

# Adolescents in the Criminal Justice System: Research and Implications for Policy

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# Foundation of the Juvenile Court

Ideas about childhood provide the philosophical basis for the establishment of a separate justice system.

Childhood/adolescence as periods of development

- Immature → less culpable → divert from adult system
- Malleable → delinquency is a transitory phenomenon
  - potential for change → intervene to develop adult competencies
- Vulnerable → protect from corrupting influences
  - protect from stigma

# Affirmation of Foundational Assumptions

Neuroscience: The adolescent brain is less developed than previously thought. Change continues into early 20s.

Some changes come with puberty. Others are dependent on age and experience.

What is still developing in late teens?

- Self control over emotions and behavior (impulse control, affect regulation)
- Planning: Consideration of long-term consequences
- Problem-solving under conditions of high emotion (“hot” versus “cold” cognitions)
- Decision-making: In the lab, abilities of 15 year olds are close to those of adults. But in “real life”, 15 year olds are very poor decision-makers, especially in the company of friends.

# Lessons from Research on Brain Development

- Normal adolescents will make mistakes, engage in risky behaviors. For the most part, these are transitory.
- They need “room to reform.”
- Imposition of punishment is part of the learning process.
- But punishment should not be too harsh and stigmatizing: Impairs development and reduces future life chances.

# Research on Consequences of Treating Adolescents as Adults

General Deterrence: Does prospect of criminal prosecution/punishment reduce likelihood of offending among adolescents?

Research shows mixed results.

# Four Studies

Singer and McDowall (1988). Study in NY (age 16 is cutoff between juvenile and adult).

- Change in the law lowered age of criminal responsibility for 5 offenses. Received much publicity.
- Examined arrest rates for these offenses for 4 years prior to enactment of the law and 6 years afterward. Also compared to rates for older youth in same jurisdiction and same-age youth in nearby jurisdiction. No effect.

# Jensen and Metzger (1994)

- 1981, Idaho passed “automatic transfer” law for 5 violent offenses.
- Examined arrest rates for these offenses for 5 years prior to and 5 years after the change in the law.
- Also compared rates to those in two demographically-similar neighboring states that did not have mandatory transfer.
- Arrests for the targeted offenses increased 13% in Idaho after the law was passed. They decreased in the two neighboring states.

# Levitt (1998)

Examined effects of severity of punishment across the juvenile and adult systems for the period 1978-1993.

- In states in which the juvenile courts are most lenient vis-a-vis the adult courts, violent crimes fell by 3.8 percent in the year when the age of majority is reached.
- In states where the juvenile courts are relatively harsh compared to adult courts, violent crimes rise 23.1 percent with passage to the adult criminal justice system.
- In the year following attainment of the age of majority, states that punish adults particularly harshly see violent crime rates fall by almost 25 percent.

It is not possible to determine whether the crime drops reported here represent deterrent effects or incapacitation effects (drop in crime among those who are incarcerated). If the latter, the effect may be short-lived.



# Rashid (2004)

- Replicated Levitt's research for the period 1982-1992.
- Unable to reproduce Levitt's results.
- There is no evidence that harsher adult justice systems deter criminal behavior in youths who have recently become adults.

# Studies of Specific Deterrence: Effect on Adolescents of Being Prosecuted and Punished in the Adult System

- Multiple studies carried out in different jurisdictions
- Used different methodologies, some more sophisticated than others.

# Podkopacz and Feld (1995)

- Youth referred for judicial waiver in Minnesota, 1986-1992.
- Applied statistical controls for differences between waived and non-waived youth.
- 58% of those sent to the adult system re-offended within two years, compared to 42% of those retained in the juvenile system.
- Frequency of offending higher among those treated as adults.
- Limitations.

# Fagan (1991)

Study conducted in New York and New Jersey

- A natural experiment
- Compared 400 15- and 16-year old boys processed in New York City (in criminal court) and 400 15- and 16-year old boys processed in New Jersey (in juvenile court)
- Armed Robbers and burglars
- 4-7 year follow-up

# Fagan (continued)

Burglars: No differences in re-offending between those in the adult system and those in the juvenile system.

Robbers: Those in the adult system:

- 30% more likely to be rearrested.
- re-offended more quickly.
- re-offended at 75% higher rates.

Those incarcerated in the adult system did worse than those incarcerated in the juvenile system. Those placed on adult probation did worse than those placed on juvenile probation.

Effects of court type were independent of sentence length.

# Bishop, Frazier, Lanza-Kaduce, and Winner (1996)

## Florida

- Very broad transfer law.
- Prosecutorial direct file.
- Compared 2,738 transfers and 2,728 youths retained in the juvenile system

# Bishop et al. (cont.)

- To establish equivalence of groups, pairs were matched in terms of:
  1. Most serious offense
  2. Number of counts charged
  3. Number of prior referrals
  4. Most serious prior offense
  5. Age
  6. Sex
  7. Race

# Bishop et al. findings

- Those in the adult system were significantly more likely to be rearrested for serious felony crimes.
- Frequency of offending was significantly higher among those in the adult system.
- After 3 years, those in the adult system were nearly twice as likely to be rearrested.
- Those in the adult system re-offended more quickly.



# Follow-up after 7 years

- Re-offending was more prevalent among those prosecuted in the adult system in 6 out of 7 offense categories (not burglars).
- Higher re-offense rate was most pronounced among those initially convicted of violent crimes.
- Methodological Issues: How well-matched were the pairs?

# Kupchik, Fagan, and Leiberman (2004)

- NY and NJ comparisons.
- Compared 15- and 16- year-olds charged with 1<sup>st</sup> degree robbery, 1<sup>st</sup> degree burglary, and aggravated assault in NY (adults) and NJ (juveniles).
- Seven-year follow-up.

# Kupchik et al. findings

Youth in the adult system:

- were twice as likely to be arrested for a violent crime.
- more often committed weapons offenses.
- re-offended more quickly.

Re-offending was highest among those in the adult system who were first-time offenders, and those who had no prior treatment in the jjs.

# Lanza-Kaduce, Frazier, Bishop, and Lane

- Second study in Florida, a response to feedback from prosecutors.
- Carried out in 6 judicial circuits in mid-1990s.
- Match had to come from the same circuit.
- Began by matching using automated data:
  - Primary offense
  - Number of Counts
  - Number of Prior Referrals
  - Most Serious Prior Offense
  - Age, Sex, Race

## Lanza-Kaduce et al. (cont.)

- Obtained information from police and court records to generate better matches.
- Generated 315 pairs (630 youths) matched in terms of arrest charge, intervening legal problems during processing, weapon use, victim injury, property damage/loss, gang involvement, adult codefendants, mitigating and aggravating factors.

# Lanza-Kaduce et al.: Findings from Analysis of “Best Matched Pairs”

- 50% of those in the adult system were rearrested for a felony, compared to 37% of those in the juvenile system. ( $p < .01$ )
- Those in the adult system were significantly more likely to be rearrested for a violent felony crime. (23% v. 14%)

# Summary

- Specific deterrence research has produced consistent findings.
- Prosecution/punishment in the criminal justice system increases the risk to public safety.
- Public safety gains are achieved when youth are incarcerated in the adult system, but gains are quickly offset when offenders are released. Adolescents in the adult system re-offend more quickly, at higher rates, and for more serious crimes.

# Interpreting the Findings

## Effects Linked to:

- Correctional experiences of youths in adult and juvenile systems.
- Reintegration experiences of youths released from adult and juvenile systems.



# National comparison of adult and juvenile correctional institutions

- Adult institutions are generally much larger. In larger institutions, security concerns dominate.
- Higher ratios of line-level correctional officers in adult institutions.
- Higher ratios of professional staff in juvenile institutions. (teachers, counselors) Line staff frequently trained in treatment modalities.
- Greater inmate-inmate contact in adult institutions.

## Institutional comparisons (cont.)

- More treatment programs in juvenile institutions.
- More idle time in adult institutions—neither treatment nor work for many inmates.
- More violence in adult institutions (Inmate-inmate and staff-inmate violence)

# Forst et al. (1989)

- Study of correctional experiences of adolescents in training schools and prisons.
- “treatment” vs. “custody” orientations
- Reward structure for staff contrasted markedly. Prison staff evaluated in terms of ability to control and manage inmates. Training school evaluations of staff emphasize “helping skills.”

# Forst et al. (cont.)

- No differences in ratings of educational and vocational programs.
- Youths rated training school staff higher in assisting them to improve social skills, to solve personal problems, to achieve personal goals, to improve family relationships, to feel better about themselves.
- Medical, counseling and family services rated higher in juvenile facilities.

## Forst et al. (cont.)

- Youths in prison were more often targets of violence.
- Inmate-on-inmate sexual assaults, physical attacks with weapons, and staff assaults were significantly more frequent in prisons than in juvenile correctional institutions.

# Bishop and Frazier, 2000, 2006

- Interviewed 150 offenders, half in DOC adult facilities, half in DJJ juvenile facilities. Age range = 17-20
- 9 juvenile institutions
- 12 adult institutions
  - 6 YO facilities
  - 5 prisons that house inmates of all ages
  - 1 jail

# Key Findings

- Differences in:
  - Treatment v. Custody Orientation
  - Staff Expectancies
  - Modeling of Violent Behavior
  - Criminal Socialization
  - Self-reported effects on inmates

# Self-Reported Effects on Youth

60% of those in the juvenile system expected to remain law abiding after release.

64% of those in the adult system were uncertain about the future, or expected to continue in crime.



# Making Sense of the Findings

Relative to the adult system, the juvenile system may be more rehabilitative.

- lower inmate:staff ratios; more contact and more positive relationships between inmates and staff; (encouragement, positive expectancies, versus degradation, humiliation, negative expectancies)
- stronger treatment orientation (addressing mental health needs, learning problems, social skills deficits)
- programming that facilitates adolescent development (social competencies, pro-social identity, decision-making and planning)

# Making Sense of the Findings

Relative to the juvenile system, the adult system may be criminogenic.

- Identity formation is shaped in negative ways.
  - Status in the inmate culture is based on ability to use violence, exploitation.
  - Staff degradation is toxic.
- Regimentation affords few opportunities for decision-making, crucial to development of self efficacy.
- Social development is arrested. Dog-eat-dog world. Mistrust. Few exceptions (old cons)

# Making Sense of the Findings

Stigma of criminal conviction affects prospects for employment, marriage, friendship networks.

Juvenile conviction has fewer and less damaging collateral consequences.

# Policy Considerations

- Treating adolescent offenders as adults produces incapacitative benefits that the juvenile system does not.
- But treatment as an adult increases the risk of re-offending when offenders return to the community. This is problematic for youth, and for public safety.
- Even criminal conviction without incarceration has a detrimental impact on youth.
- Some 16 and 17 year olds need to be in the criminal justice system. They pose a danger to other young people if retained in the juvenile system and pose a serious risk to the community if not incarcerated for lengthy periods. Justice requires that they be removed from the juvenile system.

# Policy Options

1. Retain 16 as the lower age of criminal court jurisdiction but establish separate correctional units for 16 and 17 year old offenders, where they can be housed up to age 21. Invest heavily in skills-based rehabilitative programming for this group. Increase the complement of professional staff and remove physical barriers that separate inmates from staff.

# Policy Options

2. Raise the age of criminal court jurisdiction, and reserve criminal prosecution for older, chronic, violent adolescent offenders—that is, those who will be incapacitated in the adult system for lengthy periods of time. Retain almost all adolescents in the juvenile system, where they can receive treatment and avoid stigma. This can be accomplished in multiple ways:
  - A. Rely on discretionary judicial waiver to remove offenders from the juvenile system;
  - B. Consider legislative exclusion of certain offense/prior record combinations from juvenile court jurisdiction. If this option is adopted, consider including a post-conviction option for sentencing to the juvenile system.
  - C. Give juvenile court judges blended sentencing options.

# Policy Options

3. Enhance the effectiveness of juvenile correctional programming through the adoption of evidence-based best practices (as in Pennsylvania, Washington, Florida). This strategy will facilitate youth development and better protect the public safety.