



Juvenile incarceration justice in America: Rehabilitation is key  
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The leadership of the United States of America has convinced us that punishment is the only acceptable solution to crime. Its “tough on crime” approach led to the problem that is mass incarceration. But perhaps the most sinister part is the failure of the system to offer rehabilitation and a second chance to youth offenders.

“Prison affected me a lot. ... I [have] been in here for 15 years. I came in here when I was a kid. I had to kinda teach myself how to grow up. I had to teach myself how to be a man,” Sean Gordine, who has served 15 years of his sentence for second-degree murder in Pennsylvania, explained in an interview with Daily Kos via phone. Gordine was 15 years old at the time of his arrest and was sentenced to 40 years to life.

The United States saw a significant increase—[270%](#)—in violent crime between 1960-1980, prompting elected officials to push legislation that gave more funding to the police and placed more people behind bars. In 1968, President Lyndon Johnson signed the Omnibus Crime Control and Safe Streets Act of 1968, [which funded \\$400 million to law enforcement](#) for growth and development. That was followed up by policies that disproportionately affected underserved communities. The Violent Crime Control Act and Law Enforcement Act of 1994, best known as the 1994 Crime Bill, which was signed by President Bill Clinton, not only placed a larger target

on minorities, [the bill allowed for the use of tax dollars](#) to build more jails and prisons. It also gave the green light to municipalities to hand down harsher sentences.

Ultimately, the bill exacerbated the school-to-prison pipeline with increased funding for school resource officers who, in some cases, are able to make arrests and even carry weapons. The hiring of school resource officers [affected mostly Black children](#), who are twice as likely as white children to be punished. It's important to [note this is just one of the risk factors](#) when discussing youth offenders, others being poverty, disabilities, racial profiling, and more.

In the '90s, the United States shifted from rehabilitative practices to imprisoning children for the sake of "cleaning the streets." According to the Office of Juvenile Justice and Delinquency Prevention, 2.7 million juveniles under the age of 18 were arrested in 1995. The number of arrests dropped 70% between 1995-2019—law enforcement agencies reported 696,620 arrests of youth under 18 in 2019. Why? Advocacy for youth offenders helped to push for legislation that supports decarceration. But while there has been a decline over the past two decades, there is so much more to be done—and undone.

"I always heard the saying when you get your time, you don't really feel it. So I always thought ... how you not gon[na] feel it when you get a life sentence or something equivalent like 40 years or something like that? ... I didn't believe it at that moment," Gordine said.

### **second-degree murder but life in jail**

Pennsylvania's second-degree murder law "does not describe an act but a situation: it applies when someone dies related to a felony," according to a report conducted by the Philadelphia Lawyers for Social Equity. What that means is a person does not have to cause death to receive the same life sentence as the person who did cause the death. In 2020, a report revealed that 38% of juvenile lifers had been convicted of second-degree murder in Pennsylvania. "Any loss of life because of a crime being committed is a tragedy. ... But in what world has justice been served if the person who actually took the life can plead out with 5, 10, or even 15 years in jail, but their lookout is ordered to serve the rest of their life, 40, 50, or 60 more years, and then die in prison for second-degree murder," Lieutenant Governor John Fetterman (who is also running for Pennsylvania's Senate seat) said in a press release response to the report.

The second-degree murder law "don't make sense. It's here to suffocate you. It's just here to destroy you. That's how I see it," said Gordine.

Pennsylvania has the most juvenile lifers out of any other state: a first- or second-degree murder conviction is an automatic life sentence. Their department of corrections website states that 477 juvenile lifers have been resentenced and 279 have been released. The resentencing occurred following the Supreme Court upholding of *Miller v. Alabama* stating that it "is unconstitutional to sentence a juvenile offender to mandatory life-without-parole." Gordine was sentenced under a new law, which gave excessive minimum sentences to life. "It's a 'de facto' life sentence, meaning [the system] found another way to give us life," Gordine said.

Though there have been juvenile lifers in Pennsylvania who were able to make it home after many years in prison, there is still some pushback. "It's still very county-dependent, fact-dependent, and there are still a lot of politics involved," said Brooke McCarthy of the Juvenile Law Center in an interview with The Philadelphia Inquirer.

According to the National Governors Association, 27 states "currently do not set forth a minimum age of prosecution through statute; however, several states recently have introduced some form of legislation related to the minimum age of juvenile prosecution." The age at which a child can be prosecuted varies by state. A statute in Washington allows for the prosecution of children as young as 8 years; however, to charge children between the ages of 8 and 12 years of age in juvenile court, a prosecutor must prove that the child has the capacity to understand the offense. Some states don't have a minimum age for children to be tried in adult courts. Others, such as Georgia, Oklahoma, New York, North Carolina, Mississippi, and Nevada have a minimum age of 13 years old.

understanding the consequences of their actions

Katie Barnett, director of development and communications at the Youth Sentencing & Reentry Project (YSRP)—a Philadelphia nonprofit that supports youth prosecuted in the adult criminal legal system—explained to Daily Kos "mandatory sentencing does not take into account an individual's, let alone a child's, capacity for growth or change, which we know they are capable of when offered comprehensive support."

There are many reasons children should not be tried as adults, but the obvious fact is that their brains are still forming. Studies show that the brain is not fully developed until a person is in their mid-20s. Many juvenile justice organizations argue that children are not culpable for their actions, therefore, they should not be held to the same standard as adults. The American Academy of Child and Adolescent Psychiatry published an article explaining teenage brain development. The region of the brain that is responsible for immediate reactions is called the amygdala. The frontal cortex, which is responsible for reasoning, isn't yet developed in teenagers. The article states that "adolescents' brains work differently than adults when they make decisions or solve problems. Their actions are guided more by the emotional and reactive amygdala and less by the thoughtful, logical frontal cortex."

Emily Robb, the director of case advocacy of YSRP, said to Daily Kos in an email: "The law has simply not caught up with what we now know about brain development and how the part of the brain that controls impulsivity and risk-taking is the last to mature."

Charging children as adults does not make sense when they don't fully understand the consequences of their actions. But some states are working to right their wrongs. California, for example, implemented a Youth Offenders Program, which has helped free people who were under the age of 26 when they committed a crime. There are disqualifiers, which include incarcerated people who have received a death sentence and those who are on their second or third strike. However, a youth offender who was "under 18 years old when they committed the

crime for which they were sentenced to life without the possibility of parole” meets the qualifications. These changes in laws regarding youth offenders should be retroactive.

372413 09: A prisoner marches while holding onto his mattress inside a Broward County jail July 6, 2000 in Fort Lauderdale, Fl. The jail offers a 90 day military style boot camp for juvenile offenders. (Photo by Robert King/Newsmakers)



**A prisoner marches while holding onto his mattress inside a Broward County jail in Fort Lauderdale, Florida. The jail offers a 90-day military-style boot camp for juvenile offenders.**

Another reason the U.S. needs to take a hard look at the way youth offenders are handled within the justice system is the abuse they often suffer while incarcerated. Interrogating Justice detailed the trauma children may face behind bars. “Girls in the juvenile justice system have higher rates of depression and post-traumatic stress disorder (PTSD) than boys. When these problems go unaddressed, they contribute to behavioral problems during incarceration,” reported the ACLU.

The lack of care for youth offenders contributes to the largely underreported instances of abuse. Girls are more likely to be abused by prison staff, while boys are more likely to be abused by other incarcerated individuals. Additionally, solitary confinement is often used as a form of

punishment. Isolating children has a negative impact on their mental health and development. In an interview with Essence magazine, Nykia Watkins, now an advocate for juvenile justice reform, shared that, "Being incarcerated was so traumatic. I was one of those kids who sat in jail and had staff point fingers in my face. ... I've been one of those kids that [was] strip searched. Those kinds of things are dehumanizing."

(Disclaimer: The following contains accounts of child abuse.)

In 2021, the Delaware County Public Defender's office sent a letter to the Pennsylvania Department of Human Services that included accounts of various forms of abuse by the detention center's staff. Delaware County Juvenile Detention Center (DCJDC), located in Lima, Pennsylvania, was forced to close following the release of the letter. Allegations of abuse included "a staff member ramming the head of a child into a reinforced window, an attempt to 'induce a miscarriage' on a pregnant teen, guards forcing a child to drink from a toilet, a disregard of suicide protocols, and several instances of beatings." There were also allegations of racism, homophobia, transphobia, and misogyny. DCJDC staff were also accused of failing to provide adequate mental health care and education for youth offenders.

Our country has a journey to fulfill when it comes to the treatment of children and youth offenders. "Once [juveniles are] placed behind bars, I think we need more funding to get more specialists involved. We need better education. We need more focus on figuring out what ... the problem [is] that the kids are going through. ... What made them get caught up in the things that they [were] caught up in? I think [there] needs to be a lot more support, a lot more help, a lot more ... just a whole better chance at a second chance. You can't just throw away a child," Gordine said.

### **but what about ...**

But what about the domestic terrorists who regurgitate white supremacist ideals, like Kyle Rittenhouse, the 17-year-old who shot and killed two protestors and wounded a third in Kenosha, Wisconsin, during a protest in support of Jacob Blake? Rittenhouse was charged as an adult and eventually acquitted. He had the support of the far-right, acquiring \$2 million in donations, and was thrust into the spotlight as a poster child for "vigilance." While he should not have been carrying an AR-15, we cannot ignore that he was only 17.

In a Mother Jones article, Marsha Levick, the deputy director and chief counsel of the Juvenile Law Center, remarked, "if [children] are to be prosecuted, it should be as a juvenile and not in the adult justice system. The leading reform voices are in consensus about this. It's not an outlier view today. And the science takes us there."

Prosecuting Rittenhouse in juvenile court would have been more suitable to ensure his potential rehabilitation and some sort of accountability and would have avoided the spectacle that ensued throughout the months leading up to his trial. And who knows if he would have been offered the same grace by our nation's justice system if he were Black? But that is why we simply cannot pick and choose; considering the racial disparities in how children are viewed and treated in the

U.S., it's life or death for a lot of Black children and other children of color, even when they haven't done anything wrong.

In shifting the focus back to rehabilitation, the juvenile justice system has the opportunity to truly turn things around for the children who commit these offenses. "Do we believe in rehabilitation? Do we believe in responsibility? If we do, that can happen, that doesn't have to be behind bars," said Pennsylvania Democratic State Rep. Chris Rabb in 2021.



**Kyle Rittenhouse speaks with his attorneys before the jury is relieved for the evening during his trial at the Kenosha County Courthouse on November 18, 2021, in Kenosha, Wisconsin.**

### **reordering america's priorities**

America is a nation that is too dependent on its police. An overpoliced environment **has not decreased crime**, yet funding is continuously *increased* to support police departments nationwide. A **2019 American Civil Liberties Union (ACLU) report showed** that there are "14 million children in schools with police but no counselor, nurse, psychologist, or social worker." America's priorities are not in order.

Rehabilitation is more than just offering a program to incarcerated people and expecting them to soak it all in, it requires compassionate facilitators. Gordine emphasized that, "if you show the inmates that you don't care, then [they are not going to] take that stuff seriously." We can't offer the support children and youth offenders need without asking ourselves why we feel the need to punish in regards to people who offend. There is a certain amount of care that must be applied so that we can move forward within our communities. If we can't

consider the “why” behind the crime, we won’t get past the tough-on-crime laws that have negatively affected thousands of children and contributed to mass incarceration.

**Organizations such as** the Juvenile Law Center, Impact Justice, and Justice Policy Institute work to change how the juvenile justice system operates. No Kids in Prison hopes to end the imprisonment of children and provide opportunities for them to succeed. Briannah Stoves, a youth leader of the Care, Not Control initiative **explained to *Essence*,** “Incarceration shouldn’t be the go-to, it isn’t the solution. Support is, you know, being heard and finding different options. Those are solutions.”

Mass incarceration is a horror in itself, but discarding children is more harmful than anything else. When our communities provide very little resources to those who need it most, the result is the human response of survival. It’s dehumanizing to reduce children to criminals while consistently showing them we don’t care about them as a society.

Ultimately, pushing our elected officials is imperative to assure unfair practices within the juvenile justice system change. Paying attention to the thoughts and actions of those running for office behind topics like juvenile justice or second-degree murder laws is the bare minimum. But change can happen. **Hawaii, for instance, announced that the number of** incarcerated girls at Hawaii Youth Correctional Facility was zero for the first time in its carceral history. But this didn’t happen overnight, it followed years of advocacy and choosing healing instead of punishment.

“There are several policy changes under consideration in the [Pennsylvania] legislature now that would change the way children are treated in the adult justice system. These proposals are the result of the bipartisan **Pennsylvania Juvenile Justice Task Force. SB 1240** would eliminate “direct file”—the practice of charging children automatically as adults, without review by a judge, for a set list of offenses, which includes second-degree murder. It would also raise the age at which youth could be transferred after a hearing to adult court from 14 to 16, and change the presumption to favor a child staying in juvenile court,” explained YSRP Policy Director Margot Isman.

As for Gordine, he is currently in the appeals process and is hoping he is approved through Pennsylvania’s Supreme Court. “I’m much more than just an inmate. [...] or like, a juvenile who’s been sentenced to 40 years. I been working on myself constantly and sharpening my mind; bettering myself. ... I’m just not that guy that—or that kid—that was caught up in this case. I’m so much more than that,” said Gordine.

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