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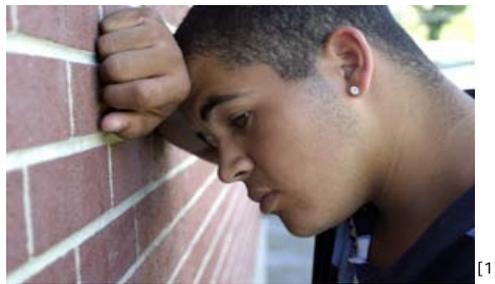
Trying Juveniles as Adults in the 'Show-Me' State

February 8, 2011 @ 6:37 pm

By **Kenneth J. Cooper**

Despite an unusual state law requiring judges to consider racial disparity when deciding whether to try juveniles as adults, Missouri prosecutes a disproportionate number of black youth accused of serious crimes in regular courts, where they can be sentenced to prison alongside hardened criminals.

In recent years, African-American teenagers have faced trials in adult courts at a rate three to four times higher than their proportion of Missouri's youth population. They were defendants in 57 percent of such prosecutions in 2008, the latest year statistics are available, even though they make up only 14 percent of state residents between ages 12 and 17.



One possible reason for "the high amount of disparity," the wording of a free legal clinic at Washington University in St. Louis that defends lower-income juveniles, is that Missouri does not require juvenile judges to hold a probable cause hearing before transferring a case. Nor do a dozen other states, including California and Maryland, and also Washington, D.C. The nation's courts have a long history of meting out harsher punishment to African Americans when judicial discretion is relatively unfettered.

Juvenile courts in those 13 states and the nation's capital could be violating a Supreme Court ruling, *Kent v. United States*, which states judges must determine, before transferring cases to adult court, that they are strong enough to secure a grand jury indictment. That 1966 decision requires that such criminal complaints against juveniles must have "prosecutive merit" and "measure up to the essentials of due process and fair treatment."

Mae Quinn, the legal clinic's co-director, suspects that Missouri prosecutors actually have an incentive to take weak cases into adult court, where young defendants can feel pressured to accept a plea bargain. Even though probation is often the result, she says the threat of prison time represents a form of punishment in itself.

"That's actually the perverse reality for some of these cases," explains Quinn, a law professor at Washington University and co-director of its Civil Justice Clinic. "This is a case that was weak, and no one screened it for probable cause in a significant way."

Quinn and law students in the clinic represent young defendants in St. Louis County Juvenile Court, whose jurisdiction is separate from the city of St. Louis. The county is 22 percent black, according to latest census estimate, and encompasses a number of predominately black suburbs.

Last fall, the clinic focused on challenging Missouri's loose system for certifying juveniles to be tried as adults. Alexandra Rieck, a third-year law student, researched and wrote a "user's guide" on that part of the state juvenile code and the racial disparity it has permitted.

"I did not find comparable data about racial disparity in certification for other states, because I believe that Missouri is one of the only states, if not the only one, to have a requirement about ensuring there is no racial disparity," Rieck says.

Missouri law requires juvenile judges to consider 10 factors when making those decisions, such as the severity of the alleged crime, any personal injury done, and the defendant's age and record. Racial disparity is the tenth factor. The user's guide published in December concludes that proof of disparity "should weigh against" prosecuting a juvenile as an adult.

The state has some evidence of the racial disparity. The Missouri Division of Youth Services has published statistics showing that black youth were defendants in nearly half of the cases tried as adults during an eight-year period ending in 2008.

The disparity has been generally on an upward trend, from a low 33 percent in 2001 to a high of 57 percent in 2008. Black youth faced the possibility of going to prison with adults about 400 times during that time.

The state agency warns on its website that the numbers reflect a count of cases, not children prosecuted as adults, because more than one court may have tried the same youth using a different identifying number. Annual figures for each court show St. Louis City, which is 48 percent black, has treated juveniles as adults most often, followed by St. Louis County. Together, those two courts have tried about 70 percent of the cases statewide.

Last fall, Washington University's clinic succeeded in getting dismissed cases against two youth who faced the possibility of punishment as adults. In one case, the law students convinced the prosecutor to drop the charges "for lack of evidence," Quinn says, and in the other, "after a full-blown hearing and rehearing on this probable cause issue, the court decided to dismiss the charges entirely—and it 's very unusual."

In the user's guide, Rieck encourages other juvenile defenders in Missouri to raise the lack of a probable cause requirement to increase pressure for changes in the juvenile code.

Her research found at least 12 states besides Missouri and D.C. do not have a statute or court precedent requiring juvenile judges to assess probable cause before transferring a case to adult court. They include: Arkansas, California, Delaware, Hawaii, Idaho, Maryland, Massachusetts, Nebraska, Oregon, Rhode Island, South Dakota and Wyoming.

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