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Prison for Teen Who Lit "Agender" Youth's Skirt on Fire Thwarts Healing

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The news of Richard Thomas' seven-year prison sentence raises fresh questions about how the justice system intervenes in dangerous, but clearly adolescent behavior. Richard, age 16, was prosecuted in a California adult court after setting on fire the skirt of 18-year-old "Sasha" Fleischman, who was asleep on a local bus. Sasha identifies as "agender" meaning neither male nor female. Three days after the incident, the Alameda County District Attorney's Office charged Richard as an adult, alleging assault and aggravated mayhem as hate crimes. The charging decision completely bypassed the juvenile court system.

The incident deserved serious attention. Sasha suffered second and third degree burns and was hospitalized for several weeks. The charging decision appropriately recognized this, as well as the fact that the act was perpetrated on a gender non-conforming youth. But this case presented a series of additional elements and opportunities that were lost in the reflexive urge to imprison Richard for what he did.

This was an impulsive act perpetrated by an immature teenager. We have a separate court system to deal with just this kind of disturbing, but unmistakably juvenile type of behavior. Although what happened to Sasha was horrible, in many ways it typifies the kind of thoughtless, attention-seeking, peer-influenced behavior we see every day in juvenile court. The reality is that even "good" kids can be mean and insensitive. Lighting Sasha's skirt on fire on the bus may have seemed funny at the time -- a way for Richard to make himself feel better at the expense of someone who seemed "different." He did it in the moment, without reflecting upon the harm his actions would cause, both physically and emotionally.

Significantly, Richard felt terrible about what had happened. Almost immediately, he publicly expressed remorse and wrote a letter of apology to Sasha. It was also clear that Sasha and Sasha's family were open to creating a healing process and a public dialogue about what had happened. Sasha's mother went to the District Attorney to ask that a restorative justice process be pursued

but was refused. In a media statement at the time of sentencing, Sasha's mother expressed relief that Sasha would not have to go to trial, but also said "...we really feel for Richard and his family. Because of what seems like a childish, impulsive, tragic lack of judgment on the part of Richard, he and his family are going to be suffering from this." She went on to say, "A 16-year-old's actions -- however severe the results -- don't have any place in the adult judicial system."

While the juvenile justice system is far from perfect, it has the ability both to provide accountability and individualized rehabilitative services. Youth in the juvenile system can be removed from the community when that is needed to protect the public -- sometimes for a period of years. In juvenile facilities, youth must receive the full complement of compulsory education services, as well as "care, guidance and treatment" in accordance with their particular needs. This helps to assure that young people will leave custody equipped to move successfully forward in their lives.

In addition, many juvenile courts have restorative justice programs, or can set up such a process as part of the juvenile court disposition. Restorative justice brings victims together with the young person who caused the harm, as well as members of the community who have been impacted. In this setting, youth must come face-to-face with their actions. Victims have the opportunity to speak about the harm they suffered and have a voice in deciding what should be done to repair the situation. The process often results in restitution, reconciliation with the victim, community service, counseling or participation in public education about the issues involved. The young person is held accountable, but in a way that focuses on the needs of the victim and the community. This kind of process seems especially desirable in a case involving intolerance and ignorance about gender-non-conforming youth. Sending Richard to prison effectively cut off these opportunities.

Richard will be housed in a juvenile facility until his 18th birthday and then be shipped to state prison. California's prison system is unconstitutionally overcrowded and under a federal court jurisdiction for failure to provide adequate health and mental health care. Only a fraction of its inmates have access to academic education or vocational services. In prison, Richard will spend 24 hours a day in the company of older, more criminally entrenched inmates. He will leave prison without having had the opportunity to grow up the way other kids do, by gradually learning to exercise good judgment and responsibility, guided by caring parental figures. These deficits will leave him more likely to have further contact with the criminal justice system, and more likely to have problems seeking employment and higher education. Will that help Sasha? Will it help the greater community?

Sasha, now a college student at MIT, has cogently observed, "You should really know better than to light someone's skirt on fire. You should be able to realize that this is not some funny prank. But I don't want to be too harsh. People do dumb things, especially when they are teenagers." Why can't our justice system recognize this?