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# Strategies to Divert Adolescents with Behavioral Health Needs from the Juvenile Justice System



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# RESEARCH ON ADOLESCENT DEVELOPMENT, BEHAVIORAL HEALTH, AND CRIMINAL OFFENDING: WHY DOES IT MATTER FOR JUVENILE JUSTICE POLICY?

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The transition from adolescence to early adulthood marks an important period of development, second only to early childhood in terms of its influence on an individual's life trajectory. Research in the last 15 years has radically transformed how researchers and policymakers think about adolescence. We know much more about the changes in adolescents' psychology (their reasoning and behaviors) and neurobiology (their brains) as they mature into adulthood. This knowledge has had significant implications for law and public policy. This chapter highlights six key takeaways from my and others' research on adolescent development and criminal offending that can help state policymakers develop more evidence-informed juvenile justice policy.

## SIX KEY TAKEAWAYS

- 1** We are in the middle of a "sea change" in the orientation of juvenile justice, with research on adolescent development being integrated into court decisions, practice, and state policymaking.

A series of U. S. Supreme Court decisions over the last two decades has reaffirmed the position that adolescents' capacity to make reasonable decisions about engaging in crime is qualitatively different from that of adults, and that this difference should be taken into account when considering sentencing. This logic is reflected in the words of Justice Kagan in the *Miller v. Alabama* decision that, "Incorrigibility is inconsistent with youth." This logic has spread beyond the courts, however, spawning changes in the age of jurisdiction in several states (e.g., Michigan, New York) and increasing support for interventions that foster positive adolescent development.

Current legal and legislative thinking has shifted to recognize that adolescents are individuals whose personality and habits are in a state of flux. This shift in thinking has affected decisions and policies about youth who have committed serious crimes, as well as youth who have committed nonviolent, low-level crimes (which are the vast majority of crimes committed by youth). When considering the culpability of an adult who commits a serious crime, courts often need to make a judgment about the fixed nature of their character and intractability for positive change. In some instances, this assessment may be used to determine whether the individual has a "depraved character."

Such judgments about adolescents, however, are often difficult to make because their characters are still forming, often fluctuating considerably over time. Research suggests that adolescent offending only rarely reflects an underlying depraved character. Adolescents are, in a sense, a moving target. They are difficult to judge against other adolescents and it is difficult to predict exactly how they will turn out over time. As a result, courts have ruled in favor of considering maturity as a factor in sentencing, often resulting in less harsh sentences for juveniles who commit serious crimes compared to adults.

Knowledge of adolescent development has also had an impact on society's response to less serious offenses committed by adolescents. Our thinking about interventions and punishment for these offenders has changed. There is increased support for prevention programs to keep youth out of the juvenile justice system and diversion programs to get them out of the justice system as soon as possible.

## 2 Neuropsychological and behavioral research, taken together, support the idea that adolescents are distinct from adults in how they formulate judgments.

The science surrounding brain development has increased in both the amount of research conducted and the sophistication of that research over the last several decades. Neuropsychological studies using brain scans have examined which parts of the brain are activated when making certain types of decisions, and this technology has revealed distinct differences in decision-making between adolescents and adults. Other researchers have conducted behavioral studies using laboratory tasks to understand how adolescents and adults weigh the costs and benefits of certain actions (e.g., taking risks in game simulations) and the factors (e.g., the presence of peers) that affect certain types of choices (e.g., taking a short-term gain).

In response to the justice system's interest in this body of research, the U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention (OJJDP) commissioned a report from the National Academy of Sciences (NAS) to assess the implications of the science around adolescent development for juvenile justice. This report examined both the neuropsychological and behavioral evidence about adolescent decision-making capacities and considered the relevance of these findings to federal, state, and local policymakers; courts; and practitioners.<sup>1</sup>

The NAS Panel found strong convergence of the conclusions reached in neuropsychological and behavioral studies on three points.

1. Adolescents lack the capacity shown by adults to make optimal decisions in emotionally charged situations. Adolescents do not think as clearly about risks and benefits when they are emotionally upset. Adolescents have less capacity for self-regulation. This is particularly relevant to criminal offending, as youth often commit delinquent acts when they are emotionally excited. You can think of this as a diminished ability to put the brakes on bad decisions.

2. Adolescents have a heightened sensitivity to external influences like peer pressure and immediate incentives, which skews their ability to make decisions they might “know” are right. During this time of life, youth pay more attention to the thoughts and opinions of others, a common, and now scientifically validated, maxim of many parents of adolescents.
3. Adolescents are less likely to make sound judgments about decisions that require future orientation. That is, they find it difficult to consider the long-term consequences of an action. They focus on the upside (rewards) of a decision rather than the downside (potential costs). Thus, they tend to act impulsively and go after immediate rewards. You could think of this as short-sightedness.

In sum, typical adolescent development is marked by increased sensation-seeking (the pursuit of new and rewarding experiences), low capacity to regulate emotions and actions, and an increased rush to action. One researcher found that this combination is not an American or European phenomenon, but is a reality of adolescence across cultures.<sup>2</sup> These characteristics influence all domains of an adolescent’s life, not only criminal activity, and are essential aspects of maturation into adulthood. Taken together, these factors have important implications for adolescents’ decisions to engage in crime, their ability to benefit from certain interventions, and their response to deterrence.

**3**

Juvenile offenders naturally evolve toward committing less or no crime; that is, juvenile offenders tend to “desist” from crime regardless of the intensity of the intervention of the justice system. This reduction in offending is related to their improved social judgment skills as they mature into adulthood.

Contrary to common belief, juvenile crime is generally not a sign that an individual has started down the path to an adult life of crime. For some adolescents, early criminal acts are the beginning of a long career of criminal involvement. Adolescents who start offending at an early age, commit numerous offenses, and have numerous disadvantages (e.g., skills deficits, poor family functioning) are at increased risk of continued offending. However, these are a minority of adolescents in the system. Most adolescents reduce or stop their offending (“desist” from crime) as they age.

The Pathways to Desistance study examined whether serious juvenile offenders followed this natural crime-cessation pattern and, if it was occurring, what factors led to the change. The study followed a group of more than 1,300 adolescents who committed felony offenses and interviewed them regularly for seven years. The pattern of desistance was clear. The adolescents self-reported less crime over time, had lower rates of arrest over time, and committed less serious crimes when they did criminal acts.<sup>3</sup>

One of the more intriguing findings is related to the pattern of adolescent development discussed above. Adolescent offenders who had a marked desistance from crime showed an increase in mature ways of thinking (e.g., consideration of others), whereas the much smaller number of offenders who continued to offend showed delayed development in mature thinking. This finding from a large sample of serious adolescent offenders further bolsters the conclusion that adolescents do desist from crime naturally and that this pattern is likely due to maturation of psychological factors (e.g., impulsivity) and brain development.<sup>4</sup>

#### **4** Institutional stays in secure juvenile or adult facilities do little, if anything, to reduce future adolescent offending.

Placement in institutions (i.e., secure residential placements, run either by the state, county, or a contracted provider) for adjudicated adolescents is being used much less nationwide. Some of this reduced use is attributable to fewer adolescents being processed through the juvenile justice system overall (i.e., arrests and petitions to court are down). In addition, many state systems have made a concerted effort to develop alternatives to these placements (e.g., diversion before adjudication or referral to community-based care at disposition), further reducing the populations of adolescents in these facilities. Even at these lower levels, however, these placements consume a sizable proportion of a state's juvenile justice resources.

The evidence for the effectiveness of these types of placements on reducing future offending, also known as recidivism, is rather weak. Large-scale meta-analyses (studies that consolidate and analyze multiple studies) have reviewed a range of interventions available in the juvenile justice system. The analyses show that institutional placements do not lead to sizable reductions in future crime; in fact, a proportion of placements seem to increase recidivism.

The Pathways to Desistance study rigorously compared institutional placement and probation, and their effects on recidivism. Even with serious adolescent offenders, there were no differences between the two approaches once the background characteristics of the adolescents were controlled.<sup>5</sup> Given the expense and variability in the programming offered in institutional environments, it seems wise to carefully consider which adolescents should be placed in institutional care (e.g., those who present the greatest threat to public safety) and carefully monitor the services offered and climate in these settings (e.g., the overall level of harshness).

**5** Mental health problems are more prevalent in adolescent offenders for a variety of reasons, but mental health problems alone contribute little to criminal involvement. Substance use problems are much more influential, but are rarely addressed adequately.

Adolescents in the juvenile justice system are more likely to have behavioral health problems (e.g., diagnosable mental health conditions or substance use disorders) than adolescents in the community. Approximately 50% to 70% of youth involved in the juvenile justice system have a diagnosable mental health condition such as anxiety or conduct disorder, compared to 10% to 20% in the general adolescent population.<sup>6</sup> It's also estimated that more than 60% of youth involved in the juvenile justice system with a mental health condition also have a co-occurring substance use disorder.<sup>7</sup>

These prevalence rates are not surprising, given the level of stress and disadvantage these adolescents have experienced during their lifetime. Prolonged stress and multiple disadvantages on a young child can increase the chances of behavioral health problems, criminal involvement, or both. (*Editor's note: See the Family Impact Seminar report, Building Strong Wisconsin Families: Evidence-Based Approaches to Address Toxic Stress in Children, for information on early childhood adversity.*) There is a clear need to integrate behavioral health services into interventions in juvenile justice.

Perhaps surprisingly, there is little evidence to support the idea that providing more mental health services will reduce future offending. Analyses from the Pathways to Desistance study can again provide some insight on why this is so. First, consistent with many other studies and as mentioned above, most of the adolescents with mental health problems also had co-occurring problems with substance use. Providing mental health services would have addressed only part of their challenges. Moreover, those adolescents with behavioral health issues (e.g., either mental health or substance use diagnoses or both) had higher levels of risk for recidivism on structured assessment instruments. That is, they had other, often more powerful factors (e.g., criminogenic factors such as negative peer groups) affecting their likelihood of reoffending. Thus, integrated interventions that address both the behavioral health needs of the adolescent (e.g., reducing their mental health symptoms) and criminogenic needs (e.g., improving their peer associations) seem to hold the most promise.

Perhaps more relevant is the finding by numerous researchers that substance use is more closely related to criminal offending (and violence) than mental health symptomatology in both adults and adolescents. Over time, the level of substance use by serious adolescent offenders goes closely in step with their criminal involvement. Yet few serious adolescent offenders with diagnosable substance use problems receive community-based treatment. Expanding prevention and treatment programs, such as the Reclaiming Futures model discussed later in this report, should yield an appreciable reduction in their continued criminal involvement.

- 6 State policymakers can improve their state's juvenile justice system by supporting programs and policies that provide the most effective services to the right adolescents at the right time. Although system improvement takes data, time, money, political will, and statewide planning, the returns on investment are high given adolescents' ability to change, mature, and become productive members of society.

There are ways to address the complex problems inherent in juvenile justice. Doing so, however, involves an organized statewide effort, rather than a search for the newest approach or intervention. There are no off-the-shelf fixes that can be implanted in juvenile justice; each state must construct its own evidence-based system for managing juvenile justice. Fortunately, policymakers can seek guidance from the extensive research on adolescent development and patterns of offending, as well as from rigorous evaluations of interventions and sentencing outcomes.

The goal of juvenile justice can be thought of as a broad effort to provide the most effective service to the right adolescent at the right time in their life to reduce their threat to public safety. It is not only fiscally responsible but also more effective when services get to adolescents at highest risk of continued offending, which is the group most likely to benefit from them.

States that have made notable progress on building effective systems (e.g., Missouri, Pennsylvania) have done so over extended periods of time and in planned steps that built upon each other. The success of these efforts is due to one critical factor: the systematic assessment of adolescents as they enter the justice system and proceed through different programs. This allows youth with behavioral health or criminogenic needs to be identified as soon as possible and connected with services that are well-matched to their needs. These assessments also allow for careful analyses of which adolescents receive which services at each point in their system involvement. Juvenile justice systems can then use this data to evaluate the effectiveness of the services (and service providers) at reducing recidivism.

As a first step to achieving these goals, most states convene all relevant stakeholders, including youth and their families, and create a statewide plan that collects accurate baseline data on adolescents and services. The next step is often to create evidence-based benchmarks for each step adolescents take in the system (e.g., initial contact with law enforcement, arraignment, sentencing). Only when states establish a strong culture of managing by objective standards can they move toward ensuring that the right adolescents are getting the right services to increase public safety.

## Conclusion

We're entering the next generation of juvenile justice reform, one in which the promise of our youth can be capitalized upon rather than hindered. More policymakers, government leaders, court and law enforcement officials, and youth-serving organizations are taking a developmental approach to juvenile justice and formulating policies and practices aligned with the latest science on adolescent development. This evidence-informed perspective helps ensure that youth are held appropriately accountable, interventions are effective and fiscally responsible, and youth are less likely to reoffend. When it comes to adolescents—who are still developing emotionally, physically, and intellectually into their 20s—it is up to us to support their growth into mature adults who complete their education, form stable relationships, engage in the labor market, and stay physically and mentally healthy.

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