

Raise the Age: Legislation Reform for the Juvenile Justice System

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Juvenile justice policies in New York State put adolescents at risk for experiencing trauma in the criminal justice system. As a result of their precarious stage of development and limitations in brain functioning, adolescents face grave consequences when prosecuted and sentenced as adults. Adolescents need to be given sustainable solutions through rehabilitation in order to discourage recidivism upon release. Juvenile justice is not accomplishing its goals of lowering crime rates, nor is it working to reduce recidivism. These realities, in addition to theory, help to prove that reform is necessary.

The U.S. is the only country in the world in which youth offenders can be sentenced to life in prison without the possibility of parole (Rothchild, 2013). The goals of the juvenile justice system are to decrease recidivism, reduce crime rates, and dissuade juveniles from committing crimes (Rothchild, 2013). In order to accomplish such goals, the New York State government decided that harsh punishment would be the ultimate deterrent. In reality, these goals have not been met, as the crime rate for all ages is increasing (State Trends, 2010), and both juvenile and adult prisons are experiencing overcrowding (State Trends, 2010).

The challenges to the current system are further compounded by high costs and ineffectiveness (State Trends, 2010). The juvenile justice system places heavy reliance on containment and punishment, which in turn removes adolescents from their families, peers, and social contexts. This lack of positive influence during an important transition period is compounded further by the collateral consequences of being in the juvenile justice system. Adolescents must deal with the developmental consequences of isolation, punishment, and relationships with dysfunctional peers, in addition to a permanent record that may limit future academic or employment opportunities (Bonnie et al., 2013). These factors delay brain development and often leave adolescents susceptible to impaired decision-making. This impairment can increase the likelihood of incarceration and be further exacerbated through incarceration, because juveniles are no longer able to learn from pro-social peers (Bonnie et al., 2013).

In order to achieve the best practice in the criminal justice system, it is crucial to limit recidivism and foster the development of socially conscious adolescents. By raising the minimum age of juvenile offenders to be tried as adults to 18, legislation should integrate evidence-based theory about adolescent brain development. In addition, statutory amendments should be created that would require all juvenile cases to be seen in family court (Lazarow, 2012).

History of the Juvenile Offender Act

The creation of juvenile justice legislation was based upon the belief that adolescents and children are inherently good and that services addressing their transgressions should focus on treatment rather than punitive measures (Lazarow, 2012). The first juvenile court opened in New York City in 1922, and by 1925, the majority of states had adopted legislation creating a separate court for juvenile offenders. This process was often less harsh than its adult counterpart and helped to delineate the adolescent delinquent from being labeled as a criminal. In 1962, the New York State Family Court Act was passed, which stated that juvenile offenses would be adjudicated in family court alongside child protection cases and custody disputes (Lazarow, 2012). In 1978, the Juvenile Offender Act was established. This legislation came about as a result of public outcry surrounding the case of Willie Bosket, a 15-year-old who murdered two strangers in the subway. In this case, the defendant was adjudicated as a juvenile offender and was sentenced to a juvenile detention facility for five years (Lazarow, 2012). The public felt that the sentence was too light and that Willie Bosket

deserved to be tried as an adult. The Juvenile Offender Act created a new category of juvenile offenders, defined as individuals between the ages of 13 and 15 who were charged with a crime that the legislature considered sufficiently serious enough as to require the child's prosecution in criminal court. As a result, the potential consequences for such crimes increased dramatically and placed more emphasis on punitive measures rather than treatment (Lazarow, 2012).

Current policies

The New York Penal Code dictates that 16 is the age upon which an individual may be held criminally responsible (N.Y Penal Law § 30.00(1)). As a result of this legislation, individuals over the age of 16 can be prosecuted as adults in criminal court, but receive youthful offender status (N.Y. Penal Law § 30.00(1)). Youthful offenders, according to this characterization, will be deemed criminally responsible for their behavior, unlike their juvenile offender counterparts, who fall under the jurisdiction of family court.

According to the Juvenile Offender Act, individuals between the ages of 13 and 15 will be characterized as juvenile offenders (NY Criminal Procedure Law § 1.20(42)). These youth are deemed criminally responsible due to the severity of the act they are charged with committing. This category applies to youth charged with committing any of the violent felonies listed in New York Penal Law (N.Y. Penal Law § 10.00(18)). Cases involving juvenile offenders in New York City are prosecuted by New York City Law Department's corporation counsel, but sentences are served through the Administration of Children's Services (NY Penal Law § 70.05.)

Under New York Penal Law, individuals between the ages of 16 and 18 will be considered criminally responsible and will be prosecuted by the District Attorney in the adult criminal justice system. If convicted, these individuals serve their sentences in adult correctional facilities. Children between the ages of 16 and 18 who are convicted in adult criminal court may be eligible for the court to grant youthful offender status, which subsequently replaces a criminal conviction and provides a lesser sentence while sealing the individual's criminal record (NY Criminal Procedure Law § 720.10.) Youthful offender status is only available to individuals who have not committed Class AI or AII felonies and do not have any previous felonies (NY Criminal Procedure Law § 720.10 (2&3)).

Raise the Age

Adolescents—as individuals who are growing and forming identities, adapting to various stimuli, and in a precarious stage of brain development—can be considered a vulnerable population (Lambie & Randell, 2012). In addition to the already difficult processes of adolescent development, the psychosocial factors of incarceration further hinder a healthy transition into adulthood.

Brain Development of Adolescents

Adolescents are distinguishable from adults in numerous ways. They are more likely to be influenced by mass media and peers (Lambie & Randell, 2012), display relaxed attitudes towards risk, maintain a decreased ability to plan for the future, and have a lower capacity for self-management. It appears more difficult for adolescents to manage stressors and expectations with the same ability as their adult counterparts due to marked differences in emotional, physical, and psychological maturity (Steinberg & Haskins, 2008).

It is difficult for adolescents to regulate mood, impulse, and behavior (Lambie & Randell, 2012). The adolescent brain is in a constant period of maturation. As the individual grows older, the brain progresses in a series of dramatic changes. The structure and the function of the brain in adolescence may affect the way that an individual can process and react to information and various stimuli (State Trends, 2010). The region of the brain most affected by this developmental transition is the one that controls goal-oriented thinking, rational decision making, long-term planning, impulse control, insight, and judgment. Without these crucial aspects of

the brain functioning at full capacity, adolescents may experience difficulty understanding the repercussions of their actions.

Anatomical changes in the brain occur throughout adolescent development and often peak in early-to-middle adulthood. These changes often bring on the creation or improvement of self-regulation, reward processing, processing of social information, lowered levels of sensation seeking and impulsivity, better anticipation of future consequences, and development of psychosocial maturity (Lambie & Randell, 2012). Adolescents are more likely to seek immediate gratification in the form of social rewards and peer approval. Lambie and Randell (2012) believe that this reality can heavily influence behavior and that delinquency may be a direct consequence of this phenomenon. The inability to clearly regulate impulse and understand consequences are clear demonstrations of childlike thinking (Dahl, 2004), making it ineffective for such individuals to be treated as adults by the criminal justice system (Rothchild, 2013).

When considering adolescent brain development, Dahl highlights numerous changes related to puberty that affect the brain and development. As an example, a pubertal hormone called the beta-estrogen receptor is linked to mechanisms prompting behavioral and emotional change. In a period of flux and change, adolescents may experience internal confusion. Dahl labels this phenomenon as internal “dys-synchrony,” which is characterized by a process of internal confusion and external acting-out of behavioral outbursts (Dahl, 2004). As such, adolescents are more likely than any other age group to engage in risky behaviors. This may be attributed to the emphasis put on exploration and experimentation during adolescence (Hayford & Furstenberg, 2008). The delay in development of the beta-estrogen receptor makes adolescents more likely to experience a disconnect between emotional regulation and external acting-out of delinquent behaviors (Dahl, 2004).

Impact of Incarceration on Adolescent Development

Excessive punishment of adolescents may, in fact, increase the likelihood of adolescents further committing crime (Bonnie et al., 2013). Relevant literature suggests that three conditions are particularly salient for healthy psychological development: the presence of a parental figure who is involved with the adolescent and concerned with their wellbeing, the inclusion of a pro-social peer group that values and models pro-social behavior and academic success, and activities that enable the adolescent to develop critical thinking and autonomous decision making (Bonnie, Johnson, Chemers & Schuck, 2013). Prison limits the conditions that facilitate healthy psychological development.

Incarceration generates a major stress response in the brain. Adolescents face this situation with the added disadvantage of immaturity, which may make it harder to cope with stressors they encounter in the prison system (Shulman & Cauffman, 2011). Incarceration separates adolescent offenders from their social networks - family, friends, and community - at a crucial time in which adolescents perceive their relationships to be of major importance. This loss may compound the social isolation of being incarcerated, putting the adolescent at risk for psychological disorders or stress (Shulman & Cauffman, 2011).

Youth incarcerated in adult facilities face atypical and highly stressful experiences that heavily affect future outcomes of emotional development, and often result in responses of trauma (Shulman & Cauffman, 2011). Juvenile offenders may be vulnerable to adverse consequences such as deeply immersing themselves in the criminal justice system as they move away from any pro-social involvement in society (Lambie & Randell, 2013). When adolescents are housed in adult prisons, they face a substantially larger risk of physical and sexual abuse. In order to prevent these dangerous situations, adolescents have been segregated or confined in solitary units for their own safety, which, in turn, can foster or exacerbate mental health problems (State Trends, 2010). Studies have shown that the suicide rate of juvenile offenders in adult prisons is 7.7 times higher than that of their counterparts serving sentences in juvenile detention centers (Justice Policy Institute, n.d).

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Psychosocial Factors

Sentencing structure does not take into account the psychosocial factors that may have brought individuals into the criminal justice system in the first place. Social structures such as low-income neighborhoods and schools that do not promote high levels of engagement enable risk-taking behaviors to become the norm during adolescence. The majority of youth offenders come from backgrounds of family dysfunction, exposure to violence, and low socio-economic status (Lambie & Randell, 2012). Measurable disproportionality has been observed for youth across racial boundaries (Bonnie et al., 2013). In 2008, the criminal processing for cases involving black youth was significantly higher (8%) than for white youth. For drug cases, black youth were 16% more likely to be formally processed than white youth. Twenty-five percent of black youth were detained in 2008 in comparison with 19% of white youth. In all cases, those involving black youth were 16% more likely to be detained out of home for minor drug offenses than white offenders of the same crime (Bonnie et al., 2013). Juvenile justice has not been able to account for sociological contexts in its attempt to be egalitarian. Because of policies like stop and frisk, certain groups of adolescents are continuously over-represented and stigmatized.

Weaknesses of the Juvenile Offender Act

There is no evidence that confinement of juvenile offenders in adult prisons or juvenile correctional institutions reduces the likelihood of subsequent reoffending (Bonnie et al., 2013). It is necessary to focus efforts on preventive services and use mental health counseling as a rehabilitative approach to avoid longstanding punitive consequences for an individual's future (Saltaris, 2001).

Inappropriate Interventions

The primary cornerstone of juvenile justice legislation is accountability. Legislation was created for juvenile offenders to be held responsible for their actions and to become accountable for the crimes they have been charged with committing (Bonnie et al., 2013). The mechanisms for juvenile justice too closely mirror those of adult criminal justice through the use of lengthy confinement, condemnation, and punishment (Bonnie et al., 2013). Procedures specifically designed to hold adolescents accountable should promote positive legal socialization, reinforce prosocial identity development, and facilitate compliance with laws.

In contrast, the current practice of harsh interventions facilitates negative interactions between the youth population and the criminal justice system. These negative interactions can foster discontent and undermine respect for legal authority as well as reinforce social dissatisfaction (Bonnie et al., 2013). An inquest by the Department of Justice cited the heavy reliance on using restraints on youth with mental health issues, poor diagnosis of mental health conditions, poor administration of medication and treatment plans, and poor chemical-dependency programming for youth suffering from substance abuse issues (Bohland, 2011). The oversight in interventions has led to prolonged mental health concerns in juvenile offenders in addition to exacerbated levels of substance abuse upon return to the community (Bohland, 2011). Lambie and Randell (2012) cite a study in which they found that up to 95% of detained youth have at least one DSM IV diagnosis, with the possibility of co-existing or co-morbid mental health problems. Rates of substance abuse within this population are extreme, affecting approximately 70% of juvenile offenders. Juvenile offenders also have multiple special education needs, as many are evaluated below their chronological age level in terms of reading comprehension, writing, and cognitive abilities (Lambie & Randell, 2012). These deficiencies, when compounded by detainment and incarceration, may lead to major deficits in functioning as the adolescent develops into adulthood. The implications of this may lead to impairments in employment, impairments in attaining higher education, and more reliance on criminal activity (Lambie & Randell, 2012).

Lack of Subjectivity

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Regular cultural forces in society make the process of coming into the criminal justice system increasingly subjective, which subsequently makes objectivity in the courtroom impossible. There is no single risk-marker strongly associated with serious delinquency. Risks are generated across developmental stages and differ in social and geographical contexts. Programs are more likely to have positive impacts when using evidence-based treatment models and using multi-faceted, community-based interventions (Bonnie et al., 2013). Juvenile justice depends on state law and local practices, and the availability of certain interventions depends on the adolescent's geographic location. More diversionary programs may be available in affluent suburban areas than in communities with lower socio-economic status, which may be the source of discrepancies in recidivism (Bonnie et al., 2013).

Collateral Consequences

Criminal records mark adolescents for the rest of their lives and inhibit success in the academic and career realms. These limitations increase the likelihood of becoming a career criminal (Steinberg & Haskins, 2008). When taking this factor into account, it is necessary to limit the possibility of re-offending, and doing so would likely include limiting sentences of incarceration of juveniles in adult prisons (Steinberg, 2012). The consequences of prosecuting and sentencing youth in the adult system follow the youth throughout their development. Adult conviction limits a youth's opportunity for employment for the rest of their life due to the release of adult convictions to public record (State Trends, 2010).

The Role of Social Work

When considering the implications of the criminal justice system on juvenile offenders, it is necessary to also consider the implications for social work practice. Theory provides an important framework for the necessity of raising the age of qualification for juvenile offenders. Social workers should consider the type of interventions that promote the best learning and promote healthy development for adolescents that come in contact with the criminal justice system.

The Use of Power to Change Behavior

Prison is a prime example of an institution that fosters coercive power between law enforcement and offender. Coercive power relates to the relationship between two people, in which the less powerful individual must submit to the more powerful person in order to avoid punishment (Dr. Ronald Feldman, Ph D., Class Lecture 2014). Adolescents are least receptive to coercive power. This type of punishment, commonly found in juvenile justice facilities and adult prisons, often fosters contempt and does not promote motivation towards positive change (Dr. Ronald Feldman, Ph D., Class Lecture 2014).

Adolescents are most affected by expert and referent power (Dr. Ronald Feldman, Ph.D., Class Lecture 2014). These types of power, respectively, deal with the subject wanting to gain the knowledge of the person in the powerful position and the subject wanting to emulate the powerful person's behavior. These types of power relationships could be more readily accessed within a community setting. These environments would be more likely to have a focus around rehabilitation and education rather than crime and punishment, thus making referent power the more likely type of relationship between offender and educator.

This turbulent relationship between educator and offender has been researched in different cases throughout the United States. Vinter and Janowitz (1959) studied correctional facilities in Michigan. In their research, they determined that the facility with the worst overall response from juvenile inmates was "Dick," a facility that was the most restrictive with prison cells (Dr. Ronald Feldman, Ph D., Class Lecture 2014). Respondents voted that "Dick" had the highest rates of disempowerment of inmates and lowest rates of focus on positive change. At the opposite end of the spectrum was "Inland," a facility focused on rehabilitation. "Inland" was rated as having highest levels of inmate satisfaction and had the highest number of respondents who reported being helped (Dr. Ronald Feldman, Ph D., Class Lecture 2014).

Social Learning Theory

Social learning theory is important when considering how to develop pro-social behaviors as a means to reduce recidivism and subsequently decrease crime rates. This theory contends that an individual's behavior is heavily influenced by the person's environment and is based upon the following principles (Dr. Ronald Feldman, Ph D., Class Lecture 2014):

- Expectations for behavior are shaped by the individual environment
- Principles that govern learning of pro-social behaviors are the same as those for learning anti-social behaviors
- Learning new behaviors depends on modeling, identification, and imitation

The goal of juvenile justice legislation is to address dysfunctional behaviors and prevent them from reoccurring. A highly restrictive environment such as an adult prison, however, would inevitably lead to difficulty for adolescents in accessing positive modeling from pro-social peers, or authoritative figures. An environment like the aforementioned "Dick" or "Inland" would have an important effect on an adolescent's development.

The Call for Reform

In order to move juvenile justice in a positive direction, massive and widespread reform must be undertaken. A change in legislation would be required to raise the age at which a 16-year-old offender could be prosecuted in adult criminal court. Research dictates that effective treatments must be focused on the principles of risk, need, and responsibility (Lambie & Randell, 2012). Interventions and programming should be spearheaded through community-based programs that focus on the use of evidence-based treatment options that facilitate rehabilitative modalities and social learning (Lambie & Randell, 2012).

The Center for Court Innovation in New York City is currently researching and undertaking numerous opportunities for juvenile offenders to seek alternatives to the traditional criminal justice model (Barbieri, 2014). Their innovative youth justice framework provides an important outline for the legislation and overarching reform that needs to take place in juvenile justice today. Some examples of their efforts include: The Alternative to Detention Program, which uses mentorship, support, and supervision to ensure that the adolescent can remain in the community while awaiting court decision on charges; The Adolescent Diversion Program, which works with legal systems to create non-criminal dispositions so that adolescents can avoid permanent criminal records that can impair the re-entry into society from being successful and productive; and The AIM program, which provides young people on probation with supportive programming that works on healing trauma, providing support, and providing advocacy for youth as they return to their communities (Barbieri, 2014).

If the true goals of the juvenile justice system included rehabilitation, then treatment modalities and intensity should account for the risk that the offender poses to society, the societal stigma associated with their crime, and the various difficulties that individual will face upon returning to the community. It is also necessary to facilitate effective use of resources and success in addressing target treatments. In order to do so, the offender's learning style should be considered (Lambie & Randell, 2012). Taking into account the delays in adolescent brain development, the structural differences between adolescents and adults, and the role of intergenerational trauma, it simply makes sense to shift the focus to preventing justice system involvement (Barbieri, 2014).

Given the low age of legal responsibility in New York compounded with the stringent criteria to qualify for juvenile offender status, the majority of individuals are deprived of the opportunity to take advantage of evidence-based programming and treatment (Carriero, 2012). In order to affect change for future generations, decrease recidivism, and foster safe communities, it is crucial to amend the current Juvenile Offender Act. Amendments should include the policy that all juvenile cases, without exception, should be seen in family

court. This amendment would ensure that all adolescent offenders are treated equally under protection of the law, and as a result may not face harsher punishment due to widespread oppression, discrimination, or bias. The age for juvenile offender adjudication must be raised to the minimum age of 18. Finally, services must be in place to provide adolescents with necessary treatment, including programming such as counseling, restorative justice, and education in order to prevent offenses from reoccurring.

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