

Juvenile Justice: Rethinking Punitive Approaches To Addressing Juvenile Crime

Nearly two decades after a spike in juvenile crime led states to adopt tougher, more punitive juvenile justice policies, evidence suggests there are ways of dealing with young offenders that are more effective and less costly than prosecuting them as adults and imposing harsh sentences.

The number of youth under the age of 18 years sentenced to time in adult prisons soared in the wake of “get tough” reforms that included widespread legislation relaxing the requirements for transferring young offenders from juvenile courts to adult criminal courts, where mandatory minimum sentences and other factors make incarceration more likely. That population remains historically high today, despite a recent decline in the number of youth sent to adult prisons.

The shift toward a more punitive approach toward youth justice has raised several concerns. Criminal courts give little consideration to the nature of adolescence, despite evidence that youth are not similar to adults in ways important to determining culpability, such as having an under-developed ability to understand the consequences of their actions. Research suggests that those making important juvenile justice decisions rely largely on intuition rather than evidence-based models when assessing the risks posed by juvenile offenders and matching them with sanctions and interventions. Finally, studies in several states suggest that laws that led greater numbers of young offenders to be prosecuted as adults in criminal court have not lowered juvenile crime rates or reduced recidivism.

Although many of the punitive reforms that swept the nation in the 1990s remain in place, there are signs that enthusiasm for such policies is weakening as states begin to consider their effectiveness and cost. This special report examines the reforms that reshaped juvenile justice in the United States, the fairness and effectiveness of those reforms, and alternative policies and interventions that show promise. It is largely based on a series of recent studies

published in *The Future of Children*, a collaboration of Princeton University and The Brookings Institute.

Juvenile Justice Transformed

Early juvenile justice systems in America began to appear at the dawn of the 20th century. The reformers who established them did so with the belief that the nation needed to deal compassionately with youth accused of crimes through a separate court that considered them more worthy of rehabilitation than punishment and was focused on steering them away from becoming repeat offenders.

As these juvenile courts developed over the following decades, specialized facilities for young offenders were also established, such as juvenile detention centers, training schools and centers that provided a structured environment for addressing the educational, psychological and vocational needs of children who had committed crimes.¹

In addition, judicial decisions over that period provided juveniles charged with crimes with many of the same legal protections found in adult courts to ensure fair treatment under the law, including the right to legal counsel, the right to confront and cross-examine witnesses and the privilege against self-incrimination.

This trend began to shift in the late 1980s, when the nation experienced a steady increase in juvenile crime, particularly violent crime. Between 1985 and 1995, the nation witnessed a nearly 80% rise in arrests of juveniles 17 years old or younger for violent crimes, including murder, forcible rape and aggravated assault.² Contributing to public alarm was the idea advanced by the news media and a few academics that a new generation of young “super predators” had emerged that was more violent, cold-hearted, and less amenable to rehabilitation than their predecessors.

Trying Juveniles As Adults

The most widespread policy response to such concerns to

enact new judicial transfer statutes that made it easier or mandatory to send the cases of young offenders charged with felonies to adult criminal courts. All but six states enacted such statutes between 1992 and 1997.³ These statutes were typically designed to increase the certainty, length and severity of punishment.

The momentum toward making it easier to try juvenile offenders in criminal court was so strong that states continued to expand the reach of the court through expanded transfer statutes even as juvenile crime across the nation declined steadily and steeply, beginning around 1994. This trend included a significant and prolonged decline in the number of juveniles arrested for violent crimes, which challenged the validity of the “super predator” theory. Between 1994 and 1998, for example, juvenile arrests for Violent Crime Index offenses – murder, forcible rape, robbery, and aggravated assaulted – fell 19% compared to a 6% decline in adults arrested for similar felonies.⁴

Today, all states today have adopted mechanisms to handle juveniles in adult criminal court.

The most common is the judicial waiver, which is found in Pennsylvania and 45 other states. Such waivers authorize or require juvenile courts to waive jurisdiction over certain criminal cases involving minors so they can be prosecuted as adult in criminal courts. In 15 states, laws give prosecutors the choice of whether juveniles charged with certain felonies are tried in juvenile or criminal court. Pennsylvania and 28 other states exclude serious felonies from being tried in juvenile court, requiring that they be sent straight to criminal court.⁵

Impact On Juvenile Offenders And Crime

Such statutes had a profound impact on the U.S. juvenile justice system. The original intent of establishing a separate juvenile court was to keep adolescents out of adult prisons, limit their exposure to adult criminal activity and poor role models, and provide interventions aimed at diverting them from further anti-social behavior and toward more positive outcomes.

Widespread revision of transfer and other juvenile justice statutes in the 1990s blurred the line between the juvenile and criminal courts. Expanded transfer laws eliminated much of the discretion in charging young offenders. Who prosecuted a case was determined more by the nature of the offense, not the characteristics or needs of the individual juvenile offender.

These reforms led to greater numbers of juvenile offenders having their cases heard in adult criminal courts that do not share the same emphasis on rehabilitation found in the juvenile court system. Estimates suggest that the cases of as many as 25 percent of juvenile offenders in the United

States are adjudicated in adult criminal courts.⁶

Unlike their colleagues in juvenile court, criminal court judges work under federal and state laws that set rigid sentencing guidelines and prescribe mandatory minimum sentences – rules that limit their ability to consider circumstances specific to adolescents that might mitigate the sentence of convicted juvenile offenders.

Young Offenders Are Different

As a result, factors such as the minor’s age, education, maturity and other developmental factors, as well as family history, typically have little, if any, impact on the sentencing of juvenile offenders who are convicted in criminal court.

Research suggests, however, that such factors are important considerations in assessing the blameworthiness of adolescents.

Adolescents who commit crimes do so during a tumultuous stage in their development marked by profound biological, psychological, emotional and social changes. Puberty, for example, is accompanied by physical changes, the onset of sexual maturity, and new drives, impulses, emotions, motivations, changes in arousal, and behaviors and experiences that challenge an adolescent’s self-regulation abilities. Changes in arousal and motivation during adolescence tend to outpace more slowly-developing self-regulation abilities.⁷

Compared to adults, adolescents are more susceptible to peer influence, and are less mature when it comes to judging risk, adopting a future orientation and managing their emotions and actions. Their character is unformed; their decision-making capacity, undeveloped.

Researchers have found that risk taking and poorly regulated behavior tend to lessen with maturity, suggesting that as children age they are amenable to change. Several studies show that antisocial behavior increases almost ten-fold during adolescence and then rapidly declines as they get older. Only a small group of adolescents who commit antisocial acts during their childhood continue to do so into adulthood.⁸

The standard for judging culpability under criminal law is whether “reasonable people” would have been unlikely to commit the same crime under comparable circumstances. In criminal court, the basis of analysis when applying that standard to a juvenile offender is the likely behavior of an adult, not the likely behavior of another adolescent.

Reliance On Intuition

Another concern is the decision-making processes used by juvenile justice professionals in most states when determining important issues, such as whether young offenders are likely to pose a future risk to the community and whether they will benefit from services designed to help them turn

their lives around.

Judging risk and amenability to treatment involves making a variety of determinations. These include deciding whether an offense represents a misdemeanor or a felony and, in cases where statutes offer a choice, whether to charge a young offender as a juvenile or as an adult. Other decisions include whether to refer a juvenile for more in-depth evaluation, and choosing the appropriate disposition, such as the type of supervision, treatment and placement.

Research suggests that juvenile justice professionals today continue a long-standing tradition of relying largely on their intuition to make such decisions. In general, making decisions about risk and amenability based on a consistent set of carefully assessed, empirically verified data is rare in today's juvenile court system.

This reliance on intuition rather than data has led to the limited use of several "structured" decision-making tools, including rating scales and decision trees, that are widely used in other fields, such as medicine and adult corrections. The reluctance to use such tools stems, in part, from the limited resources of the U.S. juvenile court system, which struggles under the heavy demand of having to handle nearly 950,000 cases filed each year.

Incarcerated In Adult Prisons

Tougher reforms that made it easier to try young offenders in criminal courts has resulted in a surge in the number of juveniles sentenced to adult prison terms. Between 1990 and 1999, the number of youth under the age of 18 years incarcerated in adult prisons rose from an estimated 2,000 to nearly 9,500,⁹ before falling to 7,200 in 2004.

The nation also witnessed a significant increase in the number of juveniles sentenced to the harshest prison sentence available to the court. Between 1990 and 2000, the number of juveniles receiving a sentence of life in prison without the chance of parole increased by 216%, despite a nearly 55% decline in the number of juveniles convicted of murder.¹⁰ The estimated 2,380 U.S. inmates serving life with parole for crimes committed when they were under the age of 18 is by far the largest such population in the world.¹¹

High Rate Of Mental Disorders

Recent studies reveal a troubling picture of mental illness in the juvenile justice system. About 50% of juveniles in various types of juvenile justice settings meet criteria for one of more mental disorders.¹² By comparison, the prevalence of mental illness among youth in the general U.S. population is estimated to be about 15% to 25%.¹³

Researchers offer several clinical, social, legal, and systemic reasons for the high prevalence of mental disorders in the juvenile justice system. The possible reasons include the

following:

- Youth who have mental disorders are at greater risk of committing crimes than those who do not have mental disorders. Studies suggest, for example, that affective disorders are strongly associated with an increased tendency toward anger, irritability, and hostility.¹⁴ Such mood disorders – mostly forms of clinical depression – are found in about 10% to 25% of youth in juvenile justice settings.¹⁵

- The more punitive juvenile justice reforms of the 1990s that eroded the discretion authorities have when dealing with juveniles charged with certain offenses have resulted in less emphasis being placed on the characteristics and needs of individual adolescents.

- At about the same time tougher juvenile justice reforms were being enacted across the nation, most states experienced a reduction in public mental health services for children, particularly inpatient services.

Crime Rates Unchanged

Most studies that have examined the impact of tougher juvenile justice reforms find that measures such as state laws that make it easier to try young offenders as adults have not resulted in reducing juvenile crime rates as expected. The research suggests among the reasons crime rates remained largely unchanged is that young offenders, regardless of their age, seem unresponsive to the increased risk of being incarcerated.

Studies conducted in the states of New York and Washington, for example, found no difference in juvenile arrest rates after tougher juvenile justice laws were enacted. In Idaho, researchers reported that juvenile crime rates actually increased after the state enacted a law that required adult criminal courts to adjudicate the cases of juveniles who were 14 to 17 years old and charged with violent crimes.¹⁶

Transferring more juvenile offenders to criminal court has also failed to reduce recidivism. In fact, research suggests that tougher reforms may make the problem worse. For example, several studies report that adolescents transferred to criminal courts subsequently commit violent crime at higher rates than adolescents whose cases were tried in juvenile court systems.¹⁷

Implications For Policy And Practice

Research shows there is a wide gap between science and juvenile justice policy and practice and suggests the gap is one of the major reasons why more punitive approaches to adolescent offenders have failed to meet expected outcomes of reducing juvenile crime and recidivism.

The MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice was established in 1997 to help close that gap by identifying ways in

which scientific knowledge about adolescent development and juvenile crime could inform policy and practice within the juvenile and criminal justice systems. The studies published in the 2008 volume of *The Future of Children* dedicated to juvenile justice issues grew out of that work.

Those studies, and others, identify several proven options that hold the potential to promote a justice system that is more effective, less costly and embraces a developmental perspective that recognizes it is counterproductive to ignore the differences that separate adolescent offenders from adults criminals.

Revisiting Transfer Laws

There are signs that policymakers are beginning to consider evidence that expanded transfer statutes have not reduced juvenile crime and may contribute to higher rates of recidivism.

Some states are taking action to reverse the trend begun in the 1990s to lower the age boundary between juvenile and criminal court to adolescents as young as 16 years old. In 2007, Connecticut passed legislation that moved that boundary from age 16 years back to age 18. Missouri, Illinois, New Hampshire and North Carolina have begun debating similar legislation.

Pennsylvania is one of 25 states with laws that provide some mechanism for criminal courts to consider transferring the case of a juvenile back to juvenile court. These reverse waivers allow an attorney for a juvenile charged in criminal court to petition to have the case transferred to a juvenile court.

The alternative to the wholesale transfer of offenders under the age of 18 to criminal court is to rely on case-by-case assessments, which was an approach adopted by early juvenile courts to determine which young offenders warrant expulsion from the juvenile court.

Decision-Making Tools

Among the practices that can be improved is the way decisions are made related to the risk adolescent offenders pose to the community and how amenable they are to treatment. Today, juvenile justice practitioners make those decisions based more on intuition than available data.

Several instruments for assessing future risk and amenability to treatment are becoming readily available, including actuarial methods and combined actuarial and clinical judgment methods. The actuarial approach uses a consistent and systematic method for gathering and combining data to rate and group individuals for the purpose of predicting the

likelihood of a particular outcome, such as a juvenile offender being arrested again in the future. The approach is similar to what actuaries do in setting insurance rates. The clinical approach, in contrast, attempts to predict an outcome, such as rearrest, by drawing a coherent picture of how different characteristics of an individual and his or her situation make that outcome more or less likely. Such characteristics might include a history of fighting and being returned to the custody of a dysfunctional parent with a history of violence.

Neither approach is a panacea and implementation is not without challenges. However, both offer methods for structuring judgment based on data that are more consistent and more equitable than relying on the intuition of various practitioners.

Juvenile Mental Health

Youth with mental disorders in the juvenile justice system make up a very heterogeneous population whose illnesses placed them at risk for a variety of reasons. For example, some mental illnesses, particularly those that compromise the ability to regulate emotions and impulses, elevate the risk of criminal behavior. Other illnesses have causes that contribute to offending. Maltreatment is associated with conduct problems and depression, for example.

The most common treatments for youth in acute distress because of mental disorders include professional clinical care, psychopharmacological intervention when necessary and structuring an environment to protect the adolescent and reduce stress during a time of crisis.

During the 1990s, public mental health services for children, particularly in-patient services, were reduced in most states and many communities began using the juvenile justice system to fill the gap caused by the shortage of services.

Research suggests, however, that providing treatment for delinquent youth with mental disorders should not be the burden of the juvenile justice system alone. Instead, treatment should be a shared responsibility with the broader community. Collaboration with community agencies and institutions is supported by research that suggests the most successful methods of treating delinquent youths with mental disorders involve community-based interventions that assist them in the context of their everyday social interactions within the community.

Many youth have multiple needs that do not fit neatly within the boundaries of individual agencies. When coordination is lacking, they may not receive services from various agencies. In recent years, approaches to treating

delinquent youth with mental disorders have begun to focus on a community system of care that integrates services across mental health, child protection, education and juvenile justice agencies.

In that scenario, the primary role of the juvenile justice system is one of identifying young offenders with mental disorders, including those who are seen as a risk to themselves or others at intake and require emergency mental health services, those who need long-term treatment that can be safely delivered outside the juvenile justice system, and those with problems severe enough to warrant secure confinement designed to treat violent, mentally ill offenders.

Promising Interventions

Preventing juvenile delinquency offers several benefits in addition to sparing youth from the consequences of committing crimes. Because many adult criminals begin their careers in crime as juveniles, interventions that prevent delinquency have the potential to reduce adult crime. In addition, preventing delinquency can reduce the cost of arrest, prosecution, incarceration, and other expenses associated with offending. Cost-benefit studies suggest taxpayers can save \$7 to \$10 in such costs for every \$1 invested in effective delinquency-prevention programs.¹⁸

The good news is that high-quality studies in recent years have identified more than a dozen programs that are effective at preventing delinquency and diverting first-time juvenile offenders from further encounters with the justice system.

Research suggests the most effective community-based programs are those that emphasize family interactions. For example, Functional Family Therapy, a well-documented 25-year-old program, has been effective at helping 11-year-old-to-18-year-old youth overcome delinquency, substance abuse, and problems with violence. Therapists, often through home visits, focus on improving family functioning by helping family members develop better problem solving skills, enhance emotional connections and by improving the ability of parents to provide appropriate structure, guidance and limits for their children. Another program, Multisystemic Therapy has helped to reduce recidivism rates and out-of-home placement rates for a range of troubled youth.¹⁹ The intervention is designed to help parents deal effectively with their children's behavior problems, including poor school performance and their associations with deviant peers.

Other effective interventions for delinquent youth include alternatives for placing them in an institutional setting, such as a group home. Studies suggest, for example, that Multidimensional Treatment Foster Care is effective in reducing arrest rates among adolescents who participate.²⁰ The program recruits families in the community to take in one

youth and provides the foster parents with case management, ongoing supervision and training that emphasizes behavior management methods to create a structured and therapeutic living environment.

For longer than a decade, a growing body of evidence has demonstrated that these and other available interventions can be used effectively to prevent delinquency and reduce the likelihood of juvenile offenders committing further crimes. However, studies suggest that as few as 5% of eligible youth participate in such programs across the nation. The fact that effective programs largely go unused is an indication of the lingering gap between what researchers know about the causes and treatment of juvenile crime and the policies and practices that remain entrenched in communities across the nation.

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