in Global Affairs from Yale University, not the super cool GBS coach, "Choosing Words With Purpose: Framing Immigration and Refugee Issues as National Security Threats to Avoid Issues of Social Policy," http://yalejournal.org/article_post/choosing-words-with-purpose/, CMR) *edited

United States: The Fear of Terrorists in Sheep's Clothing Recent debates in the United States focus on preventing people from certain countries from arriving in the first place. However, the rhetoric about the threat these people pose to the States is not dissimilar to the issue's historical framing or the framing used in other countries. This **framing** is **intentional**, as evidenced in a leaked 2005 memo from Dr. Frank Luntz, a famous communications expert, to one of the major political parties in the United States (the party of President Trump). He suggested using specific frames to get support for the party's positions on immigration, such as: "Border security is homeland security. In a post-9/11 world, protecting our borders has taken on a whole new importance. It's not just about economics or even quality of life. It's about **preventing the next September 11th.** We don't know who is entering the country each day. We don't know why they are here or what they plan to do. What we do know is that terrorists can't attack America if terrorists are kept OUT of America."[26] As fear of terrorist attacks in the United States grows, this suggested framing has become the **dominant narrative in** the U.S. **debate** regarding refugees.[27] In the fall of 2015, over half of all U.S. state governors issued statements declaring that they would bar any Syrian refugees from settling within their state, citing the fear that violent extremists would enter the United States disguised as refugees.[28] Although these proclamations do not have legal force in themselves, many Governors can affect resettlement in roundabout ways—such as instructing state agencies to stop supporting relocation efforts and cut funding to resettlement programs.[29] Additionally, their statements set the tone and frame for the entire state government apparatus as one of security, such as an invocation of emergency powers to protect the state's citizens (Robert Bentley, Alabama) or the necessity of taking immediate action to ensure that terrorists do not enter the state under the guise of refugee resettlement (Sam Brownback, Kansas).[30] President Trump has promulgated three different bans on individuals based on nationality. The names of the orders alone explicitly link national security to refugees and immigrants. Executive Order 13,769 ("EO-1") and Executive Order 13,780 ("EO-2") are entitled "Protecting the Nation from Foreign Terrorist Entry into the United States", and the third travel ban is entitled "Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats" (referred to as "EO-3" by the courts although it is a Presidential Proclamation).[31] Individuals and organizations have successfully brought motions in court for injunctions to stop the enforcement of portions of the bans. Although the eventual legal outcome of the third version of the travel ban is uncertain, the historical comparisons are already apparent. Although the United States has a history of banning certain nationalities, the Japanese internment during World War II is the most relevant to the current debate.[32] The government used **the claim of a national security threat** to **prevent scrutiny** over the necessity its actions, and the court system provided an additional stamp of legitimacy. In the case Korematsu v. United States, the Supreme Court upheld the conviction of Fred Korematsu for remaining in an area after a military order forbid all persons of Japanese ancestry from being present. Korematsu did not turn himself into military authorities because he knew it would result in being sent to an internment camp, yet the Supreme Court held that the exclusion order was justified by the exigencies of war and the threat to national security. A 1982 government report found that military necessity did not actually warrant the exclusion and detention of ethnic Japanese and instead were driven by "race prejudice, war hysteria and a failure of political leadership."[33] The Supreme Court's decision enabled the government to shield its racially discriminatory policies in the cloak of national security. The district court judge that overturned Korematsu's conviction in 1984 expressed what the Supreme Court's decision in Korematsu v. United States now represents—a warning: [I]t stands as a constant caution that in times of war or declared military necessity our institutions must be vigilant in protecting constitutional guarantees. It stands as a caution that in times of distress the shield of military necessity and national security must not be used to protect governmental actions from close scrutiny and accountability. It stands as a caution that in times of international hostility and antagonisms our institutions, legislative, executive and judicial, must be prepared to exercise their authority to protect all citizens from the petty fears and prejudices that are so easily aroused.[34] Today, the criticism of **the travel ban is similar**—the United States government is claiming there is a threat from specific countries in order to avoid scrutiny over restricting the movement of a specific group of people. It is attempting to **frame the debate** in a manner that those on the other side are now **forced to spend time and effort arguing** that foreigners are **not national security threats**, instead of addressing **broader issues** of **social policy**. Perhaps because of the warning the earlier case now provides, the courts have been less willing to take the government's

word that such discrimination is "necessary." No longer are the lower courts refusing to scrutinize the government's claim of necessity; they are pulling back this curtain to question underlying assumptions. The Ninth Circuit Court of Appeals, in upholding a preliminary injunction that stopped the enforcement of the refugee section of EO-2, stated, "the President did not meet the essential precondition to exercising his delegated authority: The President must make a sufficient finding that the entry of these classes of people would be "detrimental to the interests of the United States."[35] However, the Supreme Court, in reviewing the injunction, ruled that it would ~~stand~~ for those refugees that have a bona fide relationship with an American individual or entity (i.e. the ban could not be enforced against them), but that it would not ~~stand~~ (i.e. the ban could be enforced) against those without such a connection to the United States because "the balance tips in favor of the government's compelling need to provide for the Nation's security."[36] After the courts held that the justification was not sufficient, EO-3 was the first version to provide reasoning for the claim that the bans were necessary for national security.[37] It stated that Homeland Security reviewed the travel ban, and because certain countries were not sharing information, they could not separate the good from the bad—similar to the argument the government made for Japanese internment and its inability to separate loyal from disloyal. However, critics note that **none of the countries included in the travel ban have been tied to any terrorist attack in the United States**. Both the Fourth and Ninth Circuits held that the new national security justification of EO-3 was not sufficient to make it legal in its entirety, and the country is currently waiting for the Supreme Court to rule.[38] The turn to the courts gives hope of the rule of law mitigating the adverse effects of vocabulary and framing intended to drive support for specific "solutions" to immigration issues. The courts are now pushing past the facade and asking for legitimate support for the government's assertions. However, the courts are limited to the national security frame the government has provided—it is not their place to address social policy and the larger forces behind immigration. Conclusion The current debates in both Israel and the United States illustrate a worldwide phenomenon in which politicians and media are framing the issue of migration as one of national security and choosing vocabulary that **reduces citizens' sympathy** and **increases their fear** . In so doing, they are deliberately attempting to reduce support for addressing the underlying causes of the mass movement of people today, many **escaping threats to their very lives**. Psychology provides us with the "why" and "how" of government and media campaigns: (1) vocabulary affects how people think about asylum-seekers and state responses to them, and (2) that **framing bias** allows a **national security framing** to **narrow the solution set avoiding** those that might address social issues. History and the law are tools. History can be used to invoke fear, as is done in Israel, or as a warning not to take the government's national security argument at face value, as is done in the United States. Law can be a mitigating force, like it is in present day Israel and the United States, but it can also exacerbate the threat, as in the United States during World War II. History and the law, however, are not capable of changing the debate and opening the discussion to wider social policy issues. For that, we need new tools that can **counteract** the **manipulation** of people's **emotions** and **decision preferences**. For that, **we need to** understand psychology and purposely choose words that **change the debate**.

Physical and psychological pain are categorized as the same rubric

Biro, 10 -- holds a Ph.D. in English Literature from Oxford University and an M.D. from Columbia University (David Biro, Is There Such a Thing as Psychological Pain? and Why It Matters, PubMed Central (PMC), 9-10-10, 6-30-2020, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2952112/)//OD

"They say passing a kidney stone is the worst pain you could ever have. They're wrong. Sure it was bad. I remember whimpering like a baby in the Emergency Room. But it was a joke compared to this pain which never passes. It just keeps on going and eating me up inside. I still feel it now, intense as ever, 10 years later." Dan Vento is talking about the time his daughter suffered a relapse of an uncommon form of cancer called osteosarcoma. Jennifer was nine, the youngest of his three daughters. Dan and his wife Mary thought they had weathered the storm. The initial round of chemotherapy seemed to work. But a year later, Jennifer's left knee began to swell and hurt again, then her thigh, then her back. The cancer not only had returned but was now all over Jennifer's body, and it had happened so quickly that even the doctors were caught off guard. Naturally the Ventos tried everything, even a bone marrow transplant. But the cancer could not be stopped. Metastatic tumors invaded Jennifer's bones, obstructed her airways and destroyed her vision. Overnight, their little girl had become unrecognizable, from the cancer and from the aggressive treatments—a swollen, lumpy mass with tubes and IV lines hooked up to beeping machines. The worse part was that there was nothing they could do to help. They stood by, feeling as if the cancer were ripping through their bones too. Less than 2 months after the relapse Jennifer died. It was almost a relief at first; the Ventos couldn't bear watching their daughter suffer another day. But when they saw Jennifer in the little coffin, when they saw the coffin lowered into the ground, when they saw the earth covering the coffin—from that day on, their pain would never end. "I tried to be strong for my wife and kids," Dan Vento explained. "If they saw me crumble, how would they be able to keep going?" But despite the strong facade, Vento was crumbling. "I felt weak and lightheaded all the time, like I might pass out, and needed to grab onto something—a chair, the wall, anything—to keep from falling." Vento had always been tough. Though not physically imposing—he was short and stocky—he was a self-made man from the Bronx who owned a successful chain of grocery stores and always got whatever he wanted, at work and at home. When Jennifer died, however, he didn't seem to want much anymore and found it increasingly difficult to concentrate. His life began to unravel. There was only pain. Go to: Diverging Views Is what Dan Vento experienced–as he watched his daughter suffer, when he

buried her, and now, 10 years later, still entangled in grief—pain? He certainly thinks so and uses the word just as he did when he spent an agonizing night in the ER with kidney stones. So do many other people who undergo similar trauma, as well as those who suffer "pain" in psychiatric illnesses like depression and schizophrenia. Most professionals, however, would disagree. Scientists who study pain and doctors who treat pain consider the experience a strictly physical phenomenon, in the sense that it can only be caused by injury to the body. Pain occurs when receptors on nerve cells in the skin and internal organs detect potentially damaging stimuli, a pinrick, for example, or high temperatures (Melzack and Wall 1983, pp. 81–108). The nociceptors (from the Latin nocere, to injure) then signal the brain, which assesses the threat and coordinates a series of protective responses. We pull the arm away from the flame; we rest the broken leg. This highly effective biological warning system that prevents further damage and aids in healing is something we can't live very well without. Just think of patients who are unable to feel pain, those with genetic defects and those with diseases that affect nerve transmission like diabetes and leprosy; the benefits of life without pain are easily outweighed by the negatives of progressive injury to the body and premature death (see Brand and Yancey 1997). Dan Vento has suffered no physical injury. Nor have patients who experience the psychic pain that accompanies acute depression. Nor have cancer patients (and their parents) who experience the overwhelming fear and anxiety and isolation that accompany the physical symptoms of their illnesses. Their nociceptors, at least with respect to these particular feelings, remain silent, sending no distress signal to the brain. Therefore, their feelings are not really pain but something categorically different, what the professionals prefer to call suffering or anguish (Cassell 1991, pp. 30–46). And therefore, one will find no mention of grief or depression in medical classification schemes of pain. Even psychiatrists are wary of speaking about pain in their patients, reserving it only for those rare and strange cases of psychogenic pain or somatoform pain disorder—that is, physical-like pain localized to a part of the body that has not been injured, the modern-day equivalent to what Freud termed hysteria or conversion reaction (DSM 3, rev.; American Psychiatric Association 1987). The bottom line is that the psychological pain experienced by Dan Vento and millions of patients with acute depression is an oxymoron or, at best, a metaphor. It simply does not exist.1 Go to: The Subjective Argument How can there be such a gulf between the layperson and the expert, especially with regard to such a common part of life? And if the experts are right, how could ordinary people like Dan Vento as well as our language professionals—celebrated writers like William Styron and Joan Didion, for example, who wrote so eloquently about pain in depression (Darkness Visible) and grief (The Year of Magical Thinking)—have gotten things so wrong? Unless of course they haven't. Unless it's not the layperson but the expert who is confused. Perhaps one's instinctive tendency to see pain more broadly, as a category that incorporates both physical and psychological varieties, may be more enlightened than the expert's narrower conception. Perhaps there are good reasons for speaking of pain in the setting of grief or depression or schizophrenia or divorce or the nonphysical suffering that accompanies illness. Let's examine the evidence. In the first place, there is a wealth of subjective evidence—what people feel and think and then convey to others through language. When we ask people about certain aversive emotional experiences and listen to their words, we find that they not only use the generic word "pain" to label these experiences, but also describe them in the same ways they describe physical pain. Now pain of any kind is notoriously difficult to express. There are problems conceptualizing the experience because it is perceptually inaccessible (we can't see or touch pain) and because, unlike other inner states, it is not always linked to external objects that we can see or touch (like the person who makes us angry or the dog that makes us scared) (Scarry 1985, pp. 161–162; Biro 2010, pp. 11–47). As a result, one is forced to think about pain indirectly, through metaphor: we imagine a more knowable object linked to the pain and then speak of the experience in terms of that object. By far the most common metaphor used to describe physical pain is the weapon (Scarry 1985, pp. 15–19). We say that a pain is shooting or stabbing. Lengthy lists of similar adjectives can be found on the McGill Pain Questionnaire, created in the 1970s to help patients communicate their feelings to doctors. Pain can be described as piercing, drilling, burning, grinding, throbbing, stinging, squeezing, and so on. Each of the descriptors implies the presence of a weapon or weapon-like object that can injure the body—the drill that drills, the fire that burns. And since most patients have never been stabbed or shot or are not being stabbed or shot at the moment of pain, they are using these terms figuratively to objectify what would otherwise be difficult to pin down and represent; now they could see pain and describe how it feels by talking about knives and guns and the damage they can do the body. People with psychological pain use the very same metaphors to describe their experiences. Dan Vento, silenced for so long by the incapacitating pain of loss, will eventually open up to a psychiatrist. It felt like a bomb, he explained, that exploded inside of him, obliterating everything in his body. At other times, he felt the damage was occurring more slowly and methodically, as if there were a swarm of parasites eating away at his organs. But either way, the result was the same for Vento: he was being emptied out from the inside—"gutted" was the word he used—until all that was left was a big, raw gaping wound. When her husband died and she was flooded with grief, Joan Didion saw giant waves. In her memoir, she writes that she felt as if she were being battered by "destructive waves, paroxysms, sudden apprehensions that weaken the knees and blind the eyes and obliterate the dailiness of life" (Didion 2005, pp. 27–28). For Kay Redfield Jamison, a psychiatrist who suffers from manic depression, the weapon is a giant centrifuge, containing tubes of her blood. It spins around her mind faster and faster, out of control, until it explodes, splattering blood everywhere (Jamison 1996, p. 80). Listening to the language of pain of all kinds, we discover a shared felt structure that the weapon metaphor effectively captures (Biro 2010, pp. 79–96). Whether triggered by grief and depression or kidney stones and spinal injury, pain reads like a story in three parts: equation M1 In pain we feel as if there must be some weapon-like object (bomb, swarm of parasites, giant wave, centrifuge) that is moving toward and threatening us; that when it strikes, it will injure, possibly even destroy us; and that we must get away from it or shield ourselves at all costs. Even when there is nothing coming at us, when there is no injury, when we remain motionless, we feel the movement, the injury and the desire to run. Whatever happens that makes us feel these things—the loss of a loved one or the physical destruction of cancer—we experience pain. Go to: New

Objective Evidence The subjective evidence for the existence of emotional pain is compelling, especially since there is no objective way to verify and characterize someone else's pain. Although we can attach a person to a functional magnetic resonance imaging (fMRI) device, observe the blood flow to pain centers in the brain and then infer its presence, the only definitive test is a person's word: I feel pain or I don't. Actually, most experts grudgingly acknowledge the inescapably subjective nature of pain. In an addendum to their universally accepted definition of pain—"An unpleasant sensory and emotional experience associated with actual or potential tissue damage"—the International Association for the Study of Pain (IASP 2007) concedes that people do report pain for strictly psychological reasons and that, since such reports can't be distinguished from instances where there is a physical cause, they should be taken at face value: "If people regard their experience as pain and if they report it in the same ways as pain caused by tissue damage, it should be accepted as pain." But despite the concession, the IASP does not make room for the pain experienced by Dan Vento, Joan Didion, or Kay Redfield Jamison on their extensive classification schemes of pain disorders. While complex regional pain—which affects somewhere of the order of 6–26 people in 100,000 (de Mos et al. 2007)—appears on the list, the vastly more common pain occurring in grief or depression does not. For physicians and scientists that will only pay lip service to the subjective argument, however, there is now mounting objective evidence for broadening our notion of pain. Since the introduction of gate control theory in the 1960s, the link between tissue damage and pain has progressively weakened. We now have a better understanding why there can be severe injury and no pain (wounded soldiers in battle) and, conversely, no injury and severe pain (migraine, fibromyalgia). This happens, as prominent pain scientists Ronald Melzack and Patrick Wall have explained, because there are psychological factors—one's culture and past experiences, our emotional and cognitive states, the context of pain—that can intensify or dampen the nociceptor signal before it registers in higher brain centers (Melzack and Wall 1983, pp. 15–33). Moreover, many cases of chronic pain seem to occur without any direct nociceptor stimulation at all. Neuropathic pain results when a dysfunctional nervous system fires spontaneously or misinterprets ordinary sensory stimuli as noxious (Woolf and Mannion 1998). In tic dolouroux, for example, the movement of a feather across the face can trigger spasms of intense pain. A second strand of evidence comes from our growing understanding of how the brain processes pain. It turns out that pain is an incredibly complex perceptual system with multiple subsystems. Most important for this discussion, there are distinct areas in the brain that process the sensation of pain (its quality, location, intensity) and our feelings about the sensation (the narrative of its aversiveness) (Price 2000). Further, the sensory center (in the somatosensory cortex) and the affective center (in the anterior cingulate and insula cortices) are not only spatially apart but dissociable: that is, a person can have the sensation of pain but not feel pain (Grahek 2007, pp. 29–50). We can observe this in patients undergoing minor surgery with medication that makes them indifferent to being cut with a scalpel. Even more dramatic is a rare group of patients whose affective pain centers (or the connections to those centers) have been destroyed. In the case of pain asymbolia, patients can still sense a needle prick (because the nociceptor signal registers in the somatosensory cortex) but will laugh at its insignificance (because the signal is not processed by the anterior cingulate cortex). These instances of disconnect between the sensation and the feeling of pain tell us that despite the complexity of pain—which involves sensations and behavior, feeling, cognition and memory—the critical component is feeling. If we don't have the feelings that Dan Vento had when the kidney stone was passing through his ureter—that something bad was happening to him, that that something was damaging his body, and that he must do whatever he could to avoid further damage—then pain loses its biological value. Because they laugh at pain rather than run from it, pain asymbolia patients will likely fare no better than patients with congenital or acquired pain insensitivity. In fact, I would argue that if we don't feel pain, there's no point using the term at all. Leprosy patients, soldiers on the battlefield, sedated patients undergoing surgery, pain asymbolia patients—they may experience unpleasant sensations but they don't feel pain and don't take protective measures. Everything is contingent on the feeling of pain. If tissue damage is not necessary to feeling pain and if there is a special affective center in the brain devoted to such feeling, why can't that center be activated by means other than the nociceptor pathway? Why isn't it possible that noxious psychological stimuli—stimuli that threaten the emotional well-being of a person, like the loss of a child or the pain of depression or the suffering of cancer patients—find their way to the anterior cingulate gyrus, making us feel the same way we do when we experience physical pain? This is precisely what scientists are discovering. Naomi Eisenberger and her colleagues at UCLA have recently developed a clever model of psychological pain that can be studied objectively (Eisenberger et al. 2003). Normal subjects played a video ball-tossing game while their brains were monitored by fMRI. When the subjects were excluded from the virtual game, they experienced distress that correlated with increased blood flow to the anterior cingular and insular cortices, exactly the same pattern that would have occurred had they been stuck by a needle. The greater the social distress generated, the more active these affective pain centers became. Studies done on saddened and grieving subjects produced similar results (Gundel et al. 2003). It appears that the layperson's intuition about pain is being borne out by science; psychological pain seems to run on the same neural tracks as physical pain. And why shouldn't it? Just as physical stimuli that can damage our bodies prompt certain feelings and responses, so too should psychological stimuli that can damage our psyche like the loss of a child or the intrinsic symptoms of depression. Just as we need to rest the body to protect ourselves from further harm, so too should we protect the mind. This more complete and comprehensive warning system certainly makes sense from a biological perspective. Go to: Why Words Matter Does it matter whether we call Dan Vento's feelings pain or suffering? Is this just a semantic issue, a disagreement between two sets of language users that, in the end, doesn't have any adverse consequences? Yes, it does matter, and yes, it has adverse consequences. It matters because the disagreement reflects a much larger issue: the rigid mindset of the scientific community, which sees the world in a certain way and won't allow for deviation, even from dissenters within its own ranks. Science focuses its spotlight exclusively on the objective world, what can be studied, quantified, and explained. Because it seems resistant to such inquiry, the subjective realm has been traditionally off limits, something that can only be appreciated on much looser terms by the humanities and the "softer" sciences (e.g., psychology). This mindset informs values, and not just the values of scientists. Because of their position in the intellectual hierarchy, there is a trickle-down effect, which carries over to the practical science of medicine and to the culture at large. In the case of pain, there is only one kind, the real or physical kind that can be objectively

verified by observing nociceptor activity or finding lesions on a CAT scan. Other experiences that may feel like pain but cannot be linked to tissue damage are not pain. Much more subjective and less transparently material, they are therefore derivative, less important, and better labeled something else (suffering or anguish). While psychological pain may be unpleasant, the fact remains that it is "in our heads," not our bodies. As we continue to unfold the logic of the objectivist (and dualistic) paradigm—which has now thoroughly permeated our cultural consciousness—those who suffer without any physical corroboration to show for it inevitably begin to appear suspect. They are either crazy (mentally ill), deceitful (because there is no real pain) or weak (everything is painful to such people). They don't need pain doctors or pain medication, but psychiatrists and priests. Disregarding for a moment that that all pain is "in the head"—even Dan Vento's kidney stone pain, which he localized to the right side of his pelvis—the truth is that psychological pain is often more intense and dangerous than the "real thing." For Dan Vento, his bout with kidney stones, among the most painful of all medical conditions, was nothing compared to the pain of grief. Similarly, Lucy Grealy tells us in her memoir, Autobiography of a Face (1995), that she would much rather face the pain of cancer and its treatments than the far worse pain of feeling deformed and lonely (pp. 7, 170, 186). In fact, many such sufferers welcome, even court, physical pain, feeling that it actually alleviates their emotional pain to a degree. And when, unalleviated, the pain becomes too much to bear, some will choose to end it by ending life. Suicide rates are significantly higher in the setting of grief and depression than they are in the setting of physical pain (Schneidman 1998). In addition to relegating psychological sufferers to second-class status, the prevailing objectivist mindset is also detrimental to another large group of people. Sufferers of chronic pain conditions like migraine, lower back pain, and fibromyalgia find themselves somewhere in limbo between real pain and the derivative, mental kind. On the one hand, their pain seems physical (because it is localized to a part of the body), but on the other, it has more in more in common with psychological distress (because there is no detectable injury). For a long time, medicine had no idea what to do with these patients, and so they drifted from doctor to doctor without finding relief. Although their lives have improved with the introduction of pain specialists and pain clinics, chronic pain patients are still often tormented by the insidious logic of the objectivist perspective (see Heshusius 2009, pp. 1–19). Some, in fact, resort to self-mutilation to legitimize their pain in the face of ongoing skepticism from family members and doctors: "You see now," they will say, pointing to their slashed arms, "The pain is not in my head, it's real (see Padfield 2003, pp. 41–43). I bring up the seriousness of psychological pain and the limbo-like situation of chronic pain conditions because, like the work of a growing number of scientists, it goes against the grain of the prevailing mindset. Perhaps, then, we should change this mindset and broaden our outlook. Instead of privileging one type of pain over another, let's approach them in a more inclusive, democratic spirit, in which all pains are created equal. Or better yet, let's view pain as occurring on a continuum or spectrum that runs from one ideal (pain linked solely to physical injury) to another (pain linked solely to psychological injury). A spectrum of pain certainly matches our experience more accurately than the conventional paradigm. It accommodates our belief that the feeling of pain can arise from injury to the body as well as injury to the mind. It also accommodates our experience of the considerable overlap between the two varieties, that there is never pure physical or pure psychological pain but always combinations. Those suffering from grief and mental illness often have somatic complaints: Dan Vento felt the loss of his daughter in his gut; William Styron's descent into depression was accompanied by sleeping and breathing problems (Styron 1992, pp. 18, 42–43). At the same time, patients in physical pain inevitably suffer emotionally; cancer patients routinely feel terrified, helpless and lonely (Cherney et al. 1994). Moreover, the benefits of adopting a broader perspective go beyond validating and valuing our lived experiences. There are practical implications. For science, it would mean more support for the transformative work of researchers like Joseph LeDoux and Antonio Damasio into the subjective realm of feelings and emotions (LeDoux 1996; Damasio 1999). After all, these experiences are as material as the beating of the heart and the DNA molecule, even though at the moment we don't precisely know how to translate neural activity (brain language) into mental states (mind language). So too is psychological pain. Now that we know it shares neurological substrates with physical pain, scientists will no doubt look to extend the work of Eisenberger by finding the "nociceptor pathways" of psychological injury: How are feelings of grief or depression detected and transmitted to the anterior cingular cortex? and How could the signals be modifed? This new mindset might also lead to insight about pathological pain states. Dan Vento's prolonged grief—what psychiatrists classify as complicated grief—has much in common with certain chronic pain states. In both instances, the injury has long past and yet the reverberating pain circuit, no longer serving any biological purpose, continues. Are there similar mechanisms at work here, and might they be manipulated to help Vento escape from his self-destructive rut? There would also be changes in the clinical realm, improving the way doctors treat pain. Some patients may require more attention to the body; others, to the mind; the majority, to both. Here too there is room for innovative thinking. Take, for example, the placebo effect in clinical trials, in which a fake pill has been shown to relieve pain on the order of 15–30% of cases. Most investigators view the phenomenon as a contaminant that must be eliminated to assess the efficacy of the "real" drug. But why not switch frames, as Benedetti (2009) has urged, and focus just as diligently on the reality of the psychological factors that are equally effective, in some cases even more so (pp. 6, 30)? Why not try to harness and enhance these factors to help patients? This same novel way of thinking led DeWall et al. (2010) to administer physical pain medication (acetaminophen) to people suffering from psychological hurt, and not unsurprisingly, it seemed to work. One of the greatest twentieth-century thinkers, Ludwig Wittgenstein, showed that paying attention to ordinary language can help advance philosophy. Perhaps the same holds true for science. He also showed that clinging dogmatically to a certain picture can lead to conceptual illness (Wittgenstein 1958, Sect. 115). If we can thoroughly break with our unhealthy (and inaccurate) dualistic legacy and truly see that mind and body are inextricably connected, then we must agree with Dan Vento, Joan Didion, and many other sufferers that psychological pain exists and is just as important and worthy of our attention as physical pain. They are two sides of the same coin and should be spoken of and treated as such. Go to: Open Access This article is distributed under the terms of the Creative Commons Attribution Noncommercial License which permits any noncommercial use, distribution, and reproduction in any medium, provided the original author(s) and source are credited. Go to: Footnotes 1I am arguing here neither that psychic distress is any less real than physical pain nor that somatic complaints can accompany psychiatric illness—in fact, 50% of depressed patients report symptoms of physical pain (Katona et al. 2005)—but that psychic

distress can itself be painful in a meaningful sense, that it can be phenomenologically akin to physical pain and, therefore, should be categorized under the same rubric.

Exts – No Adult Trials

Lack of cognitive development means juveniles should never be tried in adult criminal court

Graber 19 (Rachel L. Graber is a graduate student at Cedarville University in their Criminal Justice Program), 04-23-2019, "Is it Acceptable for Juveniles to be Tried As Adults?," Cedarville University, https://digitalcommons.cedarville.edu/cgi/viewcontent.cgi?article=1001&context=criminal_justice_capstones// Eagan EL

Additionally, an individual's brain has not fully developed until approximately the age of 21; this causes a huge dilemma when the court chooses to try to charge juveniles as adults. A juvenile's brain **does not have the same capacity as an adult** to make decisions. Problem-solving and controlling impulsivity are some of the last sections of the brain to develop. There have been multiple studies done on the development of the brain, which proves that the frontal lobe is not fully developed until the early years of the 20s. The frontal lobe is the section of the brain responsible for controlling impulses, planning, thinking in abstract, and anticipating consequences. This is the last part of the brain to develop and it undergoes the most changes during adolescence. Layzell (2005) says that because of all the research there is now biological proof that the court system should not hold adolescents to the same standards as adults because they do not have the same ability to make sound decisions and prevent impulsive behavior (p.96). There is a vast difference in how juveniles and adults assess situations and how they make decisions. Although the juvenile may be committing an "adult" crime in nature and the severity of the crime does not change, the maturity and mental level of the juvenile should change the consequences of that crime (McCrea, 2008, p.14). Choosing to hold juveniles to the same standards as adults in their thinking and actions is unscientific and improbable. Since juvenile's brains are undeveloped, "…adolescents are generally forced to rely on the emotional centers of the brain rather than the underdeveloped frontal regions, thereby functioning more so on impulse than on strategic decision-making" (Powers, 2009, p. 257). Because standards are different for juveniles and adults, juveniles should be considered less culpable as well. Trying to defend the immorality of trying juveniles as adults, Powers (2009) states it this way, "The distinction between youth and adults is not simply one of age, but one of motivation, impulse control, judgment, culpability and physiological maturation" (p. 256). Science again shows reliable information that juveniles should not be held to the same standard as adults in the vast amounts of research done to support that juveniles are less culpable. Juveniles, especially first-time offenders, **do not fully understand the due process of law** or even the rights they have as an American citizen. Not only should they not be held to adult standards, but also, they cannot be expected to understand the criminal court process. If a juvenile cannot be trusted to drink, smoke, or rent a car; then they should not be expected of them to understand their rights in a criminal case either. Grisso's study to identify if juveniles are competent to stand trial, he expresses that juveniles do not have the "ability to make decisions to waive important rights in the context of their potentially immature perspectives regarding the implications of their choices" (p.3). Lastly, when a juvenile is tried through the adult system, there are multiple juvenile rehabilitation issues. Because adult sentencing is harsher than juveniles for violent crimes and murder cases; the life sentence and longer prison sentences are inappropriate for juveniles. When placed in an adult prison for multiple years, there is no ability or structure for juveniles to learn and develop in order to be capable of reintegrating into society. "[Juveniles] **are more amendable to treatment** in comparison to adults and therefore more likely to profit from efforts related to rehabilitation" (Bryan-Hancock, 2011, p.69). Juveniles do not respond to the

same punishments as adults, and prisons are unproductive for younger offenders. In McCrea's book, his research focuses on the rehabilitation needs of juveniles and how they respond to alternate scenarios. The rehabilitation needs are different depending on the age of the offender, and the younger the offender the more impressionable they are. Being impressionable gives way for correction and a safe reinstatement into society. "Moreover, minors sent to adult prisons are significantly more likely to re-offend, and twice as likely to be arrested for a more serious crime, than minors in the juvenile justice system" (McCrea, 2008, p. 15). Because juveniles are more susceptible and impressionable than adults, adult prisons are unproductive and harmful to juveniles placed there. Juvenile rehabilitation programs still need a lot of work and a lot of focus. It is hard work developing juveniles and taking the initiative and time to invest in them. A new philosophy on juvenile rehabilitation includes the following: group therapy, self-discipline, and life-preparation programs (Wood, 2008, p. 55). Spending this intensive time and dedication on each juvenile is expensive and time-consuming; but it has proven beneficial for the recidivism rates of juveniles. Although juveniles are, by law, to be separated from adults while incarcerated, juveniles who have been **tried in criminal court are not required to be separated.** This not only makes them vulnerable to adult criminals; but also gives them the opportunity to learn criminal instincts from the violent adult criminals. Additionally, the correction facility does not generally train the corrections officers in adult prisons to accommodate and handle juveniles. "A shortage of adequately trained correctional officer has made it very difficult for the nation's jails to properly and safely house youthful offenders" (Hansen, 2005, p. 47).

Juveniles face extreme risk in adult prisons – juveniles' rehabilitative programs are key

Wood 12 (Andrea Wood is an editor for the Emory Law journal and has a J.D from Emory University as well as a B.A from Davidson College), 2012, "Cruel and Unusual Punishment: Confining Juveniles with Adults After Graham and Miller," Emory University School of Law, Volume 61 Article 6https://law.emory.edu/elj/content/volume-61/issue-6/comments/cruel-and-unusual-punishment.html

Juveniles confined in jails and prisons face serious threats to their health and well-being. Juveniles in adult facilities face a high risk of physical and sexual abuse from guards and other inmates, and this abuse may have devastating and long-term consequences for the victimized juvenile.[25] Juveniles confined in adult facilities also have dramatically higher rates of suicide than do their counterparts housed in juvenile facilities.[26] While confined in adult facilities, juveniles lack access to services critical to their continued development and are particularly vulnerable to criminal socialization.[27] Juveniles face significantly higher rates of physical and sexual abuse in adult facilities than do adult inmates in the same facilities or juveniles housed in juvenile facilities.[28] This abuse often begins immediately, within the first forty-eight hours of a juvenile's entry into an adult facility.[29] Juveniles are five times more likely to be sexually assaulted in adult facilities than in juvenile facilities.[30] Although juveniles made up only .2% of the prison population in 2005, they made up almost 1% of the substantiated incidents of inmate-on inmate sexual violence in prisons that year.[31] Juveniles constituted less than 1% of the jail population in 2005, but they made up 21% of all victims of substantiated incidents of inmate-on-inmate sexual violence in jails.[32] In total, juveniles made up 7.7% of all victims of substantiated acts of sexual violence in prisons and jails carried out by other inmates, even though they made up less than 1% of the total detained and incarcerated population.[33] Sexual assault and rape may result in severe physical consequences, potentially exposing the victim to HIV/AIDS, hepatitis, and other sexually transmitted infections.[34] Sexual activity between men, which constitutes the vast majority of prison rape, accounts for more than 50% of all new HIV infections in the United States.[35] Rates of HIV and confirmed AIDS are more than five times higher among those incarcerated in prisons than in the general population of the United States.[36] Sexual abuse has severe and long-term emotional and psychological consequences for juveniles that may last well into adulthood.[37]

Sexual abuse can lead to major depression and posttraumatic stress disorder.38 Juveniles who have been sexually abused may face problems with anger, impulse control, flashbacks, dissociative episodes, hopelessness, despair, and persistent distrust and withdrawal.39 Sexual abuse can increase tendencies toward criminal behavior and substance abuse in juveniles.40 Upon release from prison, victims of prison rape are more likely to become homeless or require government assistance due to the physical and psychological impacts of rape than are those who were not raped in prison.41 Congress recognized the significant risks that juveniles face in adult facilities when it passed the Prison Rape Elimination Act of 2003 (PREA).42 PREA, which unanimously passed in the House of Representatives and Senate and was immediately enacted into law by President George W. Bush, sought to draw attention to and address the issues of rape43 and sexual victimization of individuals in custody.44 The findings section of PREA highlights the increased risk of rape that juveniles face: "Young first-time offenders are at increased risk of sexual victimization. Juveniles are 5 times more likely to be sexually assaulted in adult rather than juvenile facilities—often within the first 48 hours of incarceration."45 PREA requires prison officials to keep more thorough internal records on rape, and it created a commission to propose standards to improve prison management.46 Although an important symbolic step, PREA has failed to eliminate or reduce sexual abuse in correctional facilities or to demonstrably change public attitudes toward rape in custodial settings.47 Numerous factors contribute to why juveniles face significant dangers when confined with adults. In a Department of Justice report that described characteristics that make an individual more likely to be sexually abused while incarcerated, many of the listed characteristics are common in juveniles, including small size and inexperience with the criminal justice system.48 Additionally, juveniles, who have not fully matured physically, cognitively, socially, or emotionally, are less capable of protecting themselves from sexual advances and assault.49 These juveniles generally also lack the experiences to cope in predatory environments, and expressions of fear may be taken as indications of weakness.50 Staffing differences may also contribute to the high rates of sexual abuse in adult detention and correctional facilities because juvenile facilities generally have a much higher staff-to-inmate ratio than do adult facilities.51 Juvenile detention facilities generally have a ratio of one staff member to every eight youths, while an average adult jail has a staff-to-inmate ratio of one to sixty-four.52 The additional staff members in juvenile facilities may provide increased supervision and may also offer assistance and support to juveniles in a more focused manner.53 Incidents of sexual assault in jails and prisons are underreported,54 and juveniles may be particularly discouraged from reporting sexual abuse as a result of developmental, emotional, and systemic barriers.55 The ramifications of disclosure include shame, stigma, not being believed, and retaliation, which impact juveniles more significantly than adults.56 Juveniles may not be willing to undergo the intense scrutiny needed to determine the accuracy of a report of sexual assault.57 Once faced with formal interviews and investigation, juveniles may feel intimidated by the perpetrator, try to suppress the pain stemming from the abuse by denying it ever occurred, change their story, or refuse to cooperate with investigators.58 Juveniles incarcerated in adult facilities are also at a high risk of committing suicide.59 One study indicates that a juvenile housed in an adult jail is five times more likely to commit suicide than is a juvenile in the general population and eight times more likely to commit suicide than is a juvenile housed in a juvenile facility.60 Other studies suggest that a juvenile's increased risk of suicide in adult jails may be far higher.61 Not designed to meet the special needs of juveniles, adult facilities may seriously compromise a juvenile's healthy development, and surveys of adult facilities indicate that they generally lack specialized or developmentally appropriate programming for juveniles.62 Adult facilities are generally far less equipped than juvenile facilities to meet the educational needs of juveniles.63 In 95% of juvenile facilities, one teacher is employed for every fifteen inmates, in contrast to one teacher for every one hundred inmates in adult facilities.64 Unlike in adult facilities, the educational staff members in juvenile facilities are generally full-time employees.65 In addition to an overall higher staff-toinmate ratio and more teachers, most juvenile facilities also include classroom spaces and do not have the same physical-space restrictions faced by many adult facilities.66 Juveniles confined in adult facilities, especially those in pretrial detention awaiting adjudication, face a high risk of falling more behind in their education.67 Juvenile facilities are better able to provide developmentally appropriate healthcare, rehabilitative services, and programming than are adult facilities.68 Adult facilities may fail to provide juveniles with the appropriate nutrition or dental and vision care, which are especially critical for developing adolescents.69 Staff members at juvenile facilities typically receive special training to work with juveniles not generally received by the staff at adult facilities.70 Many adult facilities fail to provide juveniles with even basic services, including prison-survival skills and counseling.71 In two-thirds of juvenile facilities, one counselor is employed for every ten juveniles, and in 85% of juvenile facilities, at least one counselor is employed for every twentyfive juveniles.72 A direct comparison to the number of counselors available in adult facilities is difficult because most adult facilities group all "professional and technical" personnel in one category, which includes all medical and classification staff.73 This staff-to-inmate ratio is one to

twenty-five.74 Given their incomplete development, juveniles are significantly impacted by the lack of appropriate services and care in adult facilities.75 Juveniles' developmental stage and malleability make them particularly vulnerable to criminal socialization when incarcerated with adults.76 Generally sensitive to peer pressure as a group, juveniles confined in adult facilities are "especially likely to engage in violent behavior and to develop identities linked to domination and control."77 While confined in adult facilities, juveniles lack models for building a positive identity, honing productive life skills, and solving problems and disputes.78 Rather, juveniles may spend considerable amounts of time with experienced adult offenders, who may pass along new methods and techniques related to criminal activity and the avoidance of detection.79 Juveniles may also adopt violent practices to mask their vulnerable status.80 To survive the violence they encounter in adult facilities, juveniles have reported that they often attempt to fit in to inmate culture.81 Many juveniles can only adjust to life in adult prisons or jails by "accepting violence as a part of daily life and, thus, becoming even more violent."82 A body of evidence suggests that incarcerating juveniles in adult correctional facilities not only places the juveniles in a demonstrably more hazardous living situation but also does not fulfill commonly accepted purposes of punishment. Research indicates that incarcerating juveniles with adults, an often more experienced criminal population, may neither deter juveniles from future criminal activity nor improve public safety.83 In 2007, the Task Force on Community Preventive Services, supported by the Centers for Disease Control and Prevention, systematically evaluated published studies that dealt with the effectiveness of policies that result in the transfer of juveniles to criminal court.84 The task force scrutinized the design suitability, methodologies, execution, and outcomes of these studies.85 In its analysis of six studies examining specific deterrence,86 all of which controlled for selection bias, the task force noted that four studies found that transferred juveniles subsequently committed more violent and cumulative crime than their counterparts who remained in the juvenile justice system.87 These four studies indicate that transferred juveniles were 33.7% more likely to be re-arrested than juveniles who remained in the juvenile justice system.88 The task force concluded that "juveniles transferred to the adult justice system have greater rates of subsequent violence than juveniles retained in the juvenile justice system" and that "[t]ransferring juveniles to the adult justice system is counterproductive as a strategy for deterring subsequent violence."89 This increase in recidivism may be partially attributable to confinement in adult facilities, given that juveniles are held with more experienced adult offenders and lack the rehabilitative opportunities available in juvenile facilities.90 Some researchers have concluded that incarceration with adults may have "brutalizing effects" on juveniles, in which the violent experiences that juveniles witness and experience in adult facilities normalize violent and criminal conduct.91 Research is generally inconclusive as to whether conviction in criminal court and incarceration in adult facilities deters potential juvenile offenders.92 Most evidence indicates that transfer to criminal court and incarceration in adult facilities has little or no general deterrent effect.93 Accordingly, an accumulating body of evidence suggests that incarcerating juveniles in adult facilities fails to demonstrably deter future crime, and perhaps even increases recidivism rates in juvenile offenders, while dramatically increasing the risk of serious harm faced by these vulnerable wards of the state. Although some seek to justify the confinement of juveniles with adults by pointing to the need for increased criminal sanctions for certain hardened juvenile offenders, many juveniles who are convicted of criminal offenses and confined in adult facilities serve sentences comparable in length to the ones that they would have served if held in juvenile facilities.94 Seventy-eight percent of juveniles incarcerated in adult facilities are released before they turn twenty-one; ninety-five percent are released before they turn twenty-five.95 The average time that these juveniles serve on their sentences is two years and eight months.96 Additionally, some jurisdictions have implemented systems in which a juvenile convicted in criminal court can serve his sentence in a juvenile detention facility until he reaches the age of eighteen, at which time he can be transferred to an adult facility to serve the remaining time of his sentence if necessary.97 Juveniles housed in adult facilities face extreme risks to their health and well-being without the benefit of developmentally appropriate services and rehabilitative programming. Exposed to alarmingly high rates of physical and sexual abuse, these children face the real possibility of developing psychological and emotional disorders, contracting sexually transmitted infections, or even committing suicide. Adult facilities, with often dramatically lower staff-to-inmate ratios than juvenile facilities, are not equipped to handle the special educational, developmental, physical, and emotional needs of juveniles, and thus deprive them of critical opportunities for rehabilitation. In fact, confinement in adult facilities may foster more violent behaviors, facilitate opportunities for criminal socialization, and increase recidivism.

Preventing juveniles from being tried as adults ends the injustices perpetuated by this double standard—minors' brains are not fully developed

McCrea 2008 Hannah McCrea is currently pursuing a master's degree in Environmental Regulation at the London School of Economics, "Juveniles Should Not Be Tried in Adult Courts", Greenhaven Press, 2005. At Issue. Rpt. from "A Double Standard for American Juveniles [accessed: 6/20]//cblasi

In May 2000, 13 year-old Nathaniel Brazill, an African-American boy from a low-income Florida family, shot and killed his middle school teacher, Barry Grunow, on the last day of school. A few weeks earlier, also in Florida, 12 year-old Lionel Tate killed his 6 year-old playmate while practicing a wrestling move he saw on television. Both these cases stirred controversy in Florida not because of the senselessness of the crimes, but because of the severity of the punishments: Brazill was convicted of second-degree murder and sentenced to 28 years in prison without the possibility of parole. And Tate was convicted of firstdegree murder and sentenced to life in prison without the possibility of parole, making him the youngest person in modern US history to be sentenced to life in prison. Both were tried as adults, and at the ages of 14 and 13 respectively, were locked away in adult prisons to serve their sentences. At the time of their convictions, Florida led the nation in trying minors as adults, a trend that has skyrocketed across America in the past 15 years. Currently [2007], over 200,000 minors are charged in adult courts each year, and in 2005 nearly 7000 minors were being housed in adult jails. More disturbing, a recent series by PBS Frontline, When Kids Get Life, reveals that the US is one of only a few countries in the world that sentences minors under the age of 18 to life in prison, and there are 2200 such convicts currently serving life sentences in the US. (According to the advocacy organization Pendulum Foundation, there are only 12 in the rest of the world.) Not until March 2005 did the US Supreme Court finally overturn a previous ruling and outlaw execution for crimes committed by anyone under the age of 18, acknowledging that giving teenagers the death penalty represents "cruel and unusual punishment." So if the Supreme Court has already ruled that when it comes to execution, minors can't be held accountable to the same extent as adults, why hasn't the entire practice of trying minors as adults come to an end? Why, when minors are minors by definition, should they ever be tried as adults? The sharp increase in minors tried in adult courts is due to a wave of state legislation in the 1990s that gave judges and prosecutors the ability to determine who should be tried as an adult, along with new laws assigning mandatory minimum sentences for certain types of convictions including first- and second-degree murder. In addition, many of the officials making these decisions hold elected positions, which compelled them (and compels them still) to take tough stances against young criminals following America's spike in violent street crime in the early nineties. (This was the case with state attorney Barry Krischer of Florida's affluent Palm Beach County, where Nathaniel Brazill was prosecuted, who defends in this interview his famed zero-tolerance policy of trying minors as adults as often as possible.) Proponents of trying minors as adults frequently cite weaknesses in the juvenile justice system, saying it is an insufficient deterrent for criminally-minded youths. And how, they add, can you justify to a murder victim's family a light sentence just because the person who killed their loved one was a kid? Fair enough, but can we really justify a justice system in which a person can go to prison for life for something they did when they were 12 years-old? Do we really want to encourage cycles of poverty, poor education, and violence by throwing juvenile delinquents into jail with hardened adult criminals for decades at a time? To be clear, I am not advocating leniency toward people who commit serious crimes. If a violent crime is committed, justice needs to be served no matter who the criminal—but "justice" means a proportional and appropriate punishment. In other areas of the law minors are viewed as mentally incompetent, a caveat our justice system takes seriously when deliberating the guilt or innocence of adult criminals. Society (rightly, in my opinion) denies minors the right to vote, drink, independently sign legal contracts, run for office, adopt children, buy property, and so forth. It

recognizes that our grasp of right and wrong is not fully developed for most of our minority, and thus establishes 18 as the legal age at which we are fully responsible for our choices. Our grasp of right and wrong is not fully developed for most of our minority. Trying minors as adults, therefore, represents a double standard in the legal system: a 15 year-old is too young and stupid to decide for himself whether cigarettes are something he should buy, but he is of sound adult mind when firing a gun in the midst of an argument. Often in instances where minors are tried as adults, the crimes themselves are evidence of immaturity, not malice. Prosecutors frequently call violent crimes committed by minors "adult" in nature, but this confuses the severity of the crime and the maturity of criminal: whether a 12 year-old steals a candy bar or kills a man over it, his maturity level and mental competence hasn't changed. Rather the severity of the crime, and of the consequence, has changed. (Indeed, the trivial motives of many violent crimes committed by minors demonstrate this—such as Lionel Tate's attempt to practice a WWF [World Wrestling Federation] move on a 6 year-old.) All of this was acknowledged a century ago when the juvenile justice system came into existence. In 1899, at the height of the Progressive Era, the first Juvenile court opened in Chicago with the philosophy that rehabilitation, rather than punishment, should be the objective when dealing with juveniles. Reformers acknowledged that minors and adults had different rehabilitative needs and that before a certain age offenders are sufficiently impressionable that they can be "corrected" and safely reinserted in society. Juvenile detention centers were thus developed to place an emphasis on rewarding good behavior, instilling discipline, completing education, and reinsertion. Rehabilitation, rather than punishment, should be the objective when dealing with juveniles. Place this in contrast to adult prisons, and the differences are astounding. A recent report by the Center for Policy Alternatives reveals: Youths held in adult jails are eight times more likely to commit suicide, five times more likely to be sexually assaulted, twice as likely to be beaten by staff, and 50 percent more likely to be assaulted with a weapon than youth in juvenile facilities. Moreover, minors sent to adult prisons are significantly more likely to reoffend, and twice as likely to be arrested for a more serious crime, than minors in the juvenile justice system. Extensive studies (and common sense) tell us that teenagers jailed alongside adult criminals become harder and more violent than those kept in juvenile detention. They are subject to "sentences" far harsher than those rendered by judges and juries, in the form of rape, physical abuse, torture, and suicide. Despite a Department of Justice report that nearly 40% of juveniles in adult prisons were convicted of nonviolent offenses, there is abundant evidence that jailing minors alongside adult criminals makes them become more violent and less likely to be rehabilitated. Jailing minors alongside adult criminals makes them become more violent and less likely to be rehabilitated. And unsurprisingly, nearly 77% of minors in adult prisons represent a racial minority, primarily African American, while the vast majority hails from low-income families with poorly-educated parents. Trying minors as adults represents a gross flaw in the current justice system. It draws the newest and least privileged members of society into horrific cycles of violence and depression, allowing them little path to rehabilitation, forgiveness, and productive lives. To address weaknesses in the juvenile justice system by simply bumping minors into adult courts and prisons disserves both minors and the adult prison system. Moreover, how many of us would like to be held accountable, for the rest of our lives, for the decisions we made when we were 13? And how many of us rely on our education, our wealth, and the support of our families to keep us from making grave choices, and to protect us from disproportional harm? Each year thousands of American teenagers face years of abuse in violent adult prisons for crimes they committed without these benefits. Their crimes are horrific and punishable, but their punishments are not proportional. The practice of sending minors to adult courts represents a terrible and embarrassing double standard in the American legal system, and should be written out of law nationwide.

Sentences for Juveniles in adult courts statistically have been more severe – plan is the first step in moving away from a punishment model

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Of the youth convicted of violent offenses in adult criminal courts nationwide, 79% received sentences of incarceration, compared to only 44% of those found guilty of violent offenses in the juvenile system who were sentenced to confinement. 230 The findings are similar for non-violent offenses, with more severe sanctions being given to youth who are tried as adults as opposed to those tried in age-appropriate juvenile systems. 194. The Supreme Court of the United States acknowledged in 2005 that, due to their stage of development, children are less culpable and "more vulnerable or susceptible to negative influences and outside pressures, including peer pressure."231 In consideration of the facts of child development that have been established by research, the Supreme Court ruled that children should receive less harsh sentences, and should not receive the death penalty. Moreover, the Supreme Court recognized that children have a higher likelihood of rehabilitation, and are not as responsive to the deterrence goal of punitive sanctions.232 195. According to the American Medical Association, the American Psychiatric Association, other prominent organizations, and research that has been conducted in the United States, it is harder for adolescents to control their behavior, nor do they have the foresight of a mature adult, because of the stage of their brain development.233 Youth do not take into account future consequences or implications in the same way or as much as adults do. For this reason, adolescents often engage in risky behavior, especially when pressured by peers, and are not deterred from committing crimes by the threat of harsh penalties.234 196. Nonetheless, practice across the United States is far from reflecting this basic understanding of how children are different from adults, as courts continue to impose adult sentences on children, disregarding their status and their specific developmental needs for rehabilitation. The Commission is aware that in Florida, for example, children and adolescents may be sentenced in adult court with long-term consequences, as opposed to being considered for a range of age-appropriate sentencing options in the juvenile system. While youth sentenced by juvenile courts face a maximum confinement of 36 months in a secure facility for youth, accompanied by rehabilitative-focused programs, youth who are convicted as adults consistently face extremely long sentences, due to mandatory minimum sentences or other mandatory sentencing laws of the adult system. 197. In fact, as stated in Florida's criminal legislation, adult sentences are presumed to be appropriate for youth who are convicted in the adult criminal system, without consideration of the child's needs and capacity for rehabilitation, and adult courts are not required to justify or give reasons for imposing adult sanctions on adolescents.235 Consequently, the number of children sentenced to incarceration in the adult correctional system, as opposed to probation, varies greatly among the different localities in Florida. According to a recent Human Rights Watch report, 74% of youth tried as adults receive sentences of imprisonment in the 4th Circuit, while only 12% do in the 11th Circuit.236 198. The existence of mandatory minimum sentencing in Florida compounds the arbitrary impact of the adult criminal justice system on youth, not only at the sentencing stage, but also regarding the determination of guilt. As prosecutors have been granted discretionary power to directly file charges against youth in the adult system, they frequently use the threat of possible lengthy minimum sentences in the adult courts as a way of obtaining a guilty plea. Because adult sentences include the possibility of probation, youth often plead guilty to charges in the hope of being offered this option.237 199. Meanwhile in Michigan, most of the 18 specific offenses for which youth are transferred to adult court mandate adult sentencing. For the other offenses the law allows adult sentencing as an option, while also providing the option of placing the youth under the responsibility of the Department of Human Services.238 Adult sentencing in these cases may yield extreme results, as those convicted must complete their full minimum sentence without the possibility of alternatives to incarceration for good conduct, and regardless of age.239

Lack of education of the criminal justice system locks juveniles into harsher punishment

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During its expert consultation in the preparation of this report, the IACHR was informed that the competency of children being charged as adults is not evaluated, especially regarding the psychological consequences of confinement in adult facilities while awaiting trial. This negatively affects children's right to be heard and to participate in the proceedings. Moreover, due to the design of the adult system, which is geared toward persons who have reached the age of majority and from whom a corresponding level of maturity is therefore expected, children and adolescents very often do not comprehend the proceedings that involve them. This is particularly critical, as any procedural protection is futile if the child involved does not understand the criminal proceedings to which such protections apply. 158. A study conducted in the U.S. on the competency of youth to face trial revealed that adolescents are more likely to "make choices that reflect a propensity to comply with authority figures, such as confessing to the police rather than remaining silent or accepting a prosecutor's offer of plea agreement."188 Other studies have found that youth are also inclined to plead guilty to charges for acts they did not commit, when pressured by authorities.189 159. Children who have spent time in both the juvenile and adult systems have explained that the adult systems can be incomprehensible. In its 2014 report, Human Rights Watch reported that in interviews with more than a hundred adolescents whose cases were filed directly in adult courts in Florida, and in interviews with their families, the interview subjects consistently admitted to feelings of incomprehension and confusion in the adult system. Similarly, an analysis of their cases revealed that many youth plead guilty to offenses that are eligible for adult prosecution, without fully comprehending the consequences of such pleas.190 160. In reference to the treatment they received from persons in authority in adult criminal proceedings, as opposed to proceedings in juvenile courts, youth perceived an overall push to impose harsher and lengthier punishment on them in the adult system, instead of efforts to focus more on their rehabilitation. One adolescent expressed that "[i]n juvenile court, I feltlike the judge cared a little more than adult court. In adult court you could tell there were a lot of people coming through so the judge didn't really care about your case other than what the charges are, and the prosecutors were just trying to give you as much time in prison as they can."191 161. The Commission is aware of arguments to the effect that the systems for youth must maintain a rehabilitative approach and hence should not be required to ensure all of the due process rights that are granted to adults in the more punitive adult system.192 In this regard the Commission reiterates that children's fundamental rights must be upheld, and when children are held criminally responsible for their behavior they must be afforded the same instruments of defense as are granted to adults, particularly in a system that is not designed to meet their age-appropriate needs and where the procedures in place do not offer a fair determination as to their competency to stand trial.193 162. The IACHR recalls that all juvenile justice procedures and all infrastructure of the juvenile justice system must be tailored to ensure rights of children, and procedures and infrastructure that fall short of this requirement must be progressively brought up to the applicable standard.194 The IACHR reiterates the State's obligation to observe minimum standards. The Committee on the Rights of the Child has explained that: A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. Proceedings must be both accessible and child appropriate. Particular attention needs to be paid to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained staff, design of courtrooms, clothing of judges and lawyers, sight screens, and separate waiting rooms.195Moreover, as expressed by the Committee, "a fair trial requires that the child alleged as or accused of having infringed the penal law be able to effectively participate in the trial, and therefore needs to comprehend the charges, and possible consequences and penalties, in order to direct the legal representative, to challenge witnesses, to provide an account of events, and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed. Article 14 of the Beijing Rules provides that the proceedings should be conducted in an atmosphere of understanding

to allow the child to participate and to express himself/herself freely. Taking into account the child's age and maturity may also require modified courtroom procedures and practices."196

Absence of specialized defense attorneys further exacerbate unfair trials

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Information received by the Commission indicates that the right to specialized defense for children and adolescents accused of committing a crime is not uniformly respected in the United States, as there is no constitutional obligation in that regard. In light of the fact that under the current state of the law, children and adolescents are consistently faced with possible transfer to adult court, there is a requirement of a specialized defense to effectively handle all legal matters regarding such complex hearings and procedures, in order to protect the rights of children and adolescents.197 However, the information received by the Commission has demonstrated that many defense attorneys appointed to represent children accused of crimes are not sufficiently specialized, or often do not employ necessary diligence with respect to their more vulnerable clients, due to lack of training or resources specific to this field. As a result, some attorneys representing children in justice proceedings frequently and wrongly advise their clients to accept plea bargains that allow the children to be transferred to the adult system For example, reports in Colorado have shown that, in 45% of all juvenile cases, and as a result of the absence of legal representation of youth in the early stages of proceedings in which they are charged with crimes, the defendants waive their right to counsel, or choose to enter plea bargains.198 This is especially troubling when considering the consequences faced by a child who agrees to a plea bargain, which may include proceedings and sentencing in adult courts.199 166. Other possible consequences of plea negotiations can arise when the youth or a family member is involved in proceedings with Immigration and Customs Enforcement (ICE) that may result in deportation. 200 The Commission was made aware of such serious consequences during its visit to Colorado, in interviews with youth deprived of liberty. Adequate counsel for children at early stages in the proceedings is therefore vital. 167. Children and adolescents who are convicted and sentenced in the adult system also require legal counsel post-sentencing, to represent them in periodic reviews of their custody and in any matters that require court involvement after they are committed to a correctional facility. During its visit to Colorado, the Commission heard from youth who had been sentenced in adult courts and who were being held in facilities that were administered by the adult correctional system. These youth explained to the Commission that they frequently did not have access to legal representation in matters related to their custodial sentence, and that as a result many protections of their rights that existed in theory were not accessible in practice. The Commission received very similar testimonies from adolescents from New York and Michigan. 168. In consideration of these issues, the IACHR emphasizes that, pursuant to the principle of specialization that underlies the requirement of a separate juvenile justice system, a child's right to defense in court proceedings entails that any lawyer or social worker appointed to defend him or her must be trained in children's rights and specialized in juvenile justice. Public defender services with high quality service standards, specialized in juvenile justice, must be available throughout the entire U.S. territory, and must enable appropriate participation of the child in the proceedings.201 169. The Commission has received information about instances in which the principle of presumption of innocence of youth was not respected, especially youth who were facing trial in the adult system. This is exacerbated in the context of the pressure or even explicit threats that child defendants face when a prosecutor is considering the possibility of filing directly in adult courts. According to the information received by the Commission, Prosecutors threaten to use their discretionary power to file cases directly in adult courts in order to compel youth to enter into plea bargains that ensure a custodial sentence in the juvenile system. 170. The Commission has been informed that youth often admit to having committed the offenses with which they are charged, in order to avoid prosecution, lengthy sentences, and other long-term consequences in the adult system.202 In fact, a report by the Department of Juvenile Justice in Florida found

that it is the adolescents least deserving of punishment by incarceration who are the most inclined to accept such plea bargains.203 Such adverse effects are observed in counties across the state, where, according to published reports, approximately 80% of youth sentenced to custody in the juvenile system have been threatened with prosecution in the adult system in order to obtain a guilty plea.204 171. The Commission has observed that in some cases, a further violation of children's rights is the fact that, as revealed by data referenced earlier in this report, they are held in pre-trial confinement in adult facilities for extended periods of time. One previously incarcerated youth whom the Commission interviewed during its visit to Washington D.C. reported having been deprived of his liberty in an adult jail for approximately 3 years while awaiting trial in the adult court system, before his charges were eventually dismissed. The Commission received the same information in New York during its visit, especially from the adolescents it interviewed at Rikers Island. Multitudes of similar accounts from states across the U.S. have been reported to the IACHR.

Lack of Parental guidance increases rash uneducated decisions and rejects the obligation to respect the role of a family in the life of a child

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Through its various visits and its review of information provided, the IACHR has repeatedly observed that parents' active participation of their children is frequently limited or obstructed when children are prosecuted as adults. This occurs mostly as a result of the fast pace and incomprehensibility of adult criminal proceedings. Adult proceedings, having been designed for persons who have reached the age of majority, have nor given consideration to the involvement of a defendant's family. As a consequence of the barriers to parental involvement, children tried as adults are even less able to comprehend the proceedings that affect them. 173. Specifically, during its visit to Washington, D.C., the Commission learned that when youth are charged in adult courts, the courts do not mandate or facilitate the involvement of the children's parents, because the children are treated as adults and are therefore considered to be independent and mature individuals not in need of parental guidance and assistance during the proceedings. This is in stark contrast to the juvenile system, where juvenile courts require the active participation of children's parents and family in every stage, as an essential element of the proceedings. 174. Interviews with families of incarcerated youth in Florida likewise revealed that proceedings in adult courts are fast-paced and complex, impeding family members from participating. They indicated that during their experiences in the juvenile system, the court had taken special measures to guarantee that they were present and involved in any hearing, but once the case was transferred to the adult system, they had been completely disregarded and were not involved in their children's hearings in adult court, a traumatic experience for both the children and their families. Similar information was provided in New York, in interviews with families and adolescents in pretrial detention. 175. The IACHR emphasizes that in any proceeding involving a child accused of crime, every effort must be made to secure the participation of his or her parents or legal guardians, unless it has been determined that this would be harmful to the child's best interests and contrary to an adequate defense at trial.205 The American Declaration, the ICCPR and other applicable standards clearly set out the rights of children to special protection, as well as the obligation to respect the role of the family in the life of the child. 206

Juvenile's right to appeal due to the inability to challenge prosecutor decisions

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The Commission has observed that the right to appeal has not been observed or fully respected in multiple situations related to the laying of charges and prosecution of children in the adult criminal justice system in the United States. Prosecutors are often empowered to decide whether to file charges against a child in juvenile or adult court, without being required to state their reasons, and in many systems there is no way to challenge the decision.207 In contrast, judicial waivers guarantee at a minimum that the determination is made by a judge, based on established guidelines and with the obligation of issuing written reasons, allowing for the decision to be appealed. 177. The Commission has been informed that in addition, prosecutors often make this determination absent clear criteria on how the defendants status as a child must be considered, nor are they obligated to follow written guidelines or take particular factors into account in each case. Thus, their ability to make objective decisions in the child's best interests, without being influenced by prejudice or irrelevant or external factors, might be weakened, and in most cases the decision is not subject to judicial review. 178. According to guidance provided by the National District Attorneys Association, prosecutors are responsible for ensuring that "discretionary decisions, such as whether to file a petition, transfer a case to adult court, or offer a plea deal, are not inappropriately influenced by race or any other impermissible factors."208 Nevertheless, the Commission is concerned that no effective procedural protections are granted that would allow child defendants to challenge and request examination of the significant decisions that are made by prosecutors to exclude child defendants from the juvenile justice system.

Exts - Spillover

Reform in juvenile justice spills over into greater reductions in incarceration—now is key—low crime rates makes it easier to create spill over affect

Nellis and Mauer 17, Ashley Nellis is a Senior Research Analyst and Marc Mauer is the Executive Director of The Sentencing Project, 1/24/17, "What We Can Learn from the Amazing Drop in Juvenile Incarceration", Marshall Project, https://www.themarshallproject.org/2017/01/24/what-we-can-learn-from-the-amazing-drop-in-juvenile-incarceration, [6-20-2020]//cblasi

The Bureau of Justice Statistics announced in a year-end report a 2 percent reduction in the number of prisoners nationally, continuing a modest decline of recent years. Overlooked by most observers, though, was the fact that the number of juveniles held in adult prisons declined to fewer than 1,000, an 82 percent drop from the peak year in 1997. Although America's penchant for incarceration has been widely recognized in recent years as counterproductive, the actual decline in prison populations has been very modest. In contrast, the reduced number of young people in adult prisons, along with a 50 percent decline in their confinement to youth facilities, suggests that population reductions on a significant scale are possible as well as politically feasible. A look at how the juvenile experience has changed can provide lessons in how to accelerate the reduction of adult incarceration. Teenagers under 18 have long been subjected to adult court jurisdiction in certain circumstances, and policies designed to expand those numbers were widely adopted in the "tough on crime" era of the 1980s and 1990s. With two decades of experience we now have evidence of the counterproductive outcomes of those policies. Research documents both the greater vulnerability to abuse and the greater incidence of recidivism when young people are confined in adult prisons. Changing public sentiment regarding the wisdom of sending young people to adult prisons has led policymakers in many states to revise misguided policies that applied excessive punishment with little evidence to support them. As a result, many juveniles who would otherwise be languishing in adult prisons are now either in juvenile confinement facilities that are better designed for their needs, or have been diverted from confinement altogether. What changed the public mood was groundbreaking research and sustained advocacy, initially focused on campaigns to rule out the death penalty for juveniles. A key argument in these efforts has been the concept that "kids are different" in levels of maturity and impulsivity, suggesting reduced criminal culpability. These findings were a key element in the Supreme Court's decision to strike down the juvenile death penalty in 2005 and to later scale back the scope of life imprisonment for juveniles. Awareness of the violence, including rape, inflicted on juveniles in facilities designed for adults, combined with brain science research showing that full levels of maturity are not reached until the mid-20s, has helped create greater empathy for children who commit crime. Most people understand that teenagers make poor choices but deserve second chances. There are important lessons we can learn from this experience. The first is that adopting major policy shifts in an emotional political climate is never a wise course of action. Policymakers who promoted increased transfer of children to adult courts in the early 1990s did so at a time when juvenile (and adult) violence had risen precipitously. In retrospect we know that the spike in violence was largely due to the emergence of crack cocaine drug markets, and was relatively short-lived. The second lesson is that revising how we think about people who commit crime changes how we respond to their actions. In the juvenile arena, it has become clear that young people are not yet functioning at full capacity, and therefore we need to avoid punishments that will diminish their life prospects. Instead, interventions should seek to expand their opportunities for success. As crime rates remain relatively low, this is a good moment to reflect on this experience and to pursue more constructive alternatives to jail time. We would start by restoring an individualized and rehabilitative approach to working with young adults. Knowing that most young people "age out" of crime by their mid- to late-20s, it is counterproductive to

subject them to an often-brutal prison environment. Yes, there need to be consequences for criminal behavior, but these should involve finding the appropriate balance between public safety and helping offenders address the factors that contributed to their crimes.

Exts - Recidivism

Juveniles suffer social underdevelopment, deprivation of education and irreversible psychological damage that increases recidivism rates– the "age-crime-curve proves.

Rosefelt 19 (Rebecca Rosefelt is a J.D. candidate, 2019, University of Minnesota Law School. Much of the research for this article was done in conjunction with work for Juvenile Justice Advocates International, including the author's interviews with youth in the justice system in Chihuahua, Mexico), 2019, "Children in Limbo: The Need for Maximum Limits for Juvenile Pretrial Detention," University of Minnesota Law School, https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1316&context=mjil/// Eagan EL

Children suffer from physical, intellectual, and social underdevelopment when institutionalized.29 Youths detained while awaiting trial also experience greater neglect than sentenced youth because resources are prioritized for the individuals who have a more permanent presence in the facility.30 As a result, **children in preventative detention are less likely to have access to healthcare, educational resources, support systems, or activities**.31 The lack of emotional support paired with the stress of detention has irreversible effects on the psychological development of children.32 Social skills are honed during adolescence, and detention prevents children from learning how to develop healthy relationships.33 Long periods of incarceration, particularly in places where pretrial detainees are not separated from prisoners, expose kids to more juvenile offenders—leading to a variety of negative outcomes, such as gang recruitment.34 Solitary confinement may constitute torture in some circumstances.35 The UN Special Rapporteur on Torture has called for prohibition of solitary confinement, a punishment that "children perceive as the very worst treatment."36 Individuals of different ages experience time differently, and thus every hour is **subjectively longer** to a child than an adult.37 This should be taken into consideration when calculating any type of deprivation of liberty, as "a fifteen-year prison sentence for a teenager, is in context, equal to a lifetime behind bars."38 The ability to access education while in pretrial detention varies, but is generally sparse.39 Limited access to education in pretrial detention causes children to fall behind in school, often leading to them abandoning their studies after their release, and studies show that higher school drop-out rates are correlated with higher arrest and recidivism rates.40 Lower education is linked directly to underemployment, systematically setting up detained youth for a future of unstable income and poverty.41 **Detention** also **exacerbates mental illness**, and correspondingly, children with special needs are even less likely to return to school than their non-challenged peers.42 Reduced cognitive ability of youths, particularly their impulsivity and increased willingness to take risks, is reflected in the age-crime curve.43 **The "age-crime curve"** illustrates the concept that "juvenile delinquency is a ubiquitous and passing phenomenon, linked to age."44 More specifically, it shows that individuals are most likely to violate the law during their teenage years, and the chances of offending decrease significantly in one's mid to late twenties.45 However, those who start offending from an early age, or are repeatedly incarcerated, **are more likely to continue offending** into adulthood.46 This pattern may be due to over-detention of youth: incarceration of any type may disrupt the development of people "aging out of delinquency."47 Reduction of pretrial detention is consequently a **preventative measure** that may keep juveniles from reoffending.

Reform in juvenile justice spills over into greater reductions in incarceration—now is key—low crime rates makes it easier to create spill over affect

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Although America's penchant for incarceration has been widely recognized in recent years as counterproductive, the actual decline in prison populations has been very modest. In contrast, the reduced number of young people in adult prisons, along with a 50 percent decline in their confinement to youth facilities, suggests that population reductions on a significant scale are possible as well as politically feasible. A look at how the juvenile experience has changed can provide lessons in how to accelerate the reduction of adult incarceration.

Teenagers under 18 have long been subjected to adult court jurisdiction in certain circumstances, and policies designed to expand those numbers were widely adopted in the "tough on crime" era of the 1980s and 1990s. With two decades of experience we now have evidence of the counterproductive outcomes of those policies. Research documents both the greater vulnerability to abuse and the greater incidence of recidivism when young people are confined in adult prisons.

Changing public sentiment regarding the wisdom of sending young people to adult prisons has led policymakers in many states to revise misguided policies that applied excessive punishment with little evidence to support them. As a result, many juveniles who would otherwise be languishing in adult prisons are now either in juvenile confinement facilities that are better designed for their needs, or have been diverted from confinement altogether.

What changed the public mood was groundbreaking research and sustained advocacy, initially focused on campaigns to rule out the death penalty for juveniles. A key argument in these efforts has been the concept that "kids are different" in levels of maturity and impulsivity, suggesting reduced criminal culpability. These findings were a key element in the Supreme Court's decision to strike down the juvenile death penalty in 2005 and to later scale back the scope of life imprisonment for juveniles.

Awareness of the violence, including rape, inflicted on juveniles in facilities designed for adults, combined with brain science research showing that full levels of maturity are not reached until the mid-20s, has helped create greater empathy for children who commit crime. Most people understand that teenagers make poor choices but deserve second chances.

There are important lessons we can learn from this experience. The first is that adopting major policy shifts in an emotional political climate is never a wise course of action. Policymakers who promoted increased transfer of children to adult courts in the early 1990s did so at a time when juvenile (and adult) violence had risen precipitously. In retrospect we know that the spike in violence was largely due to the emergence of crack cocaine drug markets, and was relatively short-lived.

The second lesson is that revising how we think about people who commit crime changes how we respond to their actions. In the juvenile arena, it has become clear that young people are not yet functioning at full capacity, and therefore we need to avoid punishments that will diminish their life prospects. Instead, interventions should seek to expand their opportunities for success.

As crime rates remain relatively low, this is a good moment to reflect on this experience and to pursue more constructive alternatives to jail time. We would start by restoring an individualized and rehabilitative approach to working with young adults. Knowing that most young people "age out" of crime by their mid- to late-20s, it is counterproductive to subject them to an often-brutal prison environment. Yes, there need to be consequences for criminal behavior, but these should involve finding the appropriate balance between public safety and helping offenders address the factors that contributed to their crimes.

And if such an approach makes sense for juveniles it also can be adapted for adults. The life history of individuals in prison shows that, more often than not, they committed their crimes after major setbacks — addiction, loss of jobs or housing — for which they received little support. There are few individuals in the prison system so dangerous that they can never be released back into the community. If we truly want to end mass incarceration we need to change the mindset about crime to one that emphasizes prevention and restoration over punishment.

laundry list of why children should not be held to the same level of accountability of adults

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A substantive assessment of contemporary youth crime regulation begins by examining the punitive reforms in the framework of criminal law doctrine and principles. The heart of the analysis is the principle of proportionality, which, as first-year law students learn in their criminal law class, is the foundation of fair and legitimate state punishment. Proportionality holds that criminal sanctions should be based on the culpability of the actor as well as the harm he causes. It recognizes that two defendants who cause the same harm (killing another person, for example) can vary in their blameworthiness and in the punishment that society thinks they deserve.12 Most criminals, of course, are held fully responsible for their crimes and receive whatever punishment the state deems appropriate for the harm they cause. But actors who are thought to be blameless (children, for example, or someone who kills in self-defense)

deserve no punishment—and their crimes are excused. As we have seen, the history of youth crime policy during the twentieth century was an account of radical change in lawmakers' conception of young offenders—from innocent children under the rehabilitative model to (often) fully responsible adults today. But the criminal law does not view culpability in such binary terms; the concept of mitigation plays an important role in the law's calculation of blame and punishment and should be at the heart of youth crime policy. Mitigation applies to persons engaging in harmful conduct who are blameworthy enough to meet the minimum threshold of criminal responsibility, but who deserve less punishment than a typical offender would receive. Developmental research clarifies that adolescents, because of their immaturity, should not be deemed as culpable as adults. But they also are not innocent children whose crimes should be excused. The distinction between excuse and mitigation seems straight-forward, but it is often misunderstood. In the political arena, as we have suggested, it is often assumed that unless young offenders are subject to adult punishment, they are off the hook—escaping all responsibility. Instead, under the developmental model, youths are held accountable for their crimes but presumptively are subject to more lenient punishment than adults. A justice system grounded in mitigation corresponds to the developmental reality of adolescence and is compatible with the law's commitment to fair punishment. Research in developmental psychology supports the view that several characteristics of adolescence distinguish young offenders from adults in ways that mitigate culpability. These adolescent traits include deficiencies in decision-making ability, greater vulnerability to external coercion, and the relatively unformed nature of adolescent character. As we will show, each of these attributes of adolescence corresponds to a conventional source of mitigation in criminal law. Together [End Page 19] they offer strong evidence that young offenders are not as culpable as adults. Diminished Decision-Making Capacity Under standard criminal law doctrine, actors whose decision-making capacities are impaired—by mental illness or retardation, for example—are deemed less blameworthy than typical offenders. If the impairment is severe, their crimes are excused. Considerable evidence supports the conclusion that children and adolescents are less capable decision makers than adults in ways that are relevant to their criminal choices. Although few would question this claim as applied to children, the picture is more complicated for sixteen- or seventeen-year-olds. The capacities for reasoning and understanding improve significantly from late childhood into adolescence, and by mid-adolescence, most teens are close to adults in their ability to reason and to process information (what might be called "pure" cognitive capacities)—at least in the abstract.13 The reality, however, is that adolescents are likely less capable than adults are in using these capacities in making real-world choices, partly because of lack of experience and partly because teens are less efficient than adults in processing information. In life, and particularly on the street, the ability to quickly marshal information may be essential to optimal decision making. Other aspects of psychological maturation that affect decision making lag behind cognitive development and undermine adolescent competence. Research documents what most parents of adolescents already know—teenagers are subject to psychosocial and emotional influences that contribute to immature judgment that can lead them to make bad choices. Thus, even at ages sixteen and seventeen, adolescents' developmental immaturity likely affects their decisions about involvement in crime in ways that distinguish them from adults. First, teens tend to lack what developmentalists call "**future orientation**." That is, compared with adults, adolescents are more likely to focus on the here-and-now and less likely to think about the long-term consequences of their choices or actions—and when they do, they are inclined to assign less weight to future consequences than to immediate risks and benefits. Over a period of years between mid-adolescence and early adulthood, individuals become more future oriented.14 Substantial research evidence also supports the conventional wisdom that teens are more oriented toward peers and responsive to peer influence than are adults. Several studies show that susceptibility to peer influence, especially in situations involving pressure to engage in antisocial behavior, increases between childhood and mid-adolescence, peaks

around age fourteen, and declines slowly during the late adolescent years.15 Increased susceptibility to peer pressure in early adolescence may reflect changes in individuals' capacity for self-direction (as parental influence declines) as well as changes in the intensity of pressure that adolescents exert on each other. Some research evidence suggests that teens who engage in certain types of antisocial behavior may enjoy higher status among their peers as a consequence, perhaps because they appear to be independent of adult authority.16 The result is that adolescents are more likely than either children or adults to change their decisions and alter their behavior in response to peer pressure. Peer influence affects adolescent judgment both directly and indirectly. In some contexts, [End Page 20] adolescents might make choices in response to direct peer pressure, as when they are coerced to take risks that they might otherwise avoid. But desire for peer approval (and fear of rejection) affects adolescent choices indirectly as well. Teens appear to seek peer approval especially in group situations. Thus, perhaps it is not surprising that young offenders are far more likely than adults to commit crimes in groups.17 Consider the case of Timothy Kane, a fourteen-year-old junior high school student who never had any contact with the justice system until one Sunday afternoon in January 1992. Tim was hanging out with a group of friends when a couple of older youths suggested that they break into a neighbor's house; Tim agreed to go along. On entering the house, the boys were surprised to find the elderly neighbor and her son at home—whereupon the two older boys killed them while Tim watched from under the dining room table. Interviewed years later as he served a life sentence under Florida's draconian felony murder law, Tim explained that he went along because he didn't want to stay behind alone—and he didn't want to be called a "fraidy-cat." Tim's fatal decision to get involved in the break-in appears to be, more than anything else, the conduct of a fourteen-year old worried about peer approval.18 Another psychosocial factor contributes to immature judgment: adolescents are both less likely to perceive risks and less risk-averse than adults. Thus, it is not surprising, perhaps, that they enjoy engaging in activities like speeding, unsafe sex, excessive drinking, and committing crimes more than adults do. The story is actually a bit more complicated. In the abstract, on paper and pencil tests, adolescents are capable of perceiving risks almost as well as adults. In the real world however, risk preference and other dimensions of psychosocial immaturity interact to encourage risky choices.19 Thus, a youth who might be able to identify the risks of stealing a car if presented with a hypothetical case in a psychology lab may simply never consider these risks when he is on the street with his friends planning the theft. Another (compatible) account of why adolescents take more risks than adults is that they may evaluate the risks and benefits of risky activity differently. Psychologists refer to the outcome of weighing risks and rewards as the "risk-reward ratio." The higher the ratio, the less likely an individual is to engage in the behavior in question. Studies suggest that in calculating the risk-reward ratio that guides decision making, adolescents may discount risks and calculate rewards differently from adults. In studies involving gambling games, teens tend to focus more on potential gains relative to losses than do adults.20 So, for example, in deciding whether to speed while driving a car, adolescents may weigh the potential rewards of the behavior (for example, the thrill of driving fast, peer approval, or getting to one's destination quickly) more heavily than adults would. Indeed, sometimes adults may view as a risk—fast driving, for example—what adolescents see as a reward. What distinguishes adolescents from adults in this regard, then, is not the fact that teens are less knowledgeable about risks, but, rather, that they attach different value to the rewards that risk-taking provides.21 In addition to age differences in susceptibility to peer influence, future orientation, and risk assessment, adolescents and adults also differ with respect to their ability to control impulsive behavior and choices. Thus, the conventional wisdom that adolescents are more reckless than adults is supported by research [End Page 21] on developmental changes in impulsivity and self-management. In general, studies show gradual but steady increases in the capacity for self-direction through adolescence, with gains continuing through the high school years. Research also indicates that adolescents are subject to more rapid and extreme mood swings, both positive and negative, than are adults.22 Although the

connection between moodiness and impulsivity is not clear, it is likely that extreme levels of emotional arousal, either anger or elation, are associated with difficulties in self-control. More research is needed, but the available evidence indicates that adolescents may have more difficulty regulating their moods, impulses, and behaviors than do adults. These psychosocial and emotional factors contribute to immature judgment in adolescence and probably play a role in decisions by teens to engage in criminal activity. It is easy to imagine how an individual whose choices are subject to these developmental influences—susceptibility to peer influence, poor risk assessment, sensation seeking, a tendency to give more weight to the short-term consequences of choices, and poor impulse control—might decide to engage in criminal conduct. The following scenario is illustrative. A teen is hanging out with his buddies on the street, when, on the spur of the moment, someone suggests holding up a nearby convenience store. The youth does not go through a formal decision-making process, but he "chooses" to go along, even if he has mixed feelings. Why? First and most important, like Tim Kane, he may assume that his friends will reject him if he declines to participate—a negative consequence to which he attaches considerable weight in considering alternatives. He does not think of ways to extricate himself, as a more mature person might do. He may fail to consider possible options because he lacks experience, because the choice is made so quickly, or because he has difficulty projecting the course of events into the future. Also, the "adventure" of the holdup and the possibility of getting some money are exciting. These immediate rewards, together with peer approval, weigh more heavily in his decision than the (remote) possibility of apprehension by the police. He never even considers the long-term costs of conviction of a serious crime. This account is consistent with the general developmental research on peer influence, risk preference, impulsivity, and future orientation, and it suggests how factors that are known to affect adolescent decision making in general are likely to operate in this setting. As a general proposition, it is uncontroversial that teens are inclined to engage in risky behaviors that reflect their immaturity of judgment. Although it is not possible to study directly the decisions of teens to get involved in criminal activity, it seems very likely that the psychosocial influences that shape adolescents' decision making in other settings contribute to their choices about criminal activity as well. Not every teen gets involved in crime, of course. That depends on a lot of things, including social context. But these psychosocial and emotional influences on decision making are normative—as psychologists use this term—that is, typical of adolescents as a group and developmental in nature. Research over the past few years has increased our understanding of the biological underpinnings of psychological development in adolescence. Very recent studies of adolescent brain development show that the frontal lobes undergo important structural change during this stage, especially in the prefrontal cortex.23 This region is central to [End Page 22] what psychologists call "executive functions"—advanced thinking processes used in planning ahead, regulating emotions, controlling impulses, and weighing the costs and benefits of decisions before acting. Thus, the immature judgment of teens may to some extent be a function of hard wiring.

More setbacks when juveniles are tried as adults—keeping kids out of adult trials sets up a better future

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Most juveniles tried as adults, and/or placed in adult facilities, are being denied education and subjected to various dangers, both of which can lead to permanent setbacks and high rates of recidivism.

The majority of states have already started passing reforms to make it more difficult to prosecute juveniles as adults, but there is a long way to go.

Juveniles in the adult system

Following the tough on crime era, the practice of trying youth as adults has become much more common in recent years. Between 1990 and 2010, the number of juveniles in adult jails went up by nearly 230 percent.

Around 250,000 youth are tried, sentenced or incarcerated as adults in the United States every year. On any given day, around 10,000 juveniles are housed in adult jails and prisons – 7,500 in jails and 2,700 in prisons, respectively.

Of the juveniles held in adult jails, most of them are awaiting trial, as 39 states permit or require that youth charged as adults be held in an adult jail before they are tried. Though as many as a half of them will not be convicted or will be sent back to the juvenile justice system, most will have spent at least one month in the adult jail, and one in five of them will have spent over six months there.

"The majority of youth prosecuted in adult court are charged with nonviolent offenses."

The juveniles held in adult prisons have been convicted as adults; the laws and standards of this practice vary wildly by state. The majority of youth prosecuted in adult court are charged with nonviolent offenses.

Federal law states that youth transferred from juvenile facilities to the adult system must be separated by sight and sound from adult inmates, but many states have either refused to comply with these laws (and forfeited federal grant money) or stated that they will comply only to stall on progress.

A lack of education

There are numerous federal and state laws granting all juveniles the right to education, which apply to youth in correctional facilities. However, many youth housed in adult facilities do not have access to any education. A 2005 survey of adult facilities found that 40 percent of the jails and prisons had no educational services at all.

Additionally, the Individuals with Disabilities Act requires that incarcerated youth with learning disabilities and other mental disorders be granted education that serves individual needs and prepares students for college, employment and independent living. Yet, that same survey found that only 11

percent of correctional facilities provided special education services and an even smaller 7 percent actually provided vocational training.

The other dangers

The issue of course goes beyond a denial of education and other much-needed rehabilitative services. Youth in the adult system are at extreme risk for sexual victimization, more than "any other group of incarcerated persons", according to the National Prison Rape Elimination Commission. And the Prison Rape Elimination Act of 2003 asserted that children are five times more likely to be sexually assaulted in adult prisons than in juvenile facilities, often within the first 48 hours of their incarceration.

Further, youth in the adult system are subject to mentally harmful practices and have less mental health services available to them than in the juvenile system. Many juveniles are placed in isolation, which can severely exacerbate or even cause mental disorders that have the potential to affect them for the rest of their lives. Tragically, youth housed in adult jails are 36 times more likely to commit suicide than those in juvenile facilities.

The ultimate consequences: Moral and financial

Youth sentenced as adults receive an adult criminal record, which restricts them from many employment and educational opportunities as well as financial aid. We know from numerous research reports that a lack of education and employment means higher chances of recidivism.

So, it makes sense that young people who go through the adult system are 34 percent more likely than those in the juvenile system to be re-arrested. Not only is this devastating for these young individuals, it also perpetuates a larger cycle of youth incarceration that is incredibly expensive to taxpayers as they must continue to foot the bill for recidivism.

Solutions: Keeping kids out of the adult system

There are notable success stories that suggest keeping kids out of the adult system can be extremely beneficial.

Since 2005, 29 states and Washington, D.C. have passed laws to make it more difficult to prosecute and sentence juveniles as adults, including raising the age required for adult prosecution and establishing alternatives to detention.

New York started implementing reforms in 2011, during a period of budget struggles and several investigations by the Justice Department into failing juvenile facilities. The new task force established a program to keep young offenders in local juvenile facilities as well as focus on their education, mental

health and substance abuse issues. Since then, the number of detained youth has declined by 45 percent.

After Texas passed laws to keep kids in facilities closer to home as well as decrease prosecution for minor offenses by students in school (like disrupting class or possessing tobacco), they cut the number of children in adult court by 83 percent.

Takeaway

As juveniles continue to be tried and imprisoned as adults, we continue to see all of the repercussions. Not only are juveniles at extreme risk of sexual and other abuse, which is inarguably unacceptable, they also get denied counseling and educational services they desperately need.

Thus, the time they spend in these facilities can set them back educationally, mentally and emotionally. These setbacks are enhanced by the adult criminal record they receive, preventing them from important educational and employment opportunities in the future.

All of these consequences result in a disproportionate amount of youth in adult facilities ending up incarcerated again later in life, which derails their futures and bankrupts the system.

The cycle does not benefit anyone, and it is far past time to push for reform in all 50 states.

A2 Juvenile Facilities = Bad/Worse

Multiple alternatives to changing juvenile sentencing – incarcerated youth need prepared facilities for mental illness

Gottesman and Schwarz, 11 -- conducts research and translates the findings into actionable recommendations that advocates and policymakers use to improve the lives and futures of low-income children and their families. (David Gottesman and Susan Wile Schwarz, Juvenile Justice in the US: Facts for Policymakers, NCCP, 2020, 6-19-2020, https://academiccommons.columbia.edu/doi/10.7916/D8Q81N10)//OD

While youth who are charged with the most serious and violent offenses are more likely to be tried as adults and sentenced to adult prison, juveniles with more mid-range offenses, including burglary, theft, or repeat juvenile offenders, often spend time at a traditional juvenile residential placement facility.20 These **large residential placement facilities can range in both setting and security, from rehabilitation camp-like programs to juvenile prisons.** Mental Health Needs In a 2006 survey, juvenile offenders reported symptoms of mental health illness and trauma, regardless of age, race, or gender. A majority of juvenile offenders in residential facilities had at least one mental illness.21-22 – Two-thirds reported symptoms associated with high aggression, depression, and anxiety.23 – At 27 percent, the prevalence of severe mental health illness among incarcerated youth is two to four times higher than the national rate of all youth.24-2 Thirty percent of incarcerated youth reported a history of either physical or sexual abuse.26 – Many youth in residential facilities had histories of alcohol or substance abuse. – Seventy-four percent of youth had tried alcohol at least once, compared to 56 percent of their non-incarcerated peers.26 – Eighty-four percent of youth had tried marijuana, compared to 30 percent of their nonincarcerated peers.26 Lack of Mental Health Services **While most juvenile residential facilities offer at least some therapy or counseling services, a nationally representative survey of over 7,000 incarcerated youth demonstrated that the majority of these facilities are ill-prepared to adequately address the needs of youth in their custody**. Many of these facilities lack any early identification system to screen and identify those with mental health needs. **A lack of early identification or screening can result in youth going without needed care**.26 Forty-five percent of youth are incarcerated in facilities that do not screen all new youth in the first 24 hours.26 An additional 26 percent of youth are incarcerated in facilities that do not screen any new youth in the first 24 hours.26 Further, many of the limited services available are underutilized or not utilized at all. Fifty-three percent of youth are incarcerated in facilities that do not provide mental health evaluations for all. 26 Among youth with a documented mental health issue that are incarcerated in residential placement facilities, 47 percent have not met with a counselor. 26 Research shows that treating substance abuse can lower recidivism rates, but many facilities lack an adequate substance abuse screening system.27 Half of the youth surveyed are in facilities that do not use standardized assessment tools to identify substance abuse issues, and 19 percent are in facilities that do not screen any youth for substance abuse.28 Instances of violence between youth and facility guards have been documented at many facilities.29 A Department of Justice Task Force report found that staff at Tryon Boys residential center in New York used excessive force and inappropriate restraints on youth.29 Similar instances of violence were found in juvenile facilities in Indiana,30 Ohio,31 and California.32 **Community-based Alternatives Recent research shows that community-based centers are often more effective than traditional residential placement facilities in achieving better outcomes for troubled youth, most notably in reducing the likelihood of repeat offenses.** Common community-based alternatives include centers that youth offenders attend in the community **each evening, home detention, short-term shelter care, and small community homes.** Community-based programs and services can produce positive social outcomes, such as a decreased dependence on alcohol and illegal substances, especially in the first six months after release from a facility.33 **These centers keep youth n their own communities while they receive punitive action, which is more likely to be developmentally and contextually appropriate and include necessary rehabilitative services**.33 Unlike traditional residential placement facilities, community-based alternatives aim to keep youth in small groups so that they are able to receive necessary attention and services**. Most community-based centers focus on evidence-based therapeutic services, especially multi-systemic therapy**.34 It is less expensive for states to punish and provide needed treatment in the community than to place youth offenders in a large residential placement facility.35-36 **Even with**

limited resources due to budget cuts, some states are creating positive change. In Missouri, most community based facilities are designed for 10 to 30 youths with a strong focus on therapeutic intervention.37 – Only eight percent of youth offenders in Missouri return to the juvenile system once they are released, and only eight percent go on to adult prisons.38 – Research shows lower recidivism rates will save the state money in the long run, despite upfront costs involved in establishing these community-based facilities.39-40. In Illinois, the number of juvenile offenders in traditional residential facilities has decreased as a result of fiscal incentives to communities to rehabilitate youth in community-based settings. – Youth who received community-based treatment are less likely to be involved in future criminal activities.41 – In its first three years, Illinois saved an estimated $18.7 million as a result of this program.41 Expanding community-based alternatives could decrease the populations of traditional residential placement facilities, independent of changes in crime rates by type or severity.42

Juveniles face more danger in adult prisons—no chance for rehab

SPLC 14, "Children tried as adults face danger, less chance for rehabilitation:, Southern Poverty Law Center, 10/30/14, https://www.splcenter.org/news/2014/10/30/children-tried-adults-face-danger-less-chance-rehabilitation, [6-29-2020]//cblasi

Patrick* entered an Alabama prison at the age of 16. In a little more than a year behind bars, he has witnessed more than 30 stabbings. He learned some lessons: Failing to turn over his property when a prisoner demands it puts him at risk of being stabbed, as does refusing a sexual overture. This thought hangs over him constantly. He is always on guard, ready to fight for his survival. Patrick is one of about 1,200 children under the age of 18 who are being held in adult prisons across the country. The number is about 10,000 when local adult jails are included. In Alabama, children as young as 14 can be charged and convicted as adults for any alleged offense. Neighboring Florida sends more children into adult criminal court – and into adult prisons – than any other state. "[I]n adult court, they want to lock us up," Sander A., a Florida youth, told Human Rights Watch for a recent report. "In juvenile court they want to help us make better choices." That, in a nutshell, is why children should not be tried as adults. The research is clear that children in the adult criminal justice system are more likely to reoffend than if they are held in the juvenile justice system. Still, thousands are sent into the adult system every year in the Deep South. This month, the Southern Poverty Law Center hosted or sponsored events in Alabama, Mississippi, Louisiana and Florida as part of National Youth Justice Awareness Month, a national campaign organized by the Campaign for Youth Justice to highlight the serious and devastating consequences of sending children into adult courts, jails and prisons. "It is time to recognize the toll that misguided 'tough-on-crime' policies have taken on youths across this country," said Jerri Katzerman, SPLC deputy legal director. "These policies have not only failed to make our communities safer, but have endangered children and needlessly derailed young lives." Research has shown that children in the adult criminal justice system are 34 percent more likely to be arrested again than those convicted of similar offenses in juvenile court. They also are 36 times more likely to commit suicide than youth in juvenile facilities. During their time in adult lock-ups, prisoners such as Patrick often witness brutal inmate-on-inmate violence. And they are more likely to be victimized sexually. Derrick* has been fending off sexual advances and assaults since arriving at a prison in Alabama at age 16. Many young inmates simply submit to older inmates because they know the guards probably won't help them. A number of professional organizations have opposed or condemned the practice of housing young people in adult lock-ups, including the American Jail Association, the American Correctional Association, the Council of Juvenile Correctional Administrators, the Association of State Correctional Administrators and the National Association of Counties. 'Lost in the system' Research also has shown that children have a unique propensity for rehabilitation. The human brain does not fully develop until the mid-20s and the portion of the brain that governs rational decision-making is the last to develop. This means a child may engage in dangerous behavior without fully realizing the risks and consequences for themselves and others. "I was impulsive. I wouldn't think about the consequences," said Luke R., a Florida youth serving a prison sentence for robbery. It's a refrain heard over and over. "I don't do the same things I was doing," said 22-year-old Thomas G., who is on probation for a crime he committed at age 17. "I think about things before I do them." After presiding over juvenile court for 14 years, one Florida judge summed up the young people this way: "I've been here long enough to understand that when someone is 16 and I ask them why they did it and they say 'I don't know,' I believe them." Unfortunately, the adult system fails to recognize the potential for rehabilitation in children. This can be particularly damaging for children without a strong support system of family, friends and community. "They really get lost in the system," said Michelle Stephens, whose son was prosecuted as an adult and incarcerated in Florida five years ago after accepting a plea agreement. "And all their inmate peers become their family. They join gangs in prison. They're worse off than they were before they went in prison. You think they were bad before they went in prison, now you've just put them with hardened, lifetime criminals." The distance between a youth and his family can be especially difficult. Langston T. is serving a three-year prison sentence almost four hours from his hometown. After nine months, he's yet to have a visit from his family. "It's a long trip," he said. It's just one of the harsh realities Langston and other youths in adult prisons must face. "Adult prison? It ain't a place to be," he said. "It's just breathing and eating. You just a number in here." Once a young person is out of prison, it

can be difficult turning a life around with a felony record. Thomas G. has found this out after serving a three-year sentence. "What I did when I was 16, that's still following me and will follow me for the rest of my life," he said. "I get a job, and they find out I was convicted of a felony, and they've got to let me go." He understands that people must be punished for wrongdoing but questions why one mistake must follow him forever. "[D]on't keep it held over me for the rest of my life," he said.

Community-based alternatives more effective

(Amanda **Petteruti**, Tracy Velázquez and Nastassia Walsh, 05-19-20**09**, "The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense,"Justice Policy Institute, http://www.justicepolicy.org/images/upload/09_05_rep_costsofconfinement_jj_ps.pdf

This policy brief details how states can see a net reduction in costs by moving expenditures away from large, congruent care facilities (often called "training schools") for youth and investing in community-based alternatives. Such a resource realignment can reap better results for communities, taxpayers, and children. Evidence is growing that there are cost-effective policies and programs for intervening in the lives of delinquent youth which actually improve community safety and outcomes for children. While there is no silver bullet that will guarantee reductions in crime, policies that include prevention and intervention for youth in the community have been shown to have a positive public safety benefit. Major findings and recommendations for reform include: • States needlessly spend billions of dollars a year incarcerating nonviolent youth. States spend about $5.7 billion each year imprisoning youth, even though the majority are held for nonviolent offenses and could be managed safely in the community. • The biggest states are realigning fiscal resources away from ineffective and expensive state institutions, and towards more effective community based services. California, Illinois, Ohio, New York, Pennsylvania, and other large states are redirecting funds once spent on large residential facilities, and spending those dollars on less expensive, more effective programs to curb reoffending and reduce youth crime. • Holding more youth in secure juvenile facilities can lead to costly litigation for states. Unacceptable conditions not only have serious negative consequences on the youth who experience them, but can also lead to court-ordered reforms which in some cases have cost millions of dollars. • Imprisoning youth can have severe detrimental effects on youth, their long-term economic productivity and economic health of communities. Youth who are imprisoned have higher recidivism rates than youth who remain in communities, both due to suspended opportunities for education and a disruption in the process that normally allows many youth to "age-out" of crime. • Policies that lock up more youth do not necessarily improve public safety. Ten years of data on incarceration and crime trends show that states that increased the number of youth in juvenile facilities did not necessarily experience a decrease in crime during the same time period. • Community-based programs increase public safety. The most effective programs at reducing recidivism rates and promoting positive life outcomes for youth are administered in the community, outside of the criminal or juvenile justice systems. Some of these programs have been shown to reduce recidivism by up to 22 percent. • Community-based programs for youth are more cost-effective than incarceration. Some programs like multi-systemic therapy and functional family therapy have been shown to yield up to $13 in benefits to public safety for every dollar spent. These programs are more cost effective and produce more public safety benefits than detaining and incarcerating youth.

Rehabilitation provides education – key to reducing recidivism

(Harriet R. **Morrison** and Beverly D. **Epps**, 20**02**, "Warehousing or Rehabilitation? Public Schooling in the Juvenile Justice System", Journal of Negro Education, https://www.jstor.org/stable/pdf/3211238.pdf?refreqid=excelsior%3A297e85615d22efe63592ab644f206cea)

As juvenile correctional facilities continue to fill with young African American males, the answer to the question of warehousing or rehabilitation becomes more of an issue. The potential exists for the continuing marginalization of a segment of society with the capacity to be an asset to society and the right to be an active member of their communities. The inadequacies of educational programs in correctional facilities provide little hope for juveniles to transition back into the general population. Many are released, still lacking the necessary skills for success, only to return to juvenile or adult correctional facilities. In the Morrison (2001) study, 34.2% of the offenders released returned to the criminal justice system within 12 months of their release. The recent reauthorization of the Elementary and Secondary Schools Act may have an impact on the question of warehousing or rehabilitation in juvenile correctional facili- ties. The No Child Left Behind Act of 2001 clearly articulates

the expectation for neglected or delinquent children to "have the opportunity to meet the same challenging State academic content standards and challenging State academic achievement standards that all children in the State are expected to meet" (p. 160). Based on research and current legislation, there is a need for the redesign or retooling of educational programs in juvenile correctional facilities. More often than not, the children who have been underserved in public schools continue to be underserved in correctional facilities.

CP Answers

A2: States

State budget issues means faulty implementation of the CP

Lee, 20 -- a freelance reporter who's been covering Georgia and metro Atlanta government and politics (Maggie Lee, State budget cuts threaten support for juvenile detainee transition, Georgia Recorder, 1-28-2020, 6-23-2020, https://georgiarecorder.com/2020/01/28/state-budget-cuts-threaten-support-for-juvenile-detainee-transition/)//OD

The leader of Georgia's Department of Juvenile Justice said proposed cuts of about 150 vacant jobs in his department wouldn't force him to change operations. After years of changes to state law under so-called criminal justice reform, his youth detention centers are about one-third vacant. But some people worry that cutting the budget for the department and other agencies that help troubled young people avoid criminal activity would reverse those changes. "Since criminal justice reform, we've seen a steady decline of our population of kids in custody," said Georgia Department of Juvenile Justice Commissioner Tyrone Oliver. And more youth are living in their community, under various levels of supervision. About 1,200 youth are held in long-term or short-term custody, Oliver told a joint state House-Senate appropriation hearing earlier this month. That compares to about 1,800 youth in custody in 2013 when former Gov. Nathan Deal pressed for a major rewrite of Georgia's juvenile justice code. That rewrite was one piece of the new approach to law and order policy over the past decade for both youth and adult offenders pushed through by the Georgia Council on Criminal Justice Reform. Deal, a former juvenile court judge, made the initiative a top priority soon after he took office with an aim to reserve incarceration for the most dangerous criminals. Deal's policies and spending priorities were designed to nudge youthful offenders deemed less threatening toward rehabilitation, through family counselling and therapy that pairs professionals with children to help them learn to cope at school, with peers and in other settings. And it meant a change in philosophy, too: Some young people with lesser offenses are now candidates for support instead of youth detention, such as a child who persistently commits offenses that wouldn't be a crime for a grown-up, like breaking curfew or skipping school. A runaway, truant or curfew-breaker shouldn't be treated the same as a kid who robbed somebody, argued supporters of Deal's initiative. Instead**, courts can review a Child in Need of Services case in a hearing that involves family. The goal is to find services to help the family to avoid future incarceration**. "So that's really an effort to try to reach out to those youth that might become court-involved," said state Rep. Mandi Ballinger, a Canton Republican who chairs the House Juvenile Justice Committee. "But before they get court-involved, let's see if we can't give them some services, let's see if we can address some of the issues that you're having there before they go out and commit crimes," Ballinger said. The lower youth incarceration rate is part of the fruit of that new focus on services and support, she said. About 10,000 juveniles in Georgia get some kind of support from community programs now, Oliver said. Georgia has made steady progress since the 2013 juvenile justice rewrite, said Melissa Carter, executive director of the Barton Child Law and Policy Center at Emory University. **But she's concerned about what she sees as potential regression in Georgia's draft budgets in the coming 17 months. The department's proposed mid-year cut to the 2020 spending plan leaves the agency $336 million for the year, down from the $351 million the governor approved last May.** The department proposes to spend $332 million for the 2021 budget year that starts in July. Gov. Brian Kemp directed most state agencies last summer to cut spending by 4% in the budget year that started last July and 6% in next year's spending plan. Most of the department's proposed savings come from the planned closing of a Sumter County facility in Americus and the elimination of about 150 vacant jobs across the state. Some are secure jobs, positions typically associated with detention facilities. But others are intended to help with rehabilitation and successful transition into life after release, such as educators, therapists, people involved in probation supervision and job training. "**Those are the ones that distinguish the juvenile system from the adult system,**" Carter said. "Those are the ones that give us the best chance at actually realizing the aims of the justice system, again, to restore youth to the communities and to their homes." **A proposed cut of more than $1 million to the Juvenile Justice Incentive Grant program also is raising concerns.** It's administered by the Criminal Justice Coordinating Council, and provides money for the evidence-based programs that serve as alternatives to juvenile lockups. And proposed budget cuts at the Georgia Public Defender Council put nine vacant posts for attorneys for juveniles at risk. "I do think that these proposed cuts really do represent a threat to the direction of reform," Carter said. "We are now six years out of the start of these reforms. We have demonstrated success, but it's early success. And that means that it's very fragile." The jobs on the chopping block have been unfilled since July 1, 2018, although the department was still actively trying to fill them. Even as he eliminates so many job slots, Oliver is still hiring for some areas of his department. "We still have to get

our staffing numbers up to the levels where they need to be in certain facilities," he told lawmakers at a recent hearing. The recent shrinking of Georgia's youth detention center population could be reversed if legislation passes to send fewer young offenders to adult prison. Ballinger wants 17-year-olds to go through the juvenile justice system instead of the adult criminal justice system. "Seventeen-year-olds can't sign contracts. They're not legally adults in any form or fashion. They can't join the military. They can't do all of these grown-up things," Ballinger said. "And yet we send our 17-year-olds to grown-up court, which is ill-equipped to deal with our 17-year-olds." Her House Bill 440, which would raise the age, was filed about halfway through the legislative session last year, but has not made it to the House floor. If it passes this year, Oliver might need some of the detention space he just reported as vacant to accommodate the older arrivals. A Georgia Bureau of Investigation reports about 6,500 17-year-olds were charged with crimes in 2018.

Budget pressures, stricter compliance rules, lack of oversight an enforcement all prove no solvency for state follow-on

Kelly 19 (John Kelly is the Editor In Chief of The Chronicle Of Social Change), 11-19-2019, "The Curious Case of The Nonparticipating Juvenile Justice States," Chronicle of Social Change, https://chronicleofsocialchange.org/youth-services-insider/the-curious-case-of-the-nonparticipating-states/39197

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) recently issued a $10.4 million funding competition that on first blush shocked Youth Services Insider. It was a request for proposals (RFP) from nonprofits or local governments in states that are not participating in the Juvenile Justice and Delinquency Prevention Act (JJDPA), through which state juvenile justice agencies receive grants in exchange for complying with four standards in their treatment of youths. Heretofore, only states that had chosen to opt out of the JJDPA were involved in the "nonparticipating states" competition. And for a long time, there was only one holdout – Wyoming. But this year's RFP **included seven states**, along with **three U.S. territories**. So YSI's initial reaction was: The exodus away from JJDPA has begun! It is no secret that there's apprehension about that happening. The funding attached to participating has dwindled since the mid-2000s – though it has ticked up a bit recently – while changes to the law itself and compliance rules have made participation harder. So it was alarming to see that the number of states that were out on JJDPA had more than doubled since last year. But the real story is a little murkier than that. First, a brief primer for those not familiar with the JJPDA. States that participate agree to comply with four "core protections" pertaining to the treatment of young people involved in the system: Not locking up youth for committing status offenses, which includes crimes like truancy that would not be considered a crime for an adult. Removal of juvenile offenders from adult jails and prisons, with very limited exceptions. In those very limited exceptions, sight and sound separation of juveniles from adults in facilities. Making efforts to research, identify and address disproportional minority contact in the juvenile justice system. It is pretty much the **only set of federal standards** specifically related to juvenile justice. A state receives its formula grant from OJJDP for monitoring those four things – 20 percent of the grant just to monitor, and 20 percent each for complying with the requirements. If a state opts out of participation, it is not eligible to receive the formula grant. Instead, the money is competed out to nonprofits or local government entities within the state. As mentioned, Wyoming has been in this boat for **decades.** In the past two years, Nebraska and Connecticut have joined the Cowboy state. So it is no surprise that these states were included in the nonparticipant RFP. The other four states listed are: Arkansas, Massachusetts, Texas and West Virginia. But none of them has walked away from participation in the law. According to OJJDP Administrator Caren Harp, these states were found incapable of accurately reporting on compliance based on what they presented as a monitoring process. They "have been ruled ineligible by OJJDP," said Harp, who was appointed by President Trump to lead the office in 2017 and sworn in in 2018. "This means the agency has determined that they are not sufficiently prepared to monitor compliance of the law. " To make things even more complicated, not all of the ineligibility is from fiscal 2019. The Arkansas ineligibility goes back to 2011, and West Virginia was ruled ineligible for fiscal 2018. Some of the money in this competition for those states is sourced to those years – $600,000 in Arkansas, and $380,000 in West Virginia. OJJDP has tripled the annual rate of audits on state systems, and "are trying to clean up all the mechanics and administrative stuff internally here with an eye toward easing their burden on administering this," said Harp, in an interview with YSI. "We take the view that the act needs to be enforced, and that only states that are eligible can receive the funds." Massachusetts was ruled ineligible for 2019, and the RFP puts out $729,000 for the state. But the biggest enchilada is Texas, obviously the largest system on the list, which has been ruled

ineligible for the past two years. OJJDP anticipates making several awards totaling about $7.5 million, the total amount of Texas's formula grant for both years. Both Texas and Massachusetts were initially awarded funds for 2018, according to OJJDP, but the grants were put on hold and the states appealed the finding of ineligibility. With both appeals lost, the money was put into this RFP. Three U.S. territories are also listed on the RFP: American Samoa, Guam and the Northern Mariana Islands. American Samoa is listed for its 2019 grants, and the other two are pegged to ineligibility in 2017. All of the funds available through the non-participating state RFP must be spent on efforts to address those four requirements of the Juvenile Justice and Delinquency Prevention Act. Harp said that while none of these states has walked away from the Juvenile Justice and Delinquency Prevention Act, the recent struggles in these three states is cause for concern about future participation. "We hear consistently from states that [JJDPA participation] is too cumbersome and cost prohibitive to administer effectively," said Harp. "It has been that way for years, and we understand that." The funding for participation – which is apportioned based on the youth population of each state – has dwindled since the turn of the century. In 2002, states shared about $90 million under what is called the Title II Formula grant. That had fallen to $62 million by 2011, then plummeted to $40 million in 2012. It has since ticked back to $60 million for 2019. Meanwhile, a recent reauthorization of the JJDPA added some more requirements on the part of states, and rules finalized by the Obama administration in its last few months tightened the screws on compliance determinations. The penalty for failing to comply with any of the four requirements is a 20 percent cut to a state's grant allocation. And that 20 percent goes back into a fund that the federal agency can partially use for technical assistance, and partially use for topping off grants to the states in full compliance with JJPDA. This has all caused some concern that, given the choice between pursuing compliance for a **small** state grant or letting the funds go to a local entity, some systems will look at the cost-benefit and say, "Let's just let some **nonprofits and local courts compete** for this money." "That's been my concern since I got here," Harp said. "The harder we make administrative burdens on states, and the costs of complying with this act … the more likely [that] states will pull out. That hasn't truly started to happen yet, but doesn't mean it won't." The RFP has some juvenile justice advocates worried that the administration is not genuinely trying to maintain the connection between states and the JJDPA. "I'm still not aware why [Administrator Harp] would roll this into a non-participating state grant instead of helping them get into eligibility compliance?" said Campaign for Youth Justice CEO Marcy Mistrett. "It's completely backwards." Asked if this administration wants to see states remain in the act, Harp said, "Absolutely, we want states in the act. When a nonparticipating state says we'd like to come back in … we're ready to do whatever to try and support them and provide technical assistance to them."

States circumvent

Lahey 16 (Jessica Lahey is a contributing writer for The Atlantic), 01-08-2016, "The Steep Costs of Keeping Juveniles in Adult Prisons," Atlantic, https://www.theatlantic.com/education/archive/2016/01/the-cost-of-keeping-juveniles-in-adult-prisons/423201/// Eagan EL

On December 14, 2015, Philip Chism, of Danvers, Massachusetts, was convicted of raping and murdering his high-school math teacher, Colleen Ritzer. Chism, now 16, was 14 when he committed the crime, but was tried as an adult due to a Massachusetts state law requiring juveniles 14 and older accused of murder to be tried as adults. Massachusetts has policies in place that prevent juveniles from being sentenced to adult prisons, policies meant to protect youth from the increased risk of sexual abuse, injury, and death they face when imprisoned alongside adults. Juveniles constitute **1,200 of the 1.5 million people** housed in federal and state prisons in this country, and nearly **200,000** youth enter the adult criminal-justice system each year, most **for non-violent crimes**. On any given day, 10,000 juveniles are housed in adult prisons and jails. These children lose more than their freedom when they enter adult prisons; they **lose out** on the **educational and psychological benefits** offered by **juvenile-detention facilities**. Worse, they are much more likely to suffer sexual abuse and violence at the hands of other inmates and prison staff. The National Prison Rape Elimination Commission described their fate in blunt terms in a 2009 report: "More than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk of sexual abuse." The National Inmate Survey conducted by Department of Justice indicates that "1.8 percent of 16- and 17- year-olds imprisoned with adults report being sexually abused by other inmates." Of these cases, **75 percent** report having been victimized **repeatedly** by staff. However, due to

the imbalance of power between children and adults, not to mention between children and prison staff, sexual abuse of juveniles in adult prison is underreported; fewer than one in 10 of the juveniles surveyed reported their abuse. Given the lack of services and safety, it's hardly surprising that juveniles housed in adult prisons are **36 times** more likely to commit suicide than juveniles housed apart from adult offenders. The federal government has taken steps to protect juveniles from being housed with adults through two federal statutes: the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA) and the Prison Rape Elimination Act of 2003 (PREA). Under JJDPA and PREA guidelines, **juveniles must be housed separately from adult inmates.** Despite these statutes, **states continue to house juveniles with adult inmates**, and a few have chosen to forfeit federal-grant dollars rather than comply with PREA. PREA defines juveniles, or, in PREA language, "youthful inmates," as "any person under the age of 18 who is under adult-court supervision and incarcerated or detained in a prison or jail." PREA's "youthful inmate" standard is the first time a **federal statute** has denied juveniles as anyone under age 18. The JJDPA, however, **allows states to set their own definition** of "juvenile" as they see fit, and exempts youths being tried as adults from the JJDPA. Nine states (North Carolina, New York, Missouri, Texas, South Carolina, Georgia, Michigan, Louisiana, and Wisconsin) set the upper limit for "juvenile" at 16 years of age; in New York and North Carolina judicial systems, youths are automatically considered adults at age 16. This **discrepancy** in age definitions has resulted in **disagreement**, discord, and ultimately, **slow progress** toward compliance with PREA's youthful-inmate standard in many states. Texas recently agreed to comply earlier this year, albeit conditionally and with great reluctance, and in Utah, progress has stalled altogether. In the Department of Justice's annual report on the states' progress toward PREA compliance, 11 jurisdictions (Arizona, Iowa, Maine, Mississippi, Missouri, New Hampshire, New Jersey, North Dakota, Oregon, Tennessee, and Washington) certify they are in compliance with PREA guidelines, up from two states in 2014. **Most** other jurisdictions have submitted assurances of their intent to comply with the guidelines. Alaska, Arkansas, and Utah have either **ignored the guidelines** or report they have no plans to comply, citing undue financial burden and the right of states to oversee their criminal-justice system. **Assurances do not equal compliance**, however, and many of these states, such as Michigan, New York, Texas, and Florida, continue to house juveniles with adults, and as Florida has the highest rates of inmate-on-inmate sexual victimization and staff sexual misconduct, juveniles imprisoned in that state face a much higher risk of sexual abuse.

A2 Plea Bargain CP

Not cognitively developed enough to participate in plea bargains

Daftary-Kapur and Zottoli 14 Tarika Daftary-Kapur is a professor of Criminal Justice Department at Fairleigh Dickinson University. Tina M. Zottoli is a professor of Psychology Department at St. Joseph's College. "A First Look at the Plea Deal Experiences of Juveniles Tried in Adult Court", https://www-tandfonline-com.proxy.lib.umich.edu/doi/pdf/10.1080/14999013.2014.960983?needAccess=true, [6-20-2020]//cblasi

There is nothing in our data that suggests that our participants felt coerced into accepting a plea agreement; in fact, most of our participants perceived their decisions to accept their pleas as autonomous and the majority had favorable views of their attorneys. Nonetheless, our data do suggest that our participants showed deficits in both legal understanding and appreciation of the consequences of accepting a felony plea. Impaired understanding and appreciation raises the question of competence, and competence, as discussed earlier, is a necessary prerequisite for voluntariness. Furthermore, the youth in our study appear to have been strongly influenced by short-term factors that were mostly related to escaping what was experienced as an aversive process. Thus, our data provide a first look at the plea deal experiences of youth charged as adults and point to several potential areas for future research. First, while it is tempting to assume that any or all of the deficits we report arise from developmental immaturity, these deficits might be present in all offenders regardless of age. While a concerning finding either way, an important question is whether or not, as a group, youth charged as adults are at increased risk for having their due process rights violated during the plea deal process, and if so, whether or not these vulnerabilities manifest differently, or are more or less pronounced, at different points of development (i.e., early, middle, and late adolescence). The non-mentally diseased adult is the generally accepted benchmark for legal competence, and issues of competence are typically raised about adult defendants only when symptoms of mental illness or cognitive impairment are present. Mental illness and cognitive impairment surely raise similar questions in adolescent defendants, but developmental immaturity is rarely considered with respect to the competency of juvenile offenders to enter into plea deals. Furthermore, situations and circumstances (e.g., the immediate appeal of ending an arduous process) that are non-coercive for an adult may be coercive for an adolescent by virtue of developmental differences in the valuations of outcomes (e.g., Miller & Byrnes, 2001a, 2001b), weighing of long-term risks against short-term benefits (e.g., Crone & van der Molen, 2004), tendencies to comply to authority (e.g., Grisso et al., 2003), suggestibility (Gudjonsson, 2003; Redlich & Goodman, 2003; Scott-Hayward, 2007) and susceptibility to emotion (e.g., Prencipe et al., 2011). However, it is not unreasonable to assume that many (if not most) adult offenders exhibit the decisionmaking vulnerabilities of typically developing adolescents. Most of the existing research on age-related changes in cognitive and psychosocial functioning has been conducted in non-offending samples. Furthermore, with some notable exceptions (e.g., Grisso et al., 2003) much of the research on the vulnerability of adolescents in specific legal contexts has compared normally developing adolescents to normally developing adults, or, like this paper, has examined offending juveniles but not included adult offender comparison samples. Research comparing adult and juvenile offenders in the plea-deal context is necessary to establish this matter, especially in light of data from a recent study that reported low plea comprehension in adult offenders who were nonetheless competent to stand trial (Redlich & Summers, 2012) and in light of recent criticisms (e.g., Caldwell, 2011; Dervan, 2012) that the plea-bargaining system as it is in operation today may be inherently coercive, even for adult offenders. Along these lines, future developmental studies should expand on our current interview protocol to include questions that directly assess plea-deal decision making (e.g., identifying and weighing pros and cons) and that tap both

individual and age-related differences in impulsivity and perspective taking. Second, while studies using adult comparison samples will certainly help elucidate whether the deficits displayed by the youth in our study are a result of developmental immaturity, limited attorney contact/communication, or an interaction between the two, it remains that the youth in our study show deficits that may have compromised the integrity of their decision making in the plea context. At present, attorneys are in the best position to assess for deficiencies in their client's legal knowledge and appreciation of consequences, and to mitigate potential threats to competent decision making by their clients. To work with youth effectively, complex information must be broken down into small chunks and gone over slowly, giving the youth time to process the information. While the heavy caseloads of most public defenders present an obstacle to such an investment of time and resources, among the likely contributing factors to deficits in understanding and appreciation, communication is the main variable over which attorneys have control. Thus, future research should address ways to help attorneys identify deficits and communicate information to clients effectively and efficiently (see Buss, 2000 for suggestions on the ways in which attorneys can promote the decision-making competency of their juvenile clients). Such research will likely be well received by attorneys in light the recent Supreme Court rulings in Missouri v. Frye (2012) and Lafler v. Cooper (2012) that defendants have a constitutional right to effective counsel during the plea bargaining process. Our research team is presently working on a short checklist designed to help attorneys efficiently assess for deficits in their clients understanding and decision-making capacities to allow them to more efficiently allocate their limited resources and to screen for clients who may need formal competency evaluations. Third, adjudicative competence is a broad construct and the content of competency assessments may differ based on the tasks a defendant is required to perform in a given context (Roesch, Zapf, Golding, & Skeem, 1999). Few forensic assessment instruments for adjudicative competency include more than a handful of general questions related to plea-deal decision making. Given that most youth charged as adults take plea deals, future research should look at whether existing instruments are adequate guides for examiners who assess adjudicative competency of youth and/or whether new instruments are necessary to address this gap. Finally, while we were restricted from asking about initial charges and plea discounts in this study, future research should seek to document the discrepancies between initial charges (and attendant punishments) and the plea discounts offered to youth. Researchers should also experimentally manipulate initial charges and discounts to determine if youth are more or less likely to be influenced by wider disparities than are adults.

A2 Courts

Judicial actions shape elections

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After sporadic appearances in presidential campaigns throughout American history**, judicial issues are becoming a permanent fixture in presidential contests**. The President's power to nominate federal judges has emerged as at least a moderately important issue during the past several presidential campaigns, and judicial issues were more prominent in the 2000 campaign than in any election since 1968. The growing salience of the courts in presidential elections reflects increasing public awareness of the power of federal judges, particularly the Supreme Court Justices, and heightened appreciation of the President's ability to influence the courts through judicial nominations. Growing public sophistication about the judiciary's importance seems likely to ensure that judicial issues will remain a feature of presidential campaigns. If history is any guide, however, judicial issues are likely to continue to produce much campaign bluster but will affect few **ballots**. While the impact of judicial issues on voting patterns is difficult to discern, there is evidence that presidential candidates use judicial issues more as a means of rallying the party faithful than swaying undecided voters. Voters who agree with a candidate's judicial philosophy or with the type of judicial appointments that he promises to make are likely to agree with the candidate's views on legislative and administrative issues. Judicial issues therefore often merely reflect how voters already feel about a candidate on more salient legislative and administrative issues. Nevertheless**, judicial issues have significance in presidential contests that transcend the actual number of votes that they change**. Presidential **campaigns provide a unique** forum for public **discussion of judicial issues**. Dialogue between voters and candidates about judicial issues, while too often shallow, helps to shape public opinion about individual judicial decisions as well as broader legal issues. It also provides a barometer of public attitudes toward the Supreme Court. Presidential contests therefore can influence and have indeed affected subsequent judicial nominations and legislation affecting the courts. The impact of judicial issues in presidential campaigns and elections has received very little attention from scholars or other commentators.' The subject is ignored even in detailed studies of presidential campaigns.2 It deserves **more attention** because judicial issues have played a role in many elections during the **past two hundred years** and are now a staple of **presidential politics**. By chronologically tracing the use of judicial issues in past elections, this article will demonstrate that the use of judicial issues reveals much about the role of the judiciary in American society. In particular, this article will argue that the use of judicial issues in presidential campaigns illustrates 1) the decline of efforts by critics of the courts to curb the institutional powers of the courts and the concomitant growth of efforts to change judicial decisions by influencing the appointment of judges; 2) the abiding public respect of Americans for the judiciary; 3) the paucity of public sophistication about legal issues and the growth of such sophistication during recent years; 4) the manner in which judicial issues are inextricably intertwined with political issues; and 5) the ways in which voter reaction to judicial issues has influenced subsequent judicial appointments and legislation.

K Answers

Teenagers are uniquely capable to discuss racial inequality and mental health

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Even though teens can't vote until age 18, they want their opinions considered on important topics. Today's teens are interested in issues relating to every aspect of their lives from environmental concerns to privileges like driving. Teens and Driving The legal driving age is a hot topic for teens as they reach the age to earn this privilege. Each state sets the legal driving requirements for adolescents. Some states offer limited driver's licenses. This begins with a permit which is often issued at age 15, and the allowed driving time increases with experience and age. Others place limits on the number of passengers a 16-year-old can have in the car as well as institute curfews. Some tie the approval of a driver's license to school performance and the completion of driver's education courses. These differences in driving requirements lead to feelings of unfair policy. Many teens believe driving requirements should be more lenient and fair, but the facts about teens and driving don't support this stance. Teen drivers are three times as likely to be killed in a car crash than older drivers. Speeding, not wearing a seat belt, and not recognizing hazardous situations are among the highest risk factors for teen car accidents. Half of teen car crash deaths happen in the evening and at night. Teens and Racial Equality Teenagers today have grown up in a more racially diverse world than their parents or grandparents. Because diversity is their norm, teens don't see or react to race relations in the same way as do adults. People raised in this diverse world had a viewpoint that racism was gone or nearly gone until the racially charged news stories took over in recent years. Racial justice, especially relating to equal opportunities in education and employment, is of high interest to teens who come from mixed race backgrounds or have friends who do. Teen opinions on race issues in the United States are strong and less optimistic than in the past. Almost all black teens believe racism will never go away. More than three-quarters of American teenagers see racial discrimination as a problem for their generation. About 70 percent of teens do not feel the United States is not on the right path for the future. Teens and Alcohol In the past, the legal drinking age in many states was 18. However, lawmakers raised that age limit to 21 in every state. Some teens feel the limit should revert to 18 because that is when young people are recognized as adults. For example, at age 18, teens can vote and serve in the military. The argument for raising the legal drinking age to 21 formed to combat the immaturity of younger teens. Today, teens argue that raising the legal drinking age hasn't stopped them from drinking and instead has promoted binge drinking. This debate continues with each generation. Statistics on teen alcohol use show consumption is high among teens. By about ninth grade, one-third of teens have consumed alcohol. More than half of teens have had alcohol by the time they graduate high school. Teens drink more and binge drink more often the older they are in adolescence. Teens and Gun Control The debate over whether people have the right to own guns, who should and shouldn't be able to own them, and how these issues affect everyone never goes away. However, the incidence of related news stories seems more prevalent than in past decades. Specific concerns for teens include access to firearms for suicidal purposes, school and mass shootings and accidental firearm death in the home. Research indicates gun safety and violence affect thousands of children and teens each year. More than 1.5 million kids are living in homes with loaded guns that aren't locked away. Almost 14,000 people under age 19 are injured by gunshots annually. About 90 percent of accidental child gunshot deaths happen inside the child's home. Teens and Environmental Safety volunteers Available resources and future outlook are important issues to youth who care about quality of life. Issues like the availability of clean water, food scarcity, and clean air affect teens because they can impact a child's development and health in the years to come. Teens have more information about environmental issues than previous generations because there has been more research in recent decades and information is available in schools. Experts suggest preventable environmental hazards contribute to hundreds of thousands of child deaths every year. Cleaning environmental factors like water and air could have prevented more than 25 percent of child deaths. The biggest environmental hazard to children is air pollution. Exposure to environmental risks at a young age contributes to cancer in children. Twenty-one teenagers and young adults are currently involved in a lawsuit against the federal government for their actions relating to climate change policies. Teens say these poor decisions fail to protect public resources and have stripped younger generations of their right to life and liberty. Teens and Abortion Like adults, teens have a vested interest in each person's ability to make choices about her body and life. Some of the issues teens are concerned with regarding abortion include: Should parents be notified and should teens be allowed to choose abortion without a parent's consent? Is abortion right or wrong? Do both teen mom and teen dad have rights in decision-making? Does abortion hurt a teen girl's development? Teen moms accounted for over 200,000 births in 2015. While teen mom birthrates in the United States are higher than many other countries, instances are at an all-time low in America. Estimates suggest around 700,000 teen girls get pregnant each year with about one-fourth ending in abortion. Teens and Gender Equality The age-old struggle of male versus female roles and opportunities carries on with today's youth. Teens express a desire to see equal opportunities for men and women at work and in politics, but not necessarily in household roles. Both boys and girls see a need for gender equality, making this a universal issue. More than half of teens think the ideal family consists of the man working outside the home and the woman taking care of the home and children. The number of teens with this attitude has been on the rise since the early 1990s. About 90 percent of teens think men and women should be equal in the workplace. Young women earn 24 percent less than young men at work. Women account for less than 15 percent of government officials around the world. Teens and Higher Education unloading car at college Adult attitudes on the student loan crisis and a push for free higher education opportunities for low-income kids aren't necessarily echoed by teens. Research on attitudes toward the importance of a college education and the student loan crisis indicate teens still value higher education and don't view student loans as a college deterrent. About 90 percent of teens plan to attend college. Around 60 percent of teens suggest they can find a way to afford college without student loans. Only 11 percent of teens believe the government should help individuals struggling with student loan debt. Teens

and Mental Health Depression, anxiety, and other mental disorders impact the well-being of children, teens, and adults. Healthcare policies, education standards, and stigmas associated with mental health affect teens who are seeing high rates of mental disorders. 20 percent of adolescents currently have mental disorders which can be diagnosed. Less than half of young people with psychiatric disorders get treatment. The second leading cause of death in people ages 15-24 is suicide. There is a shortage of child mental health professionals in many areas, especially rural parts of the country. Teens and Foreign Affairs The United States political stance on international affairs waxes and wanes with each president with approaches ranging from peaceful communication to hostile action. These policies and viewpoints affect everything from education to quality of life for youth around the world. In the late teen years, adolescents can serve in the U.S. military, will seek out higher education, look for work, and plan for their future. The relationships between the U.S. and other countries can impact the opportunities for teens in all these areas. Over 300,000 U.S. students study abroad each year. Almost half of U.S. companies feel they miss out on international business opportunities because they don't have access to internationally competent employees. Americans are among the least likely in the world to embrace overseas employment, with one exception. More than half of millennials say they'd be willing to relocate for work. Wars in the 21st century have cost Americans over 1.5 trillion dollars and deployed about 2.5 million people. The Future Landscape Teens are interested in political issues because they feel empowered to make the world a better place for themselves. The availability of information and influential teenage role models help adolescents learn and do more. Although they can't vote in elections, teens can influence lawmakers by getting informed and making their voices heard.

Kids need to talk about politics—helps them develop key skills to advocate change

Fletcher 20, Adam Fletcher is a co-founder and longtime leader of Freechild., "Youth and Politics", Freechild Institute, https://freechild.org/youth-and-politics/, [Accessed: 6-30-2020]//cblasi

Around the world there is a growing interest in youth and politics. Some political groups are changing to respond to the growing number of young people who want to affect the political system. Political ideologies appealing to youth that were once considered "fringe" beliefs are becoming mainstreamed, and more young people are associating themselves with non-popular political parties. More young people than ever before are actually becoming engaged in local community campaigns and other political activities. Youth can change the world through politics by becoming actively, meaningfully and substantially involved throughout political parties and beyond. Ways Youth can Change the World through Politics Youth Mainstreaming – Advocating for youth mainstreaming can allow young people to change the world by creating new awareness, opportunities, policies, systems and cultures that foster youth engagement. In political parties, youth mainstreaming could allow for children and youth to affect democratic representation even in parties that would deny them the right to vote or otherwise become engaged. Running for Office — Whatever age they are, young people can run for office anywhere in the world as an act of protest; to make a stand; or to draw attention. Building momentum for single candidates requires they remain committed to the causes that get them elected; pushing a political party or platform requires staunch champions for youth in politics. Youth as Voters — Fighting for youth suffrage and demanding youth rights is a platform for youth voters. Another avenue for youth as voters is a protest vote. Going to a voting place and casting a blank ballot can show youth dissatisfaction with the current political system. Youth as voters can also vote for a youth candidate who may be foreign to the political system, but young and capable of sharing youth voice. Things Youth Need to Change the World through Politics **Education — I**n order to become engaged in politics in the most effective ways, young people can learn about political systems, political actions, political issues and other realities within and around the political system. They can also conduct action learning oriented activities that allow them to gain credit for their involvement. Training — Training young people to change the world through politics means teaching them the skills they need to become involved. These include communication, problem-solving, change management and conflict resolution skills. It also means participating in knowledge-sharing activities designed to build their capacity for powerful action. Inspiration — After 12, 14, 17 or 21 years of being told their voices don't matter in politics, young people may need inspiration to become engaged. Never in history have children and youth been seen or treated as serious political actors; given the opportunity, they will be. Inspiration from stories, parables, biographies and other sources can help prepare and sustain youth in politics.

DA Answers

A2 Elections

Hurts Trumps base the public feels less safe

Pegg 15 (Kaitlin Pegg is a student at Indiana University Maurer School of Law, J.D. expected 2015; University of Kentucky, B.A. 2012), 05-08-2015, "The "Once an Adult, Always an Adult" Doctrine: More Harm Than Good,", https://pdfs.semanticscholar.org/0327/583e18d8f66d9a7dcd7ab5e8ea80220a145b.pdf

The widespread use of the doctrine, as well as the concept of juvenile transfers in general, are largely a result of public perception of juvenile crime and subsequent responses.62 The media's focus on severe and violent crimes committed by youth has resulted in a tough-on-juvenile-criminals sentiment in the general public.63 Although the juvenile crime rate has decreased in recent years, polls reveal that the public feels that it is actually increasing.64 As a result, political players and policy makers have adopted "tough-on-crime" policies—including support for juvenile transfers—in an effort to gain the support of constituents who are fearful of young criminals.65 Additionally, courts have refused to hold that juveniles possess constitutional or fundamental rights to have their cases handled by juvenile, rather than adult, courts.66 Therefore, state legislatures may transfer youth to adult court via the "once an adult, always an adult" doctrine without infringing upon inherent rights of juveniles.67

Impacts is inevitable – Trump will refuse to leave office

Trump will be forced to leave

Kaplan 20 Fred Kaplan is the author of The Bomb: Presidents, Generals, and the Secret History of Nuclear War. "Trump Can't Just Refuse to Leave Office", Slate Magazine, 6/1/20, https://slate.com/news-and-politics/2020/06/trump-election-refusal-leave.html, [6-29-2020]//cblasi

The fear is spreading that if President Donald Trump loses the election this November, he'll refuse to leave office. Bill Maher has been warning of this specter on his HBO show, Real Time, since late last year. This past weekend, New York Times columnist Roger Cohen called Trump's compliance with the election results "the most critical question for American democracy" and wrote that the "chances are growing" that Trump would not concede if Joe Biden won. Biden himself has raised the possibility on a few occasions. If Trump could get away with refusing to leave the Oval Office, in order "to extend his autocratic power," as Cohen put it, he probably would. But he wouldn't get away with it; those around him would almost certainly advise him against it, if he asked; therefore my guess is, he won't try. Then again, in recent years many things have happened that I would have bet against. Let's say the nightmare happens. Here is why it won't last long. So it's the morning of Jan. 20, 2021. Trump doesn't meet President-elect Joe Biden and his wife in the White House driveway, nor does he attend the inauguration on Capitol Hill. Instead, he proclaims, as he has many times by this point, that the election was a fraud (he has set the stage for this with his false claims about mail-in ballots), and at noon, instead of acceding to the transfer of power, Trump proclaims that the swearing in was FAKE NEWS and that he remains the president. Here is what would happen next. On the dot of noon, the nuclear codes, which currently allow Trump to order and authenticate a nuclear attack, expire. The officer who has been following him around everywhere with the "football"—which, contrary to popular belief, is not a button or a palm print but rather a book filled with various launch codes—leaves. If Trump and whatever lackeys stay with him prevent the officer from leaving, another officer, holding a backup football, would join Biden at the inauguration ceremony. By the same token, the entire U.S. military establishment will pivot away from ex-President Trump and salute President Biden. The principle of civilian control is hammered into American officers from the time they're cadets—and the 20th Amendment of the Constitution states, "The terms of the President and Vice President shall end at noon on the 20th day of January"—no ifs, ands, or buts. If Trump orders the military to do anything, they will refuse his order. If any officers obey his order—say, to circle the White House to keep him in power—they would certainly be tried and convicted on charges of mutiny and sedition, and they would know this before taking the leap. Meanwhile, the Secret Service will abandon Trump, as they do every president whose term is up, except for a small detail assigned to protect him and his family for the rest of their lives. Overseas, foreign leaders will cut off relations with the U.S. ambassadors in their capitals and await instructions from Biden or his acting secretary of state. Meanwhile, Biden's acting attorney general will have drawn up arrest warrants for Donald J. Trump and anyone who remains at his side on charges—at minimum—of criminal trespassing. If Trump calls on the armed forces or militias or the nation's sheriffs to come defend him, he might also be charged with incitement or insurrection. If any of Trump's aides or Cabinet officers continue to take his orders, they too could face criminal charges and, in any case, would have a hard time finding respectable employment after the pretend monarch is taken away in handcuffs. If armed militiamen and sheriffs rally to the White House and they refuse to let U.S. marshals through the gates, a small contingent of Secret Service or the National Guard could be called up to enforce the law. If that doesn't work, a few M1 tanks rolling down Pennsylvania Avenue should make the would-be rebels flee. It would be terrible if the standoff came to this, but

Commander in Chief Biden would have this option available, if necessary. In other words, Trump could hole himself up in the Oval Office, but the Oval Office would very soon be cut off from all power. He would have no choice but to give up. It is hard to imagine, even in this time of hard-to-imagine things happening, that a single Supreme Court justice or more than a handful of congressional Republicans—and probably not a single member of the GOP leadership, not even Senate Majority Leader Mitch McConnell (who, depending on how Election Day had gone, might be downgraded to minority leader on Inauguration Day)—would stand up for Trump's blatantly unconstitutional ploy to stay in power. The next 7½ months of Trump's presidency will likely be rife with tension and scandals and outrage, no matter how the election goes. There will be plenty to deal with for all of us who care about the future of the United States as a nation, a people, and a democracy. To the extent this concerns the election, there's more cause for worry about Trump suppressing turnout, or 2016-style tampering. The possibility that Trump won't leave office, even if he loses, is a scenario for which Biden's aides should draw up contingencies—but it doesn't rank high among the things for citizens to take seriously, and take action about, now

Trump drops out of 2020—low poll numbers make him sad

Hall 6/29 Richard Hall is The Independent's senior US correspondent., "Trump may drop out of the 2020 race if poll numbers don't improve GOP insiders tell Fox News", Independent, https://www.independent.co.uk/news/world/americas/us-election/trump-2020-us-election-drop-out-fox-news-republican-a9592036.html?fbclid=IwAR2nHaT0fJZWr6c_cjZ4IoV8THli9pjzKJL53oFg_8FQuXpl4jEOCQfLzWM, [6-29-2020]//cblasi

Donald Trump may drop out of the 2020 presidential race if he believes he has no chance of winning, a Republican Party operative reportedly told Fox News. The claim comes in a report in the president's favourite news outlet that cites a number of GOP insiders who are concerned about Mr Trump's re-election prospects amid abysmal polling numbers. Joe Biden, the presumptive Democratic nominee, currently holds an average lead of nine points over the incumbent, according to a tracker of 2020 polls by RealClearPolitics. Crucially, Mr Trump has lost support from older white voters — typically a bedrock of support for the Republican Party and a group that was crucial to his narrow 2016 victory. Mr Trump is also trailing the former vice president in almost all the swing states. "It's too early, but if the polls continue to worsen, you can see a scenario where he drops out," one anonymous GOP operative told Fox News. Charles Gasparino, the author of the Fox News report, said in a series of tweets that he had spoken to "major players" in the Republican party for the story. One of them described Mr Trump's mood as "fragile" as his chances of a second-term looked increasingly dim. Another of the GOP sources cited in the report said of the likelihood that Mr Trump will drop out: "I've heard the talk but I doubt it's true. My bet is, he drops if he believes there's no way to win." Mr Trump has repeatedly hit out at polling that shows him far behind Mr Biden. Last month, he tweeted that Fox News "should fire their Fake Pollster. Never had a good Fox Poll!" On Monday, he tweeted: "Sorry to inform the Do Nothing Democrats, but I am getting VERY GOOD internal Polling Numbers. Just like 2016, the @nytimes Polls are Fake! The @FoxNews Polls are a JOKE! Do you think they will apologize to me & their subscribers AGAIN when I WIN? People want LAW, ORDER & SAFETY!" But polls from all polling organisations show Mr Trump consistently behind by similar margins. In particular, they have shown high levels of disapproval over the president's handling of the coronavirus and mass protests calling for racial justice after the police killing of George Floyd. A recent Washington Post-Ipsos poll found that 36 per cent of American adults approve of Trump's handling of the protests, while 62 percent disapprove. A New York Times poll returned similar numbers. The same New York Times-Siena College poll found 58 per cent of Americans disapprove of his handling of the coronavirus outbreak, while only 38 percent approve — the worst ratings since the crisis began. The Trump campaign called reports that the president would consider dropping out "the granddaddy of fake news". "Everyone knows that media polling has always been wrong about President Trump – they undersample Republicans and don't screen for likely voters – in order to set false narratives," Trump campaign spokesman Tim Murtaugh told Fox News. "It won't work. There was similar fretting in 2016 and if it had been accurate, Hillary Clinton would be in the White House right now."

Trump drops out—unhappy base due to covid makes him reconsider

Longman 6/29 Martin Longman is the web editor for the Washington Monthly "What If Trump Decides Not to Seek a Second Term?", Washington Monthly, https://washingtonmonthly.com/2020/06/29/what-if-trump-decides-not-to-seek-a-second-term/, [6-29-2020]//cblasi

Speculation that President Trump may pull a Lyndon Johnson and decline to seek a second term is beginning to percolate. To understand why, let's turn to a guy best known for making drunk cable news appearances: "Under the current trajectory, President Trump is on the precipice of one of the worst electoral defeats in modern presidential elections

and the worst historically for an incumbent president," said former Trump political adviser Sam Nunberg, who remains a supporter. Nunberg pointed to national polls released by CNBC and New York Times/Siena over the past week showing Trump receiving below 40 percent against Biden. If Trump's numbers erode to 35 percentage points over the next two weeks, Nunberg added, "He's going to be facing realistically a 400-plus electoral vote loss and the president would need to strongly reconsider whether he wants to continue to run as the Republican presidential nominee." Recent surveys have Joe Biden leading by one point in Texas and pulling ahead in Georgia, so Nunberg isn't just raving in his usual way. He spoke of the "trajectory," and if Trump can't bend the current curve, his polls are going to look devastatingly bad in a couple of weeks, and certainly before he is supposed to accept the Republican Party's presidential nomination in Jacksonville. Actually, the Republican convention is looking increasingly like a fate worse than death for the president. As Dave Brooks writes for Billboard, the venue management company ASG Global that handled Trump's Tulsa rally is also responsible for running events at the VyStar Veterans Memorial Arena in Jacksonville. They are furious with Trump's campaign. The company asked the White House for a detailed security and social distancing plan for Tulsa and received nothing. When they put stickers on alternating chairs telling people not to sit there, campaign staffers went around and peeled those stickers off. Several of those staffers actually had COVID-19 and they were not following basic protocols about maintaining six feet of distance or wearing masks. After the event the Tulsa mayor had, they had the temerity to say that he would have been okay with it, if ASG Global simply refused to serve as the host. There's a real chance that they will refuse to put their employees at risk again in Jacksonville. At a minimum, they're going to make demands that will undermine the whole point of moving the convention from Charlotte, North Carolina. Trump isn't getting a normal looking crowd. In any case, the coronavirus has now erupted throughout the South, and particularly in Florida, making it unlikely that a bunch of septuagenarian and octogenarian delegates will want to travel there by plane. Most residents don't want them to come anyway, and it's unclear if the hotels will be welcoming. Why would Trump want to be humiliated in this fashion? Why would anyone want to show up and sing his praises after he's begun supporting "white power" and shooting peaceful protesters on Twitter? Wouldn't it be best to just call the whole thing off? It's not as crazy of an idea as it sounds, but there's plenty of preparation going on in the other direction, with William Barr working overtime to use the Justice Department as an organ of Trump's reelection effort. We've seen dry runs on limiting urban polling stations in Georgia and Kentucky, and Trump's clearly still banking on covert Russian assistance. If he stays in, he's going to fight dirty on every front. What's clear is that under Trump's leadership, nothing is going to get better between now and November. Schools won't reopen or will quickly regret their decision to do so, the economy is going to get worse, and America will continue to stick out like a sore thumb as having the absolute worst response in the world to the viral pandemic. Certainly, Trump isn't going to become some kind of stable genius. He will continue to outrage and offend in ways that don't fit the current moment. He might just call it quits. He certainly should.

Impacts inevitable—Trump will cancel the election

Smith 6/11 Averell "Ace" Smith is an American political adviser who has worked mainly for Democratic Party candidates and initiatives."Could Donald Trump really 'cancel' the 2020 presidential election? Yes, and here's how", Sacbee, 6/11/20, https://www.sacbee.com/opinion/article243441296.html, [6-29-2020]//cblasi

Don't believe anyone who says "a presidential election can't be canceled." It can be, and here's how. While it is true that the United States Constitution and (later) federal law requires that an election be held on the first Tuesday after the first Sunday in November, there is a catch: The Constitution allows the presidential electors to be chosen through means determined by the state legislatures, not by direct election of its citizens. So, can President Donald Trump cancel the presidential election on a state-by-state basis if he thinks he may lose? Yes he can, and it's easy: Let's say COVID-19 breaks out and chaos ensues. Article II, Section 1 of the Constitution reads: "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress…" In other words, states, not citizens hold the power to select the presidential electors. In fact, it wasn't until 1824 that the popular vote was partially used to elect a president. Even in that election, while 18 states chose presidential electors by popular vote, six states still opted to choose them by a vote of the state legislature. Under the Constitution, individual states can simply decide to appoint a trove of Trump supporters to cast their electoral votes for him – it is perfectly within their rights All that Trump-biased states would need to do is declare a COVID-19 health emergency and pass a law to take away the presidential selection from the citizens and give it to themselves. The result would be a **canceled presidential election** in that state, and a slate of Trump electors, chosen to cast their state's electoral votes, allowing any state with a close margin to guarantee Trump a victory. Another common question I hear is: "What happens if there is COVID-19 chaos this fall and the presidential election is thrown to the House of Representatives?" Most people logically think Trump will lose because the Democrats control the House of Representatives. Unfortunately, the opposite is true: If it goes into the House, Trump wins. He wins because, under Article II, Section 1 of the Constitution, each state receives just one vote. Thus, California which has 55 electoral votes would have the same voting power as North Dakota with 3 electoral votes. The writing is already on the wall. After witnessing the use of the military force to silence peaceful protesters, let's clearly understand that these people will take any steps – even extralegal steps – necessary to stay in power. Trump's advisor and son-in-law, Jared

Kushner, has refused to rule out delaying the election. It is no coincidence that Trump and his allies have done everything in their power to stop voting by mail. They have done so because allowing citizens to vote without risking their lives, takes away the "emergency" that will give their allies cover to cancel state elections. Nothing should surprise us anymore – so put this on your list of important things to focus on as our national election looms. Fight your hearts out for universal vote-by-mail so that Trump and his minions have no excuse to cancel the election. Because we all know that Trump will do anything to stay in power, even if it means canceling the election.

Trump won't take credit—reauthorization of JJDP proves

Charles 19 J. Brian Charles is a staff writer at governing focusing on health care and criminal justice reform. "The Criminal Justice Reforms Trump Didn't Mention in His State of the Union", 2/7/19, https://www.governing.com/topics/public-justice-safety/gov-trump-sotu-juvenile-criminal-justice-reform-states.html, [6-27-2020]//cblasi

In his **S**tate **o**f **t**he **U**nion address on Tuesday, President Trump lauded Republican and Democratic members of Congress for coming together to pass criminal justice reforms. The First Step Act, which was signed by Trump in late December, reduces prison sentences for thousands of nonviolent federal inmates. But another bipartisan measure signed in December, which will make sweeping changes to the nation's juvenile justice system, has received **far less attention** from the president and members of Congress even though it could impact more people since it also applies to state prisons and local jails. Under the new law, known as the **J**uvenile **J**ustice and **D**elinquency **P**revention Act, states must begin collecting data on racial disparities in the juvenile system -- and develop specific strategies for addressing those inequalities. If they don't, they will risk losing federal funding that helps them collect data on juvenile crime. Currently, all but three states -- Connecticut, Nebraska and Wyoming -- receive such funding. "Race and ethnic disparities are a huge part of the problem of mass incarceration," says Melissa Goemann, senior policy counsel for the National Juvenile Justice Network. "I think this gives them more of an impetus to develop more rigorous programs to reduce [those] disparities." According to Department of Justice data, black juveniles are three times more likely to be incarcerated than Latinos, and six times more likely to be incarcerated than whites. The law also eases punishments for many juvenile offenders. It prohibits states from holding juveniles for more than seven days on so-called status offenses, such as truancy or running away from home. And it all but eliminates the practice of holding juveniles in adult correctional facilities. (Rural counties that do not currently have juvenile correctional facilities are exempt.) "This is a bipartisan bill," Goemann says. "It's one of the few policy areas where there is overwhelming agreement on both sides." Despite the broad support for the measure, the juvenile reform bill had been tied up in Congress for more than a decade as lawmakers quibbled over certain details. When it finally passed the House in December, Democratic Virginia Rep. Bobby Scott called it "the culmination of a multi-year, bipartisan effort to improve our juvenile justice system." Scott, along with Republican Rep. Jason Lewis of Minnesota, was the chief supporter of the bill in the House. "This legislation strengthens each of the core protections for children in the juvenile justice system," Scott said in a statement. "It ensures children are treated separately -- both in approach and location -- than adult offenders; it shifts the focus from punishing young people to supporting them through education and programming; and it puts a spotlight on the racial disparities in our juvenile justice system." The new reforms mark something of a pivot for the Trump administration. The president has repeatedly positioned himself as a tough-on-crime leader. In his inaugural address, he vowed to end the "American carnage" that "crime and gangs and drugs" had wreaked in cities across the country. Last year, the Justice Department curtailed its own data collection and monitoring of racial disparities in juvenile justice, according to reporting from the Marshall Institute, a nonprofit news organization covering criminal justice. Nonetheless, Trump has embraced the new measures as effective ways to address racial inequalities in the American justice system. While he did not mention the new juvenile justice law in his State of the Union address this week, he did praise Congress for passing the First Step Act to make changes to adult criminal justice policy. "This legislation reformed sentencing laws that have wrongly and disproportionately harmed the African-American community," he said in his address. He heralded the law, which curbs the use of mandatory minimums for drug felonies and reduces the sentences of more than 2,000 current federal inmates, as an important way to give "nonviolent offenders the chance to reenter society as productive, law-abiding citizens."

Plan doesn’t get votes

Pilington 18 Ed Pilkington is chief reporter for Guardian US., “Under Trump, juveniles are 'offenders' and aren't 'healthy and educated'”, Guardian, 10/4/18https://www.theguardian.com/us-news/2018/oct/04/trump-administration-juvenile-justice-websites, [6-27-2020]//cblasi

The Trump administration has surreptitiously altered federal government websites dealing with juvenile justice to remove the ambition that American children should be “healthy and educated”. The change was among a raft of revisions quietly imposed on public information websites by a little-known agency of the justice department known as the Office of Juvenile Justice and Delinquency Prevention (OJJDP). It advises states and local communities on how to treat minors in trouble with the law. Under the agency’s old vision statement, the office expressed a desire for America to be “a nation where our children are healthy, educated, and free from violence”. After Donald Trump entered the White House in January 2017, the phrase was changed – without any public notice or consultation – to “a nation where our children are free from crime and violence”. Other changes to the agency’s websites included removing guidance that urged states to stop putting children into solitary confinement, avoid placing girls behind bars and address the disproportionate impact of courts and prisons on black and other minority kids. The unannounced alterations were spotted by the open information group the Sunlight Foundation. Its Web Integrity Project, which monitors tens of thousands of government websites, became aware of a large number of edits being made to the agency’s web output. Researchers at the project used the Wayback Machine, which archives billions of internet pages, to compare today’s web pages with pre-Trump offerings. The findings suggest that under new leadership the juvenile justice branch of the Department of Justice has begun to change its messaging in order to reflect a tougher federal approach to children that **emphasizes punishment over rehabilitation.** The change in approach followed the appointment by Trump of Caren Harp as head of the DoJ’s juvenile justice agency. Harp has a track record as both a prosecutor and defender, and before taking over the helm in January was associate law professor at Liberty University, a Christian institution in Virginia with ties to the conservative movement. In an interview published with a juvenile justice magazine in March, Harp said that in her view the system had become imbalanced and she urged a return to a **more penal approach**. “There’s a need to return to balanced consideration of public safety, offender accountability and youth development.” She added: “It drifted a bit to a focus on avoiding arrests at all costs and therapeutic intervention. It went a little too far to the side of providing services without thinking of short-term safety.” The Marshall Project reported last month that under Harp the agency has quietly dropped a number of important research projects designed to assist states in reducing the disproportionate imprisonment of black and other minority young people. The attorney general, Jeff Sessions, a former US senator from Alabama, had pressed for the changes, complaining of unnecessary regulation. In a statement released to the Guardian, a spokesman for the juvenile justice agency said that the changes to its websites were part of a “normal transition from one administration to another. Web pages are removed or archived in order to review content and ensure programs, policy and other online information is current.” The Sunlight Foundation discovered a number of notable alterations that the agency has made without alerting anybody. It has radically revised the language it uses to describe children who get caught up in the criminal justice system from the neutral, albeit clunky “justice-involved youth” to the more judgmental “offender”. It has also removed a page called Girls and the Juvenile Justice System that gave girls and young women advice on how to relate to the criminal justice system. The expunged page noted that girls’ share of arrests, custody and court appearances have increased steadily over the past 30 years to almost a third of juvenile cases. It added that girls who become trapped in the system are “often girls of color and girls living in poverty. They are typically nonviolent and pose little or no risk to public safety. Their involvement with the juvenile justice system usually does more harm than good.” The agency has also scrapped a page called “Eliminating solitary confinement for youth”. It urged states and local communities to stop placing kids into isolation cells as an “important step toward improving conditions and creating an environment where they can heal and thrive”

A2 Crime DA

Adult punishments increase juvenile misdeed

Young and Gainsborough 2000 Malcolm C. Young and Jenni Gainsborough are attorneys. “Prosecuting Juveniles in Adult Court--An Assessment of Trends and Consequences” https://www.prisonpolicy.org/scans/sp/juvenile.pdf , [6/20/20]//cblasi

The move to send more children into the adult criminal justice system is a radical rethinking of the traditional view that delinquent children need help to turn their lives around and belong in a system that focuses primarily on rehabilitation rather than punishment. Remarkably, the nationwide transformation to this more punitive approach is taking place despite the continuing, multiyear, decline in juvenile crime. As the number of juvenile cases heard in criminal court increases, more people involved in the system are recognizing that adult courts are inappropriate and unjust settings for children whose developmental immaturity puts them at a disadvantage at every stage in the system. There is mounting evidence of the long-term and damaging consequences suffered by children who are imprisoned in adult prisons and jails. Furthermore, the imposition of adult punishments, far from deterring crime, actually increases the likelihood that a young person will commit further criminal offenses. The transfer of increasing numbers of children from juvenile to criminal courts is continuing in the face of mounting evidence of the harm it does both to the children and to public safety – once again “tough on crime” politics undermines good public policy.

A2 Budget DA

More evidence of cost-effective alternatives

(Amanda **Petteruti**, Tracy Velázquez and Nastassia Walsh, 05-19-20**09**, "The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense,"Justice Policy Institute, http://www.justicepolicy.org/images/upload/09_05_rep_costsofconfinement_jj_ps.pdf

This policy brief details how states can see a net reduction in costs by moving expenditures away from large, congruent care facilities (often called "training schools") for youth and investing in community-based alternatives. Such a resource realignment can reap better results for communities, taxpayers, and children. Evidence is growing that there are cost-effective policies and programs for intervening in the lives of delinquent youth which actually improve community safety and outcomes for children. While there is no silver bullet that will guarantee reductions in crime, policies that include prevention and intervention for youth in the community have been shown to have a positive public safety benefit. Major findings and recommendations for reform include: • States needlessly spend billions of dollars a year incarcerating nonviolent youth. States spend about $5.7 billion each year imprisoning youth, even though the majority are held for nonviolent offenses and could be managed safely in the community. • The biggest states are realigning fiscal resources away from ineffective and expensive state institutions, and towards more effective community based services. California, Illinois, Ohio, New York, Pennsylvania, and other large states are redirecting funds once spent on large residential facilities, and spending those dollars on less expensive, more effective programs to curb reoffending and reduce youth crime. • Holding more youth in secure juvenile facilities can lead to costly litigation for states. Unacceptable conditions not only have serious negative consequences on the youth who experience them, but can also lead to court-ordered reforms which in some cases have cost millions of dollars. • Imprisoning youth can have severe detrimental effects on youth, their long-term economic productivity and economic health of communities. Youth who are imprisoned have higher recidivism rates than youth who remain in communities, both due to suspended opportunities for education and a disruption in the process that normally allows many youth to "age-out" of crime. • Policies that lock up more youth do not necessarily improve public safety. Ten years of data on incarceration and crime trends show that states that increased the number of youth in juvenile facilities did not necessarily experience a decrease in crime during the same time period. • Community-based programs increase public safety. The most effective programs at reducing recidivism rates and promoting positive life outcomes for youth are administered in the community, outside of the criminal or juvenile justice systems. Some of these programs have been shown to reduce recidivism by up to 22 percent. • Community-based programs for youth are more cost-effective than incarceration. Some programs like multi-systemic therapy and functional family therapy have been shown to yield up to $13 in benefits to public safety for every dollar spent. These programs are more cost effective and produce more public safety benefits than detaining and incarcerating youth.

detentions = expensive

(Barry **Holman &** Jason **Ziedenberg**, 11-28-20**06**, "The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities,"Justice Policy Institute, http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf)

The fiscal costs of incarcerating youth are a cause for concern in these budget-strained times. According to Earl Dunlap, head of the National Juvenile Detention Association, the annual average cost per year of a detention bed—depending on geography and cost of living—could range from $32,000 ($87 per day) to as high as $65,000 a year ($178 per day), with some big cities paying far more. Dunlap says that the cost of building, financing, and operating a single detention bed costs the public between $1.25 and $1.5 million over a twenty-year period of time. By contrast, a number of communities that have invested in alternatives to detention have documented the fiscal savings they achieve on a daily basis, in contrast to what they would spend per day on detaining a youth. In New York City (2001), one day in detention ($385) costs 15 times what it does to send a youth to a detention alternative ($25).42 In Tarrant County, Texas (2004), it costs a community 3.5 times as much to detain a youth per day ($121) versus a detention alternative ($35), and even less for electronic monitoring ($3.75).43 Whether compared to alternatives in the here and now, or put to

rigorous economic efficiency models that account for the long-term costs of crime and incarceration overtime, juvenile detention is not a cost-effective way of promoting public safety, or meeting detained young people's needs. The Washington State Institute for Public Policy (WSIPP), a non-partisan research institution that—at legislative direction—studies issues of importance to Washington State, was directed to study the cost effectiveness of the state's juvenile justice system. WSIPP found that there had been a 43 percent increase in juvenile justice spending during the 1990s, and that the main factor driving those expenditures was the confinement of juvenile offenders. While this increase in spending and juvenile incarceration was associated with a decrease in juvenile crime, WSIPP found, "the effect of detention on lower crime rates has decreased in recent years as the system expanded. The lesson: confinement works, but it is an expensive way to lower crime rates."44 The legislature directed them to take the next step, and answer the question, "Are there less expensive ways to reduce juvenile crime?" WSIPP found that, for every dollar spent on county juvenile detention systems, $1.98 of "benefits" in terms of reduced crime and costs of crime to taxpayers was achieved. By sharp contrast, diversion and mentoring programs produced $3.36 of benefits for every dollar spent, aggression replacement training produced $10 of benefits for every dollar spent, and multi-systemic therapy produced $13 of benefits for every dollar spent. Any inefficiencies in a juvenile justice system that concentrates juvenile justice spending on detention or confinement drains available funds away from interventions that may be more effective at reducing recidivism and promoting public safety.

Alternatives to incarceration more cost effective

(**Biehl & Kollmann**, 03-20**18**, "," No Publication, https://www.law.northwestern.edu/legalclinic/cfjc/documents/communitysafetymarch.pdf)

Most evidence-based youth services with high return on investment (ROI), such as family therapy (see previous report), rely on youth to be at home or in a community setting to participate. Such services overwhelmingly cost far less upfront, as well as delivering long-term cost savings through improved outcomes. A study of RECLAIM Ohio, an incentive-realignment program similar to Redeploy Illinois, showed that youth diverted from incarceration into community-based supervision and services had lower rates of recidivism within every risk category. Low- and medium-risk youth engaged in alternative settings had recidivism rates two-to-six times lower than incarcerated youth of the same risk levels. Meanwhile, community-based alternatives to incarceration cost exponentially less than youth prisons. Placing most youth in alternative programs is a cost-effective choice – these programs achieve much better results at a tiny fraction of the cost of youth prison for low- and medium-risk youth. But what of very high-risk youth, who may not have exponentially better outcomes in a community program than they would if sent to IDJJ? It should still be a public safety priority to choose non-prison-based programs in every possible case, for three reasons: First, as illustrated through the experience of RECLAIM Ohio, community-based programming can in fact deliver better recidivism results than the state youth prison system – even for youth in the highest ("very high risk") category. And once total program costs (initial processing plus recidivism differences) are considered, RECLAIM Ohio was significantly more costeffective than both large state youth prisons and smaller, community correction facilities for youth in every risk category – including, again, the highest-risk youth. Second, if alternatives to incarceration like Redeploy Illinois are expanded to very high-risk youth and "only" achieve recidivism results on par with IDJJ, 29 times more money is still available to invest in youth and community development programs and other public safety budget priorities that do reduce recidivism. With fiscal discipline and close attention to ensure cost savings truly are reinvested into important community resources, including strong education, health, and family supports, there is still a net general safety benefit to avoiding incarceration for high-risk youth, even if the specific recidivism results are held constant. Third, for the very few programs that could require high direct per capita costs closer to those of youth prisons, the ten-to-one ripple effect of incarceration's broader economic drag still makes services delivered outside of harmful prison settings more cost-effective overall. For instance, for a very small number of youth who cannot yet

be safely supervised outside of a residential setting, services could be delivered individually, by highly-trained employees, in a very personalized and local intensive therapeutic program with a homelike environment. Even if upfront costs for tailored, extremely high quality residential services matched youth prison costs, they would still be a more cost-effective alternative, due to avoiding some of the economic harms of incarceration.

Miscellaneous

8th Amendment Adv

*Note – we didn't end up pursuing this advantage but here is an internal link card for anyone who wants to take a further look

Juvenile confinement with adults is a clear 8th amendment violation

Wood, 20 -- articles editor for the Emory Law Journal. (Andrea Wood, Cruel and Unusual Punishment: Confining Juveniles with Adults After Graham and Miller, Emory University School of Law, 2020, 6-19-2020, https://law.emory.edu/elj/content/volume-61/issue-6/comments/cruel-and-unusual-punishment.html)//OD

Confining juveniles with adults violates the Eighth Amendment's prohibition against cruel and unusual punishment. Juveniles, recognized by the Supreme Court as being developmentally different from adults and having diminished culpability, face grave dangers when confined with adults in prisons and jails. In Roper v. Simmons, Graham v. Florida, and Miller v. Alabama, the Court expounded upon the many differences between juveniles and adults. In Roper and Graham, the Court held that juveniles' diminished culpability as a class warranted the establishment of bright-line rules against capital punishment and life in prison without the possibility of parole for the nonhomicide conviction of a juvenile, respectively. Similarly, juveniles' diminished culpability, along with the unfulfilled penological goal of deterrence, merits a bright-line rule preventing the confinement of juveniles with adults in prisons and jails. Given the significant and known dangers faced by juveniles confined in adult facilities, the confinement of juveniles with adults violates the Eighth Amendment. **Although this Comment does not argue for the elimination of the transfer of juveniles to criminal court, it does assert that even when juveniles are tried in criminal court, the Constitution prohibits the confinement of juveniles with adults.** Although sight-and-sound separation from adults in prisons and jails would be less likely to violate the Eighth Amendment, it is not an ideal solution and still presents significant risks, especially stemming from the dangers of solitary confinement for juveniles. 353 Accordingly, whenever possible, juveniles should be housed in juvenile facilities at least until they reach the age of eighteen. States should begin to prepare for increased numbers of juveniles that will need to be confined in juvenile facilities if the Supreme Court holds the confinement of juveniles with adults to be unconstitutional. The ultimate solution, however, will be for states to adopt policies and programs that decrease the confinement of juveniles in all detention and correctional facilities, and that promote nonresidential supervision, programs, and intervention whenever appropriate. 354

Wood n.d. Andrea Wood is a United States District Judge of the United States District Court for the Northern District of Illinois., n.d., "Cruel and Unusual Punishment: Confining Juveniles with Adults After Graham and Miller", Emory University School of Law, https://law.emory.edu/elj/content/volume-61/issue-6/comments/cruel-and-unusual-punishment.html, [6-20-2020]//cblasi

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Due Process Adv

Constitutional rights are being violated—abolishing juveniles tried as adults solves

Bailey, Michael (2002) "Why Juveniles Should Not Be Tried as Adults," Brigham Young University Prelaw Review: Vol. 16 , Article 12, https://scholarsarchive.byu.edu/cgi/viewcontent.cgi?article=1049&context=byuplr [accessed: 6/20/20]//cblasi

Juveniles' constitutional rights are in danger of being abused. Certain constitutional freedoms like Miranda rights require special consideration when applied to juveniles.Wllle the Constitution allows adults to waive 6 People u. Rivem, 968 P1d 1061 CO (1997). -Lucas u. U.S., 521 A2d 876 DC (1987). • Comur v. State, 34+ 457 AR (1998). 90 BRIGHAM YoUNG UNIVERSITY PRELAW REVIEW [Vol. 16 these rights if they choose, certainly before waiving their rights, juveniles should receive advice from a competent, crusted adult instead of an unfamiliar authority figure like a police officer. In State of New Hampshire v. jason FarrelL the court claimed that an adult need not be present for a juvenile to waive his or her Miranda rights.• Miranda rights are a critical component of the Constitution and officials should not hastily encourage adolescents co relinquish them. In addition, since the court grants adults due process protections regarding rules of evidence as a safeguard against biased and inflan1marory prosecution, it should award juveniles no less. In che case of State of Arizona v. Orlander Beasley, che fourteen-year-old defendant was described as a "chronic felony offender."' 0 The court used his juvenile record co determine his status for erial as an adult. Paradoxically, rhis record could nor be used as evidence in the erial irself. The State of Arizona denied the juvenile defendant proper due process protection by employing the very evidence prohibited from being used in the court case to determine his status as an adult for the trial. This blatant double standard regarding the uses of evidence is unfair and unconstitutionaL In rhe case of Lucas v. United States, the appeUanc court found rhat the erial court erred in admitting certain evidence. Specifi cally, "the trial court erred in failing sau sponte co caution the jury ... that it should not consider the contradictory grand jury testimony presented as evidence."11 In chis case the court negligently allowed the jury to be influenced by proscribed evidence. The court again prevented tl1e adolescent defendant from proper due process protection by admitting inappropriate evidence co che erial. When youth are tried, they should be extended due process protection from preliminary hearings throughout the entire process. Until recently, due process protection for juveniles seemed unnecessary. In his Catholic University Law Review article Thomas Wagman points out that the Supreme Court advanced juvenile procedural due process rights in Kent v. United States: "Prior co chis case, society did not consider juveniles 'criminals'; and thus, an assumption existed chat they did not need che due • Stutt t>. Fa~n/1, 98497 NH (zoot) . .. sw~ v. B~.:zslry. I CA-CR 99-o899 AZ (2000). II Lll<•ts v. u.s. 2002] Why juveniles Should Not Be Tried as Adults 91 process protections afforded to adults." 12 Although juveniles might not have been regarded as criminals, upon standing erial they should be afforded the same rights as adults, including those of due process. Due process protection is predicated on proper rules of evidence. It is critical that juveniles be extended the fre·edoms and rights the Constitution created for all citizens.

Constitutional rights being violated

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Future I-Law/Human Rights Adv Cards

The Committee of American Human Rights has said that the Juvenile Justice System is bad and needs to be fixed

OAS 11 – (Organization of American States, "Juvenile Justice and Human Rights in the Americas", https://www.oas.org/en/iachr/children/docs/pdf/JuvenileJustice.pdf, Howard)

1. **The** Inter-American Commission on Human Rights (**IACHR**) **has had multiple occasions to deal with the issue of juvenile justice and its relationship to human rights** when examining and deciding the petitions and cases submitted to it, and the precautionary measures requested of it, when conducting its visits and adopting reports on the situation of human rights in the member States of the Organization of American States (OAS), and at the public hearings convened during its sessions. Based on the information it received, the Commission has decided to prepare a thematic **report to examine juvenile justice in the Americas and to make recommendations to the member States with a view to strengthening and improving their institutions, laws, policies, programs and practices in the area of juvenile justice and to ensure that those systems are implemented in accordance with the international corpus juris** on the rights of children and adolescents. To make the preparation of this report possible, the IACHR signed a memorandum of understanding with the Regional Office for Latin America and the Caribbean of the United Nations Children's Fund (UNICEF) and with the United Nations' Office of the High Commissioner for Human Rights (OHCHR). It also received financial support from the Inter-American Development Bank (IADB), Save the Children - Sweden, and the Government of Luxemburg. The Commission also wishes to acknowledge the cooperation of the Special Representative on Violence Against Children Office.

The States have a minimum age that all children must follow for the Juvenile Justice System set by I-Law

OAS 11 – (Organization of American States, "Juvenile Justice and Human Rights in the Americas", https://www.oas.org/en/iachr/children/docs/pdf/JuvenileJustice.pdf, Howard)

2. **The States** of the region **are confronted every day with the problems associated with criminal offenses** committed **by persons under the age of 18**. International **law** has clearly established that a juvenile justice system must be in place for children and adolescents who violate criminal laws. But this special justice system does not apply to all children; instead, it applies only to those who have reached the minimum age at which they can be held accountable for violations of criminal law. Once that minimum age has been reached, the juvenile justice system must be applied to all children and adolescents, without any exceptions. Therefore, it is unacceptable for States to exclude from that system any person who has not yet attained adulthood, which, under international law, is at the age of 18.

3.- The States are currently not following the human rights of children and this needs to be changed

OAS 11 – (Organization of American States, "Juvenile Justice and Human Rights in the Americas", https://www.oas.org/en/iachr/children/docs/pdf/JuvenileJustice.pdf, Howard)

3. **The report adopted by the IACHR identifies the international principles of human rights that juvenile justice systems must observe**. This report underlines the member States' obligations vis-à-vis the human rights of children and adolescents accused of violating criminal law. The report makes it clear that a juvenile justice system must ensure that children and adolescents enjoy all the same rights that other human beings enjoy; but it must also provide them with the special protections that their age and stage of development necessitate, in keeping with the main objectives of the juvenile justice system, namely, the rehabilitation of children and adolescents, their comprehensive 1 The Commission wishes to thank consultants Diya Nijhowne and Javier Palummo, for the preparation of this report, and to single out for special recognition the contributions of consultant Daniela Salazar and Santiago J. Vázquez. x development and their reincorporation into society to enable them to play a constructive role within it.

Crimmigation Adv

*NOTE -we left this out of the 1AC but wanted to provide the cards in case anyone wants to get creative

Adv

Scenario 1: Crimmigration

Title 8 gives local law enforcement the power to report suspected undocumented children to federal deportation agencies

Adam 17 (Erin Mower Adams, BYU Law Review, "Noncitizen Youth in the Juvenile Justice System: The Serious Consequences of Failed Confidentiality by ICE Referral " March 2017, https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=3091&context=lawreview) //JS

Due to an unresolved clash between federal and state law, there is **no guarantee that the values of the juvenile justice system will apply to the one million undocumented youths** currently living in the country1 in the same way they apply to citizen juveniles. These **values, including rehabilitation, confidentiality, and the best interests of the child**,2 might be turned on their heads when do-gooder law enforcement and probation officers take it upon themselves to report children they suspect of being illegal aliens to the United States Immigration and Customs Enforcement (ICE). The federal-state clash begins with federal immigration law. Under Title 8 of the United States Code, no government entity, official, or person may prohibit or restrict a government entity or official from sending information about a person's citizenship or immigration status to the Immigration and Naturalization Service (INS).3 In other words, federal law preempts all state and local law. Thus, government officials cannot be prohibited from sending information to INS.4 While no federal law affirmatively requires juvenile justice personnel to determine a minor's immigration status,5 and despite the fact that "the federal government [does]n't classify minors as a deportation priority,"6 a 2013 report found: **[S]ome juvenile justice personnel report youth whom they suspect of lacking legal immigration status to immigration authorities and permit ICE officials to enter juvenile facilities to interview suspect youth. Even departments and staff that would prefer to stay out of immigration enforcement sometimes believe they are legally obligated to cooperate with federal immigration officials to facilitate apprehension of juveniles suspected of violating immigration laws.7** Indeed, even though federal law is prohibited from requiring state or local law enforcement to communicate with ICE,8 the mere fact that Title 8 allows juvenile justice personnel to report suspected juveniles leads some to act on a perceived (but mistaken) duty to contact immigration officials. Such reporting, however, may be in direct violation of state confidentiality laws. Whether these personnel acts are based on a feeling of responsibility or a perceived (but mistaken) duty when they report youth to ICE, reporting youth to ICE may be in direct violation of state confidentiality laws.

Explicitly deports kids and ruins lives – immigration file is held over their heads and destroys privacy

Adam 17 (Erin Mower Adams, BYU Law Review, "Noncitizen Youth in the Juvenile Justice System: The Serious Consequences of Failed Confidentiality by ICE Referral " March 2017, https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=3091&context=lawreview) //JS

Confidentiality is a core value of the juvenile justice system,9 and most states have laws that keep juvenile records private.10 The juvenile justice system is a state construct that recognizes that "children who commit crimes are different from adults: as a class, they are less blameworthy, and they have a greater capacity for change."11 Thus, states established separate court systems for juveniles, with rehabilitation as the primary goal.12 Confidentiality is an important part of this goal, so "juvenile court hearings are often closed to members of the public and records are often kept confidential, protecting children from carrying the burdens of their delinquent activity into adulthood."13 **When juvenile justice personnel report suspect youths to ICE, it not only flies in the face of rehabilitation goals, but it could also violate state confidentiality laws.**14 And while it is harmful enough that California, Arizona, Florida, Pennsylvania, New York, and Texas routinely refer minors to the federal authorities,15 some probation departments go beyond simply reporting names and even hand over juvenile court documents (even, in one case, by providing a juvenile's entire file).16 This can have devastating consequences for a child against whom government attorneys can use such information in deportation proceedings—which can prevent the child from being permitted to obtain a visa or a pathway to legal residency.17 Further, **these documents remain in a child's immigration file for the rest of his or her life**.18 For Alex, a fourteen-year-old boy, this legal gray area has immeasurably altered his life.19

Alex lives in Orange County, but was born in Mexico to a seventeen-year-old mother who fled to the United States to escape her physically abusive boyfriend whose abuse nearly made her miscarry.20 In the United States, Alex and his mother endured two more abusive relationships, and they ultimately found themselves in a homeless shelter.21 As a consequence of this tumultuous childhood, Alex began acting out in school.22 In 2012, he was put in juvenile detention for taking a pocket knife to school, although he said he never threatened anyone with the knife.23 The knife was tucked into Alex's waistband, and was spotted by another student only as they were undressing for Physical Education class.24 He was charged with felony possession of a weapon on school grounds and misdemeanor brandishing of a deadly weapon.25 Although the felony was reduced to a misdemeanor, he was ordered to serve sixty days of electronic home confinement and community service.26 When Alex violated the terms of his probation, he was sent back to juvenile detention.27 For a U.S. citizen, violation of probation presumably would result in either receiving a contempt charge, having probation revoked, or being placed in a secure facility.28 Alex, on the other hand, was reported directly to the federal immigration authorities by the Orange County Probation Department per the department's long-standing practice of notifying ICE of suspected illegal juveniles.29 Two ICE officials arrived at the Orange County detention center and interrogated Alex, asking him where he was born and whether he was a U.S. citizen.30 Alex—handcuffed and alone without his mother or an attorney present—answered the questions, not realizing his right to remain silent.31 He was then taken into federal custody.32 His mother had no idea where he had been taken, could not find him, and was hesitant to try since any contact with immigration authorities could lead to her own deportation (as she was still undocumented and had no driver's license).33 Why are children like Alex, who are among the most vulnerable people in the United States and who often come from turbulent circumstances,34 turned over to immigration officials—seemingly in direct contradiction of the purposes of the juvenile justice system? Those who take a hard stance against immigration might answer that there are heavy costs associated with putting undocumented children through the juvenile justice system, or that these children—already here illegally—pose a threat to community safety.35 However, the truth is that immigration law is extremely complicated—many of the children who are being reported to ICE likely have grounds for immigration relief,36 and these grounds are subverted if the juvenile's confidentiality is breached. Juveniles who can gain such relief thus gain legal status or protection (such as special immigrant juvenile status, asylum, or a visa for being a victim of crime, violence, or trafficking) and are no longer considered "undocumented." Hence, many of the children going through the juvenile system need not remain undocumented. Further, studies show that immigrants are less likely to commit crimes than U.S. citizens.37 Consequently, not only are costs less heavy than some might expect due to the relatively low number of undocumented children in the system, but community safety fears should be alleviated as well. Undocumented juveniles charged with crimes are often treated differently than citizen juveniles in both the frequency and the severity of breaches of confidentiality.38 Of course, many of the policies that provide for disparate treatment between citizens and noncitizens are presumably put in place to protect our communities.39 But there is a need for better balance between ensuring the safety of our communities and doing what is in the best interests of vulnerable youths. The differences in treatment may not only violate state privacy laws, but they may result in serious immigration consequences and, arguably, unconstitutional treatment for undocumented juveniles.40

Confidentiality is thrown out the window for undocumented children, disregarding the "core values" of the system

Adam 17 (Erin Mower Adams, BYU Law Review, "Noncitizen Youth in the Juvenile Justice System: The Serious Consequences of Failed Confidentiality by ICE Referral " March 2017, https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=3091&context=lawreview) //JS

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Violation of undocumented juvenile confidential can cause permanent damage to the prospect of citizenship, deportation, unnecessary detention, and separation from family

Adam 17 (Erin Mower Adams, BYU Law Review, "Noncitizen Youth in the Juvenile Justice System: The Serious Consequences of Failed Confidentiality by ICE Referral " March 2017, https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=3091&context=lawreview) //JS

For citizens, public access to juvenile records can create a barrier that blocks juveniles from obtaining employment, housing, and education, and from joining the military.157 However, violations of undocumented juvenile confidentiality can have even more injurious effects since the violations can lead to immigration repercussions.158 Reporting youths to immigration officials and allowing ICE interrogation provides a pathway for government attorneys to use the information against the juvenile in deportation proceedings.159 In some cases, juvenile justice personnel report to ICE not only a suspected undocumented juvenile's name, but the juvenile's entire file.160 Indeed, many immigration court files may be "chock full" of confidential juvenile records.161 These confidential documents will remain in the person's immigration file for life.162 This can have devastating, long-term consequences for a child. Consequences include depriving the child of certain forms of immigration relief like a visa or a pathway to legal residency or citizenship;163 removal or deportation;164 prolonged or unnecessary detention;165 and separation from family.166 These consequences may happen even in the common occurrence that the case is dropped or dismissed167 or if no crime is proven.168

We have a moral obligation to the undocumented

Carnegie Council 17 (Carnegie Council, for Ethics and International Affairs, "Ethics, Undocumented Immigrants, and the Issue of Integration: Making a Better Life for Everyone in New York City" January 5, 2017 https://www.carnegiecouncil.org/publications/articles_papers_reports/975) //JS

According to a study conducted by the Migration Policy Institute (MPI), an estimated 643,000 undocumented immigrants live within the five boroughs of New York City. Advocates of the New York City Municipal ID card hoped that government-issued photo identification would bring many of those undocumented immigrants out of the shadows. With the newly elected president of the United States, Donald Trump, many are wondering whether the NYC Municipal ID was the right thing to do as the cards can put undocumented cardholders at greater risk of being harassed by government authorities and even of deportation. Nisha Agarwal, commissioner at the NYC Mayor's Office of Immigrant Affairs, argues that the NYC Municipal ID card has helped many undocumented immigrants do things such as pick up their kids from school, access public and government buildings, interact more easily with police officers, and open bank accounts. Furthermore, the commissioner argues that the Municipal ID has helped many undocumented immigrants increase their sense of belonging to New York City and to the United States. Given that 60 percent of NYC's population is foreign born and less than half of the city's population has a driver's license, the Municipal ID proves to be an effective legal response to cope with the need for identification in NYC. One of the biggest misconceptions about undocumented immigrants is that they take job opportunities away from American citizens. Many believe that immigrants do not pay any taxes and that they do not want to assimilate to the United States. However, studies conducted by the Pew Research Center suggests that these opinions are a product of anti-immigrant context which has been sustained and reproduced by the political climate. It is both unethical and immoral to punish individuals for choosing to migrate to another country without having the proper documents. The United States takes in a certain number of refugees per year, would it not be morally wrong to ignore and punish those already living in the country? Additionally, many undocumented immigrants living in the United States migrated from their native countries due to the negative impact of United States interventions in their homelands. For instance, there are immigrants from Central America and Mexico who have migrated after the United States government's political, military, or economic intervention. In particular, the North America Free Trade Agreement (NAFTA) led to considerable levels of unemployment in Central and Southern Mexico. Thus, the right to survive and to thrive both socially and economically justifies the actions of the undocumented community and those helping them with their cause. Moreover, from a theological perspective, it can be morally right to disobey certain laws. Many Biblical heroes, such as Prophet Daniel and saints like Saint Peter and Saint Paul, became martyrs by refusing to obey unjust human laws. Even though most people will argue that disobeying the law is morally wrong, it is morally right to disobey human laws when they are not in accordance with the Natural Law principles of justice and fairness**. Thus, legislators who condemn undocumented immigrants and choose to close the doors of opportunities for these members of our society act negligently, unethically, and immorally**. There is no doubt that Trump's presidency, with his lack of ethical and moral rhetoric and behavior, poses a greater risk to undocumented immigrants. His narrative fails to acknowledge the tremendous contributions of immigrants in the United States. Is escaping crime and poverty an illegal offense? Is it a moral offense to protect the most vulnerable members of our communities? Is it an unethical offense to give undocumented immigrants a sense of belonging and security? Is it a criminal offense to safeguard immigrant families from harassment and discrimination? These families are already in the United States; therefore, our government officials should enact legislation to provide them with a prosperous future.

Children die from ICE detention center conditions

Tatum and Flaherty 19 (Sophie Tatum and Anne Flaherty, ABC news“World should know what is happening' to children in ICE detention: Mother testifies” 10, 2019 https://abcnews.go.com/Politics/world-happening-children-ice-detention-mother-testifies/story?id=64241135) //JS

A woman who is suing the U.S. government because her daughter died after they were held in federal custody, testified before Congress on Wednesday, at a hearing aimed at reviewing conditions at border facilities amid increased criticism of the conditions at certain migrant holding centers. "It is painful for me to relive this experience and remember that suffering, but I am here because the world should know what is happening to so many children in ICE detention," Yazmin Juarez said through a translator. "My beautiful girl is gone, but I hope her story will spur this country's government to act so that more children do not die because of neglect and mistreatment." Juarez is claiming wrongful death, after her daughter became sick while in U.S. Immigration and Customs Enforcement custody and then died shortly after they were released. Juarez is testifying at the hearing along with individuals from human rights groups, a doctor and an ICE official. A congressional oversight subcommittee convened Wednesday to review the recent allegations of child neglect and overcrowding at border facilities. Juarez told ABC News in 2018 that she was fleeing an abusive situation at home when she illegally entered the United States. She said that she and her toddler were placed in a family detention center in Dilley, Texas, where ICE provides medical care. ABC News previously reported that while in detention, Juarez took her daughter, Mariee, to the health clinic where she saw

physician assistants on multiple occasions and a doctor once. However, after the two were released, on the flight to New Jersey to meet Juarez's mother, her daughter's health declined and the toddler died six weeks later. Speaking through tears on Wednesday, Juarez described the final weeks with her daughter, saying she was "terrified by the time their plane landed." Through a translator, Juarez explained that her daughter was admitted to the Intensive Care Unit and diagnosed with a viral lung infection. From there, the child was transferred to another children's hospital. "She was poked and prodded and eventually needed a ventilator to help her breath," Juarez's recounted. "I couldn't even hold her, or hug her, or console her when she asked for her mother." "As a mother I wish I could have taken her place," she said. Six weeks later, her daughter died on what was Mother's Day in Juarez's home country. "When I walked out of the hospital on that day, all I had with me was a piece of paper with Mariee's handprint, in pink paint, that the staff had created for me. It was the only thing that I had left and the nurses had given it to me as a Mother's Day gift," she recalled. Juarez went on to say that she is facing the committee because she wants to put an end to this. "My daughter is gone. The people who are in charge of running these facilities and caring for these little angels are not supposed to let these things happen to them," she said. "Frankly, to me, it was completely irresponsible," Yazmin previously told ABC News of her daughter's medical treatment at the Dilley facility. "I think they should think about the children. The children are little angels, and this is not their fault." When asked about the allegations made by Juarez on Wednesday, an ICE spokesperson said that they were unable to comment "on the specifics of pending legal claims against the agency" and declined to comment on the testimony, but went on to say that the agency "takes very seriously the health, safety and welfare of those in our care." "ICE is committed to ensuring the welfare of all those in the agency's custody, including providing access to necessary and appropriate medical care," the spokesperson said. "Comprehensive medical care is provided to all individuals in ICE custody. Staffing includes registered nurses and licensed practical nurses, licensed mental health providers, mid-level providers that include a physician's assistant and nurse practitioner, a physician, dental care and access to 24-hour emergency care. Pursuant to our commitment to the welfare of those in the agency's custody, ICE spends nearly $270 million annually on the spectrum of healthcare services provided to those in our care." The spokesperson also pointed to a 2017 Department of Homeland Security Inspector General report where it found that "the family residential centers are 'clean, well-organized, and efficiently run" and the agency was found to be "addressing the inherent challenges of providing medical care and language services and ensuring the safety of families in detention." On Tuesday, ABC News reported that the number of undocumented migrants being stopped at the border had decreased drastically over the span of just a few weeks, following an agreement with the Mexican government who has since increased its own security efforts within the country. There were 104,344 people who either tried to cross illegally or approached a port of entry without proper documentation, according to the Department of Homeland Security. This is compared to 144,278 individuals who attempted to cross in May. However, the lower number still has human rights groups concerned. Groups have said that some families waiting in Mexico for their asylum cases are in danger of various crimes, like kidnapping, sexual assault and violence. The congressional hearing also comes as Border Patrol has been under increased scrutiny over conditions at certain facilities holding children. Previously, ABC News reported that physician Dolly Lucio Sevier, who was granted access to the largest CBP detention center in the country in McAllen, Texas, said the facility had "extreme cold temperatures, lights on 24 hours a day, no adequate access to medical care, basic sanitation, water or adequate food." Lawyers who were granted access to a facility in Clint, Texas, said the conditions there were just as bad. "The hearing will examine the impact of the Trump Administration's deterrence policies on the humanitarian crisis at the border, recent reports of dangerous conditions and medical neglect, and the lack of accountability for abuse and misconduct at detention facilities," according to the Civil Rights and Civil Liberties House subcommittee.

ICE detention centers are horrible conditions

Lind 19 (Dara Lind, writing for Vox news, "The horrifying conditions facing kids in border detention, explained" Jun 25, 2019, https://www.vox.com/policy-and-politics/2019/6/25/18715725/children-border-detention-kids-cages-immigration)//JS

At any given time, for the past several weeks, more than 2,000 children have been held in the custody of US Border Patrol without their parents. Legally, they're not supposed to be held by border agents for more than 72 hours before being sent to the Department of Health and Human Services, which is responsible for finding their nearest relative in the US to house them while their immigration cases are adjudicated. In practice, they're being held for days, sometimes weeks, in facilities without enough food or toothbrushes — going days without showering, overcrowded and undercared for. Late last week, the conditions of that detention in one facility in Clint, Texas, became public when investigators, checking on the US government's obligations under the Flores agreement (which governs the care of immigrant children in US custody), were so horrified that they turned into public whistleblowers and spoke to the Associated Press about what they saw. The stories they told have horrified much of America. The past several days have seen growing outrage, and the acting commissioner of Customs and Border Protection (which oversees CBP) announced his resignation Tuesday (though officials maintain the outrage didn't cause the resignation). But the problem goes beyond one official — or one facility. The story gained even wider traction after Rep. Alexandria Ocasio-Cortez's (D-NY) reference to the detention facilities as "concentration camps," and the ensuing debate over whether that term was appropriate. The US government's response was to move the children out of the Clint facility — and move another group of children in. On Monday, officials confirmed that all 350 of the children there last week would be moved to other facilities by Tuesday; about 250 of them have been placed with HHS, and the remainder are being sent to other Border Patrol facilities. But on Tuesday morning, a Customs and Border Protection official told a New York Times reporter on a press call that about a hundred children were currently being housed at Clint. That's illustrative of the hectic improvisation that's characterized much of the Trump administration's response to the current border influx. It's a problem that is much, much bigger than the problems at a single facility. Indeed, the problems

investigators identified at Clint are problems elsewhere as well. The lone member of the team of legal investigators who visited the El Paso facility in which many children were sent from Clint — called "Border Patrol Station 1" — told Vox that conditions there were just as bad as they were in Clint, with the same problems of insufficient food, no toothbrushes, and aggressive guards. The problem isn't the Clint facility. The problem is the hastily-cobbled-together system of facilities Customs and Border Protection (the agency which runs Border Patrol) has thrown together in the last several months, as the unprecedented number of families and children coming into the US without papers has overwhelmed a system designed to swiftly deport single adults. It is apparent that even an administration acting with the best interests of children in mind at every turn would be scrambling right now. But policymakers are split on how much of the current crisis is simply a resource problem — one Congress could help by sending more resources — and how much is deliberate mistreatment or neglect from an administration that doesn't deserve any more money or trust.

FJDA good for immigrants

Hong 18---Esther K. Hong, Summer 2018, <MGreen> ("Fixing Deference in Youth Crimmigration Cases" New Mexico Law Review, https://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=2326&context=nmlr)*crimmigration = criminal immigration

Conclusion The debate over how state and federal authorities should dictate and influence policies and enforcement in crimmigration matters is a well-seasoned one. It has, however, rarely focused on issues pertaining specifically to noncitizen youth in the crimmigration system. This Article focuses on one important issue facing this population—the interpretation of their state youth-adult offense finding for immigration purposes—and argues for a change to the inconsistent deference that judges and immigration officials give to state authorities or federal authorities to make this determination. By weighing the traditional interests that are implicated in crimmigration issues (the state's police power, the federal government's supremacy over immigration, and interest in uniformity), as well as interests specific to noncitizen youth (the state's parens patriae power and federal policies toward youth), **I recommend that immigration officials should initially defer to the federal government by incorporating the FJDA or another prospective federal standard to determine the nature of these youth-adult offense findings for immigration purposes. Immigration officials then should take state action into account when state authorities have clearly shown that they intended to not expose a noncitizen youth to a standard adult conviction. By implementing this change in deference, immigration officials will be able to advance the important goals of treating noncitizen youth in a uniform and fair manner across state lines, maintaining federal plenary power over immigration, and better respecting state and federal interests toward youth.**

T Answers

Aff Angle v. T

The aff likely a) amends a federal act and b) applies to children who are tried in the federal adult system – not the traditional juvenile system – so it should avoid the T issues described in D Heidt's initial lecture

Aff = CJR

Criminal justice reform includes juvenile reforms surrounding court

TNS 16 (Targeted News Service; “Juvenile Justice Reform Passes Michigan House as Largest Criminal Justice Reform Package in U.S. History,” 4-28-2016, ProQuest)//ddv

The House this week passed the largest **criminal justice reform** package in U.S. history when the bipartisan, 19-bill **juvenile justice reform** legislation cleared the House floor. State Rep. Peter Lucido sponsored the first bill in the package which revises the definition of "juvenile," raising the age from 17 to 18 within the Probate Code and requires cases involving a person less than 18 years of age be transferred to the Family Division of the Circuit Court.