

Juveniles and California's Criminal Justice System

An Interview with Sue Burrell, Staff Attorney at the Youth Law Center

Last year Senate Bill 9 became law following a six-year effort led by a coalition of organizations that included Human Rights Watch, Friends Committee on Legislation of California, and many others. This new law allows people who were under age 18 at the time of their offense and who were sentenced to life without the possibility of parole to apply to the court that sentenced them for resentencing, after they have served 15 years.

This year the Legislature takes up Senate Bill 260, which offers hope to young people who were sentenced to lengthy adult prison terms. Senate Bill 260 is co-sponsored by Human Rights Watch, Friends Committee on Legislation of California, Youth Law Center and the University of Southern California School of Law Post Conviction Clinic. As of July 2013, SB 260 has passed the Senate and now awaits a vote in the Assembly.

The FCL Education Fund spoke with Sue Burrell, staff attorney with the Youth Law Center, to hear her perspective on SB 260 and to find out more about the history behind this current legislation. Sue has worked for decades to stem abuses in state juvenile institutions and to transform the juvenile system into one that produces better outcomes for youth. Through litigation, legislation and sharing best practices, Sue and the Youth Law Center have improved conditions for marginalized young people across the country.

What are the basic provisions of Senate Bill 260 and who would it affect?

Senate Bill 260 addresses the situation of people who were minors at the time of their offense, who were tried as adults, and who were sentenced to adult prison terms. Some of them received sentences so long that they would not be eligible for parole until a time that exceeds their life expectancy. SB 260 would provide a review process allowing these

young people to demonstrate growth, maturity and rehabilitation after they have served a substantial part of their prison sentence.

So Senate Bill 260 applies to a subset of juvenile offenders?

Yes. Let's talk about how juveniles are treated in the criminal justice system. Most juvenile offenders are now dealt with on a county basis, either through local juvenile facilities or community-based programs. A small number, about 850, convicted of more serious offenses, are housed in three institutions run by the California Division of Juvenile Justice. These juveniles are not part of the adult criminal justice system.

Senate Bill 260 offers hope to young people who were sentenced to lengthy adult prison terms

Senate Bill 260 deals with a different group of people: over 6,000 prisoners in California's adult prison system who were tried as adults and sentenced to adult terms. Some were as young as 14 and 15 at the time of their offense. The offenses are among the most serious, including murder and

felony murder (a person is involved in a felony in which someone dies, even if the death was unintentional, or the person is involved in a felony in which another person causes a death). Prisoners are housed in state juvenile facilities until they reach age 18 and are then transferred into the regular prison system.

What's the history of charging juveniles as adults?

Historically, "care, treatment and guidance" was the foundation of juvenile justice. But over the course of the 20th century, particularly in the 1980's and 90's when there was a surge in juvenile crime, this traditional foundation became eroded. Public opinion was that we needed to "get tough" with young people. The juvenile justice system became more like the adult system, with prosecutors presenting cases rather than probation officers and increasing

punishments. Overall there was a much more punitive approach.

It became much easier to try juveniles in the adult system as well. This trend culminated in 2000 after voters passed Proposition 21. Proposition 21 contained 32 changes to state law concerning young defendants – many of its provisions had been tried and failed in the Legislature, but it qualified for the ballot and easily passed. As a result, during the last decade, younger and younger defendants have been sent into the adult system for a broader array of offenses than ever before. The vast majority are youth of color and poor youth.

Prior to Proposition 21, a juvenile court judge would hold a hearing called a “fitness hearing,” to see if it was appropriate in that particular case to send the accused to adult court. The judge made a decision about whether the young person could be rehabilitated in the juvenile system based on a thorough social study report prepared by the probation officer and other background evidence offered by the young person.

Under state law, the judge had to consider specific criteria such as the young person’s past history of criminality, degree of criminal sophistication, the success or failure of previous rehabilitative efforts, whether there would be enough jurisdictional time within which to rehabilitate the person, and the circumstances and gravity of the offense. The young person could present evidence about their personal background and expert opinions about their capacity to be rehabilitated. Although a substantial number of youth subjected to fitness hearings were found “unfit” and sent to adult court, many were found “fit” and retained in the juvenile system.

Since the enactment of Proposition 21, these safeguards are no longer in place for a large proportion of youth tried as adults because prosecutors are now permitted to file cases directly in adult court. This means that the critical decision about whether a young person will be treated as a juvenile or an adult is made on the spur of the moment by a prosecutor who has only an arrest report on which to base the decision. There are no requirements that the decision be made based on capacity for rehabilitation or other criteria. A prosecutor may charge the accused as an adult based only on his or her age, the type of offense and information contained in the arrest report.

As a result, we now have thousands of prisoners in the state’s prison system who were juveniles at the

time of their offense – many sentenced to extremely long sentences. We believe that the system is out of balance and has gone too far down a punitive road. Senate Bill 260 will help correct that imbalance.

In the decade or so since Proposition 21, there seems to be movement both in California and nationally to reverse the trend of treating juveniles as adults.

Yes, around the country there are signs that the tide is shifting. For example, some states are raising the age at which a defendant can be sent into the adult system. Scientific research is now informing more of our thinking about public policy and juvenile offenders, and several crucial court cases have led to major change.

In the scientific world, research over the past decade has given us new insight into the adolescent brain, finding conclusively that juvenile brains do not mature until a person reaches their mid 20’s. People with immature brains have trouble thinking ahead or weighing the consequences of their acts. They act more impulsively and react more emotionally. They take more risks, and it is harder for them to exercise mature judgment.

The psychosocial development of juveniles makes them more subject to peer pressure and to negative influence by adults. All of us who are adults know this is true because we were once that young ourselves, and we know how our kids behave. Our system recognizes this in other areas of the law: we have age requirements for driving, for drinking, for joining the military – but our public policy on crime has been out of sync with what we know about how juveniles mature and how they can change.

On the legal front, there were a series of key court decisions starting around 2005. In *Roper v. Simmons*, the U.S. Supreme Court ruled that persons under the age of 18 cannot be executed, as it is a violation of the Eighth Amendment’s ban on Cruel and Unusual Punishment. In its decision, the court noted that young people are inherently different than adults and should not be held to an adult standard of culpability. Juveniles, the justices said, are capable of change as they mature. Additionally, the death penalty serves no deterrent function as juveniles are more impulsive – they act on the spur of the moment, and this impetuosity is not deterred by the threat of the ultimate punishment.

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The decision in *Graham v. Florida* in 2010 also reinforced that juveniles should be held to a different standard than adults. The Supreme Court ruled that juveniles cannot be sentenced to life without parole for non-homicide cases, as that too is a violation of the Eighth Amendment. Because of that finding, the court ordered states to provide juveniles with a meaningful opportunity for release at which they can demonstrate growth, maturity and rehabilitation.

Just last year in 2012, the Supreme Court ruled in *Miller v. Alabama* that even in homicide cases, a state provision requiring a sentence of life without parole for juveniles in certain cases also violates the Constitution.

And finally, in the *People v. Caballero*, the California Supreme Court applied the reasoning of *Graham*, *Miller* and *Roper*, ruling that the state cannot impose on a juvenile a sentence that is so long that it amounts to a life sentence. The specific case dealt with non-homicide cases, but the court's reasoning should be interpreted to apply to all cases, including homicide and felony murder.

What is the impact of these rulings on California?

Caballero and the Supreme Court cases create the need for a review mechanism for cases involving long sentences imposed on juveniles tried as adults. Because of the language in the cases entitling young people to "a meaningful opportunity for release," many young people in the state prison system are already filing motions and writs in the appellate courts. There is a tremendous need for the Legislature to provide guidance to the courts and everyone in the justice system about how this review should work. Otherwise, the process will be chaotic, and probably much more lengthy and expensive as successive appellate courts address review issues in individual cases.

Already in this session, there is another bill (AB 1276) designed to deal with non-homicide cases – in an obvious attempt to provide guidance in that limited group of cases. Senate Bill 260 addresses a broader group of cases, as will inevitably be required by the Supreme Court cases. It will establish a humane system to allow those youth who receive lengthy sentences an opportunity to show their growth, maturity and

rehabilitation to qualify to re-enter society. It will put California on the right track to comply with the recent legal decisions.

It is good for youth because it gives them hope, provides an incentive for them to improve themselves, and gives them the chance to make a positive contribution. It is good for the prison system, because youth who are working hard for release help to create a more peaceful, productive environment for everyone.

It is good for the community, because it will help to ensure that when youth are released, they have the capacity to be productive, successful members of society, thus reducing future criminality, victimization, and attendant costs to the system. It is also good for the community because it puts us more in sync with our basic belief that kids really are different and our belief in redemption.

What else should our readers know about juveniles in the adult system?

Well, it's interesting – the very qualities we've talked about – impulsivity, risk-taking, lack of trust in adults – can make juveniles very bad clients. They are often suspicious of adults and don't know how to interact with them; they may not believe the evidence against them exists and may turn down plea bargains; some are too immature to effectively help their attorneys with their defense. Often this means that adults charged with the same offense actually get lower sentences.

And sadly, it's not unusual for juveniles to have very poor legal representation, including for serious crimes. Many more juveniles than you might imagine are convicted when they shouldn't be. Some are factually innocent; others are guilty of something less than what they are convicted of; and others should have gotten a less onerous sentence. Wrongful convictions happen more than we know, and young people are particularly vulnerable. This is another reason sentencing review for juveniles tried as adults is so important.

We've been talking about people sentenced to adult terms. As far as the other young people in the juvenile justice system, what would you most like to see changed?

I'd like to see us keep more kids *out* of the juvenile system. Many of them are crossing over from the child welfare system. They may be victims of trauma; they may need mental health services. They may be lesbian/gay or transgender youth who have been kicked out of their families and are engaged in "survival" crimes. They may be kids who could have been dealt with at school. If they can't get the help they need, they wind up in the juvenile justice system as a default. We need to address the front door issues that allow these kids to come in to juvenile justice. We need to find ways to support families and assist agencies in addressing the needs of these young people so we don't "criminalize" their behavior.

And for those who *do* enter into the juvenile justice system, let's reduce the use of incarceration. The lon-

ger you are incarcerated the more incapable you are of functioning in society and the harder it is to socialize normally.

On a more global level, I'd like to see the United States finally sign the United Nations Convention on the Rights of the Child. The Convention prohibits death sentences and life sentences for minors and requires the prohibition and elimination of all corporal punishment and all other cruel or degrading forms of punishment of children. Our country, South Sudan, Somalia and are the only UN members who have not yet signed. It is truly appalling that our country refuses to sign this statement of basic rights for children. While we like to think of our country as the most humane and enlightened, this is an area in which we have a long way to go. **FCICA**