

REPORT BRIEF • NOVEMBER 2012

REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH

The past decade has seen an explosion of knowledge about adolescent development and the neurobiological underpinnings of adolescent behavior. Much has also been learned about the pathways by which adolescents become delinquent, the effectiveness of prevention and treatment programs, and the long-term effects of transferring youths to the adult system and confining them in harsh conditions.

These findings have raised doubts about the wisdom and effectiveness of laws passed in the 1990s that criminalized many juvenile offenses and led more youths to be tried as adults. Some jurisdictions have already taken significant steps to reverse these policies and to overhaul their juvenile justice systems.

A new report from the National Research Council, *Reforming Juvenile Justice: A Developmental Approach*, aims to consolidate the progress that has been made in both science and policymaking and establish a strong platform for a 21st-century juvenile justice system. It takes an in-depth look at evidence on adolescent development and on effective responses to adolescent offending.



Changes are needed if the juvenile justice system is to meet its aims of holding adolescents accountable, preventing reoffending, and treating them fairly, the report concludes. It recommends that state and tribal governments review their laws and policies and align them with emerging evidence on adolescent development and effective interventions.

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EMERGING SCIENCE ON ADOLESCENCE

Falling between childhood and adulthood, adolescence is when a person develops an integrated sense of self, which includes separating from parents and developing an individual identity. As part of that process, adolescents often engage in novelty-seeking and risky behavior, such as alcohol and drug use, unsafe sex, and reckless driving.

Research has shown that adolescents differ from adults in at least three important ways that lead to differences in behavior:

- Adolescents are less able to regulate their own behavior in emotionally charged contexts.
- Adolescents are more sensitive to external influences such as peer pressure and immediate rewards.
- Adolescents show less ability to make judgments and decisions that require future orientation.

Evidence suggests that these cognitive tendencies are linked to the biological immaturity of the brain and an imbalance among developing brain systems. The brain system that influences pleasure-seeking and emotional reactivity develops more rapidly than the brain system that supports self-control, leaving adolescents less capable of self-regulation than adults. The likelihood and seriousness of offending are also strongly affected by influences in youths' environment — peers, parents, schools, and communities. In addition, perceived racial discrimination has been linked to antisocial behavior.

Research shows that, for most youths, the period of risky experimentation does not extend beyond adolescence, ceasing as identity settles with maturity. The vast majority of youths who are arrested or referred to juvenile court have not committed serious offenses, and half of them appear in the system only once. Evidence indicates that youths who commit serious offenses such as homicide, aggravated

WHO IS AN ADOLESCENT?

Scientifically, adolescence has no precise chronological onset or endpoint. It refers to a phase in development between childhood and adulthood beginning at puberty, typically about 12 or 13, and ending in the late teens or early twenties. Generally speaking, the committee's report focuses on those under age 18 and refers to this age group as juveniles — the term used in the legal system — or youths.

assault, and burglary are a very small proportion of the overall delinquent population, and that their behavior is driven by the same risk factors and developmental processes that influence other juvenile offenders.

THE EXISTING JUVENILE JUSTICE SYSTEM

In 2008, 28 percent of delinquency cases that were adjudicated resulted in youths being placed outside the home, such as in a group home or juvenile correctional facility. Confining youths away from their homes and communities interferes with three social conditions that contribute to adolescents' healthy psychological development:

- the presence of a parent or parent figure who is involved with the adolescent and concerned about his or her successful development;
- association with peers who value and model positive social behavior and academic success; and
- activities that require autonomous decision-making and critical thinking. Schools, extracurricular activities, and work settings can provide opportunities for adolescents to learn to think for themselves, develop self-reliance and self-efficacy, and improve reasoning skills.

In addition, many youths face collateral consequences of involvement in the justice

system, such as the public release of juvenile records that follow them throughout their lives and limit future educational and employment opportunities.

These disadvantages are borne disproportionately by some groups of adolescents. Racial and ethnic minorities are overrepresented at every stage of the juvenile justice system; they are more likely to be arrested, and, for certain offenses, more likely to face harsh punishment. They also remain in the system longer than white youths. Adolescents who move between the child welfare and juvenile justice systems, and those with mental health disorders, are also more likely to be treated harshly.

A DEVELOPMENTAL APPROACH TO JUVENILE JUSTICE

The overarching goal of the juvenile justice system is to support the positive social development of youths who become involved in the system, and thereby assure the safety of communities. The specific aims of juvenile courts and affiliated agencies are to hold youths accountable for wrongdoing, prevent further offending, and treat youths fairly. All three of these aims are compatible with a developmental approach to juvenile justice.

Accountability. Holding adolescents accountable for their offenses aims to ensure that offenders will be answerable for wrongdoing, particularly for conduct that causes harm to identifiable victims. It does not follow, however, that the mechanisms of accountability for juveniles should mimic adult punishments. Condemnation, control, and lengthy confinement (“serving time”) — the identifying attributes of criminal punishment — are not ordinarily needed to assure that juveniles are held accountable. Juvenile courts should provide an opportunity for youths to accept responsibility for their actions, make amends to individual victims and the community, and participate in community service or other kinds of programs. Examples of appropriate approaches include restorative justice pro-

grams that involve victims and adjudication programs that involve restitution and peers.

Preventing reoffending. Whether a juvenile court can reduce reoffending depends on its ability to intervene with the right adolescent offenders and use the right type of intervention. The first step in enabling courts to do this is by implementing risk and need assessments. Risk assessments gauge whether a youth is at low, medium, or high risk of reoffending based on factors such as prior offending history and school performance. Newer instruments also assess the youth’s needs, acknowledging that the risk of reoffending is not a fixed attribute but an estimate that might be lowered by particular interventions, monitoring in the community, or changes in life situation. Using these tools can allow resources to be better targeted, focusing the more intense and costly interventions on those at greater risk of reoffending.

If implemented well, evidence-based interventions — for example, certain types of therapy, such as aggression replacement therapy and cognitive-behavioral therapy — reduce reoffending and produce remarkably large economic returns relative to their costs. In general, community-based interventions show greater reductions in rearrests than programs offered in institutional settings. Once in institutional care, adequate time — arguably up to about six months — is needed to provide sufficiently intense services for adolescents to benefit. There is no convincing evidence, however, that confinement of juvenile offenders beyond the minimum amount needed for this purpose appreciably reduces the likelihood of subsequent offending.

Fairness. Treating youths fairly and with dignity can enhance moral development and legal socialization during adolescence. The juvenile court should assure that youths are represented by properly trained counsel and have an opportunity to participate in the proceedings. However, lawyers in juvenile courts often have too few resources and are overburdened by high caseloads.

GUIDING PRINCIPLES FOR JUVENILE JUSTICE REFORM

ACCOUNTABILITY

- Use the justice system to communicate the message that society expects youths to take responsibility for their actions and the foreseeable consequences of their actions.
- Encourage youths to accept responsibility for admitted or proven wrongdoing, consistent with protecting their legal rights.
- Facilitate constructive involvement of family members in the proceedings to assist youths to accept responsibility and carry out the obligations set by the court.
- Use restitution and community service as instruments of accountability to victims and the community.
- Use confinement sparingly and only when needed to respond to and prevent serious reoffending.
- Avoid collateral consequences of adjudication such as public release of juvenile records that reduce opportunities for a successful transition to a prosocial adult life.

PREVENTING REOFFENDING

- Use structured risk and need assessment instruments to identify low-risk youths who can be handled less formally in community-based settings, to match youths with specialized treatment, and to target more intensive and expensive interventions toward high-risk youths.
- Use clearly specified interventions rooted in knowledge about adolescent development and tailored to the particular adolescent's needs and social environment.
- Engage the adolescent's family as much as possible and draw on neighborhood resources to foster positive activities, prosocial development, and law-abiding behavior.
- Eliminate interventions that rigorous evaluation research has shown to be ineffective or harmful.
- Keep accurate data on the type and intensity of interventions provided and the results achieved.

FAIRNESS

- Ensure that youths are represented throughout the process by properly trained counsel unless the right is voluntarily and intelligently waived by the youth.
- Ensure that youths are adjudicated only if they are competent to understand the proceedings and assist counsel.
- Facilitate participation by youths in all proceedings.
- Intensify efforts to reduce racial and ethnic disparities, as well as other patterns of unequal treatment, in the administration of juvenile justice.
- Ensure that youths perceive that they have been treated fairly and with dignity.
- Establish and implement evidence-based measures for fairness based on both legal criteria and perceptions of youths, families, and other participants.

To improve the quality of representation and enhance youths' perception of justice, states should clarify the obligations of juvenile defense counsel at every stage of the case and should specify caseload limits in accordance with recommended standards.

A critical aspect of achieving a fair juvenile justice system is reducing racial and ethnic disparities. Several interventions and policy initiatives have been undertaken to reduce disparities, but there is little scientific evidence on whether they are effective. Federal, state, and local governments should intensify their efforts to address disparities in a focused and transparent manner.

ROLE OF THE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (OJJDP)

The juvenile justice field is moving toward a more developmentally appropriate system, with states and local jurisdictions taking the lead as federal dollars have waned. But the need for technical assistance and training is critical. Historically, such assistance has come from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in the Department of Justice. Congress established this office in 1974, giving it a broad mandate to develop and disseminate knowledge to the juvenile justice field, assist states and local jurisdictions in improving their juvenile justice systems, develop national standards, and coordinate federal activities related to the treatment of juvenile offenders. Unfortunately, OJJDP's capacity to carry out this mandate has dramatically declined over the past decade, in part due to inadequate funding and a severe restriction of its discretion in determining how its resources should be used.

RECOMMENDATIONS

The committee made recommendations for a developmentally informed juvenile justice system and for incorporating new evidence into policy and practice on a continuing basis.

Given current realities regarding the role of OJJDP and the role of the federal government in general, the immediate momentum for change will continue to come from the state, local, and tribal jurisdictions.

Among the committee's recommendations:

State and tribal governments should establish bipartisan multistakeholder task forces or commissions under the auspices of the governor or tribal leader, the legislature, or the highest state court to undertake a thorough and transparent assessment of their juvenile justice systems. They should align their laws, policies and practices with evolving knowledge about adolescent development and evidence-based programs. In addition, they should intensify efforts to identify and eliminate policies that tend to disadvantage minorities, to publicly report on the scope of the problem, and to evaluate programs aimed at reducing disparities.

Federal policymakers should restore OJJDP's capacity to carry out its core mission through reauthorization, appropriations, and funding flexibility. OJJDP has been effective in the past in spearheading major reforms that reflect key developmental principles: keeping youths separated from adult offenders, addressing racial disparities, and avoiding unnecessary detention for youths. These protections need to be strengthened by:

- defining status offenses to include offenses such as possession of alcohol or tobacco that apply only to youths under 21.
- removing all exceptions to the detention of youths who commit offenses that would not be punishable by confinement if committed by an adult. For example, a youth should not be confined for an offense such as truancy or running away.
- modifying the definition of an "adult inmate" to give states flexibility to keep youths in juvenile facilities until they reach the age of extended juvenile court jurisdiction.

- expanding the protections to all youths under 18 in pretrial detention, whether they are charged in juvenile or adult courts.

In addition, OJJDP should prioritize its research, training, and technical assistance resources to promote the adoption of developmentally appropriate policies and practices and expand the number of jurisdictions actively engaged in activities to reduce racial disparities.

Federal research agencies, such as the National Science Foundation, Centers for Disease Control and Prevention, and National Institutes of Health, as well as OJJDP, should support research that continues to advance the science of adolescent development,

expanding our understanding of the ways developmental processes influence juvenile delinquency and how the juvenile justice system should respond.

The Bureau of Justice Statistics and other government and private statistical agencies should, under OJJDP's leadership, develop a data improvement program on juvenile offending and juvenile justice system processing that provides greater insight into state and local variations. At the state and local level, data should be collected on the gender, age, race and ethnicity of offenders as well as offense charged or committed; arrest, detention, and disposition practices; and recidivism.

COMMITTEE ON ASSESSING JUVENILE JUSTICE REFORM

ROBERT L. JOHNSON (Chair), University of Medicine and Dentistry, New Jersey Medical School; **RICHARD J. BONNIE** (Vice-Chair), *IOM Member*, University of Virginia; **CARL C. BELL**, Community Mental Health Council, Inc.; **LAWRENCE D. BOBO**, *NAS Member*, Harvard University; **JEFFREY A. BUTTS**, John Jay College of Criminal Justice; **GLADYS CARRIÓN**, New York State Office of Children & Family Service; **B.J. CASEY**, Weill Medical College of Cornell University; **KENNETH A. DODGE**, Duke University; **SANDRA A. GRAHAM**, University of California, Los Angeles; **ERNESTINE GRAY**, Orleans Parish Juvenile Court, New Orleans, Louisiana; **EDWARD P. MULVEY**, University of Pittsburgh School of Medicine; **ROBERT PLOTNICK**, University of Washington; **ELIZABETH S. SCOTT**, Columbia University; **TERENCE P. THORNBERRY**, University of Maryland, College Park; **CHERIE TOWNSEND**, Texas Department of Juvenile Justice; **BETTY M. CHEMERS**, *Study Director*

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