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Criminal Justice Issues and Prisoners' Rights

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by [Jean Casella and James Ridgeway](#) | July 8, 2010

CHILDREN IN LOCKDOWN

A story by Scott Christiansen that appeared in June in the [Anchorage Press](#) is significant not only because it describes the case of a 16-year-old who spent 500 days in pre-trial solitary confinement. Its significant because this case, according to the paper, has a chance to reform the way Alaska treats young offenders who've been waived into the adult court and prison systems.

The yard in segregation at the Anchorage Correctional Complex is specifically built so one person may have yard time alone.

Its about 20 feet long and maybe ten feet wide. Daylight, the sound of birds chirping and fresh air comes in from a caged space atop its concrete walls, but there is no view. The only exercise equipment is a block step built into the floor. Its two steps high and looks like a piece of a skatepark, only cut short and placed in an otherwise blank concrete room.

For much of the more than 500 days he spent there, this would've comprised the sole recreational outlet for Keen Smith, this despite the fact that jail time was virtually all pre-trial and Keen was therefore presumed innocent. Smith was 16 and charged with a felony first degree assault, and under laws passed in Alaska in the 1990s, that automatically meant he would be tried and imprisoned as an adult. And because at the time the state lacked the resources for a separate facility in which youthful offenders could be held separately from adults, a policy of the Alaska Department of Corrections Keen spent well over a year in conditions a layperson would have trouble distinguishing from solitary confinement.

Smith was convicted and sentenced to ten years. But his attorney, Chris Provost, who is supervising attorney of the Juvenile Delinquency Unit at the state Office of Public Advocacy, is now seeking to have his sentence reduced, based on evidence that children don't have the same decision-making abilities as adults. Provost is drawing on the 2005 Supreme Courts decisions in *Roper v. Simmons*, which banned death sentences for people under 18, and the more recent *Graham v. Florida*, which [placed limits](#) on sentences of life without parole for juveniles, among other case-law. Christiansen sums up Provost's argument:

Youth don't process cause-and-effect as well as adults. They can't think about the consequences of their own actions the way adults can. In youth crimes, the adage cooler heads prevail is often overridden by something called hot cognition, a state of mind during which a person's actions are controlled by feelings and emotions, rather than an analysis of what might happen if they take action.

If Smith's lawyers are successful, Alaska courts will recognize that a 16-year-old accused of a crime in adult court can qualify for a non-statutory mitigator, a mitigating factor at sentencing that isn't among those currently recognized by the state legislature. This is new ground for Alaska criminal courts.

The case also has implications for in Alaska is called the auto-waiver law, the law that automatically moves juveniles 16 and over into adult court if they are accused of certain felonies. About half of all states have some form of these [statutory exclusion](#) laws, which throw juveniles into the adult justice system without a hearing and without regard to mitigating circumstances. In Alaska, Christiansen reports, no judge gets to decide whether a 16-year-old is waived into the adult system. The law takes effect based on just two factors: the defendant's age and the criminal charge. The law also forces those youth in custody into Department of Corrections facilities, rather than facilities run by Division of Juvenile Justice.

That's where the Alaska case connects directly to the issue of juveniles in solitary confinement. At recent legislative hearings, officials from the Alaska Department of Corrections warned that they had no accommodations, other than segregation cells, that could keep the youthful offender safe in an adult prison. This means kids live in isolation 23 hours a day. They eat their meals alone, and exercise alone. And although the *Anchorage Press* documents some recent efforts to provide these kids with some education, prison officials admit that there's little discernible difference between the administrative segregation cells used for juveniles, and the punitive segregation cells used for prisoners who break the rules.

The psychological impact of isolation works against these children's prospects for any sort of rehabilitation, and for getting themselves out of the system. This is especially true of kids who spend months in solitary confinement before they are even tried, and then have to face a

judge and jury. They don't present well in court, Provost told the paper.

The fact that hundreds of children in the United States now live in solitary confinement is a by-product of the move, in the 1990s, toward treating children as adults in the justice system. These changes were made in response to a perceived spike in juvenile crime; the trend subsided long ago, but the policies are still in place. It appears that what they have done, rather than deter crime, is produce career criminals. At the end of his story, Christensen notes:

In the August 2008 edition of [the U.S. Department of Justice's] publication *Juvenile Justice Bulletin*, one article counted six major studies since 1980 that have found recidivism rates higher among youth offenders tried and punished under adult rules. (The studies were conducted in five states: Florida, New Jersey, New York, Minnesota and Pennsylvania.)

James Ridgeway (1936-2021) was the founder and co-director of Solitary Watch. An investigative journalist for over 60 years, he served as Washington Correspondent for the Village Voice and Mother Jones, reporting domestically on subjects ranging from electoral politics to corporate malfeasance to the rise of the racist far-right, and abroad from Central America, Northern Ireland, Eastern Europe, Haiti, and the former Yugoslavia. Earlier, he wrote for The New Republic and Ramparts, and his work appeared in dozens of other publications. He was the co-director of two films and author of 20 books, including a forthcoming posthumous edition of his groundbreaking 1991 work on the far right, *Blood in the Face*. Jean Casella is the director of Solitary Watch. She has also published work in The Guardian, The Nation, and Mother Jones, and is co-editor of the book *Hell Is a Very Small Place: Voices from Solitary Confinement*. She has received a Soros Justice Media Fellowship and an Alicia Patterson Fellowship. She tweets @solitarywatch.

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Only with your support can we continue this groundbreaking work, shining light into the darkest corners of the U.S. criminal punishment system.

by [Juan Moreno Haines](#)

October 25, 2022

by [Solitary Watch Guest Author](#)

October 13, 2022

by [Vaidya Gullapalli](#)

September 29, 2022

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Another quote.

According to Kent Kiehl, a neuroscientist who has studied criminal brains, genetics alone is not a sufficient predictor, but the combination of genetics and childhood trauma corresponds to a 400% greater likelihood of being convicted of a violent crime.

http://newsweek.washingtonpost.com/onfaith/modernmuslim/2010/07/neurolaw_responsibility_and_religion.html

Children are placed in solitary in adult prisons not specifically for what they have done but rather for their own protection.

This is done to insure their physical security but in doing so the system only damages them mentally. A system designed to manipulate and control behavior, has achieved not only the control of bad behavior, but in extreme cases, prisoners may literally stop behaving.

One particular offender most suited, both ideologically and functionally, to this environment, is the psychopath.

There was a recent NPR series about the genetic link to this condition.

I quote;

Brain patterns and genetic makeup are not enough to make anyone a psychopath. You need a third ingredient: abuse or violence in one's childhood.

Fallon once believed that genes and brain function could determine everything about us. But now he thinks his childhood may have made all the difference.

As for the psychopaths he studies, Fallon feels some compassion for these people who, he says, got a bad roll of the dice.

It's an unlucky day when all of these three things come together in a bad way, and I think one has to empathize with what happened to them, he says.

So I ask, are we tax payers supplying the third ingredient?

No wonder the recidivism studies mentioned in this post have shown such poor results.

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