

JUSTICE IN THE JUVENILE JUSTICE SYSTEM?

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JUSTICE IN THE JUVENILE JUSTICE SYSTEM

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Abstract

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Research has confirmed a direct relationship between criminal behavior and emotional and cognitive deficiency. Antisocial behavior in juveniles can be attributed to developmental delays, parental antisocial behaviors, parent-based maladaptive reasoning, and various anxiety disorders. Yet juveniles may not be afforded the opportunity to further develop in an age appropriate environment that will enable them to better control anxiety-based tendencies and mature beyond stages where irrational behavior is compounded by external factors. Time is the only way to determine to what extent, if any, is malice or prototypical defiance a factor. However, juveniles who are waived to adult courts are often tried according to offense-based policies and punished as if they were a reasonably functioning adult committing the offense.

Although there are some who argue that levels of comprehension have little or no relation to a person's competency to stand trial, this research should provide thought-provoking analysis based on previous research which may be used as sufficient justification to amend current laws requiring the waiver of juveniles to adult courts. Even more so, it should provide argument for rehabilitation and/or treatment as the primary method for addressing juvenile crime.

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Chapter One: Introduction

Competency and justice are the two key issues that need to be addressed by examining creditable information and valid arguments in order to determine whether adjudicating juveniles to adult courts is both constitutional and just. Advocates against adjudication believe that juvenile justice practices appear to be subjective, and even less progress has been made in determining how to assess juvenile competency and determine whether it is just to use criminal versus rehabilitative approaches (Viljoen, Fraser, & Wingrove, 2007).

The law requires that all defendants be competent to stand trial. Competency standards have been more firmly established and consistently applied in the adult criminal system. However, despite the increasing number of juveniles being adjudicated into criminal courts and tried as adults, whether or not we have established accurate and effective ways to assess juvenile competency is still a highly contested area. Furthermore, the legal and constitutional argument of fair and equitable treatment is a factor when applying offense-based policies (Kupchik, 2006). Is the constitution intended to ensure the rights of the people or the rights of an offense against the people who offended?

Previous rulings in federal court (*Dusky v. United States*) require criminal courts to ensure that a defendant has the ability to have a factual understanding of the legal process, a rational understanding of legal proceedings and the ability to effectively communicate with their attorney in a manner that aids in their defense. Sentencing is then based on the actions of the offender as compared to a reasonable person. Studies show that a reasoning juvenile is equivalent to an adult who is experiencing abnormal levels of anxiety (Morren, Muris & Kindt, 2004). How then can we expect the “reasonability” of a juvenile to be equivalent to that of a

reasonable adult? The laws permitting adjudication of juveniles can be argued as unjust (Federal Sentencing Guidelines-Chapter 2/A-C, 2007).

Studies show that delinquent adolescents have lower IQ scores than non-delinquent adolescents. This in itself implies that a possible cognitive deficiency, which may prohibit one from being competent enough to provide much assistance in his/her legal defense, may be more prevalent when dealing with a juvenile offender (Enns, Reddon, Das, & Boukos, 2007).

Additionally, researchers claim that there should be a differentiation between delinquents with adolescence-limited antisocial behavior and those with life-course persistent antisocial behavior. Adolescence-limited antisocial behavior dissipates as one approaches adulthood, while life-course persistent antisocial behavior gets increasingly serious over a lifetime (Enns et al., 2007).

Thus time may be the only way to truly determine if delinquency is temporary or life persistent. This could be a strong argument for rehabilitation and stronger support for the position that the laws that allow courts to issue juveniles the same punishment as mature adults are unjust.

The justice in punishing a juvenile for committing a crime should never be in question. However, the issue of competency, in itself, may be a significant defense for a juvenile undergoing a criminal trial. It is a valid question as to whether a juvenile is competent enough to ensure that the issue of competency is thoroughly addressed and effectively argued.

In addition, should the punishment of a juvenile, whose tendencies may be a result of temporary developmental limitations, be the same as an adult, whose social deviation has been

proven through the course of time to be life persistent? Could one actually be criminally minded and the other lacking the development that would eventually result in a lifestyle change?

The year 1995 marked a substantial paradigm shift in the criminal justice system when legislators enacted laws to issue punishment instead of rehabilitation for serious offenses committed by juveniles. One of the main opposing positions to this trend speaks to the issue of competency asserting the injustice in punishing a juvenile, with undeveloped cognitive abilities, in the same manner as adults (Wisconsin Council on Children and Families, 2006). This report on juvenile delinquency listed the following major finds:

- Almost 5,000 17-year-olds were admitted to adult jails in 2004,
- From 2003 to 2004, almost 300 youth 17 years old and younger were admitted to adult prison,
- Arrests for violent crimes in Wisconsin have decreased steadily for the past decade.
- The ability to control behaviors in emotionally charged situations does not develop until late adolescence,
- Adolescence is a distinct period of brain development- decision making is one of the last brain functions to mature; as late as early 20's.

These statistics reflect the rise in the number of juveniles being tried and punished in adult systems. Although crimes committed by juveniles decreased in the state of Wisconsin, laws permitting adjudication have expanded. Objections can be raised in relation to competency and justice when juveniles and adults are held to the same standard of reasonability despite developmental differences.

If research supports a reasonable doubt as to whether deficiencies in cognitive reasoning abilities and other anxiety-based issues make it impossible to determine malice, pre-meditation and reasonability, then taking the time to further examine such information will be well spent.

This research paper examines the issues involving competency to stand trial as well as other factors which can be used to effectively argue that the adjudication of juveniles into criminal courts is unjust.

Statement of the Problem

The problem to be addressed is “Is there sufficient evidence to support the discontinuance of adjudicating juveniles into criminal courts based on issues of competency and justice?”

Definition of Terms

Amenability to Treatment: a determination as to whether a juvenile can benefit from treatment based on factors such as motivation and psycho-social assessments

Emotional Reasoning: the level of emotional maturity in which a juvenile can function which is based on factors such as intelligence, cognitive development and social environmental factors

Moral Reasoning: the extent to which one decides what is morally appropriate based on a set of principles, tenets, or learned behavior

Transfer Policies: Laws transferring jurisdiction from juvenile to criminal court

Offense-based Policies: policies that determine punishment based on the characteristics of the offense and not the offender

Parent-based reasoning: reasoning development through observation of a parent’s anxiety response.

Purpose of the Research

This research is not intended to serve as a substantive legal brief. Its purpose is to examine conclusive and inconclusive information in order to determine if an argument for reform in the juvenile justice system has sufficient support.

Significance of the Problem

As a result of the case in 1960 involving *Dusky v. US*, federal law states that a criminal defendant must be capable of meaningful participation in his or her defense. In other words, the defendant must be competent to stand trial, having "sufficient present ability to consult with his attorney with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against him." This draws questions as to whether juveniles have the ability to adequately weigh decisions regarding waiving rights, plea bargaining and pleading guilty.

Recent judicial rulings have replaced formerly permitted judicial waivers with prosecutorial discretion leaving the decision to file charges in juvenile or criminal court up to the prosecutor or the option to "waive by exclusion", which is an automatic process that places certain offenses under the jurisdiction of criminal courts (Salekin & Ustad, 2007).

Defense attorneys encounter a vast number of issues related to competency when working with juvenile defendants. The juvenile defendant has developmental immaturities that can bring into question their ability to factually understand the trial process or to provide substantial assist to their attorneys to aid in their defense (Salekin & Ustad, 2007)

Research findings lead to the questions that must be answered. Can juveniles really provide adequate assistance in their own defense? Do their developmental deficiencies

jeopardize the fundamental fairness of the adjudicative process? Are they truly competent to stand trial in criminal courts? Should the fate of a juvenile rely solely on an assigned advocate? Can advocates escape the political bargaining that is evident in the judicial process today? Should juveniles be held to a different more age-appropriate standard other than those prescribed to adults?

Chapter Two: Review of Related Literature

Cognitive Development

When determining the probability of changes in legislation, research suggests that one of the driving forces may be the opinion of defense attorneys and judges. In an attempt to reflect this opinion, research conducted by Viljoen et al., (2007) consisted of surveys with criteria questions based on four subscales: factual understanding, rational understanding, communication with counsel and reasoning.

General developmental theories included scales which examined developmental immaturity, such as cognitive immaturity, lack of awareness of long-term consequences of decisions and lack of awareness of the possible risk of decisions. General areas of cognitive impairment included poor reasoning abilities and limited ability to process information quickly. Developmental immaturity included an inability to make appropriate judgments, lack of consideration of long-term consequences of decisions, inability to make autonomous decisions, inability to resist influence from friends or peers, inability to resist parental influence and inability to resist pressures from authority figures. It is important to note the opinions of policy and law makers because the transition from childhood to adulthood undergoes many psychological changes in areas of identity, self-consciousness, and cognitive flexibility. However, offense-based perspectives rarely take these factors into consideration (Viljoen, et.al, 2007, Blakemore, S., 2008).

Because children are directly influenced by parents and social environments, whatever behavior, ideals and/or principles are reinforced are converted into internal speech and form the basis for self-regulation. A juvenile's verbal IQ score is directly related to delinquency and lower

scores are often a factored result of an inability to self-regulate their behavior. When this factor continues within children, the potential for life-course-persistent anti-social behavior increases and these children are less likely to consider long-term consequences or delay reward or gratification (Enns et. al., 2007).

Judges and defense attorneys believe that mental and cognitive disorders should be considered above developmental immaturity and therefore if a person does not have a mental or cognitive disorder, their maturity or lack of development may be deemed irrelevant. It is important to note that the areas of developmental immaturity in criminal courts that receive the highest scores from judges and defense attorneys were lack of awareness of possible risk of decisions and inability to weigh costs and benefits of various alternatives (Viljoen, et. al., 2007), areas directly related to federal laws regarding competence.

Recent trends reflect precedence in two other mechanisms of transfer into criminal court: statutory exclusion and prosecutorial direct file. Statutory exclusion allows automatic transfer of juveniles for serious crimes such as murder or assault. Prosecutorial direct filing gives prosecutors the discretion to file charges in either juvenile or criminal courts for certain types of offenses (Salekin & Ustad, 2001). Therefore the perspective judges and prosecutors have on cognitive development is extremely important to this issue.

Yet despite constitutional issues of equality, 27% of legal professionals fear that lower standards for juveniles could make it harder to prosecute them and therefore do not believe that competency standards should be different for juveniles. Similarly, even with a moderate rating of importance in developmental immaturity (level 3), judges have the opinion that developmental immaturity alone should not suffice in determining competency to stand trial in criminal courts.

However, brain-imaging studies provide evidence that the progressing maturation of the frontal cortex (which provides decision making and reasoning) and other regions within the brain, extends throughout adolescence and even into adulthood (Viljoen, et. al., 2007, Blakemore, 2008).

There is evidence of neuropsychological vulnerabilities among delinquents with lower IQ scores making them vulnerable to unfavorable social environments (Enns, et. al., 2007). Therefore, juveniles who come from those environments are more like to commit crimes. Although the matter of justice seems more evident, can this be effectively argued as an issue of competence? These juveniles should not be compared to reasoning adults and may not be able to make rational decisions regarding treatment. For example, a youth whose father and older brothers are in prison may view incarceration as inevitable or as a rite of passage.

Reasoning (moral and emotional)

Clinical psychologists believe that youth who are mature enough to understand the nature and consequences of their behavior should be considered for adult waiver. Yet, the impact that hormones, culture and social environment have on the development of the social brain require more definitive research. Juvenile delinquents often have lower levels of moral judgment according to moral assessments that are based on assessment criteria which includes the Kohlbergian stages of moral development established in 1987. The cause has been determined as a developmental delay in delinquent juveniles (Leenders & Brugman, 2005; Blakemore, 2008).

How does one determine whether emotional maturity and cognitive development has reached a stage that would allow a juvenile to make a rational decision? Kohlberg's theory comprises three stages of development. At the pre-conventional level, one merely seeks to avoid

punishment and insists on fairness. At the conventional level the approval of others plays a more substantial role, and at the post-conventional level, one achieves impartial interest and seeks the common good. The latter provides evidence of the development of self-chosen moral principles. It is further asserted that there is no doubt that there is a relationship between developmental delays in moral reasoning and criminal activity in adolescents. In fact, studies show that moral reasoning in juveniles who have committed theft and even violent crimes is lower than in those who have not (Chen & Howitt, 2007).

The lack of consideration for emotional and moral reasoning is evident in our courts. A survey of statutes applicable to juveniles transferred in U.S. federal and 50 state jurisdictions revealed five criteria related to mental, emotional, and developmental functioning in juveniles: (a) treatment needs and amenability, (b) risk assessment of future criminality, (c) sophistication-maturity, (d) the presence of mental retardation or mental illness, and (e) offense characteristics (Salekin & Ustad, 2001). Studies showed that juveniles who were rated significantly lower on the sophistication-maturity factor and particularly low on the emotional and intellectual maturity factor were determined competent to stand trial in adult criminal courts.

The sophistication and maturity of the crime (factors directly linked to emotional/moral reasoning) were determined as a significant construct used to determine waivers. However, when reviewing cases involving juveniles transferred to criminal courts, juveniles were rated by forensic psychologists as appropriate for transfer despite low ratings in emotional and intellectual maturity and held to the same standard as adults (Salekin & Ustad, 2001).

When determining whether a situation is dangerous, a child's actions rely heavily on both an objective response based on the information perceived and their own anxiety-response. This

anxiety response may also be a result of parent-based reasoning (reasoning developed based on observation of anxiety-based behavioral responses of a parent or other influential adult). Actions and their sophistication can also stem from several anxiety disorders, the most common being social anxiety, separation anxiety disorder, and generalized anxiety disorder. Domestic violence and maltreatment causes high levels of stress that heighten the risk of adjustment problems, including depressive and anxious symptoms, aggressive behavior, and lower levels of social competence (Morren, et al., 2004; Mejia, Kliwer, & Williams, 2006).

Therefore a delinquent juvenile can respond from an anxiety-based disorder, in which he or she has not had sufficient time to restrain and/or develop appropriate controls, or another type of acute disorder, which undeveloped can reflect criminal and antisocial characteristics.

It is also perceived that juveniles who commit crimes with sophistication and maturity, yet have low emotional reasoning, should be considered dangerous. According to clinical psychologists, low emotional maturity seems to adversely impact the juvenile by influencing both dangerousness and amenability to treatment (Salekin & Ustad, 2001).

Thus, there is increasing data showing obvious disparities in the plausible causes of juvenile and adult offenses, suggesting that juveniles should not be held to the same standards and expectations as a reasonable adult. Moreover, the argument for rehabilitation as an opportunity for continued development must be considered. With a juvenile, treatment staff may be better able than a judge or attorney to determine not only the adolescent's developmental maturity, but also the impact that the juvenile will have on society, long term.

There is currently no scientific measurement for amenability to treatment for juveniles. Researchers have examined evidence of the relationship between intelligence and delinquency. Life-course-persistent antisocial behavior originates during the development process and increases in high-risk social environments. Yet only a small proportion of adolescent youth is said to exhibit life-course persistent antisocial behaviors and only a small number of those are delinquent adolescents (Enns, et. al., 2007). This may in fact indicate that a large number of the juveniles considered dangerous and sent to adult prisons may have benefited from rehabilitative measures which could have equally reduced the risk to the public.

One should also factor in major mood disorders and psychotic disorders which are more complicated to treat. Analysis should also be based on a review of information provided through police reports, arrest affidavits, juvenile court records, school records, collateral information and other pertinent resources that may provide information on current and/or previous trauma or life-threatening situations that the juvenile was involved in (Salekin & Ustad, 2001). The results of these findings may determine areas of developmental and/or cognitive deficiencies that may stem from anxiety-based disorders that should in no way be equated with adult-level rationale.

Court Standards in Meeting Federal Competency and Sentencing Standards

Criminal courts are said to be focused more on punitive measures and rely less on social or developmental factors. Unlike juvenile courts, criminal courts tend to focus on the punishment for the offense and public safety rather than the rehabilitation of the offender (Kupchik, 2006). Developmental immaturity is considered but is a modest concern at most when assessing competency in juveniles who are tried in adult courts and is secondary to cognitive impairment and/or mental disorders. Despite the fact that case law interpreted competency to rely on the

defendant's ability to adequately reason about relevant legal issues such as how to plead, the case for the consideration of developmental immaturity must yet be made (Salekin & Ustad, 2001).

Competency rulings have also been applied based on the severity of the penalty involved. More relaxed standards of competency are considered in juvenile courts where the penalties involved are less severe. However this relaxed standard has made it easier for juveniles considered competent in juvenile courts to be waived to adult courts (Viljoen, et. al., 2007).

Clinical child psychologists and forensic psychologists have been relied upon to establish credible constructs by which to determine the appropriateness of adjudication. However, researchers assert that no true experts exist that can authoritatively define this construct (Salekin, & Ustad, 2001). Therefore, after transfer, a continued ruling of competence can only be implied because an appropriate measure for competence, based on the expectations of reasonable adult behavior, cannot be established for a person who is not an adult.

Salekin's research established characteristics of juveniles who were evaluated by forensic psychologists and subsequently waived to adult court (Salekin & Ustad, 2001). The average age was 15.94 years and the average years of education were 9.16. Almost all were males. Whites were transferred at the highest rate followed by Blacks, Hispanics and others. Almost three-quarters had previous violations, and one third had been employed at some point prior to the arrest. Psychologist found all of these juveniles were competent to stand trial. Basically, if a person understands that they have committed a crime and can be sent to jail, they are found competent. This is a basic principle used to find juveniles competent and waived to adult court (Salekin & Ustad, 2001; Sanborn, 2009).

Criteria used to transfer juveniles into adult courts vary from state to state. Many jurisdictions combined a United States Supreme Court decision (*Kent v. United States*) with juvenile statutes to comprise three constructs that relate to psychological functioning: (a) potential dangerousness, (b) sophistication-maturity, and (c) amenability to treatment (Salekin & Ustad, 2001). Studies show that dangerousness is rated high in the criteria used to transfer juveniles, with sophistication-maturity and amenability-to-treatment rated moderately low (Salekin & Ustad, 2001).

According to clinical child psychologists, dangerousness is the most highly rated construct followed by amenability to treatment and sophistication-maturity. However, forensic diplomates rated amenability to treatment as the most important construct followed by dangerousness and sophistication and maturity (Salekin & Ustad 2001). Despite this fact, of the constructs high in prototypicality (which include criminal sophistication, being capable of planned and pre-meditated crime, understating the behavioral norms and possessing the ability to identify alternative actions) the items related to sophistication and premeditation were found in case law, while those relating to behavioral norms and alternative actions were found in psychological literature on maturity (Salekin & Ustad 2001). This implies that forensic professionals believe that if a child knows right from wrong (alternative action), they are appropriate for waiver.

Thus, the more recent opinions of forensic professionals and behavioral scientists differ from current policies and procedures. The driving force behind this difference is the intent of policy-makers to expose adolescents to the offense-based criminal justice system rather than

using the offender-based model which applies more intermediate alternatives such as probation (Kupchik, 2006).

Chapter Three: Conclusions and Recommendations

The apparent difference between clinical child and forensic psychologists, which contrast rehabilitative and punitive schools of thought, is evident. This helps to clarify the question that requires definitive response from today's legal system. Based on the requirement for competency to stand trial and fair and equitable treatment under the law, should the overall focus regarding juvenile offenses be rehabilitative or punitive?

Research reflects a stark contrast between the constructs of forensic psychologists and the trends within the legal system as they relate to juvenile waivers. Court trends point to a practice of waivers which are seldom based on sophistication-maturity or consideration for amenability to treatment. In addition, some believe that competency to stand trial is not a continuous construct. The degree to which a person is able to determine whether counsel is effective, comprehend the proceedings, and understand the severity of the punishment involved is not related to or a basis of determining competency (Salekin & Ustad, 2001; Sanborn, 2009).

Much controversy exists as to whether offense-based or offender-based criteria are appropriate for use when determining waivers. Policy makers believe that juveniles who commit major offenses should not be in a protected class based on their age and/or maturity (Kupchik, 2006). However our constitution requires that all individuals (not crimes) are entitled to equal justice under the law. This is usually carried out in a court of law in which defendants are tried by a jury of their peers. This is another argument for injustice against juveniles as juries that decide their cases are composed of adults.

Our current justice system places juveniles in at least three categories. Juvenile courts are required to consider social and background information when other mandates do not exist. So it

appears as if juveniles can be considered youth offenders, adult-like (sophistication-maturity), and/or mentally challenged. These three categories suggest that assessments and presumptions are applied to juveniles more than adult defendants much unlike their adult counterparts whose competency is based on two categories, competent and/or incompetent based on mental health reasons. While this seems prudent it may also be discriminatory. Juveniles either receive too much scrutiny or none at all. In addition, such treatment can be vulnerable to various cultural, professional and social perspectives. These perspectives become laws that drastically impact the lives of juvenile offenders, who have no voice in the matter.

Because juveniles are not tried according to the protections afforded them in juvenile court, they are more likely to be sent to prison than to treatment because criminal courts focus on applying punitive measures according to the offense rather than seeking to rehabilitate the offender, who is yet undergoing stages of development. In all fairness, should we transfer adults to juvenile courts when their crimes and behavior are not those of reasonable adults?

When comparing neuropsychological characteristics it was found that juveniles with developmental delays were prone to recidivism and those who did not repeat offenses had higher levels of verbal and executive functioning (Enns et al., 2007). Therefore an argument can be made for the need to educate and rehabilitate juveniles in a developmental environment that provides the activities and influences that can result in behavioral changes.

Based on the findings of this research, the cost involved in actually determining whether or not a person is competent to stand trial could be enormous. It is likely that society will not be willing to cover costs to the extent that ensures equal justice. If the taxpayers extend cost for punitive measures to remove the risk of the juvenile repeating his/her offense, can we not more

cost-effectively restrict the imprisonment of juveniles in juvenile based facilities in order to determine if behavior is the result of antisocial or life-course persistent antisocial behavior?

It is unjust to convict a juvenile who may be experiencing adolescence-limited antisocial behavior, which typically declines as one gets older, and to prescribe punishment within a system that weighs their behavior against that of competent and reasonable adults. Normal adults do not experience the same emotional effects as those of anxious adults. Research has shown that children do not have the developmental capabilities to function as a normal reasonable adult. Rather, they resemble anxious adults (but without the experience and maturity that an adult's age affords), making it more probable that actions and responses will be irrational (Morren, et al., 2006). Thus, if competency standards are based on what a rational adult would do, juveniles should always be afforded the provisions of incompetence in criminal courts and convictions and sentencing should be in accordance with the standards given to their peers and not those of an adult. Furthermore, if a child is incapable of making an appropriate decision about the offense (or crime), chances are that he or she is also incapable of making appropriate decisions about the long-term consequences of various legal decisions involved in the case.

If a precise method of assessment cannot be obtained for juveniles then they do not belong in criminal courts. An alternative would be to consider the individual and not the crime. Perhaps the legal system should default to rehabilitative methods for any person under 17 who commits a crime. If the offender is between the ages of 18 and 20 at the time of the offense, assessments should be applied to determine competency to stand trial based on adult criteria.

This widens the scope of equity and narrows the scope in which time and expense must be used to determine competency. This is the age where competency (based on a reasonable adult) can be made. If developmental inconsistencies exist, other protections should be applied to the defendant.

Based on the interests of justice, reasonable doubt should always be evident when attempting to determine the level of competency probable for a juvenile. The offense itself may be evidence of a cognitive or social deficiency caused by biological or influential factors. Because life-persistent characteristics cannot be conclusively proven, rehabilitative measures may be warranted in order to ensure fair and equitable treatment under the law and to ensure that the issue of competence is appropriately addressed. A juvenile is better able to understand the process of rehabilitation, training and education than the processes of court.

Motivation for the rehabilitation is irrelevant in determining amenability to treatment, as a juvenile is normally unmotivated towards any measures that he/she considers punitive. Lack of motivation can also be due to the youth being unaccustomed to following directions, undisciplined, or lacking the moral constructs with which to evaluate the validity of such a need for change. In addition to social factors, a person can be mentally or emotionally deficient and lack the ability to display proper motivation. Due to these existing factors, the juvenile offender deserves the right to equal protection under the law, which according to the findings in this research, means a chance for reform regardless of perceived motivation.

In conclusion, there is reasonable evidence to expect that a juvenile is most likely limited in competency when compared to a reasonable adult and therefore the equity in the treatment of juveniles tried in adult courts is in question. Juveniles and adults should be tried in separate

courts to ensure that the justice process is equal to those of their peers. Neurological and social science should not be ignored in an effort to protect the public. Instead, we should work to enhance preventive measures by working to eliminate or reduce those factors that contribute to criminal behavior in juveniles and to provide alternative rehabilitation for juveniles that offend. This is constitutional integrity.

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