

JUVENILE CRIME and JUSTICE



GENERAL EDITOR
William J. Chambliss

KEY ISSUES IN *Crime* AND PUNISHMENT

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George Washington University



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Introduction

Juvenile Crime and Justice

In this volume, authors address various topics pertaining to juvenile crime and justice. While varying in their specific discussion topics, many of the articles share common links, which typify the points of contention in the juvenile criminal justice system. Each author presents arguments in favor of various programs, treatments, and punishments, counterbalancing them with opposing arguments. Issues are raised along the lines of three loosely connected themes: prevention, prosecution, and corrections.

Prevention policies range from youth curfews, as discussed by Yvonne Vissing, to alternative schools, as discussed by Anthony Petrosino and Claire Morgan. Proponents for prevention policies point to successful outcomes as examples of the positives of these programs. For example, a study of the 1997 juvenile curfew in Monrovia, California, claimed that there was a 32 percent drop in residential burglaries after the curfew went into effect. Prevention policies such as alternative schools, it is argued, can target youths who are considered “at risk” and give them individualized instruction to avoid later criminal offenses.

Critics of prevention policies question their overall effectiveness, arguing that these policies inevitably result in the unfair targeting of some youths, and often lead to an escalation rather than a reduction in delinquency. Juvenile curfews, for example, lead to more youths who are arrested and incarcerated for curfew violations. Thus the law creates the crime rather than curtailing what would otherwise not be a crime. Furthermore, it is argued that juveniles arrested for curfew violations often are put into contact with more serious offenders that can lead to further delinquency. Youths involved

in alternative schools are similarly stigmatized by being labeled as outcasts and are isolated with other students who may be more delinquent and aggressive, thus escalating potential problems.

When confronting juveniles in the criminal justice system, there are a few factors that the authors take into account in regard to the prosecution of youths. For one, the legally responsible party must be confronted in relation to the dualism of *mens rea* (guilty mind) and *actus reus* (physical act). Susan Reid and Gilbert Geis examine these issues in their chapters *Age Of Responsibility* and *Parental Responsibility Laws*, respectively. Where and how juveniles go to trial are relevant to issues of juveniles in adult courts and legal representation for juveniles. Those in favor of legal representation of juveniles believe that it creates a fair environment that protects constitutional rights. And while those in favor of juveniles in adult courts use the idea of “adult crime, adult time” in their defense, opponents of legal representation cite this idea as problematic. “Youth are treated like adults,” Patricia Campie and Linda Szymanski write, “even though adolescent development research clearly indicates that youth decision making and subsequent delinquent behaviors require a much different response than what is needed to prevent or reduce adult re-offending.”

There is a plethora of arguments on the positive and negative effects of different juvenile corrections policies. Arguments related to juvenile corrections range from sentencing options to where juvenile offenders should be housed to the death penalty for juvenile offenders. Arguments for boot camps, group homes, and out-of-home placement focus on the capacities of these programs to rehabilitate juvenile offenders and act as an intervention process to avoid further offenses. However, opponents of these programs highlight their cost, possibilities for abuse and neglect, and haphazard selection processes.

Also important to discussions of juvenile crime and justice is the Juvenile Justice and Delinquency Prevention Act (JJDP) of 1974. The JJDP has affected and helped mold many of the processes described above. Juveniles who are prosecuted in the juvenile court system, for example, are kept out of sight and earshot of adult offenders. This is done to prevent the victimization of the juvenile offender by adult offenders. Curfews, as Vissings points out, have roots in the JJDP. When the JJDP issued deinstitutionalization mandates in 1974, curfews helped keep those who had recently been incarcerated for infractions and mental health problems off of the streets. The JJDP has also made strides to address the overrepresentation of minority youths in the juvenile justice system through various amendments.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is an institution, established out of the JJDPA, that has had a large impact on the ways in which juvenile crime and justice is handled in the criminal justice system. The office is responsible for creating a model boot camp protocol; providing data and databases that are used in many of the chapters in this volume; and funding research on various topics related to the prevention, prosecution, and correction of juvenile crime. While the creation of boot camps is contentious, as is evidenced in Campie's discussion, the research brought forth by the OJJDP addresses many crucial issues in this field. The creation of a Disproportionate Minority Confinement (DMC) Best Practices Database provides states with a fully searchable Website that details models shown to be affective in curbing DMC, as noted in the chapter *Racial Disparities* by Tommy Curry. The OJJDP also began the Due Process Advocacy Project in 1993, which helps provide youths with legal representation in court.

Juvenile crime and justice is a very sensitive subject with much to be discussed. These chapters sift through the leading arguments pertaining to important topics in this field. As with most issues in the study of criminal justice, the best response to the problem of juvenile delinquency and crime is a hot-button issue around which there is endless debate. Legislature like the JJDPA and institutions like the OJJDP are attempting to fashion a fair and just way to handle juvenile crime and justice, but as the authors point out, there is still much to be done. In the last analysis, the arguments will be settled by empirical research, but unfortunately there is a lack of sufficient research at present to allow for definitive conclusions on many of the most controversial issues in juvenile justice policy.

William J. Chambliss
General Editor

Contents

Introduction: Juvenile Crime and Justice	xiii
<i>William J. Chambliss, General Editor</i>	
1. Age of Responsibility	1
The Legal Regulation of Childhood and Adolescence	2
History of Criminal Responsibility	4
Human Rights and the Age of Responsibility	6
Most Violated Treaty	6
<i>Pro</i> : Supporting Minimum Age of Criminal Responsibility	7
Circumventing the Juvenile Justice System	7
Moral and Cognitive Reasoning	8
Actual Juvenile Crime Rates	8
<i>Con</i> : Opposing Minimum Age of Criminal Responsibility	9
Excuse or Full Responsibility	9
Fallout From the Era of the “Child Savers”	9
Essential to Intervene	10
Developing Guidelines for Age Limits	11
2. Alternative Schools	15
The History of Alternative Schools	17
The 1960s and 1970s	17
The 1990s: Rising Worries of Violence	18
2000s: No Child Left Behind	18
Selecting Students for Alternative Schools	19
Types of Alternative Schools	20
Continuation High Schools and	
Private Examples	21
Characteristics of Alternative Schools	22
<i>Pro</i> : Arguments in Support of Alternative Schools	22
<i>Con</i> : Arguments in Opposition to Alternative Schools	23
Do Alternative Schools Work?	24
Methodological Problems in the Research	25
Public Opinion	26

3. At-Risk Youth	29
Defining the At-Risk Youth	30
Predisposing Factors	30
Demographic Factors	30
Personality Traits	31
Familial Contexts	32
Social Context	33
Influence of Violence and Conflicting Standards in Society	33
Identifying the At-Risk Youth	34
Problems at School and Home	35
Behavioral and Social Indications	35
Labeling the At-Risk Youth	36
Prevalence	37
High School Dropouts	37
Sexual Promiscuity and Unprotected Sexual Intercourse	37
Crime and Delinquency	38
Drug and Alcohol Use and Abuse	39
Obesity and Other Health-Related Risks	39
Other High-Risk Behaviors	40
Prevention and Intervention Strategies	40
<i>Pro</i> : Benefits of Prevention Strategies	41
<i>Con</i> : Drawbacks of Prevention Strategies	42
4. Boot Camps	45
History of Boot Camps	46
Office of Juvenile Justice and Delinquency Prevention Study	46
National Institute of Justice Analysis	47
Recent Trends	48
Backlash at Boot Camps	49
A Cottage Industry	50
<i>Pro</i> : Advantages of Juvenile Boot Camps	51
Completion Rates	51
Competency Development-Educational Outcomes	52
Cost Savings Compared to Incarceration	52
Youth and Public Perceptions	53
<i>Con</i> : Disadvantages of Juvenile Boot Camps	53
A Flawed Theory of Change	53
Allegations of Abuse and Neglect	54

Inconsistent Program Implementation	54
Higher Overall Costs	55
Recidivism Rates	56
5. Curfews	59
History of Curfews	60
1980s: Spike in Violence	61
Legality of Curfews	62
<i>Pro</i> : Arguments in Support of Juvenile Curfews	64
<i>Con</i> : Arguments in Opposition to Juvenile Curfews	65
Juvenile Crime Rates and Types	66
Flawed Data	67
6. Death Penalty for Juvenile Offenders	73
Death Penalty Implementation: Legal Principles	74
Evolving Standards of Decency	75
Application of Principles for Juveniles	75
<i>Thompson v. Oklahoma</i>	76
<i>Stanford v. Kentucky</i>	77
<i>Roper v. Simmons</i>	78
<i>Pro</i> : Support for Death Penalty for Juveniles	80
Justice and Maturity of Judgment	80
A Miscarriage of Justice	81
<i>Con</i> : Opposition to Death Penalty for Juveniles	82
Lack of a Deterrent Effect	82
Juvenile Impulsivity	83
Temporary Lack of Judgment	84
Conclusion	85
7. Group Homes	89
History of Group Homes for Delinquent Youths	90
Who Goes to Group Homes?	91
The Contagion Effect	91
Recent Trends	92
Positive Peer Culture Program	92
<i>Pro</i> : Benefits of Group Homes for Delinquent Youths	94
Home-Like Environment Helps Youths Transition	94
Less Restrictive Than Other Secure Placement Options	95
Less Expensive Than Other Secure Placement Options	96
<i>Con</i> : Drawbacks of Group Homes for Delinquent Youths	96

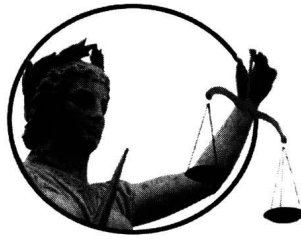
Mismatched System	96
Influence of Housemate Peers Versus Positive Support	97
Other More Cost-Effective Alternatives	98
Resistance From Local Community	99
Conclusion	100
8. Juvenile Detention Facilities	103
Overview of Juvenile Detention: A Place and a Process	104
Legal Criteria by State	105
History of Juvenile Detention	106
Profile of Detained Youths	107
Alternatives to Secure Juvenile Detention	108
Planning for Change	109
<i>Pro</i> : Benefits of Juvenile Detention Facilities	110
<i>Con</i> : Drawbacks of Juvenile Detention Facilities	111
Denial of Services	112
9. Juvenile Gangs and Delinquency	117
Defining Juvenile Gangs	118
Juvenile Gang Members and Their Lives	119
Research on Gangs Across America	119
Gang Locations	121
Gang Delinquency	122
Responses to Gangs	123
Police Suppression Techniques	123
Prosecutorial and Legislative Suppression Techniques	124
Civil Gang Injunctions	125
Gang Interventions	125
Gang Prevention	126
<i>Pro</i> : Benefits of Gang Prevention Techniques	126
Prosecutorial and Legislative Suppression Techniques	127
Gang Prevention	127
<i>Con</i> : Drawbacks of Gang Prevention Techniques	127
Controversies Surrounding Suppression Techniques	128
Civil Injunctions	129
Gang Interventions	129
Conclusion	129
10. Juvenile Offenders in Adult Courts	131
Differentiating Juvenile and Adult Justice	132

Mechanisms of Transfer	133
Statutory or Legislative Exclusion	134
Who Reaches Adult Court?	135
Transfer Biases	136
What Happens to These Transferred Youths?	138
<i>Pro</i> : Arguments in Support of Juveniles in Adult Court	139
Types of Offender and Transfer Mechanisms	140
<i>Con</i> : Arguments Against Juveniles in Adult Court	141
Modern Advances in Adolescent Research	142
Adult Court Outcomes for Youth	142
Conclusion	143
 11. Juveniles in Adult Correctional Facilities	 147
Methods for Transferring to the Adult System	148
The Supreme Court: How Harsh of a Sentence?	149
A Glimpse at Daily Life	150
A Profile of Juveniles in Adult Correctional Facilities	151
<i>Pro</i> : Support for Juvenile Transfer to Adult Facilities	152
A Deterrent Effect	153
<i>Con</i> : Opposition to Juvenile Transfer to Adult Facilities	154
Well-Being and Victimization	155
Lack of Programs and Mismatch of Supervision	156
Recidivism Rates	157
Length of Time Served	158
 12. Legal Representation	 163
History of Legal Representation for Juveniles	164
The 1990s: Assessing Due Process for Juveniles	165
The Case of <i>Roper v. Simmons</i>	167
Current Issues in Legal Representation for Juveniles	168
Ineffective Assistance of Counsel	168
Right to Conflict-Free Counsel	169
Right to Consult With Counsel Without Parents	170
Trial Court Abusing Discretion	170
Supervising Good Juvenile Defense Bar Practices	171
<i>Pro</i> : Benefits of Legal Representation for Juveniles	173
<i>Con</i> : Drawbacks of Legal Representation for Juveniles	174
Lack of Oversight	174
The Dilemmas of Counsel	175
Conclusion	175

13. Out-of-Home Placement	179
History of Out-of-Home Placements	181
Early Beginnings	181
The Child-Saving Era of Progressive Reformers	181
The Get-Tough Movement to Modern Placement	183
<i>Pro</i> : Benefits of Out-of-Home Placement	184
<i>Con</i> : Drawbacks of Out-of-Home Placement	185
Psychological and Developmental Problems	186
Disruption of Relationships	187
Culture Shock	187
Out-of-Home Versus Community-Based Interventions	188
Outdated Theories and Programs	189
Disproportionate Numbers of Minorities	190
Conclusion	190
14. Parental Responsibility Laws	195
Contributing to Delinquency	196
Examples of Applied Delinquency Laws	197
Empirical Inquires	199
Parental Responsibility Reestablished	199
Up Close and Personal	200
Street Terrorism Enforcement and Prevention Act	202
Are the New Laws Constitutional?	202
<i>Pro</i> : Arguments Supporting Parental Responsibility Laws	203
<i>Con</i> : Arguments Opposing Parental Responsibility Laws	204
Conclusion	206
15. Racial Disparities	209
Policy and Paradigm	211
Report of Accountability	212
A Historiographic Analysis of Race in Juvenile Justice	214
Bio-Underclass, Regulation, and “Other” Children	216
Abolition and Juvenile Justice: A Still-Relevant Movement	218
Scholarly Resistance: The Antiabolitionists	220
<i>Pro</i> : Support for the Theory of Racist Juvenile Justice	220
<i>Con</i> : Rejection of the Theory of Racist Juvenile Justice	221
Conclusion	222
16. Scared Straight Programs	225
The History of the Juvenile Awareness Project	226

A Change in Tone	227
<i>The Scared Straight!</i> Documentary	229
Controversy	230
Congressional Inquiry	230
<i>Pro</i> : Advantages of Scared Straight Programs	232
<i>Con</i> : Disadvantages of Scared Straight Programs	233
The Panacea Phenomenon	234
Does the Program Work? Conflicting Answers	235
17. School Violence	240
The Scope of School Violence	242
Bullying	242
Violent Versus Nonviolent Crime	242
Causes of School Violence	243
Psychological Factors	244
School Characteristics and Neighboring Factors	244
Parental Influence	245
Technology and Guns	246
The Cost of School Violence	247
Solving the School Violence Problem	248
<i>Pro</i> : Benefits of Punitive Responses to School Violence	248
<i>Con</i> : Drawbacks of Punitive Responses to School Violence	250
18. Sentencing Options	255
History of Juvenile Sentencing	256
The 1990s: Probation	257
The 2000s: Spike in Delinquency	258
Once an Adult, Always an Adult	259
Capital Punishment and Life Without Parole	260
<i>Pro</i> : Positive Sentencing Options	261
Sentencing Youths to Probation	261
Use of Judicial Discretion	262
<i>Con</i> : Negative Sentencing Options	263
Use of Formal Processing and Incapacitation	263
Transfer to Adult Court	264
Conclusion	265
19. Serious and Violent Juvenile Offenders	269
Historical Developments	270
Risk and Violence	271

Individual Risk	272
System Response	273
<i>Pro</i> : Benefits of Predicting Serious Offenders	275
<i>Con</i> : Drawbacks of Predicting Serious Offenders	276
Conclusion	277
20. Treatment and Rehabilitation	281
Evolution of Treatment and Rehabilitation Approaches	282
Treatment of Youths in General	282
Treatment of Youths in the Justice Sector	283
Culpability or Treatment Amenability: Youths Versus Adults	284
How to Treat	285
Principles of Effective Treatment	286
Whom to Treat	286
<i>Pro</i> : Arguments in Support of Treatment	287
Treatment Does Work	287
<i>Con</i> : Arguments Against Treatment	288
Distributive Justice	289
The Future of Treatment and Rehabilitation	290
 Index	 297
About the General Editor	336



1

Age of Responsibility

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There are a number of provisions in law that use a child's age to protect those under the age of majority, usually under 18 years of age, from activities that are available to adults, but are deemed harmful to children. Examples of such protections include age restrictions on the sale of alcohol and tobacco products, minimum age restrictions on employment, and in the case of criminal law, the right to be presumed to lack capacity to infringe penal law if the person is below a certain minimum age. When considering the issue of criminal responsibility and the age at which full responsibility for criminal actions occurs, there are a number of issues that must be addressed. First, the traditional notion of the dualism of *mens rea* (guilty mind) and *actus reus* (physical act) in order to seek a criminal conviction must be considered in the context of age. Historically the age at which a child was seen to understand "good" from "evil" or "right" from "wrong" was set at under the age of seven, with special rebuttal provisions for those young people between seven and 14 years of age. The minimum age of juvenile court has wide fluctuations around the world, and the setting of this age is based on questions about a child's capacity as well as the doctrine of best interests of the child. Another issue that must be considered is the question of whether or not the machinery of the formal criminal court is the most appropriate means of intervention with children and youths when they commit acts that might be deemed criminal. The final issue is the question

of the child's rights as outlined in international human rights instruments, and in particular, the United Nations Convention on the Rights of the Child (UNCRC).

Arguments for raising the minimum age of criminal responsibility include the issue of autonomy and capacity, as well as the desire to ensure that the state acts in the best interests of the child. Further considerations include a desire to protect the young person from the deleterious effects of a formal criminal trial and more serious adult sanctions, which has been shown to increase the likelihood of further entrenchment in the criminal justice system and may lead to a life of crime. By way of contrast, there are some who argue that it is important to treat certain young offenders in the same manner as adult offenders, due to the nature of the crimes they have committed. This "adulteration" of juvenile justice, they argue, is in keeping with what has been seen as an increasing maturity of young people and the responsibility they bear for their actions. This focus on the political dimensions of naming and shaming young offenders is in keeping with the idea that they must be held accountable for the heinous nature of their criminal behavior.

The academic literature on the effects of labeling on young criminals is helpful in considering the trajectories leading to career criminals from an early involvement in the criminal court process. Similarly, the literature from psychology and physiology is useful regarding the developmental pathways and brain development of children and youths in terms of their mental capacity to form judgments and understand the nature and circumstances of the events that surround their criminal conduct.

The main issues to be resolved regarding the question of age and criminal responsibility is the balance required between society's historic ideological focus, which has been seen as the need to protect children, legally and socially; and society's right to be protected from the wrongdoings of its members through accountability and punishment.

The Legal Regulation of Childhood and Adolescence

The law that regulates criminal conduct is based on a binary system, looking to the state for the protection of children until such time as they cross the threshold, known as the *age of majority*, to adulthood. While there is variation in the upper age jurisdiction of the youth court throughout the world, the age of majority assumes that the individual has reached a period in their development wherein they can be seen as fully autonomous individuals who are responsible for their choices and actions and no longer require

the protection of the state. The problem with this binary system, focusing on immature children and competent adults, means that there is no opportunity to include the evolving capacities of children as they mature during their adolescent years. Some have argued that the period of adolescence is virtually invisible in law and regulatory bodies. When provisions do exist with respect to increasing rights, responsibilities, and obligations for adolescents, they are framed within this binary stance. Adolescents are viewed as either dependent, vulnerable, incompetent, and in need of protection like their younger counterparts; or as maturing adults who are self-sufficient, responsible, and competent.

The cutoff age when a child is no longer a child is reached at the age of 18, considered the age of majority. Prior to the age of majority, children and youths receive protection from the state in the form of restrictions on their freedom and investment in their development with the intent that such policies will pay dividends in terms of the promotion of competent adults as productive members of society. Where there have been changes to this upper age of childhood, policies have been put in place to allow for changing capacities of young people based on the notion that social welfare and the welfare of the young person can both benefit through such a reclassification. One example is related to the age of consent for a minor to receive medical treatment. By lowering the age of consent, there is a benefit to the young person and to the larger community in the form of reduced health costs associated with pregnancy, sexually transmitted disease, and other social welfare costs. In the case of youth justice, however, the rationale for lowering the age is not focused on the promotion of the welfare of youths. Rather, treating a youth like an adult for the purposes of criminal responsibility is more of a reflection of societal values reflected in the adage, “adult crime equals adult time.”

The “best interest of the child” doctrine, which was paramount under the *parens patriae* doctrine (state acts like a kindly parent), in most juvenile courts appears to be in direct opposition to an increasing trend throughout the world known as the “adulteration” of youth crime, which treats young people in the same manner as an adult criminal. There are now provisions in juvenile criminal statutes throughout the world that makes it easier to transfer youths who commit criminal offences to the adult system, either for adjudication or for punishment. There are also a number of juvenile justice statutes that undermine the principle of confidentiality in youth justice proceedings by increasing the number of opportunities to share information about the youth defendant with criminal justice, educational, and