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The MCC Examines How Missouri's Juvenile Justice System Impacts Lives

"You Have the Right to an Attorney..." A Brief Look at the Life of a Missouri Public Defender

>> By: Tyler McClay

Anyone who has ever watched a crime show on television knows that when a suspected bad guy is arrested, he is read his Miranda rights, "You have the right to remain silent ... you have the right to an attorney ... if you can't afford an attorney, one will be appointed for you ..." What many people don't know is that the attorney appointed for these suspects would most often be employed at the Missouri Public Defender's office, a statewide agency employing 376 criminal defense attorneys. These lawyers represent indigent Missouri citizens facing criminal charges in state courts from their initial court appearance through appeal.

Sarah Johnson works as an Assistant Public Defender in the juvenile division in the City of St. Louis, and handles only juvenile cases. Most of her clients come from broken, or single parent homes, and in many cases have parents that are incarcerated themselves. Some don't know both of their parents, and many are living with adults who are too busy to care for them or take an interest in their lives. "Those are the heartbreaking cases," Johnson said.

Last year, the trial division of the Missouri Public Defender's office opened 70,000 new cases. Their office will resolve these cases at an average cost to Missouri taxpayers of \$345 per case, a bargain by private attorney standards.

Most of Johnson's cases involve juveniles between the ages of 14 and 17. She occasionally sees a client aged 12, but according to her "those cases are rare." When Johnson meets a new client, 70 percent of the time, they are being housed in St. Louis' juvenile detention center. They stay there until a judge has had a chance to determine if they are eligible for release.

Those that remain in detention are either charged with a serious felony offense, are at risk of running away, don't have a stable and

reliable home life, or are in need of other services, such as mental health screening or other medical treatment for trauma, abuse, or other illness.

While in detention, the juveniles are fed, have a chance to shower, and have a safe place to sleep. They are also required to attend classes offered through the school system. Most will stay in detention until their criminal charges are resolved, when they can then return to their homes. In some cases, if they don't have family able or willing to care for them, they will be placed in foster care.

A criminal trial for a juvenile isn't like a trial for an adult. There

is no jury; the trial judge serves as both judge and jury. The judge also imposes sentence if he/she finds the juvenile guilty of the crime. In those cases, the child is deemed "delinquent." Sentencing is imposed after a social evaluation or "summary" is performed.

This summary looks at the child as a whole, including his/her physical, mental, and psychological needs. If services are deemed necessary, the Deputy Juvenile Officer assigned to the child recommends them. The judge then enters a sentence according to the individual child's need for rehabilitation, correction, and if necessary, treatment.

Johnson's typical week involves attending initial detention hearings, during which the judge determines if the juvenile suspected of a crime



"These kids often don't realize that I am there to fight for them."
-Sarah Johnson, Assistant Public Defender, St. Louis

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Juvenile Justice: Fast Facts

- » 2,800 youth served every year by MO Division of Youth Services (DYS)
- » 86% are male
- » 14% are female
- » 37% minorities
- » 66% from large metro areas of the state
- » 46% of DYS youth have received previous mental health services
- » 34% have educational disabilities
- » 20% have previously been in out-of-home placement for child abuse/neglect

*Missouri Department of Social Services Division of Youth Services Website

is fit to return to the community, defending her clients in trial, attending sentencing hearings, and meeting with clients to discuss their cases. The most rewarding thing for her is to be able to explain to a client his/her constitutional rights. “These kids often don’t realize that I am there to fight for them,” Johnson said.

“So many of the adults they encounter tell them what to do, or direct them where they should go. I get to tell them that they have the right to remain silent, or the right to refuse a plea bargain and go to trial,” Johnson explained. “When they know someone is fighting for them, they feel empowered, often for the first time in their lives.”

Most of Johnson’s clients are charged with crimes of opportunity—petty theft, riding in a stolen vehicle, or fighting at school. Some face sexual assault charges, or charges of a similar nature. “Most of these kids are just not thinking about what they are doing,” Johnson said. “They get in trouble for doing things that aren’t always the smartest or wisest things to do, proving that they are still just kids.”

Juveniles charged with serious offenses can be certified as adults at an age as young as 12 years old. Certification is mandatory in first-degree robbery, rape, first-degree burglary, and first or second-degree murder cases.

Certification as an adult can result in serious penalties and can land a juvenile offender in an adult prison. In Missouri, once adolescents reach 17 years

of age, they are considered an adult for purposes of the criminal justice system. Many believe this is too young, and lawmakers in Jefferson City are currently considering legislation to increase that age to 18.

“Missouri has a very good juvenile justice system,” Johnson said. “By intervening in these kids’ lives, we have a chance to change their circumstances, which means they have a chance to stay out of the adult system. That is what we always hope for, anyway.”

Funding for the Public Defender system has been stagnant for the last several years, and an audit performed in January 2014 indicated that the Missouri Public Defender System could use an additional 200 attorneys. “Having more attorneys to work on these cases would mean that more offenders can get referrals for the help they need, be it drug treatment, mental health services, or helping them get educated so they can work,” said Michael Barrett, General Counsel for the Missouri Public Defender System. “We are always fighting for more funding. It isn’t always the easiest thing to sell in Jefferson City, but we keep trying.”

Having an attorney to defend those charged with a criminal offense can help get offenders the services they need. More access to counsel can mean more young people are turned away from delinquency and violence. The old adage that, “an ounce of prevention equals a pound of cure” makes sense, even in the criminal justice system.

—Tyler McClay is the General Counsel for the MCC

U.S. Catholic Bishops Speak Out on Youth Sentencing Schemes

>> By: Tyler McClay

In November 2000, the United States Conference of Catholic Bishops issued a statement on crime and criminal justice in which they called for a new national dialogue on crime and corrections. They began the discussion by reminding us as Catholics that “a Catholic approach [to this issue] begins with the recognition that the dignity of the human person applies to both victim and offender.”

The bishops recognized that the current trend of building more prisons and locking up more offenders would not address the situation we face as a nation in any meaningful manner, and they called for a new dialogue on crime and punishment in light of the Christian faith tradition.

The bishops recognized that the state has a distinct role to play in defending its citizens from harm. Indeed the *Catechism of the Catholic Church* states that, “it is the role of the state to defend and promote the common good of civil society, its citizens, and intermediate bodies,” (*Catechism*, para. 1910).

At the same time, however, a Catholic approach to crime would not abandon those who offend the law, but would uphold and affirm their dignity while calling them to account. As the bishops stated in 2000:

“We believe that both victims and offenders are children of God. Despite their very different claims on society, their lives and dignity should be protected and respected. We seek justice, not vengeance. We believe punishment must have clear purposes: protecting society and rehabilitating those who violate the law.”

From a Catholic perspective, there is an important relationship between the common good and punishment for crimes. Punishment can serve the common good by providing protection to those harmed and restoring public order. It also has a “medicinal” purpose in that it contributes to the “correction of the guilty party,” (*Catechism*, para. 2266).

Punishment for its own sake, however, is not a proper

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-U.S. Bishops



Christian response to crime. The causes of crime are complex and “[o]ne-size-fits-all solutions are often inadequate.” As the bishops affirm in their 2000 statement, “[w]e must renew our efforts to ensure that the punishment fits the crime. Therefore we do not support mandatory sentencing that replaces judges’ assessments with rigid formulations.”

The bishops also reject policies that treat juvenile offenders in the same way as they treat adults, “[S]ociety must never respond to children as though they are equal to adults—fully formed in conscience and fully aware of their actions.”

Since 2005, Missouri courts have been required to impose sentences of life without parole for juveniles convicted of capital murder. Judges hearing these cases did not have the discretion to consider factors such as whether the accused was the one who pulled the trigger, or the person who planned the crime; whether the case was a gang-related homicide, or whether the accused has any potential for rehabilitation and return to the community.

On June 25, 2012, however, the U.S. Supreme Court ruled in *Miller v. Alabama* that mandatory life without parole sentencing schemes for juveniles charged in capital cases are unconstitutional, and that they violate the constitutional prohibition against cruel and unusual punishment.

These sentencing schemes, the court ruled, “pose too great a risk of disproportionate punishment [by] making youth [and all that accompanies it] irrelevant to the imposition of that harshest prison sentence.”

The U.S. Supreme Court reasoned that juveniles have “diminished capacity” and “greater prospects for reform,” thereby making them less deserving of the most severe punishments. The court also said that children have a “lack of maturity and underdeveloped sense of responsibility, [and that they] are more vulnerable to negative influences and outside pressures, including from their family and peers.” The U.S. Supreme Court also reasoned that children also have “[l]imited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings.”

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> **Cont. U.S. Catholic Bishops Speak Out**

The court went on to say that life without parole “forfeits altogether the rehabilitative ideal [and] reflects an irrevocable judgment about an offender’s value and place in society, at odds with a child’s capacity for change.”

Since the U.S. Supreme Court issued the *Miller* decision, nine state Supreme Courts have ruled that the *Miller* decision should apply retroactively, thereby requiring resentencing hearings in cases imposing life without parole sentences in the past.

Four juveniles sentenced to mandatory life without parole in past cases in Missouri have recently filed petitions with the

Missouri Supreme Court seeking to have their mandatory life without parole sentences revisited. They hope the Missouri Supreme Court will permit their cases to be presented before a judge for resentencing.

The Missouri Catholic Conference filed a Friend of The Court brief in support of those seeking resentencing hearings. Citing Catholic Church teaching, the MCC argued that permitting resentencing for these offenders is appropriate and wouldn’t offend notions of fairness, because a court would still have to weigh the juveniles’ past and present circumstances, their potential for rehabilitation, and the appropriateness of the original sentence.

A court reconsidering a juvenile life

without parole sentence could still find that the defendant presents a danger to the community, and affirm the original sentence. The court could also find, however, that the crimes committed were more a result of immaturity than of a depraved heart.

A life without parole sentence is harsh. In an Address to the Delegates of the International Association of Penal Law in 2014, Pope Francis remarked that sentences such as these are “just a death penalty in disguise.” For a 16-year-old sentenced to spend the rest of his life in prison, Pope Francis couldn’t be more correct.

—Tyler McClay is the General Counsel for the MCC

The Human Cost of Treating Juveniles as Adults

>> By: Tracy McClard

I became involved in juvenile justice reform work due to the tragedy my family and I suffered from losing my 16-year-old son, Jonathan, in Missouri’s adult criminal justice system. During the summer of 2007, Jonathan was arrested for first-degree assault and certified to stand trial as an adult. He was evaluated and highly recommended by the Missouri Department of Youth Services (DYS) for placement in their nationally touted, highly successful Dual Jurisdiction Program. However, the state circuit judge from Mississippi County denied the recommendation of DYS and instead sentenced Jonathan to the maximum 30 years in adult prison. On January 4, 2008, seven weeks after Jonathan’s sentencing hearing and 3 days after his 17th birthday, Jonathan was found hanging in his cell. It took less than 6 months for the state of Missouri to take the life of my youngest child.

Following Jonathan’s loss, I resigned my position as a high school special education teacher in Chaffee, Missouri and formed Families and Friends Organized to Reform Juvenile Justice (FORJ-MO). FORJ-MO is dedicated to ending the practice of trying, sentencing, and/or incarcerating youth as adults. I began work to change laws and policies on the state and federal level, while building FORJ’s coalition, which consists of juvenile justice stakeholders, affected families, legislative champions, and national juvenile justice advocacy groups.

During the 2013 legislative session, Jonathan’s Law passed unanimously through both chambers and was signed into law on June 12. Jonathan’s Law made changes to Missouri’s Dual Jurisdiction program, making it more accessible to Missouri youth who are certified as adults. Building on this, a resolution to form a legislative juvenile justice task force was passed in 2014. The Task Force, on

which I served, was commissioned to study three specific areas of juvenile justice reform: (1) raise the age of juvenile court jurisdiction to 18; (2) remove youth under 18 from adult jails pre-trial; and (3) raise the age to certify a child as an adult (the current age is 12). The Task Force was also charged to produce a report of recommendations by January 1, 2015.

The work of the Task Force has led to the following two companion bills currently moving through the legislature:

House Bill 300 and Senate Bill 213, sponsored by Representative Ron Hicks (R-St. Charles), and Senator Wayne Wallingford (R-Cape Girardeau), respectively, would raise the age of juvenile court jurisdiction to 18. House Bill 708 and Senate Bill 320, also sponsored by Representative Hicks and Senator Wallingford, respectively, would remove certified youth from adult jails pre-trial.

Editors Note: The MCC supports raising the age of juvenile jurisdiction and keeping juveniles out of adult jails, because these measures reflect Catholic teaching on restorative justice that holds offenders accountable for their actions while providing appropriate avenues for rehabilitation. These measures are not only in the best interest of the youth, but have also proven to be cost-effective measures for tax-payers.

—Tracy McClard is a Juvenile Justice Advocate (FORJ-MO)

