

Kids Are Not Adults

Brain research is providing new insights into what drives teenage behavior, moving lawmakers to rethink policies that treat them like adults.

BY SARAH ALICE BROWN

Juvenile justice policy is at a crossroads. Juvenile crime has decreased. Recent brain and behavioral science research has revealed new insights into how and when adolescents develop. And state budgets remain tight. Together, these factors have led many lawmakers to focus on which approaches can save money, yet keep the public safe and treat young offenders more effectively.

Why Now?

When youth violence reached a peak more than 20 years ago, the country lost confidence in its ability to rehabilitate juveniles. Legislatures responded by passing laws allowing more young offenders to be tried as adults. Since then, however, juvenile crime has steadily declined.

Between 1994 and 2010, violent crime arrest rates decreased for all age groups, but more for juveniles than for adults. More specifically, the rates dropped an average of 54 percent for teenagers 15 to 17, compared to 38 percent for those between 18 and 39. And while arrest rates for violent crimes were higher in 2010 than in 1980 for all ages over 24, the rates for juveniles ages 15 to 17 were down from 1980.

With the steady decline in juvenile violence, the current state of the economy and new information on how brain development shapes teens' behavior, some lawmakers are reconsidering past assumptions.

Legislatures across the country are working on their juvenile justice policies, from passing individual measures to revamping entire codes. Arkansas revised its juvenile justice code in 2009; Georgia and Kentucky are considering doing so, and many other states are at various stages of making changes in juvenile justice.

"It's time to bring the juvenile code back to current times and find methods that work by looking at best practices nationally," says Georgia Representative Wendell Willard (R), who introduced a bill to revise the code this session. "We need to incor-

porate key items, such as instruments to assess risks, and put interventions in place within communities for young people involved in the system," says Willard.

Last year, lawmakers in Kentucky formed a task force to study juvenile justice issues. The group will recommend whether to amend any of the state's current juvenile code in 2013. "Frankly, our juvenile code is out of date, but this task force will give the legislature the foundation to change that and reflect best practices nationwide," says Representative John Tilley (D), co-chair of the task force.

Changes are not always easily made, and states are at different stages of reform. Among the various viewpoints and depths of changes, however, is the generally agreed-upon belief that juveniles are different from adults.

For Adults Only

Research distinguishing adolescents from adults has led states to re-establish boundaries between the criminal and juvenile justice systems. New policies reflect the growing body of research on how the brain develops, which has discovered teens' brains do not fully develop until about age 25, according to the John D. & Catherine T. MacArthur Foundation's Research Network on Adolescent Development and Juvenile Justice. Other social science and behavioral science also shows that kids focus on short-term payoffs rather than long-term consequences of their actions and engage in immature, emotional, risky, aggressive and impulsive behavior and delinquent acts.

Dr. David Fassler, a psychiatry professor at the University of Vermont College of Medicine, has testified before legislative committees on brain development. He says the research helps explain—not excuse—teenage behavior.

"It doesn't mean adolescents can't make rational decisions or appreciate the difference between right and wrong. But it does mean that, particularly when confronted with stressful or emotional circumstances, they are more likely to act impulsively, on



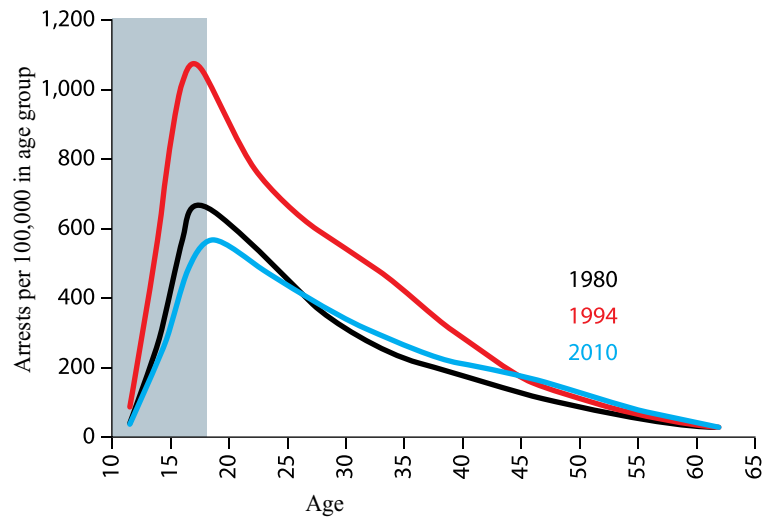
Representative
Wendell
Willard (R)
Georgia



Representative
John Tilley (D)
Kentucky



Violent Crime Index



and one-half. And Ohio now requires a judicial review before transferring anyone under age 21 to an adult jail.

Counsel Is Key

A related trend in the past decade is to increase due process protections to preserve the constitutional rights of young offenders to ensure that youths understand the court process, make reasonable decisions regarding their case and have adequate counsel. At least 10 states now have laws requiring qualified counsel to accompany juveniles at various stages of youth court proceedings. For juveniles appealing their cases, Utah created an expedited process. And two new laws in Pennsylvania require that all juvenile defendants be represented by counsel and that juvenile court judges state in court the reasoning behind their sentences.

To protect the constitutional rights of young offenders, Massachusetts Senator Karen Spilka (D) says “it is important for states to ensure that juveniles have access to quality counsel.” The Bay State created juvenile defense resource centers that provide leadership, training and support to the entire Massachusetts juvenile defense bar.



Senator
Karen Spilka (D)
Massachusetts

Legislators are also enacting laws on determining the competency of juvenile offenders to stand trial. At least 16 states—Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Kansas, Louisiana, Maine, Michigan, Minnesota, Nebraska, Ohio, Texas and Virginia—and the District of Columbia, now specifically address competency in statute. For example, Idaho lawmakers established standards for evaluating a juvenile’s competency to proceed. Maine passed a similar measure that defines “chronological immaturity,” “mental illness” and “mental retardation” for use in determining juvenile competency.

Between 65 percent and 70 percent of the 2 million young

instinct, without fully understanding or considering the consequences of their actions.”

“Every single adult has been a teenager, and many have also raised them. We all know firsthand the mistakes teens can make simply without thinking. Now we have the science that backs this up,” says North Carolina Representative Marilyn Avila (R). She is working to increase the age at which teenagers can be tried as adults from 16 to 18 in her state.



Representative
Marilyn
Avila (R)
North Carolina

Other states are considering similar changes. Lawmakers in Colorado passed significant changes in 2012, barring district attorneys from charging juveniles as adults for many low- and mid-level felonies. For serious crimes, they raised the age at which offenders can be tried as adults from 14 to 16.

In Nevada, Mississippi and Utah, lawmakers now leave it up to the juvenile courts to decide whether to transfer a juvenile to adult court. The Oklahoma Legislature upped the age limit at which offenders can be tried as adults for misdemeanors to 18

Supreme Court Rulings Set Stage

Significant rulings by the U.S. Supreme Court have also reshaped juvenile justice policies. The high court abolished the death penalty for juveniles in 2005 in *Roper v. Simmons*, citing findings by the MacArthur Research Network that adolescents can be less culpable than adults for their crimes.

Its 2010 ruling in *Graham v. Florida* ended life sentences without parole for crimes other than homicide committed by juveniles. Then last summer, in *Miller v. Alabama*, the court ruled that imposing mandatory life sentences without the possibility of parole for juveniles violates the Eighth Amendment of cruel and unusual punishment. Justice Anthony Kennedy wrote that juveniles have less culpability and, as a result, are “less deserving of the most severe punishments.”

The Court went on to state in the ruling that life without parole for juveniles is especially harsh because it removes all hope. It makes it so “that good behavior and character improvement are immaterial. When compared with the reality that juveniles are more likely to change than are adults, juveniles who have demonstrated substantial improvement should be given the opportunity for parole.”

people arrested each year in the United States have some type of mental health disorder. Newer policies focus on providing more effective evaluations and interventions for youths who come into contact with the juvenile justice system. This includes proper screening, assessment and treatment services for young offenders. Some states have special mental health courts to provide intensive case management as well.

New mental health assessments in Louisiana and Pennsylvania give a wide range of professionals the means to reliably ascertain youths’ needs. And other states such as Colorado, Connecticut, Ohio and Texas have passed comprehensive juvenile mental health reform laws.

Family Matters

“Show me it will work, and then I am all for it!” says North Carolina’s Avila. “As a legislator, I am very much in favor of evidence-based programming, because I want to invest in what will work.” She cites the effectiveness of three kinds of programs that have passed the evaluation test and are being used in at least 10 states. They include the families in the treatments young offenders receive to address specific behaviors to improve positive results for the whole family.

- ◆ Multi-systemic therapy teaches parents how to effectively handle the high-risk “acting out” behaviors of teenagers.
- ◆ Family functional therapy focuses on teaching communication and problem-solving skills to the whole family.
- ◆ Aggression-replacement training teaches positive ways to express anger as well as anger control and moral reasoning.

Massachusetts Senator Spilka believes these kinds of programs are important because “instead of simply focusing on the child’s behavior, they look to effectively treat and help the entire family.”

Communities Are Key

Policymakers across the country are searching for ways to keep the public safe while reducing costs. Many are looking at effective



policies that divert young offenders away from expensive, secure correctional facilities and into local community programs. According to the U.S. Office of Juvenile Justice and Delinquency Prevention, incarceration is a costly and ineffective way to keep delinquent juveniles from committing more serious crimes. Researchers suggest, instead, in investing in successful and cost-effective programs that have undergone rigorous evaluations.

For example, RECLAIM Ohio is a national model for funding reform that channels the money saved from fewer juvenile commitments into local courts to be used in treating and rehabilitating young people. The program not only has reduced juvenile commitments to detention facilities and saved money, but also has cut down on the number of young people re-entering the justice system. The cost of housing 10 young people in a Department of Youth Services’ facility is \$571,940 a year versus \$85,390 a year for RECLAIM Ohio programs.

Realignment shifts responsibility for managing young offenders from states to the counties. Such strategies are based on the premise that local communities are in the best position to provide extensive and cost-effective supervision and treatment services for juvenile offenders, and that youth are more successful when supervised and treated closer to their homes and families.

Illinois lawmakers, for example, passed major changes in 2004 that created Redeploy Illinois, which encourages counties to develop community programs for juveniles rather than confine them in state correctional facilities.

The program gives counties financial support to provide comprehensive services in their home communities to delinquent youths who might otherwise be sent to the Illinois Department of Juvenile Justice. The program has been so successful that it is expanding statewide and has become a model for other states.

Several other states, from California and Georgia, to New York and Texas, are also looking at ways to effectively and safely redirect fiscal resources from state institutions to community services.

“Getting kids out of the correctional centers and treated in the



community is obviously the best practice,” says Georgia’s Willard. “You have to close these large infrastructures and the overhead that goes with it, so you can redirect that money to treating youth in the community. When you go about such an exercise in your own communities, you will accomplish the goal of saving money.”

States also are shortening the time juveniles are confined in detention centers, usually while they wait for a court appearance or disposition. A recent Mississippi law, for example, limits it to 10 days for first-time nonviolent youth offenders. And Georgia decreased it from 60 days to 30 days. Illinois lawmakers increased the age of kids who can be detained for more than six hours in a county jail or municipal lockup from age 12 to 17.

Young Offenders Grow Up

Violence toward others tends to peak in adolescence, beginning most often around age 16, according to Emory University psychiatrist Peter Ash. However, if a teenager hasn’t committed a violent crime by age 19, he’s unlikely to become violent later, Ash says. The promising news is that 66 percent to 75 percent of violent young people grow out of it. “They get more self-controlled.”

Realizing that teens who commit delinquent acts don’t always turn into adult criminals, more states are protecting the confidentiality of juvenile records for future educational and employment opportunities to help them make successful transitions into adulthood.

In 2011, Delaware lawmakers passed legislation allowing juvenile criminal cases that are dismissed, acquitted or not prosecuted to be expunged from a young person’s record. “Children who are charged with minor crimes that are dismissed or dropped should not have these charges following them around for the rest of their lives,” says Representative Michael A. Barbieri (D), sponsor of the bill.



Representative
Michael A.
Barbieri (D)
Delaware

Texas Moves Away From Youth Detention

Texas lawmakers responded quickly to reports of physical and sexual abuse by staff at juvenile detention facilities in 2006. During the following session, the Legislature passed laws to address these incidents and improve the overall administration of juvenile justice. The changes included creating the Independent Ombudsman’s office to investigate and review allegations of misconduct, monitoring detention facilities with cameras and on-site officials, and barring juveniles from serving time in detention facilities for committing misdemeanors.

Legislators continued to focus on juvenile justice during the next two sessions, passing laws in 2009 that strengthened support and funding for local and county programs that monitor juveniles closer to their homes. And in 2011, to consolidate oversight of young offenders and improve communication among different levels of government, lawmakers merged the Probation Commission and the Youth Commission to create the Texas Juvenile Justice Department.

The laws appear to be making a difference. The number of juveniles in state-run detention facilities dropped from nearly 5,000 in 2006 to around 1,200 in 2012, with more participating in county and local programs. The state has closed nine facilities and may close more during the coming biennium. In addition, verified complaints of abuse dropped 69.5 percent from 2008 to 2011.

Challenges with safety within facilities, however, persist. Early in 2012, the Independent Ombudsman reported incidents of youth-on-youth violence in the state’s largest remaining detention facility. Executive Director Mike Griffiths, on the job since September 2012, believes that “there needs to be a foundation of safety and security to be effective. We are light years ahead of where we were in 2007, and the success of the community-based programs is encouraging, but safety needs to be a continued focus.” Subsequent reports indicate improvements in the culture of the facilities.

One way Texas is tackling violence in its facilities is by placing the most challenging juveniles in The Phoenix Program, which focuses on preventing high-risk youth from becoming reoffenders. It holds the kids in the program “accountable for the actions of each individual, and provides a staffing ratio of one to four, as opposed to the regular one to 12,” says Griffiths.

Texas continues to work on improving its juvenile justice system. “My challenge moving forward is to find additional dollars for local community programs, while making sure the overall system is secure,” says Griffiths. “It’s important to give the staff the support they need, while letting them know that they are accountable.”

—Richard Williams, NCSL

And in 2012, eight states—California, Colorado, Hawaii, Louisiana, Ohio, Oregon, Vermont and Washington—enacted laws vacating or expunging any prostitution charges juvenile victims of sex trafficking may have received.

A Bipartisan Issue

These recent legislative trends reflect a new understanding of adolescent development. Investing in alternative programs in the community instead of incarceration and adopting only proven intervention programs are among the examples of how state legislators hope to better serve youth and prevent juvenile crime.

“Reforming juvenile justice is definitely a bipartisan issue that all legislators can get behind. It is the right time. All the research says it makes sense and will save money,” says Representative Avila from North Carolina.

