

# Child or Adult?

Too often, our justice system doesn't draw much of a distinction

**L**eo Boyd Malvo is being tried in Virginia for the now infamous 2002 sniper shootings. He was 17 at the time of the shootings, and the prosecution is seeking the death penalty against him. The issue of Lee's age and whether he should receive the death penalty has been raised and discussed by not only the participants in his trial but also by the public, media and legal pundits.

If Lee is sentenced to death, the Virginia Supreme Court undoubtedly will see the case and will have to consider the constitutional implications of executing someone who was a juvenile at the time of the offense. For guidance on the critical question, the Virginia Supreme Court may want to turn to the reasoning of the Missouri Supreme Court in a recently decided case there.

Christopher Simmons murdered Shirley Cook in Missouri a decade ago when he was 17. He was sentenced to death for his crime. But the Missouri Supreme Court recently held that executing Christopher for a crime committed when he was a child would be cruel and unusual under the U.S. Constitution.

Some people may not consider Christopher a child at 17, but adolescent brains are physically very different from adult brains. Those differences make children less able to control their impulses and to understand the consequences of their actions, so much so that the Missouri Supreme Court held that children simply aren't as culpable as adults.

Christopher's sentence was commuted because the Missouri Supreme Court chose to do justice rather than appear tough on crime.

However you may feel about the court's decision, you can't escape the core of the case: Children aren't little adults.



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In Texas, children throughout the juvenile justice system — whether charged with the most minor offenses or the most serious offenses — often are treated as miniature adults.

A 10-year-old can be sentenced for up to 40 years.

At age 14, children can be transferred to an adult court in Texas.

Seventeen-year-olds automatically are put into the adult system — even though Texas law deems them too immature to drink alcohol or vote.

One is reminded of the cartoon in which the prosecutor announces to the court that the state will try the defendant, although a tadpole, as a frog. But it is no laughing matter.

Every parent knows teenagers aren't adults. Teenagers don't think through all the consequences of their behavior.

Even the parents of well adjusted, mentally stable and high-achieving children worry that their kids might do drugs, drink and drive, start smoking, get pregnant — or get someone pregnant. They understand that kids tend to live completely in the moment and that the consequences

of their actions at 17 often don't resonate much beyond next week.

For many kids in the juvenile justice system, it isn't about living in the moment. It is about trying to survive the moment. Those kids often are emotionally disturbed, and many live in poverty-ridden and sometimes violent neighborhoods.

There already is ample evidence that the juvenile justice system in Texas has become the dumping ground for children with mental illness. It is estimated that between half and three-quarters of the children in the system have some mental health disorder. And in light of recent cuts in mental health services to Texas children, we probably will see more and more disturbed kids in our juvenile justice system.

Before we act on rhetoric about "adult time for adult crimes," we need to stop and realize that kids aren't

adults and that the children in the juvenile justice system often have struggled more in their short lives than many adults ever will.

Juvenile crime is decreasing across the country, especially in those states that emphasize rehabilitation over punishment for young offenders. Unfortunately, Texas isn't one of those states.

When children enter our juvenile justice system, they too often stay on the course we set for them until they "graduate" to the

adult criminal justice system.

If we Texans could recognize the simple truth the Missouri Supreme Court pronounced in the Christopher Simmons case — that children aren't adults — we might give those kids the chance to become the adults we want them to be.

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