

## Recreational, Reactive, and Really Bad Crimes: Uncovering the Role of Sex and Drugs in Juvenile Court

*Judge Irene Sullivan*

I began to sort juvenile crimes into three broad categories, which I called “recreational,” “reactive,” and “really” bad crimes.

Recreational crimes include teenage pranks such as knocking down mailboxes, pulling fire alarms, and covering the school bathroom with graffiti—all wrong deeds and all misdemeanors.

Reactive crimes require more analysis. Did Ashley stab her mother’s boyfriend because he’d been coming on to her for weeks? Did Donnel steal his friend’s iPod after being taunted that his mom and dad were in prison and could never buy one for him? Did Christopher set fire to his grandmother’s house because he overheard her telling child welfare workers that she was returning him tomorrow? Aggravated battery, robbery by sudden snatching, arson. Those are all felonies.

Really bad crimes frighten everyone, particularly the innocent victims. Burglaries, home invasions, gun thefts, drug dealing, carjacking, rape, and murder. They need to be resolved swiftly, sternly, and punitively.

Sex and drug crimes fit into all three categories. Sex between a seventeen-year-old and a fourteen-year-old might be recreational and consensual, even Romeo and Juliet–type young love. Yet, in juvenile justice, it is considered sexual battery. A pat on the fanny can result in a charge of lewd and lascivious behavior, even though the “patter” is imitating mom’s boyfriend. Forcible rape is always a horrendous crime; in many cases putting the perpetrator behind bars for life. Likewise, popping an occasional beer or puffing a joint puts you in the category of recreational drug criminal if you are a minor. Treating serious depression or bipolar disorder by self-medicating with marijuana, cocaine, or stolen prescription drugs is clearly reactive behavior. Drug trafficking is a really bad crime that can send a kid straight to prison.

I hold very strong opinions about sex, drugs, and hip-hop music and culture:

1. We should almost never require juveniles to register as sex offenders.
2. We should never legalize marijuana, as it is the most dangerous gateway drug for kids to use.
3. We should enjoy the intellectual ingenuity of certain hip-hop artists.

There, I’ve said it, and many will disagree.

**Sex Offenses:** Labeling a youth a sex offender has far-reaching, often unintended, diabolical consequences. Under the federal Adam Walsh Child Protection and Safety Act of 2006, and some state laws, the juvenile’s picture, name, age, and address become public record, accessible on the Internet by pedophiles and adult sex offenders. Registration requirements can last many years or even a lifetime. Yet research shows that juvenile sex offenders are highly responsive to effective treatment and rarely reoffend, in contrast to adult sex offenders, who have a high recidivism rate. Many youths are reacting to having been sexually abused themselves, or imitating the adults who live in their home. Others may find pornography that’s carelessly left for them to view. These are problematic cases for the juvenile judge. Of course, there is empathy for the victim. Regardless, many judges think the juvenile defendant doesn’t deserve the punishment of lifetime sexual offender registration, in spite of the fact that he is found guilty of lewd and lascivious conduct, or even a sex battery, a touching not amounting to forcible rape.

Like Brad. An honor student with no prior record, and a member of the wrestling team, the teenager lost his temper when his former girlfriend taunted him in front of her friends in the high-school weight room and training room they both used. As she stood at an exercise machine in nylon shorts, her left leg fully extended behind her, he passed by and stuck his hand into her shorts, digitally penetrating her vagina with the tip of his finger. She screamed in alarm, and he was arrested. Because this was nonconsensual, and involved some force and penetration, the charge was a capital sexual battery. Clearly, Brad deserved punishment, anger management and sexual counseling, and perhaps probation. The victim needed vindication. But should Brad be required to register as a sex offender for at least twenty-five years?

After a trial, I found Brad guilty as charged but ordered the counseling and probation rather than the commitment the state was seeking. I declined to find the “force” necessary to invoke the sex offender registration requirements, fully aware that the state could appeal—which it didn’t.

Drug-Related Offenses: Research shows that severe, chronic drug addiction is more predictable in youths who (1) have been abused, (2) start using drugs or alcohol at a very young age, or (3) inherit an addictive trait, as some people are born genetically predisposed to the effects of alcohol and other drugs. Abused kids as young as eleven or twelve often use marijuana to relieve the stress created by an alcoholic or drug-addicted abuser. It's three strikes against the kid out of the box, and if we make marijuana more available by legalizing it for adults, we'll lose the whole ball game, as marijuana is the most common illicit drug used by youths in the United States. Kids model their parents who use marijuana illegally. They model their neighbors gathered on street corners, buying, selling, and using marijuana. They model their peers.

In poor neighborhoods, marijuana is cheaper and easier to get than alcohol, cocaine, ecstasy, or the powerful prescription painkiller OxyContin. The very kids who need all the help they can get must confront another obstacle when surrounded by adults who smoke marijuana. And the kids, stressed and depressed, are really reaching out for help.

The scene repeats itself again and again in my truancy and delinquency courts. Mom and fourteen-year-old Ashley stand at the podium. Mom begins her litany of complaints about her daughter: skipping school, failing grades, surly attitude, disrespect, a different child from last year. "If we drug tested you today," I ask Ashley, "would you test positive for marijuana?" In many cases, the answer is yes, and in well over half of those, Mom isn't really surprised because the drug is available at home.

Kids don't lie about this in court. They know their lives are unhappy, and they are reaching out for help. Individual or family counseling, drug treatment, a psychiatric or psychological exam, a change in schools or caregivers—give them all these things but don't give them greater access to a drug that robs them of ambition to do well in school and encourages them to drop out of a productive life.

How does marijuana do this? Physiologically, it creates a sense of euphoria, calmness, and sedation in kids, masking stress and real problems. It's the "avoidance" drug for teens. Teens have to learn to deal with success and failure, praise and rejection, happiness and disappointment, choices and consequences. Adolescence is a time of intense change, in which a child transitions to an independent, functioning adult.

As pediatrician Edward A. Jacobs wrote in the *Journal of Global Policy and Practice*, "If one turns to the use of marijuana to avoid or blunt the negative experiences or to try to enhance the positive experiences of adolescence, he/she never learns these lessons and the coping mechanisms necessary to successfully manage them." Basically, these kids never grow up.

I see them as little slacker soldiers, marching into court as early drug users at age twelve or thirteen, then marching out to jail or prison at seventeen or eighteen—not for marijuana use, mind you, but for the felonies they've committed during an adolescence of poor choices, little education, and unmet needs. But I blame the marijuana and the culture it creates.

"It was with great sadness that I sat through your truancy court hearings, watching one young person after another stand before the judge," Calvina Fay wrote to me. Ms. Fay is the executive director of the Drug Free America Foundation. "Although all of these young people were very different, with varying backgrounds, almost all of them had one link in common: drug use, primarily marijuana.

"As I asked myself why each one of them might have turned to drugs, the answer varied. For some it was probably a case of 'self-medicating' to feel better about their circumstances and to cope. For others it was possibly an act of defiance or even a tactic to get attention. For still others it may have been to counter boredom. And there is no doubt in my mind that for quite a few it was peer pressure—the desire to fit in.

"One thing that I have learned about youthful drug use is that many youngsters do not really have a strong desire to try drugs the first time. They simply do so to fit in when it is offered to them by a friend. That is why I see drug use as a 'contagious' behavior. It spreads among friends just as fashion trends spread," she concluded.

I'm not advocating for more prosecution of juvenile drug charges or misdemeanor sex crimes, nor am I ignoring the use and sale of cocaine and prescription drugs and other substances. I'm advocating to get help for kids and for an understanding of the teenage brain and the danger of an entry drug. The kid who "cops a feel" or "takes a toke" while listening to hip-hop is not a sex offender or a drug dealer. He's a teen engaging in age-old risky behaviors. We shouldn't make it any easier for him to do so by making marijuana more accessible, as his behavior will likely get a whole lot worse.

Hip-Hop: Here I agree with Professor Michael Eric Dyson, of Georgetown University, in his book *Know What I Mean? Reflections on Hip-Hop*:

"And what do great artists do? They see and they say. They don't have to live it, but they can make you believe they've lived it. It's the same with the politics of authenticity. Within hip-hop, the elevation of the ghetto is often a metaphysical complaint against society's failure to recognize the humanity of those who come from the ghetto. And by the same token, hip-hop artists are rarely given credit for the kind of intellectual ingenuity it takes to create narratives that spark debates about whether what they say is true or not. That's a great deal of the ingenuity of the art form itself. Also, I think very few people are willing to acknowledge the genius of our black children."

How can we not admire the rhetorical genius of the rapper Nas, an eighth-grade dropout from the projects in Queens, New York, in one of his earliest verses:

It's only right that I was born to use mics,  
And the stuff that I write, it's even tougher than dice  
I'm takin' rapping to a new plateau through rap slow  
My rhyming is a vitamin held without a capsule.

In four rhymed lines, Nas has shown kids creativity, personal expression, toughness, and an alternative to drug use, while not using profanity, promoting violence, or degrading women.

Genius!

### Author Information

#### *Judge Irene Sullivan*

Judge Irene Sullivan has served since 2002 as a juvenile Judge for the Unified Family Court in Clearwater, Florida. She was a family court judge prior to that and a general partner at Harris, Barrett, Mann & Dew, L.L.P. in St. Petersburg, Florida, where she was an A-V rated trial lawyer.

Judge Sullivan obtained her Juris Doctorate degree from Stetson University College of Law, cum laude, and a Bachelor of Science in Journalism, with honors, from Northwestern University's Medill School of Journalism.

Judge Sullivan has received the following awards: The Florida Network of Youth and Family Services, Inc. Outstanding Community Partner Award; St. Petersburg Bar Associations' Annual Judicial Appreciation Award; Stetson University College of Law Ben C. Willard Distinguished Alumni Award; Guardian ad Litem Community Advocate Award; Florida Association of School Social Workers' Diamond Award; Salvation Army's Children's Justice Award; Pinellas Enrichment Through Mental Health Services (PEMHS) P.A.C.E. Award; Family Resource's Family Advocate Award; Community Action Stops Abuse (CASA) Domestic Violence Champion Sponsor Award.

Judge Sullivan has been an adjunct professor at Stetson University College of Law and is currently the Juvenile Track Leader for Education, Florida Conference of Circuit Court Judges. Judge Sullivan has presented at many conferences and seminars involving juvenile crime, truancy, domestic violence and mental health issues for juveniles.

Judge Sullivan currently sits on the following Task Forces: Juvenile Arrest Avoidance Project; Florida Disproportionate Minority Contact Task Force; Blueprint Commission to Reform Juvenile Justice; Juvenile Indigent Defense Action Network at Barry University Law School, funded by the MacArthur Foundation.

Judge Sullivan is also the author of a book, *Raised by the Courts: One Judge's Insight into Juvenile Justice*, to be published by Kaplan Publishing Company in November, 2010.