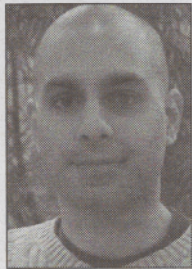


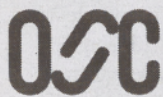
A different approach to juvenile justice

District attorneys have the power to make changes now

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In almost every situation, children enjoy a special status based on recognition that they are physically, psychologically, and developmentally different from adults. But, in contrast to the understanding we usually show to children, our criminal justice system in Oregon treats children as adults by default when they are being charged with certain crimes. The way our justice system treats these teenagers is out of line with scientific evidence, best practices, and what will best promote and protect public safety.

The U.S. Supreme Court has recognized three areas in which juveniles' incomplete development reduces their criminal culpability: immature judgment, susceptibility to negative peer influences and more transitional, less fixed identities. While the Court considered these differences as a matter of common knowledge, significant research by developmental psychologists has given substance to these beliefs. Research has shown that juveniles are more influenced by emotions than adults; perceive risks differently than adults in numerous ways; are more susceptible to negative peer influences; and their brains do not fully develop until late adolescence or adulthood.

To understand how we got here, we need to look back. In 1995, our criminal justice system underwent a seismic shift. In that year, Measure 11 went into effect, establishing mandatory minimum sentences for a number of crimes. It also required 15- to 17-year-olds charged with Measure 11 offenses to be tried and – if convicted – punished in the adult court and correctional systems. This makes a significant difference to teenagers affected by this rule. Between 1995 and 2012, nearly 4,000 kids have been

waived into the adult system via Measure 11. Data also show that Measure 11 disproportionately impacts young people of color.

The juvenile and adult justice systems are designed to serve different purposes because they recognize that there are differences between young people and adults. A major purpose of the adult system is punishment, but the juvenile system is intended to be focused on rehabilitation. In addition, the juvenile system provides certain protections to youth offenders, allowing them the chance of a future without a permanent criminal record. Young people who are prosecuted as adults will experience all the negative consequences of an adult conviction with potentially lifelong impact on their ability to successfully make a new start after incarceration. Therefore, we should take great care before we expose any young person to prosecution and punishment in the adult system.

While it would be easy to become downhearted about the Oregon justice system's failure to recognize the fundamental differences between adults and young people, there are hopeful signs of change coming. Earlier this month, Multnomah County District Attorney Rod Underhill announced a new policy allowing teenagers charged with certain Tier II (less serious) Measure 11 crimes to have their cases resolved in juvenile court. This is a praiseworthy decision by Mr. Underhill that provides a less punitive option for youth people. His new policy recognizes that "juveniles have a greater ability to reform than adults [do]...and society might benefit more if teenagers go before juvenile judges and juvenile probation counselors." While this is a great first step, it does not go far enough.

If, as Underhill has accepted, teenagers are different, then they must be considered so in every instance, almost no matter what crime they are accused of committing. (There may be very rare cases when it is reasonable to

treat a juvenile as an adult, but it should be extremely unusual for our justice system to do this.) At the outset, the default should be to treat kids as kids. We suggest that Rod Underhill and all of Oregon's district attorneys adopt the following policies:

- To cease filing charges in adult court for any person under 18 at the time of the offense. This would still allow the possibility of later transfer to adult court;
- To oppose the transfer of juveniles under 14 to adult court under any circumstances, and only seek the transfer of 15- to 17-year-olds in extraordinary circumstances where there is clear and convincing evidence that this transfer is necessary. The burden should be on prosecutors to prove the transfer is needed, not on the young person to show why it should not happen;
- Where a transfer to adult court occurs, prosecutors will still try to resolve the case in a way that reflects the "immaturity of youth" and that offers meaningful opportunities for rehabilitation and early, supervised release;
- To hold an annual training focusing on the development of the brain through age 25 and what differences between young and adult brains mean for charging, plea bargaining, and sentencing practices.

Mandatory minimum sentencing, by definition, is a one-size-fits-all approach that disregards the possibility of rehabilitation and reform. It is problematic for all offenders, but particularly for young people who have so much natural growth and change ahead of them. This rigid approach contradicts widely accepted scientific understanding about human development. We should recognize that children and adults have certain fundamental differences and we should reflect that in our justice system. It is time for district attorneys to use their power to do more to improve the treatment of young people in the criminal justice system. Fairness and sound scientific evidence demand it.

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