

THE FOURTH WAVE

JUVENILE JUSTICE REFORMS FOR
THE TWENTY-FIRST CENTURY

WINTER 2013

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Executive Summary

Every year in the United States, more than two million young people come in formal contact with the juvenile justice system. Many of them leave it more troubled than they were before: more likely to offend again as juveniles or adults, less likely to finish high school or go on to higher education, less able to find decent employment, marry, or raise a family.

But a growing wave of reforms points to better outcomes. Spurred by scientific evidence, economic realities, and political pressure, jurisdictions across the country are overturning harsh, ineffective, and expensive practices and transforming the way they deal with young offenders. These changes, embraced by liberals and conservatives alike, take the best ideas from earlier waves of reform—our concern for young people, the need to create safe communities—and put them in a new framework: a scientific understanding of child and adolescent development, the tools to evaluate what works and what doesn't, and the determination to put scarce taxpayer dollars where the evidence is. Together, the reforms seek to create a juvenile justice system that will protect communities and help all kids become responsible adults.

A CENTURY OF JUVENILE JUSTICE

Since the late nineteenth century, the U.S. has seen four major waves of juvenile justice reform.

First wave. The first juvenile court, established in 1899, took a rehabilitative approach, grounded in the same principles that underlie today's reforms: children are different from adults; they are less responsible for their actions and thus not deserving of adult punishments; society has an interest in protecting them and investing in their futures.

Second wave. In the middle of the twentieth century, the Supreme Court for the first time gave juveniles Constitutional protections against self-incrimination, the right to confront witnesses, and the right to counsel.

Third wave. In response to a sharp increase in violent crime among youths in the 1980s and early 1990s, virtually every state passed harsh, punitive laws and many abandoned the focus on rehabilitation. As a result, recidivism became the norm. The brunt of the harsh policies was borne by children of color.

Fourth wave. In the 1990s the crime wave subsided, and by the end of the century mayors, governors, and legislators across the nation began to recognize the high fiscal and social costs of incarceration. At the same time, developmental and, later, brain research made a strong case for treating children differently from adults. A new wave of reforms began, aimed at holding young offenders accountable for their actions in

developmentally appropriate ways; reducing reoffending and ensuring public safety; and producing positive outcomes for children, families, and communities. The reforms fall into several categories:

- Reducing incarceration and its harms.
- Treating kids as kids, not as adults.
- Diverting youths from the justice system.
- Ensuring equal treatment and due process.
- Balancing youth development, personal accountability, and public safety.

REDUCING INCARCERATION AND ITS HARMS

In the United States in 2008, 336 of every 100,000 youths were being held in detention or correctional custody. That's nearly five times the rate of the next highest nation, South Africa, and far higher than any Western European nation. Juvenile experts question the effectiveness of this practice, and states are beginning to respond.

Reducing confinement. Given the high cost and poor results of incarceration, a growing number of states are de-emphasizing this approach. Since 2009, at least 20 states have closed or downsized youth facilities or reduced their reliance on incarceration. In many places, the money saved is being redirected to programs that supervise and treat youths in their communities. States that reduced juvenile confinement most dramatically also saw the greatest decline in juvenile arrests for violent crimes.

Providing rehabilitation, education, and treatment for incarcerated kids. For decades, the educational and treatment needs of incarcerated children were largely ignored. Now, though, more than 200 facilities in 27 states are setting standards and tracking key indicators to improve conditions of confinement. Some states now require that detention centers and youth prisons provide certified educational services, adequate on-site medical and mental health services, suicide and mental health screenings, and gender-specific prevention, treatment, and rehabilitation programs.

Planning for reentry after confinement. Young offenders who complete programs that focus on structured learning, school achievement, and job skills are less likely to reoffend. Juvenile justice systems are taking a variety of approaches to improve young offenders' chances of succeeding after their release:

- Setting high standards for education in confinement, and ensuring that students get academic credit toward a high school diploma for their work.
- Seeing that youths are enrolled in school quickly after their release.
- Providing job training that meets industry-based standards.
- Offering subsidized job experience and working with employers in the community.
- Developing comprehensive, seamless plans of aftercare services and supervision.

TREATING KIDS AS KIDS, NOT AS ADULTS

Children, like adults, sometimes commit serious and violent crimes. But science has confirmed that they are different from adults, in ways that make them less blameworthy, less competent to stand trial, and more capable of change.

Applying science to sentencing. Since 2005, the Supreme Court has handed down several important decisions based on new research in developmental psychology and neuroscience. The Court has banned:

- Death sentences for crimes committed by youths under 18.
- Life without parole for youths convicted of non-homicide crimes.
- Mandatory sentences of life without parole for juveniles, regardless of the crime.

Recognizing that children are less competent than adults. A growing number of states now directly address the issue of competency in their juvenile statutes. Several others address it through mental health evaluations or sanity hearings.

Giving kids a chance to change. Several states preceded the Supreme Court in prohibiting juvenile life without parole, precisely because they recognized children's potential for rehabilitation.

Keeping youths out of the adult criminal system. Putting young people in the adult criminal system is harmful to them in the present, and harmful to their future chances of becoming successful adults. Some of the states that rushed to treat youths as adults in the 1990s are now changing their approach by:

- Rolling back prosecutors' unlimited discretion to try youths as adults.
- Making it more difficult to process youths in the adult system, or easier to move them back to the juvenile system.
- Allowing youths charged as adults to be held in juvenile facilities before their trial.
- Raising the age of jurisdiction for the juvenile court.

DIVERTING YOUTHS FROM THE SYSTEM

The deeper children go into the juvenile justice system, the worse their chances for success. But there are opportunities for diversion at every stage of the process, and many jurisdictions are finding ways to use those opportunities effectively.

Prevention and early intervention. The preferred way to divert kids from the system is to prevent delinquency in the first place. States are increasingly looking to coordinate their child welfare, juvenile justice, and school systems, to help identify at-risk children and families and to evaluate and address their needs before they get in trouble.

Alternatives to detention and youth prison. Many states are developing alternatives to formal processing and confinement. These include:

- Moving financial resources from juvenile facilities to less restrictive community-based rehabilitation programs.
- Allowing police who stop youths for minor offenses to offer them the option of community service and counseling instead of being charged with a crime.
- Establishing centers to provide social services for youths picked up by police for nonviolent offenses.
- Using multi-disciplinary, home-based, intensive supervision programs as an alternative to incarceration.

Family involvement. The programs that have been proven to be most effective in responding to delinquency—and saving money as well—are rooted in family involvement. A number of states are diverting youths into such programs. Other jurisdictions are bringing families into the juvenile justice process to improve case planning and interventions.

Changing school discipline practices. The adoption by schools of “zero tolerance” policies has created what some call “the school-to-prison pipeline.” Several states are now working to reform school discipline, through training of teachers and staff, more flexible options for discipline, classes in conflict resolution skills, and restorative justice approaches.

Kids with mental and behavioral health problems. About 70 percent of youths in the juvenile justice system today have a diagnosable mental health or substance use disorder. Many states are now tackling this important issue, with:

- Routine mental health screenings of youths in detention, and more thorough assessments for those who need them.
- Diversion of those with needs to appropriate mental health or substance abuse treatment, often in specialized facilities.
- Specialized courts to handle youths with mental illness.

ENSURING EQUAL TREATMENT AND DUE PROCESS

Racial and ethnic disparities run deep in juvenile justice. For example, African-American children represent 17 percent of the youth population, 30 percent of those arrested, and 62 percent of those prosecuted in the adult system. These disparities are gradually being addressed, along with other issues of fairness and due process.

Racial and ethnic fairness. Jurisdictions across the country are making serious efforts to reduce the overrepresentation of minorities in the juvenile justice system. For example, they are:

- Analyzing data to identify when and where minorities are being treated differently.
- Training police and probation officers to change the ways they perceive and interact with minority youths.
- Using objective, culturally sensitive assessments to identify the risks and needs of individual youths.
- Developing culturally sensitive services and treatment programs, including early intervention programs for minority youths and their families.
- Creating a system of graduated, alternative sanctions to divert minority youths from unnecessary confinement.

Due process for juvenile defendants. Despite the potential for harsh sentences, young offenders often don’t receive effective legal representation. To improve legal skills, several organizations are providing training and support to attorneys who work with young people. And some state legislatures have passed new laws that:

- Require that all juveniles be deemed indigent and be appointed an attorney.
- Require the appointment of lawyers at all critical stages of juvenile proceedings.
- Bar juveniles from waiving their right to counsel, or require that they meet with an attorney before doing so.
- Set performance standards for attorneys who represent juveniles.
- Allow juveniles to participate in mental health and substance abuse assessments without fear that what they reveal could be used against them in court.

BALANCING YOUTH DEVELOPMENT, PERSONAL ACCOUNTABILITY, AND PUBLIC SAFETY

The great challenge of juvenile justice reform is to encourage approaches that hold young people accountable for their behavior while enhancing their future prospects—returning dividends to them, their communities, and all of us.

Focusing on the individual child. Research shows that targeting interventions to youths who are most likely to reoffend has the greatest payoff, and that smaller, local programs centered on skill-building and counseling are more effective than punitive programs with these youths. Many of the new, evidence-based interventions being adopted across the nation specifically address children’s individual needs and strengths.

Balanced and restorative justice. Approaches that embrace community protection, accountability, and helping the child grow into a productive member of society have become increasingly popular alternatives to formal processing and punishment. They include:

- Peer juries or mediated meetings among the offender, victims, and community members.
- Monetary payment to reimburse victims for their losses or damages.
- Community service performed by the youth to reimburse the community for the loss of quality of life.
- Programs to build youth skills and social competencies.

Coordinating agencies. Supporting young people’s healthy development requires collaboration among diverse systems and agencies: child welfare, education, health care (especially Medicaid), mental health, foster care, juvenile corrections, and more. Several states have created “wraparound” systems or multi-disciplinary teams to develop integrated, coordinated plans for at-risk youths, those in the system, and those aging out of it.

CONCLUSION

Across the U.S., juvenile justice reforms are gaining momentum: through Supreme Court decisions and state legislation, lawsuits and regulatory changes, state- and county-wide programs and innovative pilot projects. The case for a “fourth wave” lies not only in the number of reforms but in their staying power, and in their ability to reach practitioners and policymakers across the ideological spectrum.

Over the past ten to 15 years we have seen reforms disseminate across urban and rural areas and through vastly different states. Reforms have continued through changes in administrations, even when parties with different priorities and different ideologies came to power. Successful local efforts have led to broader legislative changes, and changes in law have spawned creative new programs.

One thing is certain: juvenile justice reform is evolution, not revolution. The more we learn, and the more we put that knowledge to work, the closer we will come to ensuring the safety of our communities *and* the future of every child.

Introduction

In 2007, the Texas juvenile corrections system was in crisis. Scandals involving physical and sexual abuse by staff, youth-on-youth violence, and a full-scale riot at one facility had rocked the system for years. There was no effective means of reporting and investigating problems within the system, and few of the adults involved were prosecuted. Yet the state kept authorizing hundreds of millions of dollars to build and staff more juvenile facilities. The system needed serious reform—and that required legislation.

State Rep. Jerry Madden, Republican chair of the House Corrections Committee, had already confronted similar problems in the adult system, and he knew what he had to do. He reached out to two Democratic state senators: John Whitmire, chair of the Senate Criminal Justice Committee, and Juan Hinojosa, who was already working on a bill addressing some of the problems. Together they crafted legislation aimed at a major overhaul of the Texas Youth Commission: investigations of complaints would be conducted by trained law enforcement personnel; younger kids would be housed separately from 19- and 20-year-olds; youths would no longer be incarcerated for misdemeanors; and money saved by reducing incarceration would be redirected to community-based programs.

That same year, the legislation passed unanimously in both the House and the Senate. Additional reforms continue to this day.

“Everyone understood that we had to stop building more correctional facilities and instead provide communities with what they really need: alternative programs that work for kids and keep the public safe.”

–Jerry Madden, member (retired) Texas House of Representatives

The convergence of leaders from both parties in Texas might seem miraculous in an age of extreme partisanship. But in fact such scenes are taking place repeatedly as change sweeps through America’s juvenile justice systems. Spurred by a rising tide of scientific evidence, economic realities, and political pressure, jurisdictions across the country are overturning a decade of harsh, ineffective, and hugely expensive practices and transforming the way they deal with young offenders.

The wave of reform has hit every level of decision-making, from neighborhoods and child-serving organizations, to county agencies and state legislatures, all the way to the Supreme Court. Sometimes it makes a huge splash, like recent Supreme Court

decisions on the death penalty and life without parole. Sometimes it makes the local news, with the closure of a youth prison or the opening of a group home.

But other, equally important changes have received far less media attention. Relatively few people are aware of the ongoing work to:

- Reduce the number of children who are tried in the adult criminal system.
- Replace youth prisons and detention centers with community-based alternatives.
- Improve rehabilitation and treatment programs for incarcerated youth.
- Address the mental health needs of children in the juvenile justice system.
- Make sure that juveniles have appropriate legal protections.
- Address racial and ethnic bias in the system.

Red states, blue states, swing states. Over the past decade or more, virtually every state in the union has taken steps to create a juvenile justice system that is not just tough on crime but *smart* on crime—fair and just practices that protect communities and help all kids become responsible adults.

The systems now taking shape embrace the best ideas from earlier waves of reform—society’s responsibility to its youth, the need to create safe communities—and put them in a new framework: a scientific understanding of child and adolescent development, the tools to evaluate what works and what doesn’t, and the determination to put our scarce taxpayer dollars where the evidence is.

This report explores the current wave of reform—the fourth wave—in some detail. But first, to provide a foundation, it’s worth taking a look back at the three major waves that brought us to this point.

A Brief History of Juvenile Justice

Every year in the U.S., more than two million young people come in formal contact with the juvenile justice system,¹ referred there by police, parents, victims, schools, or probation officers. Many of these children leave the system—hours, days, or years later—more troubled than they were before: more likely to offend again as juveniles or adults, less likely to finish high school or go on to higher education, less able to find decent employment, marry, or raise a family.

Is this the future we envision for the nation's youth? What do we expect from the juvenile justice system? Is its purpose to hold young offenders accountable for their acts? To rehabilitate them and set them on a better path? To protect society from young people we fear?

This tension between our fear *for* children and our fear *of* them has dogged the juvenile justice system since its earliest days. The first juvenile court was established in Chicago in 1899 and spread from there across the U.S. and around the world. But its roots—and our ambivalence—date back further still.

The “discovery” of childhood. The idea of juvenile justice begins with the concept of childhood itself, a relatively recent innovation. In colonial America, as in Europe, children were viewed as small adults. Those who committed criminal acts generally were whipped, shamed, or imprisoned just like adults. Those who were poor, neglected, or orphaned could be placed by the state in almshouses and auctioned off as bonded servants.²

Before the Civil War, though, a new, more romantic notion of childhood began to take root: children held the key to the nation's future, and institutions like public schools would prepare them to take on their proper role. Those who were unfit for school—dependent or “incorrigible”—would be sent to Houses of Refuge (later called industrial schools or reformatories), highly regimented institutions where unruly children from “failed families” would be remolded into solid citizens.³

Enter the child savers. Without proper funding, oversight, or a scientific basis for their practices, it wasn't long before some reformatories became abusive and parts of the system began to fail. At the same time, new waves of poor and working-class immigrants were crowding into America's increasingly

industrialized cities, and their children, growing up in chaotic neighborhoods, became objects of fear to the more established populations.

In response, a wave of reformers emerged—the “child savers” of the second half of the nineteenth century. Signaling the philosophy of the Progressive Era, they viewed delinquency as stemming from poverty and poor parental guidance. Their vision was groundbreaking and controversial; it embraced enlightened social science research, paternalistic and centralized social control, and a genuine desire to protect the well-being of the child.⁴ The reformers' agendas ranged from compulsory education, to child labor laws, to the creation of a child and family welfare system.⁵ And leading them were the dedicated women of Jane Addams's Hull House: most notably, Lucy Flower and Julia Lathrop.⁶

These women helped shape the legislation that established the first juvenile court, in Cook County, Illinois, in 1899. It was grounded in the same principles that underlie twenty-first-century reforms: that children are different from adults; that they are less responsible for their actions and thus not deserving of adult punishments; and that society has an interest in protecting them and investing in their futures.

The concept quickly worked its way across the nation and around the world. By 1925, all but two states had a separate justice system for children, focused on the offender rather than the crime, on rehabilitation rather than punishment.⁷ While the procedures varied from one jurisdiction to another, they were generally very different from adult courts: in place of trials there were informal, non-adversarial hearings, behind closed doors, without prosecutors or defense attorneys. The court aspired to be “a kind and just parent,” the judge an educator, the process instructive.

A second wave of reform. Over the next few decades, however, the ideal of rehabilitation bumped up against the limits of current knowledge and lost its glow. Sentences (or *dispositions*, as they’re known in juvenile court) became more punitive, including children and youth confined for long periods in reformatories or state schools.⁸ Critics called the juvenile courts unfair and arbitrary, and the informality that was supposed to protect the child eventually came into conflict with the concept of due process rights. As Justice Abe Fortas wrote in 1966, juveniles may receive “the worst of both worlds: neither the protections afforded to adults nor the solicitous care and regenerative treatment postulated for juveniles.”⁹

The following year, in the decision *in re Gault*, the Supreme Court extended to juveniles the Constitutional protections against self-incrimination, the right to confront witnesses, and the right to counsel.¹⁰

Many consider this to be the second major wave of juvenile justice reform. But it applied only to cases in which the child could be placed in an institution, not to status offenders (those, such as truants and runaways, whose acts were prohibited only because they were minors), or to dependent or neglected children. Status offenses were addressed later, in the federal Juvenile Justice and Delinquency Protection Act of 1974. That law sought to keep status offenders out of detention facilities and jails, and to ensure that juveniles were separated from adults when they were confined in the same facility.¹¹

The third wave: backlash. Within two decades, the reforms protecting youths were

Mothers of the Juvenile Court

Two strains of reform came together in the friendship, vision, and determination of Lucy Flower and Julia Lathrop. Flower belonged to the generation of women philanthropists who helped build Chicago’s charitable institutions in the late nineteenth century; she served as president of the influential Chicago Woman’s Club and was a member of the Chicago Board of Education. Lathrop, a generation younger, was a Vassar graduate who chose a career as a full-time social worker, making her home at Jane Addams’s Hull House and conducting research on how cities handled child welfare and delinquency.

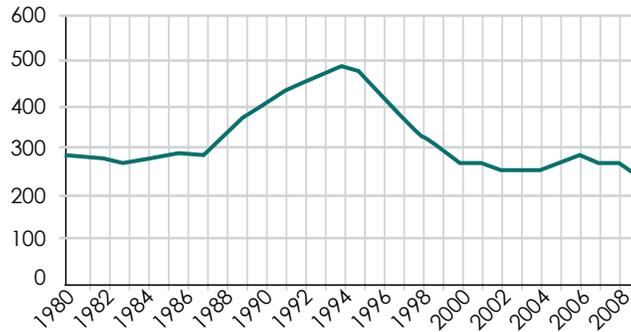
In 1888 Flower began advocating for a “parental court” to hear the cases of dependent, neglected, and delinquent children. A decade later she and Lathrop persuaded the Chicago Bar Association to investigate the conditions of delinquent and dependent children in the state, with the goal of drafting a bill establishing a juvenile court. Even before the bill was drafted, in a move that foreshadowed today’s bipartisan efforts, Lathrop and Flower galvanized support by organizing a conference that was, in the words of its president, “neither Republican nor Democratic; neither Protestant nor Catholic; neither rural nor urban.”

Early in 1899, the Illinois General Assembly took up a bill allowing Cook County to create a juvenile court, and permitting the court to appoint unpaid probation officers. Those officers would investigate cases, represent “the best interests of the child,” and take charge of children as needed before and after trial. The bill passed that spring, with only one dissenting vote in the Senate and none in the House.¹²

overtaken by yet another wave, this time aimed—or so its proponents believed—at protecting the public.

During the 1980s, violent crime among juveniles began to increase sharply and continued to rise until 1994, when it went into a steep decline.¹³ In 1995, before the drop in crime became clear,

Juvenile Arrest Rates for Violent Crime Index Offenses, 1980-2009



Rates are arrests of persons ages 10-17 per 100,000 persons ages 10-17 in the resident population. The Violent Crime Index includes the offenses of murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault. (Office of Juvenile Justice and Delinquency Prevention)¹⁴

then-Princeton professor John DiIulio voiced the opinion that America had spawned a new breed of violent, conscienceless “super-predators,” and that the problem would only become worse as the youngest, growing up in the depths of “moral poverty,” reached their teens.¹⁵

DiIulio’s words were quickly echoed by countless others. The rise in violent juvenile crime, especially homicides, combined with relentless media coverage, naturally alarmed the public. Among public officials, the rallying cry was “adult time for adult crime!” In this climate—which sociologists call *moral panic*¹⁶—legislators in virtually every state passed punitive laws that ignored the differences between children and adults, began criminalizing ordinary adolescent behaviors, and abandoned the juvenile justice system’s focus on rehabilitation.

With scarcely a nod to experience or research, courts and legislatures:¹⁷

- Dramatically expanded the number of children tried in adult courts, through a combination of automatic and discretionary transfer for certain offenses (including nonviolent property and drug offenses), and lowering the age at which children could be tried as adults.

- Gave prosecutors, rather than judges, the power to charge a youth as an adult.
- Weakened the confidentiality of juvenile proceedings.
- Handed out much harsher punishments—including mandatory minimum sentences, even life sentences without parole—based not on the offender but on the offense.
- Relied much more on boot camps and confinement in secure facilities, rather than sanctions in the youth’s own community.
- Imprisoned adults and juveniles in the same facilities.

The consequences. Juvenile violent crimes had already peaked before most of the punitive legislation was enacted, and they continued to decrease through the 1990s. By 2001 the entire increase had been erased,¹⁸ and experts had begun to evaluate the consequences of the new “tough on crime” policies.

The flooding of the system, combined with fewer resources, meant young offenders received less individual attention. Incarceration might protect the public from a child for a given length of time, but it did nothing to prepare that youth for adult

“Americans are sitting atop a demographic time bomb.” –John DiIulio, 1995¹⁹

“If I knew then what I know now, I would have shouted for prevention of crimes...

I’m sorry for any unintended consequences.” –John DiIulio, 2001²⁰

responsibilities once he or she was released. On the contrary, prisons were schools for crime, and recidivism was the norm. Popular programs like boot camps and DARE were shown to be more effective at public relations than at changing lives.²¹ Moreover, the brunt of the policies was borne by children of color, who represent nearly two-thirds of the 400,000 youths who cycle through juvenile detention centers each year,²² and more than seven out of ten youths incarcerated in adult institutions.²³

The fourth wave. As the public began to realize that the “ticking time bomb” of super-predators was not going to materialize, and legislators became aware of the high fiscal and social costs of incarceration, the moral panic began to subside.

At the same time, psychosocial and neurological studies were bringing a new understanding of adolescent development, and evidence was building that some community-based programs and treatments for delinquents were quite effective at reducing recidivism.²⁴

The time was ripe for a new wave of reforms. These reforms, most starting early in the new millennium, take a more sophisticated approach than the earlier waves—an approach informed by research in developmental psychology and neuroscience, and the realities of

twenty-first-century life. The goals of the current reforms are not to excuse young offenders but to hold them accountable for their actions in developmentally appropriate ways; to reduce reoffending and ensure public safety; and above all, to produce positive outcomes for kids, families, and communities.

The rest of this paper delves into five broad areas of reform:

- Efforts to reduce incarceration and the harm it does to the young people we lock up.
- Understanding the differences between children and adults, and applying that knowledge to juvenile justice.
- Diverting youths away from the justice system through prevention and alternative interventions.
- Improving the fairness of the system, by reducing racial and ethnic discrimination and by improving due process protections.
- Simultaneously meeting the goals of individual youth development, personal accountability, and public safety.

In each section we introduce some of the issues involved, then take a step back to see what brought us to this point, and finally examine some of the “fourth wave” reforms taking place.

Reducing Incarceration and Its Harms

A multi-nation study of youth incarceration rates, published in 2008, revealed a shocking statistic: In the United States, 336 of every 100,000 youths were being held in detention or correctional custody. The next highest rate was seen in South Africa, where just 69 out of 100,000 youths were incarcerated.²⁵

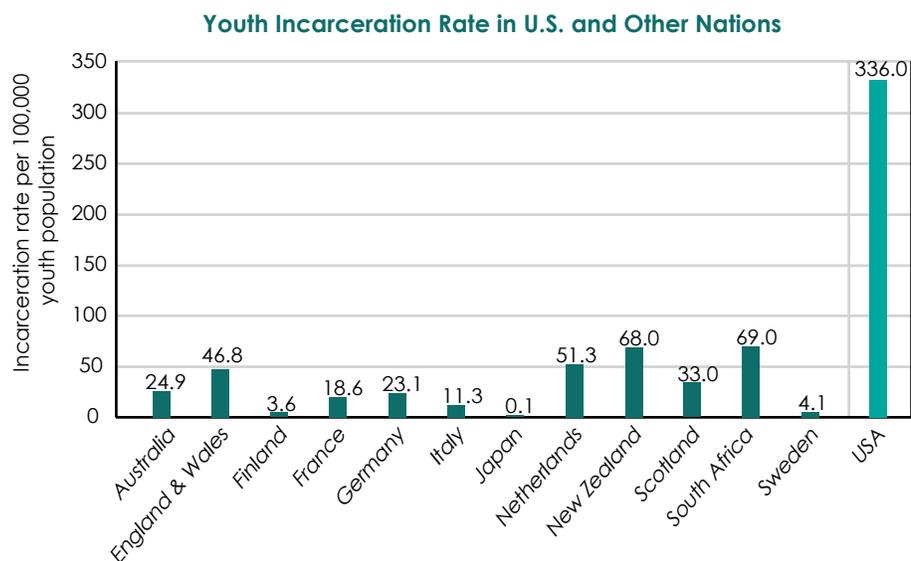


Chart from "No Place for Kids," (Baltimore: The Annie E. Casey Foundation, 2011).

The majority of these incarcerated youths either are awaiting a hearing or have committed a nonviolent offense. But even for those who have committed serious crimes, what happens to them is often worse than their offense. A 2010 story in *New York Magazine*, "The Lost Boys of Tryon," described the now-shuttered Tryon Residential Center in upstate New York as "a penal colony for kids," where boys as young as 12, many confined hundreds of miles from home, were routinely drugged into a "pharmaceutical haze" and were beaten for the slightest infraction—resulting in concussions, broken bones, and at least one death.²⁶

Tryon is hardly unique. Lawsuits, studies, and media coverage have documented horrendous conditions in juvenile facilities in many states. The findings include sustained patterns of physical and sexual abuse by staff and youths, excessive use of isolation and restraints, overcrowding and environmental safety issues, and lack of physical and mental health care, rehabilitation, and education programs.²⁷

12 percent of youths in juvenile facilities report being sexually abused while in detention, mainly by staff members.²⁸

Even in the best facilities, confining children away from home can undermine already difficult family relations. And the artificial, regimented environment itself denies young people the opportunity to learn through real-world experiences and become responsible adults.

In many cases, these are youths who have committed very serious, sometimes violent crimes; most come from troubled homes or communities. What outcomes can we expect for youths who are confined in—and eventually released from—facilities where the response from authorities is more violence, or where they don't receive the treatments and programs they need? An issue brief from the Annie E. Casey Foundation notes that “within three years of release, around 75 percent of youth are rearrested and 45 to 72 percent are convicted of a new offense.” Every recidivist, of course, means at least one more victim.²⁹

The Casey brief also points to the dismal life prospects for these young people, including a far lower chance of graduating high school by age 19 and “substantial, long-lasting reductions in employment.” According to Mary Ann Scali, Deputy Director of the National Juvenile Defender Center, incarceration has additional consequences that, while unintended, can have an impact that far exceeds the intended disposition of the child's case. “These consequences,” she notes, “may hinder a youth from pursuing higher education and financial aid; block career paths and military service; impose staggering financial burdens on their families; impact legal immigration status, and interfere with access to public housing and other benefits.”³⁰

Juvenile experts and policymakers are questioning the need to place so many children in confinement, and states are beginning to respond. One approach is to reduce the use of incarceration. Another is to make time in confinement more productive, so that young people come out better prepared for life in the community.

HOW WE GOT HERE

The children of the underclass. Juvenile reformatories have a long history in the U.S. Around 1824, long before the advent of a juvenile court, New York City established the House of Refuge. It was based on some of the central themes of much later reforms: the principle (known as *parens patriae*) that the state has a responsibility toward its children; the interrelationship between child welfare and juvenile justice (it served both neglected and delinquent children); and the need to house children in facilities separate from adults.³¹

Though billed as a progressive alternative to almshouses and prisons, there was more than a small strain of racial and ethnic bias in the establishment of Houses of Refuge and the like.* They generally housed the children of the most recent wave of poor immigrants—at that time, largely Irish; separate houses were established for African-American children and for girls. The white, Protestant, middle class looked on these “slum children” with more than a little fear, as attested by the words of the Reverend Charles Loring Brace, founder of the New York Children's Aid Society. Brace coined the term

“the dangerous classes,” and believed there were “no dangers to the value of property or the permanency of our institutions, so great as those from the existence of... a class of vagabond, ignorant, or ungoverned children.” Like John DiIulio more than a century later, he predicted “an explosion from this class which might leave the city in ashes and blood.”³²

A downward spiral. The intention of the Houses of Refuge was to apply discipline, education, and work to give these potentially dangerous children the moral instruction that their parents presumably could not. But the costs of running the schools were high, funding was scarce, and the children were invisible behind closed doors. By the 1850s and 1860s, public monies were being channeled to large, overcrowded, and poorly managed facilities, often run by private companies. (A prescient Massachusetts task force called for placing children in smaller foster homes rather than reformatories.)³³ Parents who tried to remove their children found themselves thwarted by the courts, which viewed the system as treatment, not punishment, and thus not constrained by due process rights.³⁴

* Today's juvenile facilities echo that bias: more than three-fifths of confined youth are minorities. [Richard A. Mendel, “The Case for Reducing Juvenile Incarceration: No Place for Kids,” (Baltimore: The Annie E. Casey Foundation, 2011).]

Little changed after the advent of the juvenile court. Reformatories became “industrial schools” or “training schools,” though little training was

done there. They quickly became warehouses for new generations of dependent, neglected, truant, and incorrigible youths.³⁵ After World War II, some of these facilities were updated with treatment programs, and new alternatives such as group homes, foster homes, camps, and ranches began to appear. But judges continued to sentence children to the large facilities, which soon became overcrowded again, and once more lost sight of therapeutic ideals.³⁶ Tryon, and dozens of facilities like it, were the result.

Skewed incentives. Why does the U.S. have such a high incarceration rate for children? Part of it can be explained, of course, by the rising juvenile crime rate of the twentieth century, and by the “get tough” policies that developed in its wake.

But there is another reason incarceration became the go-to disposition in juvenile justice: administrative structure and financial incentives. Throughout the U.S., it is largely county courts that sentence juveniles, while state governments generally pay most of the costs of incarceration. Until recently, most states did not cover the cost of community-based programs. Thus the county courts have had a strong monetary incentive to send youths to detention and correction centers rather than probation, treatment, and rehabilitation programs.

As of 2010, on any given day some 70,000 juveniles were confined in correctional facilities or other residential programs, or in detention centers awaiting trials or pending placement.³⁷

THE FOURTH WAVE

Reducing confinement. Given the poor results of incarceration and its extraordinarily high cost—an estimated \$100,000 a year per youth in most states,³⁸ and between \$200,000 and \$300,000 in New York and California³⁹—a growing number of states are seeking to close or downsize youth prisons and detention centers. These efforts are supported by coalitions across the political spectrum, though they are often opposed by unions representing guards and other staff, corporations that build and run the facilities, law enforcement professionals, and even some prosecutors and judges. However, an analysis by

the Annie E. Casey Foundation shows that the states that reduced juvenile confinement most dramatically actually saw the greatest decline in juvenile arrests for violent crimes.⁴⁰

States that reduced juvenile confinement most dramatically also saw the greatest decline in juvenile arrests for violent crimes.

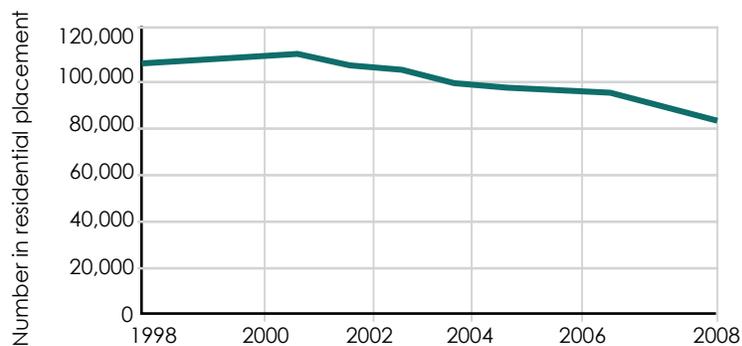
Missouri was an early leader in this effort (see page 39), but only recently has the idea really taken off. Since 2009, at least 19 states (Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Indiana, Kansas, Louisiana, Missouri, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, and Wisconsin) have closed or downsized youth facilities or reduced their reliance on incarceration.⁴¹

The number of youths held under lock and key dropped 25 percent in the first decade of the twenty-first century, and by more than half in some states.⁴²

Consider New York. In 2009, the Department of Justice released a report detailing horrific conditions in youth placement facilities like Tryon. In response, the governor launched a task force that recommended reducing the use of secure placement and reinvesting the money in community-based juvenile justice programs.⁴³ In 2011, Governor Andrew Cuomo did exactly that, closing three juvenile prisons and retaining all the savings within the juvenile justice system. In 2012 the legislature, urged on by Governor Cuomo and New York City’s Mayor Michael Bloomberg, enacted a program called “Close to Home.” Under this program, hundreds of young offenders from New York City, instead of serving sentences in upstate facilities, would receive sanctions and services in their own communities; incarceration would be used only as a last resort, when necessary to protect the public safety. Since 2007, when the Department of Justice began its investigation, New York has closed or downsized 20 juvenile facilities.⁴⁴

In addition, many states are taking a new look at the skewed incentives that have led counties to rely so heavily on incarceration. In California,

Juvenile Offenders in Publicly and Privately Operated Residential Facilities



Between the 2000 peak and 2008, the number of juvenile offenders in residential placement decreased 26 percent. (“Fact Sheet: Juveniles in Residential Placement, 1997–2008,” Office of Juvenile Justice and Delinquency Prevention, February 2010.)

Illinois, Ohio, Pennsylvania, Texas, Florida, North Carolina, and a growing number of others money saved by reducing incarceration is now being redirected to programs that supervise and treat youths in their communities.⁴⁵ (We discuss some of the programs later in this report.)

Providing rehabilitation, education, and treatment for incarcerated kids.

Young people in confinement are hardly a cross-section of American youth. Two-thirds have diagnosable mental health problems; 30 percent have attempted suicide at least once. They have high rates of learning disabilities and extremely low levels of academic achievement, scoring on average about four years below grade level.⁴⁶ They may come from unstable families, and may be runaways or homeless. Many have suffered from severe trauma, poverty, substance abuse, and lack of health care. They have emotional, physical, cognitive, and intellectual disabilities that require serious help, both to sustain them during confinement and to prepare them for release.

Yet for decades, the educational and treatment needs of incarcerated children were ignored. Despite state constitutions guaranteeing public education to all children, education inside youth facilities was minimal. While two-thirds of these kids have health care needs, more than one-third reported those needs were not being met.⁴⁷ As one scholar has written, “incarcerated children are invisible. They are isolated from family, community and power.”⁴⁸

That picture is beginning to change. More than 200 facilities in 27 states are implementing

Performance-based Standards, tracking key indicators to improve conditions of confinement.⁴⁹ Depending on the state, these may cover personnel policies, use of restraints and isolation, academic programming, physical and behavioral health services, recreation, food services, sanitation, family support, transition planning, and more.

Sometimes it takes a lawsuit to bring about change. For example, a class-action lawsuit in 2003 detailed years of horrendous abuse and neglect in Louisiana’s juvenile facilities. At the Tallulah Correctional Center for Youth—possibly the worst in the nation—broken bones and rapes were common occurrences.⁵⁰ The suit forced the closing of that facility and led to legislation and an ongoing transformation of the state’s juvenile justice system. Among the reforms are new standards that eliminate the use of restraint chairs and pepper spray, require increased training for staff, address access to educational and other services, and create procedures for reporting complaints.⁵¹ Louisiana is also using a risk-assessment tool to identify youths who are more likely to commit another violent crime, and to limit confinement to those youths.⁵² Since these reforms have been instituted, incarceration rates have fallen dramatically, and money is being reinvested in community-based programs and services.

A few other examples:

- Beginning in 2006, Mississippi required that youths be sent only to detention centers that provide certified educational services and adequate on-site medical and mental health services.⁵³

Welding a Path to Reentry Success

When the boy we'll call "Joseph" arrived at George Jr. Republic (GJR), a residential treatment community for at-risk youths, he was nearly 16 and could barely read or write. The oldest of six siblings, Joseph had lived a chaotic life in a dangerous and unstable environment. He had assaulted his stepfather while trying to protect his mother.

His guidance counselor at GJR, Kelly Nan, remembers Joseph's arrival. "His test scores were so low we identified him as special ed," Nan says. "We placed him in a life-skills class for non-readers."

In that class, something remarkable happened. Once Joseph started to learn, he wanted to learn more. Once he could read, he couldn't stop reading.

Nan had seen it before. "You bring these kids out of their environment, away from gunshots and sirens—you give them consistent, firm, and fair cottage parents and clear expectations for their behavior—and they start to flourish."

Joseph flew through the basic academic instruction—accredited by the Pennsylvania Department of Education—and began a welding program. "That really lit his fire," Nan says. "He earned six specialty certifications from the American Welding Society, along with his high school diploma." When Joseph applied to a community college welding program, the instructor told him, "You don't need us—you need to look for work!"

Joseph found work quickly. Today he makes a good living and frequently returns to GJR to speak to other kids. His passion may be unique, but his trajectory is not. "If these kids have a shot at getting a real job," Nan says, "there's a good chance they won't reoffend."

- New Jersey and a number of other states now require suicide and mental health screening for juveniles in detention centers.⁵⁴ (For more on mental health issues, see pages 30-32.)
- With girls representing the fastest-growing segment of youths held in juvenile facilities, legislatures in Connecticut, Florida, Hawaii, Minnesota, and Oregon have passed laws requiring gender-specific prevention, treatment, and rehabilitation programs in these centers.⁵⁵
- Several states—including Mississippi, Illinois, Georgia, and North Dakota—have limited the time that youths can be held in detention centers, jails, or municipal lockups while they wait for a court appearance or disposition.⁵⁶

Planning for reentry after confinement.

Nearly 100,000 youths are released from juvenile facilities each year, often to unstable homes in communities rife with poverty, crime, unemployment, and failing schools.⁵⁷ Many have spent a good portion of their developmental years in confinement. If they haven't gained the social, academic, and work-related skills they need to keep up with their peers, their chances of success are slim, and their risk of recidivism high. Many never return to school, and of those who do, only 15 percent graduate.⁵⁸ Their lack of skills, credentials, and connections creates significant barriers to legal employment.⁵⁹

Better outcomes are possible. Research shows that young offenders who complete programs that focus on structured learning, school achievement, and job skills are less likely to reoffend. In Pennsylvania, the Pennsylvania Academic and Career/Technical Alliance (PACTT) is helping juvenile justice facilities prepare youths to reintegrate into their communities and succeed in further education and employment after their release. Participating facilities set high standards for education, ensure that students get academic credit toward a high school diploma for their work, provide job training that meets industry-based standards, offer subsidized job experience, and give youths the necessary "soft skills"—from appropriate dress to conflict resolution—to become reliable, productive employees.⁶⁰ PACTT is also working with schools and employers in the community to give these ex-offenders a better chance to succeed.

Juvenile justice systems are taking a variety of approaches to improve young offenders' chances of succeeding after their release from confinement. A few examples:

- In Maryland, the Department of Juvenile Services and the Baltimore City Public Schools have collaborated on a program to ensure that youths are placed in an academic program within five days of release from detention.⁶¹
- Because a juvenile record can be a serious barrier to education and employment, more than 15 states have created rules or procedures to allow juveniles to have their records sealed or permanently erased, at least in the case of less serious crimes.⁶²
- Connecticut now requires schools to readmit students after release, even if their offense was one for which they could have been expelled.⁶³
- Indiana and a number of other states no longer terminate but rather suspend a youth's Medicaid eligibility during confinement, making it easier for them to reenroll after they're released.⁶⁴
- Michigan is implementing a new model of individualized aftercare planning—a seamless plan of services and supervision—that begins as soon as a youth enters placement and continues beyond release until he or she is stabilized in the community.⁶⁵

Treating Kids as Kids, Not as Adults

In 1999, 12-year-old Lionel Tate killed a 6-year-old friend while imitating wrestling moves he had seen on TV. He was offered a plea bargain, but his mother, certain that a jury would acquit him, persuaded Lionel to turn it down. The boy was charged with first-degree murder, tried in a Florida criminal court, convicted by the jury, and sentenced to life in prison without parole. He was the youngest person in modern U.S. history to receive such a sentence.⁶⁶

Lionel's case was part and parcel of the punitive trend of the late twentieth century. Although the exact number is unknown (many states don't report transfers of youths from juvenile to criminal court), estimates are that at least 175,000 youths a year are prosecuted in the adult criminal justice system.^{67*} There, with few exceptions, they are subject to the same laws, regulations, court processes, and punishments as adults. They can be placed in adult jails before and after their trial, sentenced to lengthy terms in adult prisons, or placed on adult probation with no youth-oriented rehabilitative services.

Currently some 10,000 youths are held in adult prisons and jails.⁶⁸ The number of staff in these prisons, their training and guidelines, as well as any educational and rehabilitation programs and mental health treatments that exist, are all designed for adult inmates.⁶⁹

But it's much worse than a lack of appropriate services. Although youths in adult facilities are generally kept apart from adults, they still are in extreme danger. Younger adolescents, in particular, are at high risk of physical and sexual victimization by other inmates and staff.⁷⁰ Studies show that youths in adult jails and prisons are five times more likely to report being a victim of rape, twice as likely to report being beaten by staff, and 50 percent more likely to be attacked with a weapon.⁷¹ Isolating the most vulnerable kids is no solution; the effects of isolation on a youth's mental health can be devastating, and young people in adult facilities are already eight times more likely to commit suicide than those in juvenile facilities.⁷²

Other consequences also reach beyond the youth's sentence. Even more than juvenile facilities, adult prisons are schools for crime. Some 80 percent of juveniles released from adult facilities will reoffend,⁷³ and they are likely to reoffend more quickly and with more serious crimes.⁷⁴ And criminal convictions carry other lifelong consequences, even for those who don't reoffend. Depending on the state and the offense, ex-offenders may be subject to:

- Barriers to employment because of their open criminal records.
- A ban on federal financial aid.
- A ban on food stamps and other aid for some drug felonies.
- A ban from some public housing.
- Driver's license revocation.
- Restrictions on the right to vote.

It's important to note, too, that minority youth are disproportionately affected by automatic transfer laws and are overrepresented in admissions to adult prisons.⁷⁵ This is discussed in detail in the section "Ensuring Equal Treatment and Due Process."

* This is at least 9 to 10 percent of the 1.9 million youths under the age of 18 arrested in 2009, according to the U.S. Office of Juvenile Justice and Delinquency Protection.

When juveniles commit what appear to be adult crimes—especially violent crimes—it can be difficult not to react to them as we would to an adult, and to want to punish them in the same way. But in fact, children and young adolescents, in particular, *are* different from adults, in their limitations, their vulnerabilities, and their capacities—including the capacity to change. In the twenty-first century, the law is beginning again to take those differences into account.

HOW WE GOT HERE

Who is a child? As the legal and social scholar Elizabeth S. Scott has pointed out, in law and policy, the line between childhood and adulthood has never been consistent.⁷⁶ Boundaries are drawn differently in different spheres of life—think about driving, voting, making decisions about marriage or sex-related medical care. And they’re imposed for reasons that may be practical, symbolic, or reflective of the changing attitudes and interests of society.

But underlying these variations is the constant belief that we should treat children differently from adults. That was the view of the reformers of the Progressive Era, who believed that children are fundamentally different from adults, and that the law ought to reflect these differences. The founders of the juvenile court also recognized that children are vulnerable, dependent, immature, and—perhaps most important—malleable, capable of change. Thus they built the court on a framework of paternalistic care and rehabilitation.⁷⁷

The loss of childhood. Beginning with the rising crime rate in the 1970s, and gaining momentum during the punitive wave of the 1990s, a skeptical public turned its back on the idea of rehabilitation. It was not without reason; most rehabilitation programs were not evidence-based, and their success rates were inconsistent at best.

At the same time, a frightened public, and along with them the courts, came to view delinquent youths not as still-developing adolescents but as unrepentant, irredeemable criminals who should be subject to the same treatment as adults. Tighter reins were drawn around the juvenile

courts: 46 states passed laws that lowered the age and broadened the circumstances under which young defendants—some as young as ten years old—could be tried in criminal courts.⁷⁸ Children, even those who were tried in the juvenile system, were punished as harshly as adults, were often incarcerated in the same facilities as adults, and were routinely denied opportunities for rehabilitation.

Science confirms: children are different.

Then came groundbreaking work by the MacArthur Foundation’s Research Network on Adolescent Development and Juvenile Justice. The studies conducted by this interdisciplinary group gave scientific credibility to several important arguments:

- **Adolescents are less blameworthy than adults.** While an adolescent may be able to carry out a rational discussion in the classroom, other cognitive skills develop more slowly. When it comes to decision-making, their immaturity makes teens more reckless and impulsive, less able to think about future consequences and recognize risks, more subject to peer pressure. These factors mitigate but don’t erase an adolescent’s criminal culpability; they make him less blameworthy, but still accountable.⁷⁹
- **Adolescents are less competent than adults to stand trial.** It’s not just their lack of experience, their unfamiliarity with the system and with legal roles, that makes adolescents less competent; it’s the way they think and use information to make decisions. They’re more likely to defer to authority figures like police and prosecutors, less likely to recognize the risks inherent in their choices or to consider the long-term consequences of their legal decisions.⁸⁰

“I would there were no age between ten and three-and-twenty, or that youth would sleep out the rest; for there is nothing in the between but getting wenches with child, wronging the ancients, stealing, fighting.” —William Shakespeare, *The Winter’s Tale*, Act 3, Scene 3

Supreme Court Recognizes Adolescents Are Different

2005: *Roper v. Simmons* bans death sentences for crimes committed before the defendant was 18.

2010: *Graham v. Florida* abolishes life without parole for youths convicted of non-homicide crimes.

2011: *J.D.B. v. State of North Carolina* recognizes that a juvenile's age is relevant in determining whether Miranda warnings must be given during police interrogation.

2012: *Jackson v. Hobbs* and *Miller v. Alabama* ban mandatory sentences of life without parole for juveniles, regardless of the crime.

- **Adolescents can be rehabilitated.**

Adolescents' character and personality traits are transitory and changeable, as are their behaviors. In fact, most adolescents will grow out of delinquent or criminal behavior on their own; others will respond to various kinds of interventions, and can learn to make responsible choices. In other words, they have a tremendous capacity for change. The trick is matching each youth with the most appropriate, effective intervention to help him or her make that change.⁸¹

These developmental findings were later reinforced by research on the structure and function of the adolescent brain, which confirmed that the last regions of the brain to develop are those that govern rational, goal-oriented decision-making.⁸² But the earlier developmental research has been cited repeatedly by the Supreme Court in a series of pivotal decisions, setting the stage for broad reforms based on the differences between youths and adults.

“The belief that adults bear a special responsibility to provide youth with adequate opportunities to reach their potential, no matter what they have done...is reflected in the law of juvenile justice.” —Terry A. Maroney, Professor of Law, Vanderbilt University⁸³

THE FOURTH WAVE

Applying science to sentencing.

In 2005, the U.S. Supreme Court ruled that it is unconstitutional—cruel and unusual punishment—to impose the death penalty on an offender whose crime was committed before he or she turned 18. Over the next few years, the Court also put tight limits on the sentence of life without parole for juveniles. All these rulings were based on scientific evidence that children are different, and on legal arguments that they deserve a chance at rehabilitation. As Justice Kennedy put it in *Graham v. Florida*, “juveniles are more capable of change than adults, and their actions are less likely to be evidence of ‘irretrievable depraved character’ than are the actions of adults.”

The Supreme Court decisions have opened up a broad discussion of how adolescents differ from adults, and caused states to take a new look at what those differences mean for the legal process and for the sanctions imposed on young offenders.

“From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.”—from the Supreme Court decision in *Roper v. Simmons*

Recognizing that children are less competent than adults.

If the juvenile courts were solely concerned with ensuring the best interests of young people—as was the ideal of the early reformers—it wouldn't matter whether young offenders were able to understand the trial process, assist in their defense, and make decisions about important matters like plea agreements. But reality is far from that ideal. And the more the law treats juveniles like adults, the more important it is to consider their competency.

A major study of juvenile competency in the court process found that a significant portion of adolescents age 15 and under are as poorly prepared to participate in their trials as adults with mental illness or cognitive disabilities. In addition to the cognitive immaturity discussed earlier, they are less knowledgeable about the

legal system, misunderstand basic concepts like “rights,” and are less likely to trust and communicate effectively with their lawyers. As a consequence, they are more likely to make decisions that are not in their best interest. For example, they may jump at the chance for a plea agreement, or confess to police, regardless of their guilt, if they think it means they can go home sooner.⁸⁴

As lawmakers come to understand the science, a growing number of states—at least ten at present count—are specifically addressing the issue of competency in their juvenile delinquency statutes. Several others address it through mental health evaluations or sanity hearings, or by setting standards for competency.⁸⁵ They are helped in these efforts by a guide developed as a part of the MacArthur Foundation’s Models for Change initiative.⁸⁶

Giving kids a chance to change. During the late twentieth century, many states passed mandatory sentencing laws, and nearly all states now have them in some form. Youths whose cases were handled in criminal court were swept up in the wave.

Partly as a result of these laws, by the summer of 2012 more than 2,000 juvenile offenders were serving life sentences—with no hope of parole—for crimes they had committed when they were teenagers, some as young as 13.^{87,88} Sixty percent of them were not enrolled in educational programs, either because there were no programs in their prisons or because prison rules didn’t allow people serving life sentences to participate.⁸⁹

Then, in June 2012, the U.S. Supreme Court offered a ray of hope. The Court ruled that it is unconstitutional to impose a life sentence on juveniles without individual consideration of the defendant and the crime. At the time of the Supreme Court decision, 29 states had set juvenile life without parole (JLWOP) as a mandatory minimum sentence for certain crimes.

In several more the sentence was possible, though not mandatory. But as lawmakers saw the emerging research on adolescent development, a number of states preceded the Supreme Court in prohibiting JLWOP. When Colorado passed bipartisan legislation ending the sentence in 2006, legislators explained that it was “in the interest of justice to recognize the rehabilitative potential of juveniles.” Three years later, Texas did likewise,⁹⁰ as did Nevada in 2011.⁹¹

They were giving kids a chance to change.

Keeping youths out of the adult criminal system. Juveniles can end up in the adult system in a variety of ways, depending on the state:

- **Age of jurisdiction.** Some states set the age of adulthood for prosecution lower than 18 years. These jurisdictional age laws account for the vast majority of youths prosecuted as adults.⁹²
- **Statutory or legislative exclusion.** This requires that certain types of offenses committed by youths of certain ages be tried in the criminal system. (Since prosecutors can decide what charges apply, this gives them a great deal of power.)
- **Judicial waiver and prosecutorial discretion.** These provisions allow individual judges or prosecutors to move youths who have committed certain crimes to adult court.
- **“Once an adult, always an adult.”** These laws usually require youths who have been convicted as an adult to be tried in criminal court for any later offenses.
- **Blended sentencing.** Some states allow juvenile courts to impose criminal sanctions under certain circumstances.

Now, some of the states that rushed to treat youths as adults are seeking to roll back those changes, recognizing that putting young people in the criminal system is harmful to them in the present, and harmful to their future chances of becoming successful adults. Colorado (along with

“Sometimes we overuse our institutions. California’s teen LWOP [life in prison without parole] is an overuse of incarceration. It denies the reality that young people often change for the better.”
—Newt Gingrich and Pat Nolan, in an editorial shortly before California passed SB 9 allowing sentencing review for teens serving life in prison⁹³

Think Kids Can't Change? Ask Edwin Desamour.

In 1989, Edwin Desamour was 16 and not without goals: Get that gold chain. Earn respect on the street. Impress the women. The path to achievement was modeled by all the men he looked up to: sell drugs, be a gangsta, have your friends' backs. When a friend said one night, "There's gonna be a fight; we're getting revenge," Edwin went along. A young man was killed.

Tried as an adult, Edwin was convicted of third-degree murder and sentenced to 7 to 20 years in prison. "It was a different world," he says. "You had to be vigilant every minute." In 8½ years behind bars, Edwin never got used to hearing the doors slam shut. He looked at older inmates who'd spent their lives revolving in and out of prison, and decided, "Not me."

After his release, Edwin began looking for mentors...everyone from the uncle who helped him get a driver's license to the man who gave him a job in crisis intervention. Through that job and others—with Women Organized Against Rape and the Latino Juvenile Justice Network—Edwin learned skills that he wanted to bring back to his North Philadelphia neighborhood.

In 2007 he co-founded MIMIC—Men in Motion in the Community—to provide positive male role models to kids at risk. The role models are men like Edwin, volunteers who once were at-risk kids themselves, who have been to prison and decided not to return. They're changing kids just as they themselves were changed.

"Kids can turn their lives around," Edwin says. "They can achieve. We want to help them do it without prison."

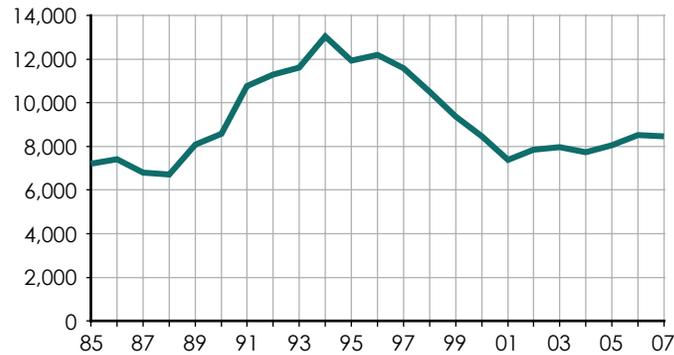
Illinois) has already made substantial changes. Following a summer of violence in Denver in 1993, then-Governor Roy Romer had pushed through an "iron fist" plan that included giving prosecutors authority to transfer juveniles directly into adult court. It was supposed to be used only for crimes like murder, rape, or assault with a deadly weapon. But the use expanded, and between 1999 and 2010, 1,800 youth cases were moved directly to adult court, 85 percent of them for low- to mid-level felonies.⁹⁴

In 2012, Colorado Gov. John Hickenlooper signed a bipartisan bill rolling back unlimited prosecutorial discretion. The bill bars prosecutors from moving juveniles to adult courts for all but the most serious crimes—and even then allows a district judge to review that decision; it completely removes the criminal court option for offenders under age 16.⁹⁵ While the reform was opposed by prosecutors and the state's attorney general, it was supported by a broad political coalition, including both liberals and Tea Party conservatives who were concerned with the rising costs of incarceration and the lack of judicial oversight.⁹⁶

A number of other states have made it more difficult to process youths in the adult system, introduced more flexibility, or strengthened safeguards. Some examples:

- Illinois has eliminated automatic transfer of youths for drug offenses.⁹⁷
- Arizona has moved discretion from prosecutors to district court judges, who presumably are better suited to determine what is in the best interests of the youth.⁹⁸
- Utah and Washington established pathways for criminal court judges to transfer young offenders back to juvenile court.⁹⁹
- Several states—from Maine to Virginia to Hawaii—now allow at least some juveniles convicted as adults to serve time in juvenile facilities.¹⁰⁰ Other states, including Virginia and Pennsylvania, are allowing youths charged as adults to be held in juvenile detention facilities before their trial.¹⁰¹
- Virginia has changed its "once an adult, always an adult" law to require a previous conviction as an adult.¹⁰²

Cases Judicially Waived to Criminal Court



The number of cases judicially waived to criminal court peaked in 1994 and then fell back to the levels of the mid-1980s. ("Fact Sheet: Delinquency Cases Waived to Criminal Court, 2007," Office of Juvenile Justice and Delinquency Prevention, February 2010.)

Another trend that is keeping young offenders out of the adult system is raising the age of jurisdiction for the juvenile court. For much of the twentieth century, offenders under the age of 18 were automatically considered juveniles. But during the punitive decades, many states lowered the age of juvenile court jurisdiction—some to as young as 15. Several of those states are again raising the

upper age of jurisdiction. Connecticut, for example, which once had more inmates under 18 in the adult system than any other state, has raised the age of jurisdiction from 16 to 18 across the board.¹⁰³ Other states are raising the age in a more limited way: for example, Illinois has raised it for youths charged with misdemeanors; Missouri for status offenders; and Mississippi for certain felonies.¹⁰⁴

Diverting Youths from the System

What happens to the more than 2 million youths who are arrested each year? 1.7 million are referred to juvenile courts; about 400,000 will spend time in juvenile detention centers; and around 70,000 can be found in juvenile jails, prisons, boot camps, and other residential facilities on any given night.¹⁰⁵

The deeper children go into the juvenile justice system, the worse their chances for success—in school, in employment, in avoiding future arrests. It’s a spiral that begins at first contact, when police are called in and a young person is labeled as “delinquent,” even for something as common as a pushing match in a school hallway.* From that point on, the school, police, prosecutors, judges—society—will view him with increasing suspicion, increasing the odds that he’ll spiral deeper into the system.

Consider adolescents picked up for a minor, first offense and sentenced to probation. If they violate the rules of their probation—say, miss a meeting with their probation officer, or get caught staying out past curfew—their offense becomes more serious and they are liable to end up in a detention facility or youth prison. In fact, more than a quarter of youths in secure facilities are there for technical violations or status offenses.¹⁰⁶ And as noted previously, confinement increases a youth’s chance of reoffending.

How many of these youths should even have that first contact with the juvenile justice system? Research tells us that most young people will be involved in some kind of delinquent behavior during adolescence. For example, one study shows that 43 percent engaged in (at least) petty theft, 37 percent have vandalized, and 27 percent have committed assault with the intent to cause serious harm.¹⁰⁷ The vast majority—even those whose behavior is serious enough for arrest—will grow out of these behaviors on their own, “much like a toddler outgrows temper tantrums.”¹⁰⁸

Fortunately, one of the things that distinguishes the juvenile from the adult justice system is the possibility of diversion at each stage of processing: referral, intake, transfer, adjudication, disposition, and release. At each of these points, someone makes the decision either to proceed down the pipeline, taking the youth deeper into the system, or to find an alternative.

Many jurisdictions today are finding effective ways to divert young people from the system or, better still, prevent them from becoming involved with it in the first place.

“What we know is if we can successfully apply community treatment, we have much better outcomes than when we lock people up and throw away the key.”

—Ohio Gov. John Kasich, June 29, 2011, on signing a bill to invest funds
from facility closures in local services¹⁰⁹

* For many youths, school discipline, even for a minor offense, becomes a gateway into the justice system. See page 30.

HOW WE GOT HERE

Support for families. From at least the mid-nineteenth century, poor families had from time to time turned to asylums, orphanages, and similar institutions to care for their children when they could not. It was a widely accepted practice at the time, but it was deplored by the child savers of the Progressive Era, who felt the institutions were too regimented and didn't prepare children for real life. The reformers looked instead to a new, home-based model for preserving families.¹¹⁰

When the juvenile court was established, it adopted both models. Motherless children were usually placed in institutions such as training and industrial schools, while those without fathers were placed in the home-based system. And since it was impossible for poor mothers to make enough money to provide for their children, Illinois in 1911 passed the first statewide legislation providing “mothers’ pensions.” Under both systems, however, control over the child’s welfare was taken from the parents and given to the court. In fact, over time, many states put mothers’ pensions under the management of the juvenile court. At least to some, this seemed to be a way to strengthen families and help prevent delinquency.¹¹¹

The role of probation officers. Supporting families was one way of keeping youths out of institutions. Another was the use of probation—supervision of the child in a community setting—which quickly became the dominant court outcome.¹¹² Probation officers did more than supervise children. They went into homes to investigate conditions; talked with families, neighbors, teachers, and employers; represented the child during hearings, and made recommendations to the judge. Under pressure from reformers, their work became funded, their positions were professionalized through training requirements, and their numbers were expanded.¹¹³

But there were at least two objections to this approach: it was too much and too little. Some people felt the probation officers were too intrusive. Public officials, said one lawyer, were “peeping into the home and attempting to establish a standard of living—a standard of conduct and morals—and then measure all people by that standard.”¹¹⁴ Others felt that, given high recidivism rates,

probation simply wasn't working well enough—not surprising, given that there were no evidence-based interventions available at the time.

Seeking a scientific understanding of delinquency. The problem of recidivism led directly to the opening of the Juvenile Psychopathic Institute in 1909. Housed at the Cook County juvenile detention home, it was the first institution dedicated to studying the causes of juvenile delinquency.¹¹⁵ (At the time, psychopathy had a much broader definition than it has today.) Its first medical director, William Healy, worked with other specialists to devise tests they could use not only to study young delinquents, but to diagnose them so they could get the help they needed. His aim was to use an individualized therapeutic rather than a punitive approach.

Under its next leader, Herman Adler, the Institute was renamed the Institute for Juvenile Research. A branch laboratory was charged with giving all children entering the detention home a short psychological exam—what we would now call a screening test—to separate the “mental defectives” from the “obviously normal children.”¹¹⁶ The first group was given more thorough psychiatric exams.

The ideas of Healy, Adler, and their colleagues were incorporated into a report, *Juvenile-Court Standards*, by a committee of the Children’s Bureau. Among the principles put forth in the report were: “that the court should have a scientific understanding of each child [and] that treatment should be adapted to individual needs.”¹¹⁷

The principles were there, but it would be many decades before they would bear fruit. Only in the late twentieth century would an understanding of risk factors, evidence-based practice, cost-benefit analysis, and the like allow policymakers to focus on prevention, early intervention, and other approaches to keeping young people out of the juvenile justice system.

THE FOURTH WAVE

Prevention and early intervention. The preferred way to divert young people from the system is to prevent delinquency in the first place—or at least prevent youths from

reoffending. Many interventions have attempted to do this, most of them with more public fanfare than actual success—think of DARE, boot camps, and Scared Straight. Only recently have we had the tools to design and scientifically evaluate evidence-based risk-assessment and delinquency-prevention programs.

We also know more now about who ends up in the juvenile justice system. For example, we know that abuse and neglect (among many other factors) put children at risk for delinquency. But studies have found that children who are placed in settings such as foster care because of *behavioral* problems are at even greater risk than those placed because of abuse or neglect.¹¹⁸

A history of child abuse and neglect increases the likelihood of juvenile arrest by 59 percent.¹¹⁹

With this knowledge, states are increasingly looking to coordinate their child welfare, juvenile justice, and school systems, to help identify at-risk children and families and to evaluate and address their needs. For example:

- In 1999, Wayne County, Michigan, brought together experts in juvenile justice, behavioral health, education, and community service to form the Juvenile Assessment Center. JAC, under the Department of Children and Family Services, became the point of entry for all court-referred youth and families in the county. It coordinates assessments and evaluations, as well as diversion programs that allow many youths to be served in home-based programs.¹²⁰
- In King County, Washington, leaders from the juvenile court, child welfare, and other local agencies have formed a partnership, Uniting for Youth, which is working to improve case assessment and management for children involved with multiple systems.¹²¹

Other states have adopted a variety of approaches to keeping at-risk youths and minor offenders out of the system.¹²²

- Indiana allows the juvenile court to establish a voluntary preventive program and appoint an early intervention advocate to children at risk for delinquency.

- Washington has a program that rewards high schools that have successful dropout prevention and intervention programs.
- Colorado has authorized municipalities to develop diversion programs for young people (and others) charged with prostitution and related offenses.
- Nebraska has passed legislation providing for early intervention with at-risk children and families through programs that support parental involvement, school attendance, and alternatives to detention.¹²³
- Outagamie County, Wisconsin, created Clean Break Juvenile Mentoring, a five-month program—with components ranging from cognitive therapy to community service—designed to keep first-time offenders out of the juvenile justice system.¹²⁴

Alternatives to detention and youth prison.

We described in an earlier section the harm that can be done to youths who are confined in detention and corrections facilities. Increasingly, policymakers have come to understand that formal processing and custody can disrupt the bonds that connect youths to their families and communities and nurture healthy development. For that reason—and because of the high cost of confinement—many states are looking to alternatives. As one research analyst has noted, “incarceration is the result of policy choices. . . . When suitable alternatives exist, juvenile courts are likely to use them.”¹²⁵

With support from funders like the Annie E. Casey Foundation, through its Juvenile Detention Alternatives Initiative (JDAI), many promising alternatives are being developed and replicated, with great success. For example, as of 2010, 85 JDAI sites had collectively reduced the average daily population of youth in detention by 42 percent, while reducing delinquency more than 29 percent.¹²⁶

A number of state legislatures have also passed their own initiatives. Illinois, for instance, passed legislation called “Redeploy Illinois” to reduce youth commitments and invest the money saved in community-based alternatives. In doing so, they also aimed to protect community safety, ensure offender accountability, treat youths in

the least restrictive environment, and give young offenders the skills for responsible development. The program began with pilot projects in four counties. As of 2011, despite inconsistent funding, it had served 27 of the state's 102 counties and diverted nearly 800 youths from placement in juvenile facilities.¹²⁷

Similar laws are in place in Ohio and Pennsylvania—and now Texas as well. There, building on the bipartisan work described at the beginning of this paper, lawmakers in 2011 again overcame their political differences: they passed a bill closing three youth prisons and shifting that money to expand community-based rehabilitation programs. As State Sen. John Whitmire said, "It got so much support because it makes so damn much sense. . . . We let the money follow the kids. It worked better than anyone's imagination."¹²⁸

There are many other examples of alternative programs, at various stages of contact with the system:

- **Civil citation programs:** In a number of Florida counties, police who stop youths for minor offenses can offer them the option of community service and counseling instead of being charged with a crime.¹²⁹
- **Post-arrest alternatives:** In Portland, Oregon, the Casey Foundation supported a collaborative Juvenile Reception Center to provide social services for youths picked up by police for nonviolent offenses.¹³⁰
- **Intensive supervision.** Mississippi recently authorized a multi-disciplinary, home-based, intensive supervision program as an alternative to incarceration.¹³¹
- **Grant programs.** Alabama is funding community-based alternatives through grant programs.¹³²

Family involvement. Keeping youths—especially at-risk youths—at home, in their communities, means working with families. At least, it should. For many years, juvenile justice systems ignored families, or held them accountable for their children's problems. Families have often felt alienated, confused by complex language and procedures, looked down

on rather than looked to as partners in their children's rehabilitation.

Yet the programs that have been proven to be most effective in responding to delinquency are rooted in family involvement. They include:

- **Multisystemic Therapy (MST),** which addresses the child's problems in many contexts, including family, peers, school, and neighborhood. Parents receive 50 hours of training and counseling over several months, so that the family itself can work to help solve the child's problems.¹³³
- **Functional Family Therapy (FFT),** which is similarly intensive and short-term.
- **Multidimensional Treatment Foster Care,** which temporarily places the youth with a specially trained foster family while providing counseling to the parents.

All of these models have been shown, in repeated studies over 20 years, to dramatically lower recidivism and incarceration, and to return several dollars in benefits for every dollar spent.¹³⁴ These models now serve more than 400,000 youths a year.¹³⁵

Florida is one state that has successfully used evidence-based programs like MST and FFT. The state had long had one of the highest numbers of incarcerated youths, most of them committed for misdemeanors or status offenses like curfew violation. In 2004 it launched the Redirection program to divert kids like these, later expanding the program to accept all nonviolent juvenile offenders. Redirection has dramatically reduced the number of incarcerated youths, saved the state more than \$50 million over six years, and, most important, reduced the risk that youths completing the program will be rearrested.¹³⁶

In some areas, juvenile justice systems are bringing families into the process to improve case planning and interventions. For example, in Santa Cruz County, California, families in the most serious cases are invited to identify their and their children's strengths and to help develop plans for the youth. They have found that these plans are more comprehensive and more likely to be followed, and the result has been a 71 percent

decrease in state commitments and residential placements.¹³⁷

Pennsylvania is also working on the issue. There a multidisciplinary group of family advocates and juvenile justice practitioners has developed a guide to help families understand the system and a training curriculum to give juvenile probation officers the understanding and skills they need to successfully engage families. They are now working on juvenile court standards for family engagement.¹³⁸

Changing school discipline practices.

During the 1990s and into the following decade, many schools in the U.S. adopted “zero tolerance” policies,* criminalizing ordinary adolescent behavior and flooding the public schools with uniformed, armed “resource officers.” Countless youngsters were arrested and brought before the juvenile courts in what came to be called “the school-to-prison pipeline.”

In Clayton County, Georgia, delinquency cases originating in schools grew from fewer than 100 in 1995 to near 1,100 in 2003. Juvenile court judge Steven Teske told state legislators that one-third of the county’s juvenile court referrals were from schools, and over 90 percent of those were minor disciplinary matters. In response, school and court officials established the School Referral Reduction Program. With new options ranging from formal warnings to conflict skills classes and restorative justice approaches (discussed on pages 40-41), the county saw a significant decrease in court referrals, fewer serious incidents, and better student outcomes.¹³⁹

Elsewhere, states are taking a variety of approaches to reforming school discipline:¹⁴⁰

- A number of state legislatures, including those in Delaware and Florida, have repealed or revised their zero tolerance laws. Others are making it more difficult to suspend or expel a student.
- In Kentucky, students have successfully challenged illegal discipline practices and failure to provide services to enable students to succeed in school.

- Louisiana now requires schools to use all available resources before filing a complaint with the court system.¹⁴¹ Schools must develop plans to train school personnel in guidance and discipline, restorative practices, adolescent development, and related areas. Other states have created trainings specific to school resource officers.
- As of early 2012, Colorado was considering a bill that would give schools more discretion over safety and referral policies and enhance training for school resource officers.¹⁴²

Kids with mental and behavioral health problems.

If the nation’s school systems have been delegating their responsibility to the juvenile justice system, their actions pale in comparison to what’s happened to children with mental and behavioral health problems. The twentieth century saw the collapse of public mental health services and the closing of residential facilities in state after state. Juvenile detention centers and correctional facilities quickly filled the vacuum. It wasn’t only that kids with emotional and substance abuse problems were offending more, getting caught, and being hauled into court. It was also the desperation of caring parents, who sometimes gave up custody of their children, or had them arrested, simply to get them some kind of help.

As a result, about 70 percent of youths in the juvenile justice system today have a diagnosable mental health or substance use disorder¹⁴³—two to three times the rate found in the community at large—though many go undiagnosed and untreated.¹⁴⁴ About one in four has an illness so severe he or she can’t function effectively in the world.¹⁴⁵ Of course, the juvenile justice system is not the best place to help these youths, and many get worse, not better, in confinement.

Up to 70 percent of youths in the juvenile justice system have a mental health disorder.

“Correctional facilities are not a good setting for the rehabilitation of adolescents with mental illness.” –Thomas Grisso, *Double Jeopardy: Adolescent Offenders with Mental Disorders*

* Zero tolerance policies impose strict, defined punishment for breaking a rule, regardless of extenuating circumstances.

How can we steer young people with mental and behavioral problems to the treatments and services that are most appropriate to them? Clearly this is an area where professionals in juvenile justice, child welfare, mental health, substance abuse, and education need to work together. Many states are now tackling this important issue, often with help from foundation programs like the Robert Wood Johnson Foundation’s Reclaiming Futures Initiative and the MacArthur Foundation’s Mental Health/ Juvenile Justice Action Network.

For example, Pennsylvania is currently working to develop a model system to identify, divert, and treat justice-involved youths with mental health needs. Efforts include research, policy work, training, screening and assessment, and collaborative work across child-serving systems.¹⁴⁶ One of the most important innovations in Pennsylvania is a huge expansion of routine mental health screening of youths in detention to identify those who need immediate attention. Legislation requiring similar screenings has been passed in Minnesota, Nevada, and New Jersey.¹⁴⁷

In some states, more thorough mental health assessments are required for certain offenders:

- In North Dakota and Oregon, youths who commit alcohol-related offenses must undergo assessment, treatment, and alcohol and drug education.¹⁴⁸
- In Tennessee, juveniles who commit offenses equivalent to felonies must undergo psychiatric evaluations.¹⁴⁹

Some juvenile court systems have developed specialized mental health branches. As early as 1999, Cook County, Illinois, established a Juvenile Court Clinic to provide judges with high-quality, objective assessments of youths, direct families to appropriate services, and provide education, training, and guidance to judges, lawyers, hearing and probation officers, and caseworkers.¹⁵⁰ Other jurisdictions have created courts specifically to handle youths with mental illness. The first juvenile mental health court was established in 2001 in Santa Clara County, California. Today, there are more than a dozen operating in California, Florida, Ohio, Washington, and other states.¹⁵¹

Finding a Better Path for Youths with Mental Health Problems

“Will” wasn’t a violent boy—he was a boy fascinated with violence. He carried bullets but no gun. He brought a knife to school and turned himself in for carrying it. He was easily frustrated, though, and one day he pulled a knife on his mother and a social service worker in his home.

Charged with felonious assault, Will told detailed stories of his drug use. Because of this, he was diverted from detention and referred to Cuyahoga County’s Behavioral Health and Juvenile Justice program (BHJJ), which placed him in a residential treatment program.

It was there that Will’s placement coordinator, Amy Good, realized something wasn’t adding up. “The reports pegged him as a severe marijuana user,” she recalls, “but tests showed no trace of drugs in his urine.” Good had noted the boy’s lack of empathy, his repetitive thoughts and angry outbursts. Something clicked. She asked that Will be evaluated for Asperger’s syndrome.

“When he received the diagnosis, fortunately, he was in a center that had a special program for kids with Asperger’s,” Good says. “They worked hard with him, and with his family and school.” After several months, Will was discharged into a therapeutic foster home, visiting his parents on weekends. His team learned to see him not as a defiant teen, but as someone with a disability, and his school found ways to teach him more effectively.

“If not for BHJJ, Will would probably have been in and out of juvenile facilities for years,” Good says. “He would have deteriorated quickly there. Instead, he got the services he needed, and a better chance at life.”

A growing number of states offer specialized diversion programs for youths with mental health problems who come in contact with the juvenile justice system:

- In Washington, any youth who comes before the juvenile court may be eligible for the Mental Health Dispositional Alternative, which provides for a suspended sentence and intensive mental health treatment.¹⁵² The state has also authorized counties to charge a 0.1 percent sales tax to establish therapeutic courts.¹⁵³
- The Integrated Co-Occurring Treatment Model in Akron, Ohio, offers a diversion program that includes a comprehensive assessment, individual and family therapy, and reintegration into the community.¹⁵⁴
- Colorado has a family advocacy program that works with the juvenile justice and mental health systems and the community to provide services to young people with mental illnesses.¹⁵⁵

Ensuring Equal Treatment and Due Process

Integral to the concept of justice is the idea of *fairness*. A juvenile justice system should treat individuals equitably, without bias or prejudice. It should hand out dispositions proportionate to the child and the offense. It should ensure that youths receive the protections the Constitution affords to all citizens.

But reality is far from the ideal. For many decades, juvenile courts denied youth legal rights that criminal defendants take for granted, such as the right to counsel and protection against self-incrimination. In most states juveniles still don't have the right to a jury trial.

Perhaps the most glaring examples of unfairness are found in how the system treats minorities. Just look at the statistics:

- African-American children represent 17 percent of the youth population, 30 percent of those arrested, and 62 percent of those prosecuted in the adult system.¹⁵⁶
- Latino children are 43 percent more likely than whites to be waived to the adult system and 40 percent more likely to be sent to adult prisons.¹⁵⁷
- Native-American youths are 1.5 times more likely than whites to be waived to the adult system and 1.84 times more likely to be sent to adult prison.¹⁵⁸

The disparities begin with arrests—many originating in predominantly African-American schools¹⁵⁹—and multiply as youths move deeper into the system. At each step—arrest, detention, confinement—minorities are treated more harshly, and so the proportion of minorities increases at the next step.¹⁶⁰ A Latino youth with a drug offense, for example, is not only more likely to be incarcerated, but will be incarcerated, on average, twice as long as a white youth with a similar conviction.¹⁶¹ Studies also suggest that the child welfare system, where African-American children are also strongly overrepresented, is a significant pathway to the juvenile justice system, and contributes to the disparities found there.¹⁶²

The disparities aren't solely racial and ethnic. Life disadvantage often means justice disadvantage, and kids at the deep end of the justice system, according to the Annie E. Casey Foundation, “come disproportionately from impoverished single-parent homes located in disinvested neighborhoods and have high rates of learning disabilities, mental health, and substance abuse problems.”¹⁶³

Prejudice and social and economic disadvantage are deeply ingrained in American life. But so is the will to overcome them. That will plays a major role in the fourth wave of reform, where states are addressing not only racial and ethnic inequities but also procedural unfairness in the juvenile justice system.

“Stereotypes are culturally shared beliefs that everyone holds, whether they're aware of them or not.... The important thing is for the players in the juvenile justice system to be aware of their unconscious biases, and to attempt to overcome them.” —Sandra Graham, Presidential Chair in Education and Diversity, University of California, Los Angeles¹⁶⁴

HOW WE GOT HERE

Ethnic discrimination. Long before the creation of the first juvenile court, prejudice played a major role in child welfare. The nineteenth-century Houses of Refuge, you will recall (page 15), became a dumping ground for neglected and “incorrigible” children of the most recent—that is, the poorest and most disparaged—group of immigrants in major cities: at that time, the Irish. The solution offered by opponents of these institutions was to send urban delinquents to live with farm families, a new dumping ground, where there was little or no effort to ensure the youths were well treated. Parents objected to having their children sent so far away, and the Catholic Church saw the program as a guise to convert the children to Protestantism.¹⁶⁵

Racial discrimination. The early juvenile courts brought in their own forms of discrimination. From the beginning, children were assigned to probation officers of their own race. In Cook County, there was only one African-American probation officer; in New Orleans and elsewhere, either for lack of volunteers or lack of interest, the cases of African-American children weren’t always investigated.¹⁶⁶

In the early decades of the twentieth century, black migration from the rural South to urban centers in the North, combined with dramatic race riots, led many child welfare organizations to stop serving African-American children, leaving fewer options for the juvenile courts. As early as 1910, children of color began to be overrepresented in Cook County’s juvenile justice system, and for many African-American boys—including those who were not delinquent, merely dependent—the only option was incarceration in the state-run facility in St. Charles, far from the city’s “black belt.” There were even fewer options for African-American girls, and many were simply sent back to families that couldn’t care for them.¹⁶⁷

A 1922 report by the Chicago Commission on Race Relations, *The Negro in Chicago*, confirmed that whites in general believed “that Negroes are instinctively criminal in inclination.” While statistics appeared on the surface to support

this, the researchers found “that Negroes are more commonly arrested, subjected to police identification, and convicted than white offenders; that on similar evidence they are generally held and convicted on more charges, and that they are given longer sentences.”¹⁶⁸ Ninety years later, that remains true.

Lack of due process. From its earliest days, the juvenile court was criticized as being unfair to the very children it had set out to protect. Timothy Hurley, whose work was intertwined with that of Lucy Flower, came to condemn the court’s intrusions into the lives of poor families and accused it of endangering the rights of parents and children.¹⁶⁹

For decades, though, legal decisions upheld the right of the juvenile court to operate outside the procedural rules that apply to adult courts. Because it was operating in the role of parents, because it was informal and non-adversarial, and because its aims were to protect and rehabilitate the child, the juvenile court was permitted to cross boundaries that would be unthinkable in adult court. Children were adjudicated behind closed doors, without due process, without a guarantee of legal representation, without protection from self-incrimination.

But when, in the 1950s, juvenile sentences became more punitive and adult-like, without the legal protections given to adults, it was time for change. Some critics decried due process as “antithetical to the spirit and goals of the [juvenile] court.”¹⁷⁰ But the Supreme Court disagreed. In 1966 the justices ruled in *Kent v. the United States* that waiver hearings in which a youth could be transferred to adult court must provide the “essentials of due process and fair treatment.”¹⁷¹ In 1967, in the case *in re Gault*, the Supreme Court put additional requirements on the juvenile courts, including written notice of the charges, a fair and impartial hearing, the right to counsel (including free counsel if needed), protection against self-incrimination, and the right to cross-examine witnesses.

Those protections were just a beginning. The right to counsel, for example, did not apply to status offenses. Nor did juveniles have the right to

a jury trial. And some protections ran up against well-intentioned—even essential—reforms, such as mental health assessments, which put children at risk of self-incrimination. Like other fairness issues, due process is being examined with new eyes in the twenty-first century.

“Gault and its progeny transformed the Progressives’ conception of the juvenile court as a social welfare agency into a second-class criminal court for juveniles.”¹⁷² —Barry C. Feld,
Centennial Professor of Law,
University of Minnesota Law School

THE FOURTH WAVE

Racial and ethnic fairness. The overrepresentation of minorities in the juvenile justice system—known in the field as “disproportionate minority contact,” or DMC—is a problem that goes too deep to be solved by legislation alone. The Juvenile Justice and Delinquency Prevention Act of 1974 required states to address the issue and provides funding to encourage reform. But the punitive wave of the 1990s only made matters worse.

Now, though, serious efforts to reduce disparities are under way in jurisdictions across the country. With support from the MacArthur Foundation’s DMC Action Network, the Casey Foundation’s Juvenile Detention Alternatives Initiative, and many other organizations, progress is being made. Jurisdictions are:

- **Collecting and analyzing data** to identify when and where minorities are being treated differently.
- **Using objective, proven screening and assessment instruments** to identify the risks and needs of individual youths.
- **Developing culturally sensitive services and treatment programs**, including early intervention programs for minority youths and their families.
- **Creating a system of graduated, alternative sanctions** to divert minority youths from unnecessary confinement.

A good example is Multnomah County, Oregon—which includes Portland—where, in

1994, minority youths represented 73 percent of youths in detention. The county began giving an objective, culturally sensitive risk assessment to every youth considered for detention, and sought to use culturally appropriate, community-based alternatives to confinement wherever possible. By 2003, minority youths represented just 50 percent of those in detention.¹⁷³

Halfway across the country, Rock County, Wisconsin, is leading that state’s charge to reduce DMC. The juvenile justice system there has completely overhauled its once-punitive approach, focusing instead on assessing and addressing each youth’s strengths and weaknesses. Probation officers—renamed “juvenile justice specialists”—now focus on the factors underlying an individual’s offending behavior and ensure that each youth receives the appropriate level of supervision and services. A new system of graduated responses requires approval from a sanctions committee before a case manager can put a youth in detention, and a broader range of community-based services is now available.¹⁷⁴ One result has been a 44 percent decrease between 2002 and 2006 in African-American youths sent to detention centers.¹⁷⁵

Many other jurisdictions are addressing DMC through a spectrum of changes. For example:

- Philadelphia has developed a training curriculum to change the way new police recruits and minority youths perceive and interact with one another.¹⁷⁶
- Berks County, Pennsylvania, translates court notices and forms into Spanish, and assigns Spanish interpreters to every juvenile courtroom.¹⁷⁷
- Jefferson Parish, Louisiana, is using behavioral-system training for teachers to the same end.¹⁷⁸ Kentucky, in response to lawsuits claiming disparate discipline practices, is taking a similar approach with additional steps, such as revising codes of conduct and tracking data on progress.¹⁷⁹
- Two counties in North Dakota are beginning pilot programs—including prevention, diversion, and post-adjudication efforts to prevent confinement—to address the overrepresentation of Native-American youths in the system.

Reducing DMC through New Options, Better Relationships

For years, the statistics in Miami-Dade County had been raising alarms. Black youths were being referred to the juvenile justice system at a rate 6.1 times that of white youths; for Hispanic youths, the rate was 2.3 times that of whites.¹⁸⁰

In 2009, Miami-Dade Schools Police Officer Nannette Badger became part of a group dedicated to changing that picture.

“We knew we had to change how we handled that first encounter, especially with minority youths,” Badger says. “The police academy doesn’t teach you a lot about juvenile contact, and most officers thought their only option was arrest. We didn’t know what programs were out there, how to identify what was best for a particular youth, or how to approach families in a positive manner.”

At the group’s urging, the Prevention Initiative, a county-wide program for at-risk youths, agreed to be a central resource to connect officers with a wide range of child and family services. More evidence-based programs were made available. Front-line police received training in how to assess mental health status and substance abuse, how to work with families, when to call the Mobile Crisis Unit, and more. A new Civil Citation Program allowed officers to refer many children to individualized services rather than the juvenile justice system.

The program is too new for a full assessment, but black and Hispanic referrals to the justice system are beginning to fall. Equally important is the evolution in relationships between police and the community.

“The new approach humanizes these children in the eyes of the officers,” explains Morris Copeland, director of the county’s Juvenile Services Department. “And it shows families that encounters with law enforcement can be positive and eye-opening.”

And some states are tackling the problem through legislation:

- Maryland requires cultural competency training for officers assigned to public schools.¹⁸¹
- Iowa requires minority impact statements for proposed legislation relating to crimes, sentencing, parole, and probation.¹⁸²
- Illinois legislators established a task force to create a standardized system to collect and analyze racial and ethnic information on arrested youths. Minnesota and other states are implementing or working on a similar approach.

Due process for juvenile defendants.

Young offenders charged with a crime for which they could be imprisoned now have the right to an attorney, including the right to have one appointed if they (or their families) can’t afford one themselves. But that doesn’t mean juveniles get the kind of representation they need, when they need it. Many kids waive their right and accept plea agreements without fully understanding the implications—recall the story of Lionel Tate (page 20). Others can’t meet the widely varying requirements for proving indigence.* Many youths are appointed a lawyer just minutes before their case is called. And the lawyers they get are often hampered by unmanageable caseloads, inadequate training and experience, and little or no administrative support or resources—such as investigators and expert witnesses—that could help the defense.¹⁸³

The Juvenile Indigent Defense Action Network, coordinated by the National Juvenile Defender Center and funded by the MacArthur Foundation, is working to improve the defense of indigent youths across multiple states. Massachusetts, for example, created a Juvenile Advocacy Department that provides leadership, training, support, and oversight to nearly 600 private attorneys who work with young people.¹⁸⁴

Other organizations and state legislatures are working to ensure access to quality counsel for kids in the system. In fact, between 2008 and 2010, at least ten states passed laws requiring

* An indigent youth is someone charged with a crime punishable by imprisonment who lacks the resources to hire an attorney without suffering undue hardship.

the appointment of lawyers at all critical stages of juvenile proceedings.¹⁸⁵ In addition:

- Illinois, Louisiana, and Maryland flatly bar juveniles from waiving their right to counsel¹⁸⁶—a position supported by the American Bar Association.¹⁸⁷
- Other states, including California, Colorado, and Indiana, require that a child meet with an attorney before waiving his or her right.¹⁸⁸
- Montana has established a statewide public defender system and requires that every youth charged with an offense be appointed an attorney.¹⁸⁹ Michigan also requires that every youth—not just those who can't afford an attorney—be appointed counsel.¹⁹⁰ In Louisiana and Pennsylvania, all children are presumed to be indigent for the purpose of appointing counsel.¹⁹¹ These policies not only help ensure fairness; they also save the time and money required by most states to determine indigence.
- In Tennessee, after a report by the Justice Department's Civil Rights Division confirmed systematic violations of due process and racial discrimination in Shelby County (Memphis), a settlement was reached in 2012 that ensures that every child brought before the court receives "independent, ethical, and zealous advocacy."¹⁹²

Other states—including Maine, Nevada, Louisiana, and Massachusetts—are using legislation, model programs, executive orders, or commissions to help **ensure not just access but high-quality counsel for youths**. These include measures such as setting and enforcing performance standards for attorneys, and providing training for attorneys in topics from adolescent development to juvenile law.¹⁹³

The right to counsel isn't the only due process protection that's being expanded. One of the most important is **allowing kids to participate in mental health and substance abuse screenings and assessments without fear that what they reveal could be used against them in court**. Pennsylvania passed such legislation in 2008, followed by Illinois and Texas.¹⁹⁴

Balancing Youth Development, Personal Accountability, and Public Safety

Justice is not a zero-sum game: supporting the developmental needs of delinquent youths doesn't come at the price of public safety. In fact, as we have seen, quite the opposite is true: when we seek only to punish young people who get into trouble, we increase the likelihood that they will continue along a pathway of juvenile delinquency and adult crime. In contrast, with appropriate interventions we can reduce offending and help kids develop into responsible adults.

Given the right resources, virtually all children are capable of positive development.¹⁹⁵ The great challenge of juvenile justice reform is to encourage approaches to juvenile crime that hold young people accountable for their behavior while enhancing their future prospects—returning dividends to them, their communities, and all of us.

This means, first of all, that we must treat every child as an individual with a unique combination of strengths as well as deficits. It's no simple matter to uncover the strengths and needs of each child. Children commit crimes for a wide range of reasons—from psychological problems and economic frustrations, to negative peer associations and adolescent thrill-seeking.¹⁹⁶ And healthy development involves multiple spheres of life: the individual, the family and home life, and the community, as well as school, employment, and social relationships.

New, evidence-based approaches to rehabilitation have to embrace this complexity, tailoring sanctions and interventions in response to each child. The juvenile justice system has to collaborate more closely than ever with other child-serving systems—social service agencies, community organizations, schools, recreational programs, healthcare providers, neighborhood volunteers, and local businesses—if we are going to help troubled kids develop the competencies they need to become responsible adults.¹⁹⁷

In the twenty-first century, this vision is starting to be realized.

“Responses are extremely variable from one individual to the next. If you don't match the kid with the right intervention...it's like sending someone with pneumonia to a dermatologist.”
—Laurence Steinberg, Professor of Psychology, Temple University¹⁹⁸

HOW WE GOT HERE

Enlisting the community. In moving beyond the idea of punishment for young offenders, the child savers of the Progressive Era sought to encourage children's healthy development by improving the social environment in which they grew up. Reformers fought for public education, support for families, improvements in public health, and a wide array of community services and organizations. Sometime the efforts were on

a grand scale, but just as often they were very local. For example, as early as the beginning of the twentieth century, Benjamin Lindsey, a judge in Denver's juvenile court, helped found the city's Juvenile Improvement Association, which provided disadvantaged children (today we would call them high-risk youths) with supervised recreational opportunities. Chicago picked up on the idea, founding its own Juvenile Protective Association in 1907.¹⁹⁹

Other agencies supported healthy youth development in other ways. The Chicago Area Project (CAP), launched in 1932, helped residents in high-crime areas establish their own delinquency prevention programs.²⁰⁰ CAP was unusual at the time in its emphasis on identifying and training leaders from within the community, rather than bringing in outside professionals.²⁰¹ That concept has seen a resurgence in recent years in groups such as the violence-prevention organization CeaseFire, which came to nationwide attention in the documentary *The Interrupters*.

Focus on the individual child. The early juvenile court was an instrument of broad social change, but one that addressed juvenile delinquency from a unique perspective. Focusing on the individual child rather than groups or large populations, the court sought to determine what differentiated one child from the next, and what solutions would work best for each child.

The individual focus was sometimes overshadowed when the juvenile courts were flooded with cases, as they were in the 1990s. But it was never completely forgotten. Researchers today are working to improve the tools for assessing children’s deficits, risks, and needs in order to better match individuals with appropriate interventions. And as discussed earlier, the naïve and unscientific rehabilitation efforts of the early juvenile justice system are starting to be replaced by interventions that can be proven to work. One emerging framework that informs these interventions is “positive youth development,” which builds on a child’s internal strengths and external supports to promote healthy development.

THE FOURTH WAVE

What works for *this kid*? The most effective interventions are targeted interventions. First, target the right kids. Research at Vanderbilt University and elsewhere shows that targeting interventions to high-risk youths—those most likely to reoffend—has the greatest payoff, and that smaller, local programs centered on skill-building and counseling are more effective than punitive programs with these youths.^{202, 203}

While assessing risk is far from a perfect science, there are now several assessment tools available that have been shown to be reliable and comprehensive.²⁰⁴

Second, target the intervention based on a child’s individual needs. Community-based interventions are far better at doing this than secure facilities, though at least one state, Arkansas, requires a detailed treatment plan for each child committed to a youth facility. And many of the interventions discussed throughout this document—including those aimed at youths with mental health and substance abuse issues, those that address education and job skills, and treatments like Multisystemic Therapy and Functional Family Therapy—address individual needs and help build children’s unique strengths.

The “Missouri Model,” which began when that state shut down its large, overcrowded “training schools” some three decades ago, also emphasizes treatments tailored to the individual offender. Today Missouri has more than 30 treatment-oriented community care facilities, group homes, moderate security and secure-care facilities—each housing between ten and 50 youths—throughout the state. In home-like settings kids receive therapy, educational services, job training, and training in communication and problem-solving skills.²⁰⁵ A single case manager is assigned to each youth from commitment through aftercare, and helps engage the family in the planning and rehabilitation process.²⁰⁶ As a result, Missouri has a recidivism rate far below that of other states.²⁰⁷

A program inspired in part by the Missouri Model is FOCUS, a residential program in Milwaukee County, Wisconsin. For three to six months, young offenders work daily with a consistent group of trained staff, developing relationships, learning to respect one another, and addressing the issues that brought them to juvenile court. The youths attend school and meet in group sessions to consider the consequences of their behavior and how to develop alternatives. The program also takes kids into the community to meet with business leaders, shop owners, professionals, and others who can serve as role models.²⁰⁸

Making Peace, Restoring Balance

A 14-year-old boy, a spring day, an open window. It was almost predictable. Egged on by friends, “Luis” broke in, took an iPod, and ran.

He might have thought twice had he known the house belonged to a police officer, and the iPod to his 7-year-old son.

Luis was caught and appeared in juvenile court. The judge offered him a choice: two years on probation or—if the victim was willing—participation in a peace circle, where victims and offenders can speak openly, in a safe environment, and reconcile accountability and forgiveness. The boy and his mother were grateful for the opportunity, and the officer consented.

In a community center Luis, his mother, and the officer sat with two facilitators. The officer arrived with insurance papers, photos, and a scowl. What angered him, he said, wasn’t the material damage but the fact that his son was now afraid to stay in his own home.

Visibly moved, Luis asked if he could apologize to the boy—and for the first time the officer saw him as a kid like his own. He asked the boy, “When you’re not burglarizing people, what do you do?”

“I play basketball,” Luis replied. “I’m really good.” But he didn’t have a hoop at home, and the neighborhood park wasn’t safe, so he could only play at school.

As it happened, the officer coached youth basketball. He told Luis to call him if he wanted to play, and gave his card to the mother. “I’m serious,” he told her. “I know how hard it is to raise a kid.”

It could have ended there, with Luis’s apology and a handshake. But the boy and the officer did play basketball together. And Luis has not offended since.

Balanced and restorative justice. Offending youths and their families are only one side of the equation. The other is the community—both the victim of the crime and others who are part of the same social fabric. True justice aims not only to hold the offender accountable but to repair the harm done to victims and society, and to restore the balance and trust among all sectors.

In the 1990s, Pennsylvania adopted a Juvenile Act incorporating a “balanced approach” to justice. It spelled out three overarching goals: community protection, accountability, and “competency development”—that is, rehabilitation aimed at helping the child grow into a productive member of the community.²⁰⁹ This approach, generally referred to as Balanced and Restorative Justice (BARJ) has become increasingly popular over the past decade, as communities see its effectiveness. BARJ approaches may include:²¹⁰

- Peer juries or mediated meetings among the offender, victims, and members of the community.
- Monetary payment to reimburse victims for their losses or damages.
- Community service performed by the youth to reimburse the community for the loss of quality of life.
- Programs to build youth skills and social competencies.

Peoria, Illinois, is a good example of the difference restorative justice can make. The district’s response to juvenile offending had been highly formal and centralized, relying heavily on detention and commitment. Several years ago, as the state struggled with the issue of disproportionate minority contact, analysts realized that a large number of minority arrests in Peoria were “aggravated battery” referrals from one public school, the predominantly African-American Manual High School. Fear of gangs and violence, combined with broken relationships among students and teachers, turned school fights into major incidents.

In 2006, Manual High School introduced a restorative justice technique called peacemaking circles, a process that allows all sides to air issues, explain their feelings, straighten out

misunderstandings, and resolve differences in an environment of safety and support. By 2010, hundreds of teachers had been trained in the practice, and Peacemaking Circles had spread to seven other schools. A follow-up study showed improved relationships among students and teachers, fewer students getting into trouble, and better school attendance and academic performance. Peoria schools are now beginning to institute peer jury programs and other BARJ techniques as well. And beyond the schools, the Peoria Police Department has launched “Community Peace Conferencing,” a program that diverts many nonviolent offenders to community volunteers trained in restorative justice techniques.²¹¹

Elsewhere:

- Jefferson County, Wisconsin, offers a teen court in which young offenders can be sentenced by a jury of their peers to participate in community service, offer an apology, and other restorative justice activities.²¹²
- Deschutes County, Oregon, has won praise for helping youths develop skills in community service programs that also provide restitution to the community. Along with its BARJ programs, the county introduced a “report card” that shows the community the results of these efforts, including restitution dollars and community service hours, victim satisfaction surveys, recidivism rates, and more.
- Common Justice, a demonstration project of the Vera Institute of Justice, arranges voluntary conversations among victims and offenders, their families, friends, and neighbors as an alternative to the court system and a means to promote accountability and healing.²¹³

Coordinating agencies. Supporting young people’s healthy development isn’t something that can be done by the justice system alone. It requires collaboration among a wide range of systems and agencies: child welfare, education and special education, health care (especially Medicaid), mental health, foster care, and more. We’ve discussed some of these systems—including child welfare, mental health,

and education—in earlier sections. We’ve also discussed education, job training, and family-support programs that help youths in confinement make a successful transition back to the community.

Another successful program is WrapAround Milwaukee, designed to serve youths who are identified by the child welfare or juvenile justice system as being at immediate risk of placement in a residential treatment center, juvenile correctional facility, or psychiatric hospital. The program has become a model of cross-system collaboration. It brings together mental health, juvenile justice, child welfare, and education systems; creates programs tailored to the unique needs of each child and family; and provides care coordination to ensure the best use of resources.^{214, 215} The program keeps hundreds of youth in the community and with their families, supports their positive development, and saves the county close to \$2,000 per participant.²¹⁶

Other examples of cross-system collaboration and coordination:

- The Dawn Project, in Marion County, Indiana, is a successful collaboration among social service, mental health, education, juvenile justice, corrections, and other agencies and organizations to develop integrated care plans for youths with serious emotional disturbances.²¹⁷
- West Virginia has passed legislation that allows the Division of Juvenile Services to create multidisciplinary treatment teams to help youths in their custody. Teams can include juvenile probation officers, social workers, parents or guardians, attorneys, school officials, and child advocates.²¹⁸
- North Dakota’s Department of Human Services uses “wraparound” planning for kids who are aging out of the juvenile justice and child welfare systems. These youths receive individualized assessments and planning, training in independent living skills, vocational training, and in-home support.²¹⁹

Into the Future

This paper has documented dozens of recent changes in the nation's multiple juvenile justice systems: Supreme Court decisions and state legislation, lawsuits and regulatory changes, state- and county-wide programs and innovative pilot projects. The changes touch many areas of juvenile justice: prevention and intervention, confinement and alternative programs, discrimination, due process, and much more.

So what is the take-away? Are we in fact riding a new wave of juvenile justice reform? And if so, where will that wave take us?

The evidence for the fourth wave lies not merely in the number of reforms, but in their staying power, and in their ability to reach practitioners and policymakers across the ideological spectrum. Over the past ten to 15 years we have seen specific reforms disseminate across urban and rural areas, and through vastly different states. Reforms have continued through changes in administrations, even when parties with different priorities and different ideologies came to power. Successful local efforts have led to broader legislative changes, and changes in law have spawned creative new programs.

It's important to point out, however, that much of this has taken place in the context of severe economic pressure and falling juvenile crime rates. What will happen if crime rates rise and public fears mount? Have public attitudes changed enough—are those changes broad and deep enough—to fend off another punitive wave, like the one that swept the country just a couple of decades ago?

One thing is certain: juvenile justice reform is evolution, not revolution. The more we learn, and the more we put that knowledge to work, the closer we will come to ensuring the safety of our communities *and* the future of every child.

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