

# Uncorrected: Failures of the juvenile justice system

by [Jens Soering](#) in the [September 18, 2007](#) issue

At age 12 Lionel Tate killed his six-year-old playmate. He was convicted of first-degree murder and sentenced to life in prison without parole. Five years later, in 2004, appellate courts overturned Tate's conviction, and a plea bargain led to his release. But in 2005 he was arrested again for robbing a pizza delivery man, and he is now spending 30 years in prison.

While many see Lionel Tate as proof positive that some youthful offenders simply cannot be redeemed, others see him as one more juvenile who was poorly served by a correctional system that does not correct. He spent five years in the custody of that system, after all. As one court-appointed psychologist later lamented, "We had a real chance" to turn his life around. "The right thing would have been to get this young man some help."

Instead, Tate was lost in a juvenile system that is unable to give children the help they need. There were 1.7 million boys and girls in detention in 1995, the last year for which nationwide figures are available; and some states, like Texas, have increased their juvenile incarceration rates by 73 percent since then. On a typical day, more than 105,000 youths are behind bars across the United States. Over 11,000 of these minors are being held in adult prisons and jails.

Whereas the national recidivism rate for adults is 67.5 percent, it is 80 percent for these boys and girls. California spends \$80,000 to incarcerate a juvenile for one year, only to have 90 percent of youths reoffend. Across the nation, it costs many times more annually to detain a child than to educate him or her in public school.

As with the crime rate for adults—which was the same in 2003 as in 1973—so too has there been no long-term rise in youth criminality that can explain the dramatic expansion of correctional systems for minors. The National Crime Survey reports relatively constant levels of serious juvenile offending between 1973 and 1989, then a spike of one-third that lasted until 1993, and a steady decline ever since. Over the

next decade, the arrest rate for all serious crimes committed by minors fell by 44 percent—and in the case of homicides, by 70 percent.

Some might take this as evidence that the tough-on-crime attitude to juvenile justice is working. But Barry Krisberg of the National Council on Crime and Delinquency argues that the decline in youth criminality “happened before the tougher juvenile penalties were even implemented”—and also before many of the currently existing youth detention centers were built. Instead, a demographic drop in the number of young people, a booming economy in the 1990s, and an end to the crack cocaine spike created the conditions for a decrease in youth crime rates.

Public outrage over gun battles between black crack dealers undoubtedly contributed to racial disparities in the justice system: African-American youths constitute 15 percent of the civilian juvenile population overall, but 44 percent of incarcerated minors. A large proportion of these children are serving time in adult prisons. While there is some evidence of higher offense rates among minorities in certain crime categories, both state and federal studies have found that for the same offenses, African-American adolescents are more likely to be arrested or detained than white teens. Black children are also sent to detention facilities more frequently than whites—in the case of drug crimes, 48 times as often—and their sentences are 41 percent longer. Why the difference? A study published in the *American Sociological Review* in 1998 suggested that probation officers preparing pre-sentence reports on juvenile criminals tended to characterize white teens as reformable and redeemable victims of circumstances, while black adolescents were often depicted as intrinsically bad.

In addition to the troubling role that racial stereotypes play in the delivery of justice, there is the problem of mental illness. Just as adult penitentiaries have been forced into the role of mental health care facilities, so too have juvenile detention centers “become de facto psychiatric hospitals for mentally ill youth,” says Dr. Ken Martinez of the New Mexico Department of Children, Youth and Families. A report by the Annie E. Casey Foundation found that 80 percent of juvenile offenders have diagnosable psychiatric disorders. In most detention centers, mentally ill youth are mixed in with the general prison population.

Conditions within juvenile detention centers reflect a tough-on-crime approach and do little to transform the lives of young offenders. Take these examples: In California, court-appointed independent experts found many isolation cells smeared

with “blood, mucus and feces.” Classes were held in a room full of tiny cages, each containing one student. In New York City, Prison Health Services provided only one full-time doctor for all 19 of the city’s juvenile detention centers. That doctor and the juvenile justice commissioner were separately held in contempt of court for neglecting to give their wards prescribed HIV and psychotropic medications. In Miami-Dade County, a Florida grand jury investigation found “dozens of juvenile justice employees with convictions and arrests.” The criminal records of staff members came to light after two nurses at a youth facility failed to treat a boy with a burst appendix who died “in agony, lying on a concrete bed.” In Mississippi, a Department of Justice investigation found “unchecked staff-on-inmate abuse, including physical assaults and chemical sprays,” as well as “hog-tying, pole-shackling, and prolonged isolation of suicidal youth in dark rooms without light, ventilation or toilet facilities.”

As shocking as these instances of mistreatment by staff are, they are not the most troubling aspect of juvenile detention centers. Even more damaging is the pervasive atmosphere of violence and fear caused by the high rates of assault and rape among inmates themselves. According to the California Youth Authority, its 4,600 wards commit 4,000 acts of serious violence against each other in a typical year. In Louisiana, some judges have become reluctant to order incarceration for youth due to the frequency of rapes, attacks and suicide attempts at the state’s two main juvenile facilities.

The consequences of these violent surroundings are clear. Court-appointed experts investigating the California Youth Authority found that youth are “made worse instead of improved” by a stay in its facilities. Public defenders in Louisiana have noted that clients with records of the most heinous crimes have “almost always been through [the state’s] juvenile prison system.” Dr. Juan Sanchez says, “Kids coming out of the facilities are angrier, tougher, more aggressive, more violent and more difficult to turn around.”

The U.S. once led the world in progressive policies for juvenile justice. Illinois and Colorado established children’s courts as early as 1899, with most states following suit over the next 20 years. In the late 1960s Massachusetts began replacing large, jail-like “training schools” with smaller, community-based programs, and the Federal Office of Juvenile Justice and Delinquency Prevention began spreading them to other states by the mid-1970s. What changed these largely progressive movements was the sudden spike in crime levels associated with the introduction of crack cocaine in

the late 1980s. At that time, social scientists like James Q. Wilson and John J. Dilulio Jr. worried that tens of thousands of “deviant, delinquent . . . chaotic, dysfunctional, fatherless, godless and jobless” teenagers were wrecking havoc on society. Dilulio has since changed his mind, and in 2001 said, “If I knew then what I know now, I would have shouted for the prevention of crimes.”

Instead, the U.S. moved toward an increasingly punitive approach. Forty states and the District of Columbia now allow minors to be tried as adults—often through “automatic transfers” that give the judge no discretion as to where to send the case. Roughly half of these states permit prosecution of minors as adults not only for violent crimes, but also for property and drug offenses. Minors sent to adult facilities are eight times more likely to commit suicide, five times more likely to be sexually assaulted and twice as likely to be beaten by staff as youths confined in juvenile detention centers.

At the same time that courts began treating youths as adults, scientists were discovering how different youths and adults are. Recent brain imaging studies suggest that the frontal lobes—those regions of the cortex that weigh risks, make judgments and control impulsive behavior—do not mature fully in most people until the early-to-mid-20s. According to the American Medical Association, “adolescents are immature not only to the observer’s naked eye but in the very fibers of their brains.” Teens are, quite literally, works in progress.

Yet the U.S. justice system does not take such findings into account in sentencing young prisoners. For instance, roughly 9,700 inmates are currently serving life sentences for crimes they committed before the age of 18, and 2,200 of them are not eligible for parole. According to Human Rights Watch, only three other countries have sent juveniles to prison for life without parole. Israel has seven such prisoners, South Africa four and Tanzania one. Fifty-nine percent of U.S. youths sentenced to life without parole are first offenders, and 60 percent are black.

In the systems that have remained oriented toward rehabilitation, the results have been positive. In Missouri, the reincarceration rate over three years was just 8 percent. When Santa Cruz, California, cut its youth incarceration rate by more than half, the city’s juvenile and misdemeanor rates continued to decline. Scott MacDonald, one of the reform’s architects in that city, explained, “The reality is that not locking these kids up does not result in an increase in crime.”

If juvenile offenders are examined individually, fewer than 10 percent of them are serious, habitual, violent offenders. Laurence Steinberg, professor of psychology at Temple University, believes that nearly 95 percent of adolescents currently in prison should be transferred to group homes or residential treatment centers. Incarceration only “expands [their] antisocial network and . . . derails their normal psychological development.”

What is it, really, to be tough on crime? Consider Giddings State School in Texas, which focuses on intensive treatment and rehabilitation. “Giddings looks nice on the outside,” admits Stan DeGerolami, a former state-school superintendent—the grounds resemble a college campus, the inmates are called students, and the guards are unarmed. But inside, it is the “toughest prison in Texas,” DeGerolami says.

Kids do hard time here. They have to face themselves. They have to deal with the events that put them here. They have to examine what they did and take responsibility for it. Kids who go through that do not go out and reoffend. That needs to be screamed out loud. They do not reoffend.

Giddings’s violent recidivism rate is only 10 percent over three years.

Missouri achieves its remarkable 8 percent recidivism rate by housing juvenile criminals in small, residential-style facilities whose staff all have college educations. Instead of spending their days turning keys, these officers are encouraged to form positive, nurturing, one-on-one relationships with the adolescents in their charge. Groups of nine to 12 wards and two staff members stay together throughout the wards’ sentences, forming a kind of alternate family unit. And the annual cost of housing one minor in this type of facility is \$10,000 to \$30,000 less than the cost of punitive incarceration.

While most juvenile facilities in Texas do not have the same results as Giddings, some local jurisdictions have implemented effective, treatment-based community corrections programs. Again, the key to success is long-term, personal relationships: each teen is assigned a caseworker who checks in with him or her as often as twice a day, not only to ensure compliance with court-ordered programs but also to help the juvenile access social services and solve personal problems. The results are both lower levels of reoffending and lower costs.

In its 2005 *Roper v. Simmons* decision, the U.S. Supreme Court banned the execution of offenders who were below the age of 18 at the time they committed their crimes. Before this decision was made, the U.S. was one of only three nations that allowed the execution of young people. (The other two are Pakistan and the Republic of Congo.)

Clearly the U.S. has a long way to go in bringing its juvenile justice system into line with those of the rest of the world. But we can hope that this court decision is a harbinger of a more equitable, fair and comprehensive response to young criminals.