

## An Executive Summary

# Rethinking Juvenile Justice

Elizabeth S. Scott and Laurence Steinberg, leading figures in juvenile law and adolescent developmental psychology, have brought their disciplines together to define a new approach to juvenile crime. In their book, *Rethinking Juvenile Justice* (Harvard University Press, 2008), they argue that advances in science, evolving public attitudes, and skyrocketing costs make this a prime moment for reform of the juvenile justice system. They outline a new developmental model that is complex, nuanced, and grounded in scientific evidence. It recognizes adolescents' immaturity but also holds them accountable for their actions, and it offers solutions that allow them to grow into responsible adults. In the end, the authors contend, this approach would better serve the interests of justice and public safety, and be less wasteful of money and lives, than either the traditional rehabilitation model or the punitive policies of the past generation.

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### **The time is ripe for reform.**

More than a century ago, reformers in the United States designed a juvenile justice system focused on providing services and treatment to children in trouble. That rehabilitation model held sway until the 1990s, when crime rates rose steeply and the boundaries between the juvenile and adult justice systems began to erode. States started handing out harsher, more punitive sanctions to adolescents and, increasingly, trying them in adult courts and sending them to adult prisons.

Now the pendulum is starting to swing back, for a variety of reasons:

**We know much more about adolescent development.** Over the past two decades, neurological and psychosocial research has confirmed what parents have long known: that although teenagers are not childlike, they are less competent

decision-makers than adults. Even when capacities for reasoning and understanding have matured, they are less capable than adults of using these capacities to make real-world choices. They are more susceptible to peer pressure, less able to consider long-term consequences, more impulsive and ready to take risks. This makes them less culpable or blameworthy than adults, and as a result, they don't merit the same punitive consequences.

Research also has shown that delinquent behavior is a normal part of teenage life, and that most individuals mature out of it as they reach adulthood. Adolescence is a time when an individual's personal identity is still taking shape, making youths more amenable to rehabilitation. In fact, we now have good evidence that specific treatments and services can be remarkably successful in helping adolescent offenders become responsible adults.

**Public attitudes are changing.** Rising juvenile crime rates in the 1980s and early 1990s, accompanied by the increasing use of firearms and fueled by media stories about “superpredators,” caused a panic that led legislators in every state to enact get-tough policies. Since then, though, both crime rates and the sense of panic have abated, and public opinion—which was always more nuanced than legislators believed—has come to oppose adult prison for most juveniles. Recent polls indicate that the public favors rehabilitative interventions even for serious first-time offenders, as long as youths are held accountable for their crimes.

**Incarcerating juveniles isn’t cost-effective.**

Even while the rate of juvenile crime was declining, expenditures climbed precipitously. The increase has come largely from the expanded use of incarceration, which can cost between \$40,000 and \$100,000 a year—far more than community-based programs—and tends to increase, not reduce, recidivism. A comprehensive cost-benefit analysis of four hundred programs aimed at crime reduction showed that the most effective juvenile justice programs, by reducing recidivism and its associated costs, offered taxpayers the best return for dollars invested—more than \$6 for every dollar spent. When the value to potential crime victims is figured in, the benefit rises to \$28 for every dollar spent. For economically strapped states, these savings are very compelling.

Taken together, all these factors make this an ideal time to consider a new approach to juvenile justice.

**Defining the goals of juvenile justice policy**

The traditional model of juvenile justice focused almost exclusively on rehabilitation, while the reforms of the 1990s emphasized punishment. The model described by Scott and Steinberg includes both elements, but is much more than a middle ground between them.

The authors define several goals that need to be balanced in juvenile justice policy. The first is fair punishment, which means recognizing young offenders’ immaturity as a mitigating circumstance while still

holding them accountable for their crimes. Another is fair hearings, as well as dispositions (punishments and services) that will enhance youths’ future prospects and reduce their likelihood of re-offending. Finally, the authors recognize that juvenile justice must satisfy the public’s desire for retribution and protect public safety.

Americans evaluate crime policies largely on the basis of their effectiveness at reducing crime at the lowest cost. At the heart of the authors’ model is the argument that social welfare will be enhanced and the cost of juvenile crime minimized if our juvenile justice system is grounded in a scientific understanding of adolescent development.

**Fairness and the principle of proportionality**

In the developmental model, fairness requires that sanctions should be proportionate in severity to the harm caused by the offense and the culpability of the offender. This is a bedrock principle of the adult justice system, but it has generally not been the case in the juvenile system, even under current reforms. In nearly all states, judges have the authority to impose individualized sanctions, which means they can ignore the mitigating effects of immaturity and impose sanctions based (consciously or not) on personal characteristics such as race, ethnicity, or socioeconomic status.

The developmental model would rein in judicial discretion with stricter guidelines—not meticulously prescribed punishments, but a relatively narrow range of sanctions for a given offense by youths of a given age. In general, younger offenders would be punished less severely than older youths, with punishments calibrated according to the seriousness of the crime. A youth’s prior criminal record would also be considered; first offenders would receive less severe sanctions than repeat offenders.

Proportionality addresses the length of a youth’s sentence and the extent to which he is deprived of liberty. In addition, what happens to the youth during the time he is in state custody can be of critical importance to his development and to the social welfare

of his community. A growing body of evidence offers guidance on the sanctions and services that are most effective for juvenile offenders.

### **Drawing age boundaries**

Two age-related questions are critical in dealing with youth crime: Where should we draw the age boundary between the juvenile and adult systems? And which juveniles can be tried as adults?

The authors argue that children under age ten are neither culpable nor competent enough to be held criminally responsible, stand trial, or be subjected to state-imposed punishment. Instead they should be dealt with by the child welfare system, which can offer a wider range of services to children and—crucially—their families.

Throughout adolescence (roughly ages 10 to 20), different psychological capacities develop at different rates. For example, logical reasoning and information-processing may reach adult levels around age 15, while impulse control, future orientation, and resistance to peer pressure—all of which influence involvement in criminal activity—are still developing in early adulthood. Based on all relevant factors, the authors recommend three age groupings:

**Ages 10 through 14.** These young adolescents are still immature across multiple domains of functioning. They should be treated as juveniles and should not be subject to adult prosecution.

**Ages 15 through 17.** This is a transitional period for many important aspects of psychological development, with a great deal of variation *within* as well as *among* individuals. The juvenile court should hold primary jurisdiction for this group. However, to maintain legitimacy, the system should have a mechanism for transferring some youths to the adult system, based on the seriousness of the offense, the individual's record of prior convictions, and an assessment of her competence to stand trial and potential for rehabilitation.

**Ages 18 and older.** Although studies of brain development indicate that maturation continues until about age 25, individuals over 18 are mature enough to be held fully accountable, and public safety requires that they be punished as adults.

But what if a youth age 17, for example, commits a crime that demands more than one year of sanctions? It would be perverse to cut his sentence short, and counter-productive to transfer him to an adult prison, which has been shown to increase recidivism. The authors recommend that the juvenile system retain *dispositional* jurisdiction of youths till the age of 24 or 25. This means that courts dealing with an offender under 18 may impose sanctions *within the juvenile system* that extend past the offender's 18th birthday. This system recognizes that the youth was less culpable at the time of his offense, avoids sending him to the “crime school” of prison, yet provides the option of imposing a lengthy sanction on a youth who has committed a serious offense.

### **What about serious and persistent juvenile offenders?**

Some youths have a history of antisocial behavior that begins in early childhood and continues into adulthood; by mid-adolescence they may already have a record of frequent and serious crimes. We don't yet fully understand what puts young children on a path to become “career criminals,” but it seems to have both physiological and family components, reinforced in later years by broader social factors: school, community, peers.

While these youths represent a very small percentage of young offenders, they are responsible for a disproportionate amount of juvenile crime—some studies say as much as half—and pose a substantial threat to public safety. Scott and Steinberg recommend the following guidelines:

**Pre-teenage offenders.** Pre-teen and young adolescent offenders are among the most dangerous of young criminals, and the most likely to persist in crime.

Yet their youth makes them less culpable, and they should not be punished as adults. The most effective response—one that respects both fairness and public safety—is a truly comprehensive policy of rehabilitation: intensive social service, mental health, and educational interventions that address the complex deficits of these high-risk youths. These interventions will be expensive, but the social cost of not doing it is even greater. The state should respond to these young offenders under the juvenile court’s dependency jurisdiction, which gives the government authority to intervene when children engage in problem behaviors that are beyond their parents’ capacity to control.

**Older serious offenders.** Older adolescents with a history of serious offending may be dealt with in juvenile

court or transferred, as described earlier. However, that decision should not be made on the basis of individual “diagnoses,” which have been shown to be highly error-prone, but rather on neutral rules based on designated offenses, age, and past criminal record.

Scott and Steinberg present a model that is complex, nuanced, and grounded in scientific evidence. It holds young people accountable for their crimes and allows them to grow into responsible adults. In the end, they contend, it would better serve the interests of justice and public safety, and be less wasteful of money and lives, than either the traditional rehabilitation model or the punitive policies of the past generation.

This brief is one in a series describing new knowledge and innovations emerging from Models for Change, a multi-state juvenile justice initiative. Models for Change is accelerating movement toward a more effective, fair, and developmentally sound juvenile justice system by creating replicable models that protect community safety, use resources wisely, and improve outcomes for youths. The briefs are intended to inform professionals in juvenile justice and related fields, and to contribute to a new national wave of juvenile justice reform.