Growing Up a Suspect:

Racial Profiling of Black Youth

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Profiling Black Children

I. Adolescent Development

II. Racial Disparities in Youth Arrest Rates

III. Implicit Bias and Systemic Racism

IV. Long term consequences

V. Case Highlights

VI. Recommendations for local law enforcement agencies and communities

Children are not small adults:
Adolescent Development Research

Four areas of Developmental Immaturity

(1) Independent Functioning
(2) Decision-making
(3) Emotion Regulation
(4) General Cognitive Processing

Children are not small adults: Adolescent Development Research

Brain Development

- **Prefrontal Cortex**—decision-making part of the brain
    - Where we weigh our pros and cons, solve problems and control impulses
    - Last part of the brain to fully develop
- **Amygdala**—emotional part of the brain
    - Process emotions, impulses aggressive and instinctive behavior
    - Used to make decisions when the prefrontal cortex is still developing
- Mental health disorders
- Trauma
- Other disabilities

Children are not small adults: Adolescent Development Research

Teen Brain in a Nutshell

- **Bad decisions**
- **Impulsive**
- **Self-centered**
- **Challenge authority**
- **Influenced and manipulated by others**
- **No consideration of long-term consequences**

Children are not small adults: Constitutional Differences

Landmark SCOTUS Decisions

Roper v. Simmons, 543 U.S. 551 (2005)

Graham v. Florida, 560 U.S. 48 (2010)

Miller v. Alabama,132 S.Ct. 2455 (2012)

J.D.B. v. North Carolina, 564 U.S. 261 (2011)

Montgomery v. Louisiana, 136 S. Ct. 718 (2016)

SCOTUS decisions were influenced by neuroscience and Amicus briefs detailing adolescent development from the APA, AMA, ASPA . Amicus briefs and SCOTUS opinions gave an in depth analysis on adolescent development as a basis for evaluating a youth's culpability.

Roper v. Simmons, 543 U.S. 551 (2005)

In *Roper*, the Supreme Court ruled it unconstitutional for a youth under 18 years old at the time of his or her crime to receive a death penalty sentence. This reversed the 1989 *Stanford v. Kentucky* ruling, which allowed youth who were at least 16 years or older at the time of their crimes to receive death penalty sentences.

Graham v. Florida, 560 U.S. 48 (2010)

In *Graham* the Court ruled that sentencing a juvenile to life without the possibility of parole for a non-homicidal crime is in violation of the Eighth Amendment. The ruling requires that states give juveniles a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."

*Miller v. Alabama,*132 S.Ct. 2455 (2012)
Montgomery v. Louisiana, 136 S. Ct. 718 (2016)

The *Miller* ruling made it unconstitutional to sentence someone who was under the age of 18 at the time of the crime to mandatory life without parole.   In *Montgomery*, SCOTUS held that the *Miller* decision should be applied retroactively.

J.D.B. v. North Carolina, 564 U.S. 261 (2011)

In *J.D.B*, the court ruled that a child's age is a relevant factor to consider in determining whether the child is in custody for purposes of *Miranda v. Arizona*. Age is an objective factor that affects how a reasonable person would perceive his or her freedom to leave.

"...to hold... that a child's age is never relevant to whether a suspect has been taken into custody— and thus to ignore the very real differences between children and adults— would be to deny children the full scope of the procedural safeguards that Miranda guarantees to adults."

National Arrest Data
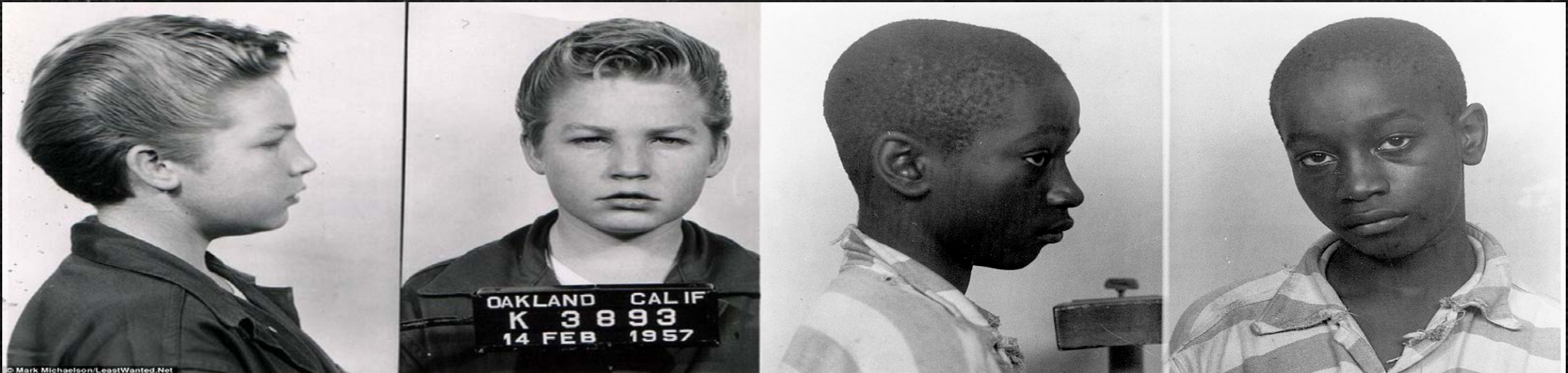# Racial Disparities: How big is the Problem?

- As a result of intensive systemic reforms, youth arrest rates fell 34% from 2003 to 2013*

- Racial disparities in arrest rates increased by 24%

- Black children make up approx. 16% of the population of children ages 10-17.

- Black children are more likely to be arrested AND more likely to be treated with disproportionate harshness as they go deeper into the system.

Arrest Rates**	White	Black	Curfew/ Loitering	Disorderly conduct
2015	1.0	2.5	3.9	3.6
2016	1.0	2.6	3.3	3.8

**Statistical Briefing Book, Office of Juvenile Justice and Delinquency Prevention

*The Sentencing Project, Racial Disparities in Youth Commitments and Arrests (April 2016).

Implicit Bias/Systemic Racism

What Does Your First "Blink" Tell You

Source: Daily Mail. Picture by: Mark Michaelson, Least Wanted.net - http://www.dailymail.co.uk/news/article-2160290/Americas-wanted-close-How-artists-mugshot-obsessive-transforming-crime-portraits-unlikely-art.html

Source: NBC News. Picture by: State of South Carolina - http://media2.s-nbcnews.com/i/MSNBC/Components/Video/__NEW/n_lw_Fscboy_140121.jpg, Public Domain, https://commons.wikimedia.org/w/index.php?curid=37356937

Implicit Bias/Systemic Racism

What Does Your First "Blink" Tell You

Source: Black Youth Project
http://blackyouthproject.com/cnn-report-black-kids-are-racially-biased-against-white-kids/

Source: CNN.com
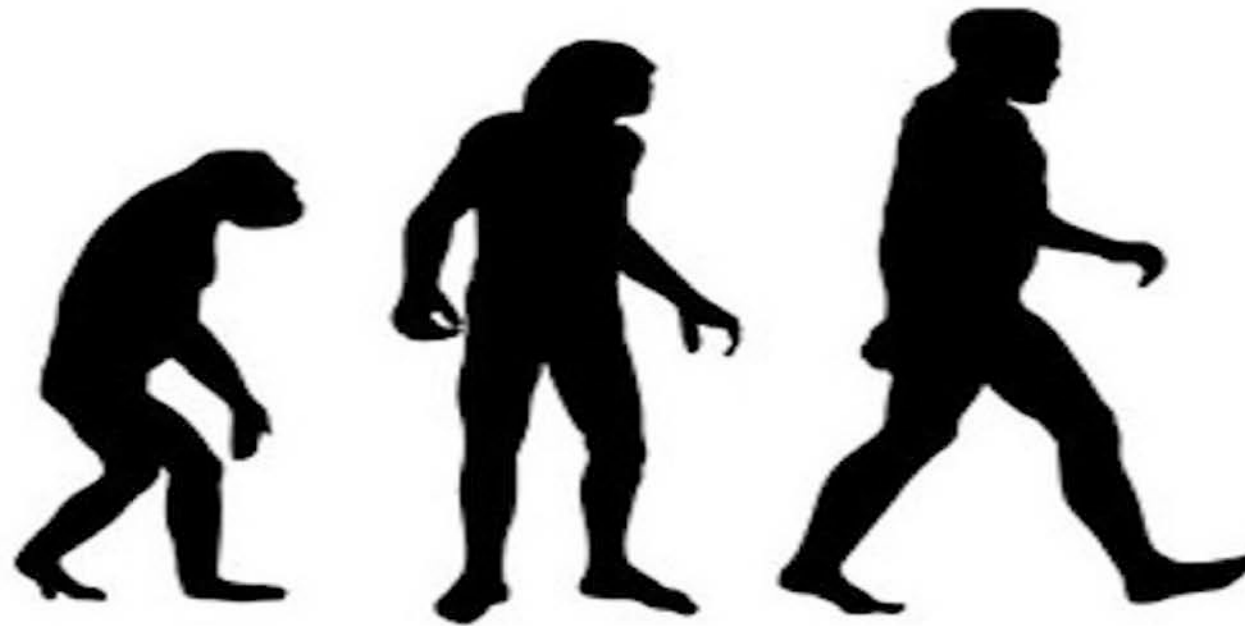https://www.cnn.com/2015/03/03/living/feat-black-white-twins/index.html

Implicit Bias/Systemic Racism

Black children are misperceived to be older than they actually are and prematurely perceived as responsible for their actions during a developmental period where their peers receive the beneficial assumption of childlike innocence.*

- Black children are seen as more culpable than their White counterparts

- Black children are seen as needing less protection

- Black children are seen as needing less nurturing

* The Essence of Innocence: Consequences of Dehumanizing Black Children, Phillip Atiba Goff et. Al. (2014) & Girlhood Interrupted: The Erasure of Black Girls' Childhood, Georgetown Law Center on Poverty and Inequality, Rebecca Epstein et al. (2017)

Implicit Bias/Systemic Racism

Implicit Bias/Systemic Racism

Systemic Racism Leads to Overrepresentation of Black Children in the Juvenile Justice System

- Police officers overestimate Black children's age and view Black children as more culpable

- Police officers engage Black children more than they do children of other races

- Black children are viewed as having criminal tendencies

- Black children are perceived to be dangerous and violent

- Black children are seen as aggressors as opposed to victims

Implicit Bias/Systemic Racism

Law enforcement, prosecutorial and judicial biases lead to more Black children being arrested, charged, prosecuted, and sentenced

- Black children are arrested and held. White children are warned and taken home

- Black children are criminally prosecuted. White children are referred to diversion

- Police officers use more force against Black children than children of any other race

- Decision makers in the juvenile justice system see the need to protect the community from "dangerous" Black children

- Black children are charged as adults more often their White counterparts

- Black children receive longer sentences than their White counterparts

Long term consequences of profiling Black children

- Disdain and loss of respect for law enforcement

- Increased recidivism

- Increased victimization of Black children in adult settings

- Trauma creating long term negative effects on Black children's physical and mental health

- Fractured familiar units

Case Law Highlights:

Examining the cases of Young Black Plaintiffs

Floyd v. City of New York, 959 F. Supp. 2d 540 (S.D.N.Y. 2013)
- Devin Almonor (age 13)
- Nicholas Peart (age 18)

Smith v. Chicago, Case No. 1:15-cv-03467 (N.D. Illinois)
- Steve McAbee (age 16)

Case Law Highlights:

- ***J.W. v. Birmingham Bd. of Ed.*, 143 F. Supp. 1118 (N.D. Ala. 2015)**
  – Use of pepperspray on Black students for minor infractions

- **Baltimore City Consent Decree**
  – US DOJ Investigation, findings, and lawsuit
  – Findings directly related to profiling and use of excessive force on Black children
  – Requires inclusion of adolescent development training, revision of policies, and collaboration with other agencies serving youth

Recommendations

1) Create and Implement State Standards for Law Enforcement Interactions with Youth*

2) Youth-Focused Culturally-Competent Law Enforcement Training

3) Implement Youth-Focused Local Policies and Practices*

4) Community-oriented Policing and Collaboration with other Youth-serving agencies

5) Improve Data Collection and Use it to Guide Decision-Making

6) Targeted Racial and Ethnic Interventions**

7) Youth Education*

* Strategies For Youth, http://strategiesforyouth.org/sfysite/wp-content/uploads/2017/06/SFY_StandardsReport_053117.pdf
** Burns Institute, https://www.burnsinstitute.org/what-is-red/