



Keeping Adolescents Out of Prison

Laurence Steinberg and Ron Haskins

Both widely accepted legal principles and research on adolescent immaturity argue that juveniles are less responsible for their criminal behavior than adults and should therefore receive less severe punishment. Research shows that harsh punishment in adult facilities increases the probability of future violent crimes and that most youngsters who commit criminal offenses will abandon illegal behavior as they enter adulthood. Scientific evaluations of prevention and treatment programs for youth that provide systematic treatment in community and family settings show that these programs significantly reduce future criminal behavior without the need for harsh sanctions. States should adapt their laws on juvenile crime to emphasize evidence-based treatment and to avoid harsh punishment for all but repeat violent offenders.

Anthony Laster was a fifteen-year-old with an IQ of less than 60. A few days after his mother died unexpectedly, Anthony tried to get one of his classmates to give him lunch money. When the boy refused, Anthony took \$2 out of the boy's pocket. The county prosecutor found this action to be a criminal offense and decided to prosecute Anthony as an adult even though he had never been arrested before. As a result

of the prosecutor's decision, Anthony spent seven weeks in jail, much of that time in an adult facility.

Except for his IQ in the retarded range, Anthony's case is not unusual. On a typical day, 69,000 youths are detained in correctional facilities, many along with adult criminals. Another 26,000 youngsters are confined awaiting adjudication or pending placement in such facilities. The best estimate is that around 45 percent of these young people have committed status offenses (acts, such as alcohol consumption, that are legal for adults but illegal for underage youth), probation violations, misdemeanors, or low-level felonies. An equally striking fact about this system of arrests and prosecutions is that minorities, especially blacks, are disproportionately overrepresented among these confined youths. The current system is thus worrisome for two reasons: it not only exposes adolescents to the dangers of placement in facilities with adult criminals but also seems on its face to be stacked against ethnic minorities.

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To read the full report on juvenile justice, edited by Laurence Steinberg, go to www.futureofchildren.org.

Figure 1. Arrests for Violent Crimes by Adolescents Aged 15–17 and 18–20, 1970–2003

Arrests per 100,000 people



Note: Violent crimes include murder, nonnegligent homicide, forcible rape, robbery, and aggravated assault.

Source: Bureau of Justice Statistics, www.ojp.usdoj.gov/bjs/dtdata.htm.

In this policy brief, we draw on articles in a recently released volume of *The Future of Children* devoted to juvenile justice to examine the problem of youth confinement in correctional facilities, including adult jails and prisons. We pay special attention to why harsh punishment of adolescents is not only often unjust but also counterproductive. Based on our review of the research evidence presented in the *Future of Children* volume, we make recommendations for reducing youth placements in adult facilities and other forms of harsh punishment in favor of more appropriate and cost-effective responses to youth crime.

A Violent Teen Crime Wave

During the mid-1980s, the American public developed a fear of violent youth that bordered on paranoia. Fed a steady diet of horror stories in local newspapers across the nation, the public developed a kind of “moral panic” about violent teenagers. In a widely read article about the coming explosion of youthful “super-predators,” John DiIulio, a respected scholar of criminal behavior, described adolescents bent on murder, rape, assault, burglary, and drug dealing. He wrote of the “vacant stares” and “remorseless eyes” of the incarcerated juveniles of the 1990s, youth who gave off a “buzz of impulsive violence.”

The public’s and DiIulio’s alarm had a basis in fact. Figure 1 shows the rates of violent crime (murder, non-negligent homicide, forcible rape, robbery, and aggravated assault) by juveniles aged fifteen to seventeen and eighteen to twenty. Between 1985 and 1995, the rate of violent crime for both groups doubled. The adolescent crime wave and the public’s strong reaction led politicians at all levels of government to respond. One important response was to expand state laws allowing juveniles to be transferred to the jurisdiction of the adult criminal system—including imprisonment in adult jails. Another was to increase sharply the harshness of sanctions, especially long sentences, to which juveniles were subjected in both the juvenile and adult systems.

Although the reaction of politicians to the public’s moral panic may have been understandable, it is important to analyze the resulting harsh confinement policies to determine whether they make sense and whether they should remain in place. In performing this analysis, we review recent studies of delinquency-prevention programs and findings from research on adolescent development that were, for the most part, not available when states enacted tough laws in response to the outbreak of adolescent crime in the 1980s and 1990s.

Surprisingly, as shown by figure 1, the anticipated explosion in the number of super-predators never happened. In fact, by the time DiIulio began writing his dramatic warning, violent crimes by youth had already peaked and were beginning a remarkable decline. The peak for fifteen- to seventeen-year-olds came in 1994; that for eighteen- to twenty-year-olds, the following year. Thereafter, violent crime for both groups fell like a rock until 2003, plunging about 50 percent for the younger group and about 35 percent for the older group. Experts disagree about the causes of both the increase in juvenile crime during the 1980s and early 1990s, and the decline that began in the mid-1990s, but a reasonable reading of the evidence points to the cumulative impact of many factors, among them changes in drug markets, policing practices, incarceration rates, the age composition of the population, the availability of handguns, and the economy. As public concern began to dissipate, however, most of the new state laws passed to inflict harsher punishment on youthful offenders stayed on the books, where many remain to this day. Perhaps now that the youth crime emergency has passed, the time for dispassionate analysis has arrived.

Penal Proportionality and Adolescent Development

A good place to begin is with the fundamentals of juvenile justice. A core principle of the American justice system is “penal proportionality.” This foundational doctrine holds that fair criminal punishment is based not only on the harm caused by the crime, but also on the blameworthiness of the perpetrator. It follows, then, that a central question is whether an adolescent’s immaturity mitigates his blameworthiness and therefore should temper his punishment. The issue is not whether the adolescent’s behavior should be completely excused because of immaturity. Rather, it is the degree of responsibility adolescents should bear for criminal acts. The public wants adolescents held responsible for their crimes—and so do we. But a policy based on mitigation because of immaturity can balance the juvenile justice goals of accountability and deterrence with the legal principle of fair and proportional punishment.

The notion that developmental immaturity mitigates adolescents’ criminal culpability rests firmly on both legal principles and solid findings from social science research about the nature of adolescence. Like adults, adolescents make choices shaped by their levels of cognitive and psychosocial development. Although the cognitive functioning of most adolescents approaches that of adults, the real-world circumstances under which they make decisions about whether to commit criminal acts are often shaped by emotional arousal and group pressure.

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Thus, the psychosocial maturity of adolescents is especially relevant to understanding culpability. Adolescents are distinguished from adults along four psychosocial dimensions: susceptibility to peer influences, attitudes about risk, ability to adopt a future orientation, and the capacity for self-management. And on all four, abundant research evidence documents that adolescents are less mature than adults. To take just two examples, studies of hypothetical dilemmas requiring adolescents to choose between antisocial behavior suggested by their peers and positive social behavior of their own choosing show that peer influences increase between childhood and early adolescence as adolescents begin to separate from parental control, peak at age fourteen, and then decline slowly during the high school years. Peer influences take place both directly through peers urging each other to take specific actions and indirectly as adolescents behave in ways intended to gain peer approval or avoid rejection. In addition, peers provide models for each other’s behavior. Similarly,

adolescents and adults differ substantially in their assessments of risk and reward. Studies using gambling tasks, for example, show that adolescents are highly motivated by potential rewards and are relatively less attentive to possible costs.

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Not only does cognitive and psychosocial immaturity diminish the decision-making capacity of adolescents, it also heightens their vulnerability to coercive circumstances. Criminal law does not require individuals to behave in ways that would be considered heroic or brave. Rather, the standard for judging culpability for apparently criminal acts is whether “reasonable people” would have been unlikely to commit the same act under comparable circumstances. In applying this standard to criminal acts by adolescents, the correct basis for analysis is the behavior of other adolescents—not adults—under similar circumstances. Given their youthful impulsivity, their susceptibility to peer pressure, and their failure to consider the long-term consequences of their actions, typical adolescents often respond to external pressure to join their peers in committing criminal acts. We are not arguing that juveniles’ diminished decision-making capacity fully excuses their actions, only that they bear less personal responsibility than an adult would for the same act, and that the punishment they receive for their actions should therefore be reduced.

Yet another reason why adolescents are less than fully responsible for their actions is that their character is not fully formed. The elegant theory of

character development and the adolescent identity crisis developed by developmental psychologist Erik Erikson provides an understanding of the struggle adolescents undergo as they figure out who they are. But apart from the theory, it is a matter of simple observation that the values, attitudes, beliefs, and plans of adolescents are tentative and exploratory rather than enduring. In fact, research demonstrates that many youths commit crimes as a result of normative experimentation with risky behavior. Indeed, self-report studies show that more than 80 percent of teen boys say they have committed crimes—offenses for which they could have been incarcerated. But most of these boys do not get caught and do not grow up to be criminals.

In this regard, the theoretical and empirical work of psychologist Terrie Moffitt is seminal. Numerous studies show that antisocial behavior increases almost tenfold during adolescence and then rapidly declines for most teens. Moffitt’s distinctive contribution is to show that only a small group of the adolescents who commit antisocial acts have consistently engaged in such acts during their childhood and continue to do so during their adult life. For the overwhelming majority of teens, their antisocial behavior dissipates in late adolescence, indicating that they have overcome “a contemporary maturity gap [that] encourages teens to mimic antisocial behavior in ways that are normative and adjustive.” These findings raise the unfortunate possibility that many adolescents who experiment with crime under social pressure get caught and are then subjected to harsh punishment, including incarceration in the same facilities as adults—punishment that, ironically, increases the chance that they will continue to behave in antisocial ways upon release.

The legal doctrine of proportionality combined with the abundant evidence on teenagers’ developmental immaturity provides a strong legal case for holding adolescents less culpable for their criminal behavior than adults. It follows from this lower level of adolescent culpability that the nation’s legal system should avoid transferring to adult court all but those adolescents who have committed repeat violent crimes and

should refrain from imposing harsh penalties on most juveniles whether they are under the jurisdiction of the juvenile or adult system.

Is Harsh Punishment Effective?

In addition to this argument for more measured punishment based on legal reasoning and developmental science, there is another good argument for avoiding harsh punishment, especially placement in the adult system. At a minimum the practice of harsh sentences for adolescents does not work; it may even be counterproductive. Although the research on this issue should not be considered definitive, the Centers for Disease Control recently sponsored an independent review of the evidence. The CDC's expert reviewers located six high-quality studies; all provided evidence of the effect of transferring adolescents to adult jurisdiction on the subsequent incidence of violent offenses after release. Only one study reported a decrease in violent crimes by youth who had previously been transferred to adult jurisdiction, while one study found no effect. The remaining four studies "all found an undesirable effect in which transferred juveniles committed more subsequent violent or general crime than retained juveniles." According to the standards adopted by the panel before conducting the review, the evidence provided by these studies is sufficient to conclude that transfer to the adult justice system results in "greater subsequent crime, including violent crime, among transferred youth."

What Works to Deter Juvenile Crime?

If transferring juveniles to the adult system is counterproductive, could other strategies be effective? As shown in detail by Peter Greenwood in the most recent *Future of Children* volume, over the past fifteen years many high-quality studies have identified programs that prevent delinquency or reduce recidivism. Indeed, the accumulating evidence is so strong that it could signal a new era in the treatment of troubled youth. In the past, the justice system has vacillated between soft and harsh punishments in handling juvenile crime. Worse, these swings have been based primarily on whatever philosophy of criminality happened to be in vogue at a given moment and not on an appeal to empirical evidence. With the development

and use of high-quality studies and experiments testing new treatments, the field has accumulated solid evidence of what works and what doesn't. According to Greenwood, at least a dozen delinquency-prevention programs show strong evidence of effectiveness.

Greenwood's careful review of the treatment literature can be summarized in five points. First, for troubled youth in community settings, family-based programs that work with the juvenile, the family, and perhaps others in the community have proven effective. Second, for youth in institutional settings, treatments that base therapy on learning what goals youth have for their life and then helping them achieve those goals have a good track record. Third, programs that are excessively harsh or punitive have either no effects or iatrogenic effects. Fourth, incarceration is expensive and yields few if any benefits other than short-term incapacitation. Fifth, even the best evidence-based programs must be fully and faithfully implemented if they are to produce the effects on teens that the evidence shows they can.

A good example of a successful and well-evaluated program is Functional Family Therapy. The program, in existence for more than twenty-five years, is designed for youth between the ages of eleven and eighteen who are delinquent, abuse drugs, or engage in violence. The goal of the program is to alter interactions between parents and children, promote family problem-solving skills, enhance emotional bonds between family members, and strengthen parents' ability to provide structure, guidance, and limits for their children. The program is delivered by specially trained therapists, usually in the home setting, who work in teams under the supervision and monitoring of more experienced therapist/trainers.

Not only do many interventions produce good effects on youth who have committed or seem destined to commit crimes, they save more money than it costs to conduct them. In fact, several studies have estimated both the costs of these various treatments and the value of the benefits they produce. A recent review by the Washington State Institute for Public Policy, for example, found that programs for juvenile

offenders were the most cost-effective of a wide range of prevention and intervention programs for children and youth. Indeed, most of the programs for juvenile offenders produced benefits of more than \$7 for every \$1 invested in them.

The Work Ahead in Preventing Juvenile Crime

Remarkably, the field of youth crime prevention and treatment has produced impressive evidence on effective and even cost-beneficial treatments. The evidence provides a lot of good news for policymakers, program administrators, and the public. But much more work lies ahead. The effective treatments that researchers have shown to work are all but unused by state and local authorities responsible for helping youth offenders. Greenwood estimates that only about 5 percent of youth who could profit from these interventions are actually enrolled in evidence-based programs. Moreover, few jurisdictions have invested in data systems that would allow them to track what happens to young people who participate in their programs. Monitoring results is a must for conducting a modern juvenile correctional system that can gauge its success and make changes based on the effects produced by its programs.

The implications of our analysis for juvenile justice policy and practice can be succinctly summarized. The legal principle of proportionality combined with findings from scientific research on adolescent immaturity argues that juveniles are less responsible for their criminal behavior than adults are and should therefore receive less severe punishment. “Less severe” punishment does not mean no punishment; it means that youth should be sanctioned in community and family settings whenever possible, especially for first offenses and nonviolent offenses. Above all, youth should be kept out of the adult criminal system unless they have committed repeat violent offenses. This course of action is especially recommended because most youth who commit criminal offenses will abandon illegal behavior at roughly the

same age as they exit adolescence. Moreover, providing effective prevention and treatment programs instead of harsh punishment greatly reduces the concern of many observers about the disproportionate involvement of minority youth in the juvenile justice system.

But revising state and local laws to reflect the emphasis on proportionate punishment is only half the battle. The other half is adopting treatment programs that are supported by evidence from high-quality evaluations and creating local and state data systems that allow officials to track what happens to youth who leave their programs. Strong and faithful implementation of scientifically tested program models, adapted as necessary for local circumstances and continuously evaluated by data on results, will produce better outcomes and less recidivism than traditional approaches that rely primarily on incarceration or on the treatment *du jour*.

This two-step approach is also recommended on benefit-cost grounds. Policymakers will point to the fact that the benefits from reduced recidivism do not necessarily flow to government agencies, especially not to the agencies responsible for paying for youth intervention programs. But as many jurisdictions have discovered, incarceration is expensive. The programs we recommend would result in less youth incarceration and therefore in substantial savings in government spending, even if the savings from incarceration accrue to different agencies than those that must pay for the intervention programs. Even so, there is no question that savings in one part of a government budget can be invested in another part of the budget without increasing net expenditures. Surely capable policymakers can figure out ways to make these numbers add up. The reasons for optimism that are so evident in the success of a range of youth interventions should not be trumped by complexities in government accounting. Seldom will policymakers have the opportunity to produce so much good for children and society with such minimal net expenditures.

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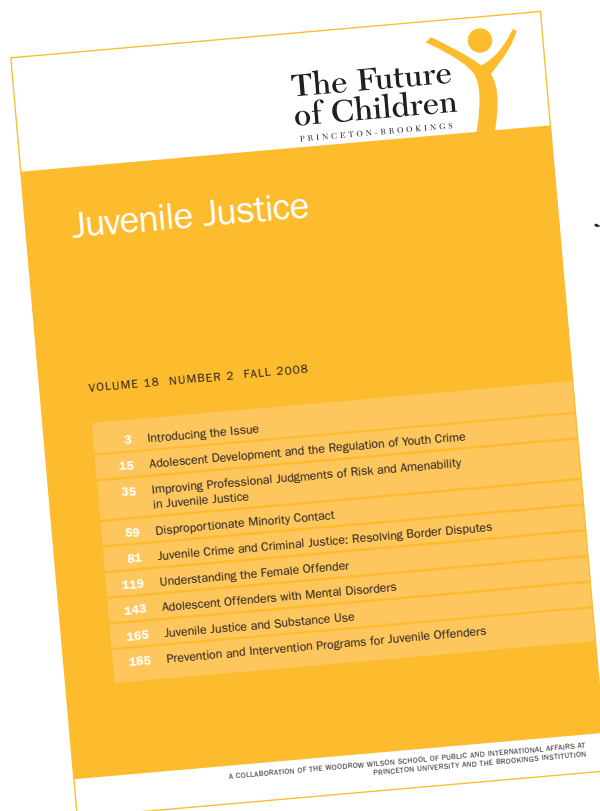
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