

# The Changing Face of Juvenile Justice

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On January 13, 2000, Nathaniel Abraham, a small 13-year-old boy, became the youngest American in modern history to be convicted of murder as an adult when he was tried in a criminal court in Pontiac, Michigan. With a borrowed, damaged .22 rifle, he somehow managed to fatally shoot a stranger from a hillside some 200 feet away. Nathaniel, an African American, was 11 at the time of the offense and had no prior delinquency record. At his court hearing, mental health experts testified that he was mentally and emotionally impaired.

However, it was Nathaniel's sentence that generated the greatest controversy in this case. Michigan's new law allowing youths of any age to be tried as adults was not so unusual; in recent years, many states had lowered the age threshold. The same law, however, allowed Michigan judges three possible sentences for youths convicted in adult court: an adult prison term, a sentence that begins in juvenile facilities and then may continue in adult correctional facilities, or a sentence to juvenile facilities alone that expires when the youth reaches age 21.

For a murder conviction, Michigan prosecutors and lawmakers fully expected one of the harsher sentences. They were stunned when Judge Eugene Moore not only ordered the sentence to juvenile facilities alone but also used his decision as an opportunity to denounce the trend in

Michigan toward trying younger and younger children as adults.

The prosecutors' dismay was understandable given recent trends in laws pertaining to youthful offenders. Legislative reform promoting the prosecution of youths as adults began sweeping the nation about a decade ago, in the midst of an episodic increase in youth violence. With some criminologists announcing that the nation was besieged by a growing wave of juvenile "super-predators" (1), the rehabilitative objective that had supported a separate system of justice for children for the past 100 years began to crumble under a wave of public fear and retributive lawmaking (2). Some states have had thousands of adult-court trials for youths each year after having mandated automatic transfer to criminal court for a wide range of felonies (3,4).

In the past few years the "super-predator" notion has been debunked, and juvenile violence has decreased (5). Yet the get-tough attitude among lawmakers still places decisions like Judge Moore's outside the nation's prevailing view that children, when they commit serious offenses, should suffer adult punishments.

Whatever one's view of these circumstances, they can have tragic consequences for youths who, like Nathaniel, enter juvenile or criminal justice systems with mental disorders. Recent studies show that, as juvenile justice administrators have been reporting for several years, mental disorders are far more common among youths referred to the justice system on delinquency or criminal charges than in past decades (6–8). Even if conduct disorders and substance use disorders are excluded, the prevalence of depressive, anxiety, attention, and thought disorders suggests that mental disorders are at

least twice as common among youths in juvenile justice settings as the 18 to 22 percent prevalence reported for adolescents in general (9).

Many believe that this is the legacy of society's failure in recent years to provide adequate mental health services to adolescents in their communities. It may also be a consequence of the recent public attitude that focuses one-sidedly on the punishment of youthful offenders (8). The juvenile justice system appears to have abandoned the process of screening and diverting some youths to mental health services when they are first referred to juvenile court—a practice more common in an earlier rehabilitative era. In a system in which decisions about the legal response to youths are based solely on the nature of their alleged offense, and not on their characteristics, many youths with mental disorders face prison sentences rather than potentially rehabilitative juvenile justice or mental health services.

Even for youths who are retained in the juvenile justice system, however, there has been growing concern about the inadequacy of programs and resources to respond to the increasing proportion of those who need mental health services while in juvenile detention and correctional settings (10). Significant efforts are finally under way in many states to provide mandatory mental health screening of youths as they enter the juvenile justice system. However, these activities will not solve the problem of inadequate resources for responding to those who are identified as requiring services. One view of the policy implications points to the need for more interagency agreements between state departments of mental health and departments of youth corrections to collaborate in serving the mental health needs of

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those who are in youth corrections custody.

Increasing mental health services to youths in the juvenile justice system, however, will not remedy two other concerns that have been raised by laws that treat children as adults solely on the basis of their offense.

Nathaniel's case illustrates one of those concerns. After Nathaniel's court hearing, a news reporter asked his defense attorney about the boy's reaction to the judge's sentence (11). The attorney replied that when they were leaving the courtroom, Nathaniel looked up at him and asked, "What happened?"

All states' laws and the U.S. Supreme Court's interpretation of the Constitution prohibit the adjudication of criminal defendants who are not competent to stand trial. The court's latest decision on that matter, in *Godinez v. Moran* (12), made it clear that being competent to stand trial means not only understanding the nature of the proceedings and being able to assist counsel but also being able to grasp the implications of making important decisions—for example, pleading guilty in response to plea bargains, or forgoing counsel—that involve the waiver of constitutional rights. In the prosecution of adults, typically the reasons for incompetence have been serious mental illness or mental retardation that interferes with those of a defendant's abilities that are related to the legal concept of competence to stand trial (13).

Two sources of potential unfairness arise when these legal criteria for competence to stand trial are applied to children and adolescents who are being tried as adults. First, as child mental health professionals are well aware, mental disorders of childhood are significantly different from those of adulthood, are often harder to identify, and are diagnosed less reliably. Cases of psychosis, especially schizophrenia, are frequently the focus of competence questions for adult defendants, but they are less common for adolescents outside of psychiatric hospitals. Nevertheless, disorders of childhood may negatively influence cognitive and emotional functioning no less seriously. Moreover, when youths are tried in adult

courts, often they are examined by mental health professionals whose clinical training and experience as well as their forensic practice do not prepare them to diagnose disorders of children and adolescents (14). Thus youths in adult courts who have mental disorders are at greater risk than adults of the disorders' not being clinically identified or of being misdiagnosed, with potential consequences for the fairness of their trials if their disorders impair their ability to participate in them.

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The second concern is the growing evidence that youths' immaturity creates a substantial risk that they cannot approach their trials in adult court with the requisite understanding and decision-making capacities to assure a fair legal process (15–17). This evidence suggests that while 13- or 14-year-olds might possess the basic cognitive abilities to understand the nature of a trial (or be capable of being taught what they need to know), their capacity for grasping the significance of decisions they must make has not yet matured to the level of the average adult defendant.

Moreover, age itself is a poor marker for judging such capacities, because prevalent mental disorders among youthful defendants typically have had residual effects that delay their development, resulting in cognitive and emotional immaturity relative to their age peers.

Developmental issues enter the debate on yet another question associated with the practice of sentencing youths as adults. What theories of culpability justify similar or different punishments for children and adults who commit the same illegal acts?

Until the 1990s, the juvenile justice system of the 20th century operated on the assumption that youths' immaturity justified a different legal response to their offenses. Adolescents, it was argued, were still malleable and might be more easily rehabilitated than adults. In addition, the offenses of most youths were construed in part as a consequence of their immaturity, not necessarily as a sign that they were tomorrow's adult criminals (5). For many youths, developmental characteristics that distinguish most adolescents from most adults—for example, the strong influence of peers, a more immediate time perspective that does not favor a grasp of longer-term outcomes, and simply less experience in assessing potential consequences—were perceived as differences that warranted a different legal response.

There was apparently no doubt about Nathaniel's guilt, and there is probably general agreement that he, like other youths who commit serious offenses, should be held responsible for his behavior. An earlier legal system, however, found room for coexistence of the idea that youths should be held responsible and the belief that their developmental immaturity warranted mitigation in how they would be held responsible and with what rehabilitative conditions. This presumption, although manifested in Judge Moore's decision, went by the board as a matter of general public policy in the frenzy of lawmaking, beginning about ten years ago, that put 13- and 14-year-olds before juries and under the national public scrutiny of *Court TV*.

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As the face of juvenile justice changed during the past decade, psychiatry and psychology were late to contribute to the debate on the risk of youths' incapacities as trial defendants or their immaturity as a mitigating factor. In fact, we had little to offer, partly because our sciences had not yet marshaled the theoretical or empirical evidence that would have been relevant in this particular realm of political discourse.

Recently these arguments have been better formulated by a research initiative of the John D. and Catherine T. MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. This group has embarked on research that will provide empirical information on youths' developmental characteristics relevant for these issues of adjudication. In May 2000 the group will publish a volume of essays providing a developmental perspective on the competencies and culpability of youths in the justice system (18). A volume on policy and practice in the transfer of youths to criminal court will soon follow (19).

While these "forensic" issues are important, they are not the most pressing. The practitioners of psychiatry and psychology must increase their efforts to assist juvenile and adult correctional systems to address the urgent, almost overwhelming need for basic mental health services to adolescents in their custody. A significant proportion of the children we formerly would have treated in our clinics and hospitals no longer go there. They have gone to juvenile detention centers, correctional facilities, and prisons. We must follow them there, if we are to remain true to our obligation to meet the mental health needs of our nation's youth, for their benefit as well as for society's future safety. ♦

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