

Young Offenders and an Effective Justice System Response

WHAT HAPPENS, WHAT SHOULD HAPPEN, AND WHAT WE NEED TO KNOW

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For the juvenile and criminal justice systems in the United States, the past half century was a tumultuous period. Beginning in the 1960s, the national crime rate sharply increased, prompting some criminologists to join with political forces to reject the rehabilitative ideal in favor of a "justice model" that would limit corrections officials' discretion with offenders and institute due process rights and determinate sentencing. This pendulum swing from treatment to punishment was buttressed by a negative review of program evaluations in juvenile and criminal justice systems. Some analysts warned of a coming generation of juvenile "super-predators" that was projected to occur between about 1995 and 2010.

Although this dire prediction never materialized, the more punitive philosophy of the criminal justice system filtered down to the juvenile justice system and ushered in significant changes in the boundaries of the juvenile justice system and in policies and procedures for handling juvenile offenders within it. Large numbers of juvenile offenders have been removed from the juvenile justice system and placed in the criminal justice system. Blended sentence provisions have been enacted into law along with offense-based determinant and mandatory minimum sentences. Punitive measures are used more widely than ever before. New laws have designated more juveniles as serious offenders, brought more minor offenders into the system, and extended periods of confinement in juvenile correctional facilities.

The period of overreaction to juvenile crime appears to be coming to a close. Both the juvenile and criminal justice systems are returning to an emphasis on rehabilitation and evidence-based practices. Moreover, there is considerable optimism that we can hold juveniles accountable, manage the risks they pose to others, and provide them with "room to reform" without "permanently damaging their lives."

Against this backdrop, we examine juvenile and criminal justice policies and practices with respect to young offenders who cross over from the juvenile to the criminal justice system. We divide this chapter into four sections. In the first, we discuss differences between the juvenile and adult justice system responses to juveniles, inconsistencies in both the juvenile and criminal justice systems, actual versus ideal justice system responses to young offenders, and the effectiveness of these responses. The second section considers key contextual factors and special considerations when deciding how to respond to young offenders. In the third, we discuss effective programs, and we follow this with highlighted research gaps. The chapter concludes with the presentation of a range of critical policy recommendations.

Intended Versus Actual Justice System Responses to Young Offenders

The shift from rehabilitative to punitive justice policies. During most of the twentieth century, state sentencing policies were primarily offender-oriented and based on a rehabilitative model of individualized sentencing (Tonry, 2009; Warren, 2007). Beginning in the 1960s, the national crime rate increased sharply. At the same time, evaluations of correctional interventions during the rehabilitative period claimed that “nothing works” (Lipton, Martinson, & Wilks, 1975; Martinson, 1974) and cast a negative shadow over therapeutic criminal and juvenile justice policy and practice (Garland 2001; Tonry 2004). This assessment led the federal government and many states to turn to offense-based sentencing policies and to embrace more punitive measures. Martinson’s (1974) conclusion—“with few isolated exceptions, the rehabilitative efforts that have been reported so far have no appreciable effect on recidivism” (p. 25)—provided a critical foundation from which to advocate such changes. The claim that “nothing works” persisted throughout the 1970s and 1980s until sophisticated scholars used advanced analytical tools to examine the evidence to date. The results refuted Martinson’s negative assessment and showed that well-implemented rehabilitative programs can substantially reduce recidivism (Cullen, 2005; Lipsey & Cullen, 2007).

The pendulum swing from treatment to punishment filtered down from the criminal justice to the juvenile justice system (Feld, 1988; Howell, 2003b). Two compelling images in the 1990s buttressed policies to enhance punishment of juvenile offenders. First, as mentioned, analysts warned of a coming generation of juvenile “superpredators” (DiIulio, 1995a) whom they characterized as a “new breed” of cold-blooded killers (DiIulio, 1995b, p. 23). Second, DiIulio and Wilson predicted a new “wave” of juvenile violence to occur between about 1995 and 2010, which they based in part on a projected increase in the under age 18 population (DiIulio, 1996, 1997; Wilson, 1995). The sharp increase in adolescent and young adult homicides in the late 1980s and early 1990s (Blumstein, 1995a, 1995b; Cook & Laub, 1998; Fox, 1996) was tied to the presumed new wave of juvenile

"superpredators." Such dire warnings, which helped to promote punitive policies, rested on three assumptions: that the relative proportion of serious and violent offenders among all juvenile delinquents was growing; that juvenile offenders were becoming younger and younger; and that juveniles were committing more and more violent crimes.

None of these assumptions proved to be correct. Several researchers have debunked the superpredator myth and doomsday projections (Howell, 2003b, 2009; Males, 1996; Snyder, 1998; Snyder & Sickmund, 2000; Zimring, 1998). A new wave of minority superpredators did not develop, nor did a general wave of juvenile violence occur. To be sure, rates of violent juvenile behavior increased in some cities in the 1980s and early 1990s, including Pittsburgh (Loeber, Farrington, Stouthamer-Loeber, White, & Wei, 2008) and Denver (Huizinga, Weiher, Espiritu, & Esbensen, 2003). However, analysis of national self-report and victimization data showed that the anticipated increase in juvenile violence was exaggerated (Howell, 2009, pp. 39–55). Because of juveniles' low base rate of serious and violent crime, the "tyranny of small numbers" affects analyses and interpretations of serious juvenile violence (Snyder, Sickmund, & Poe-Yamagata, 1996). When a small increase occurs in a small number of cases, it appears as a large percentage increase. Even at the height of the juvenile crime increase (1993), "only about 6% of all juvenile arrests were for violent crimes and less than one-tenth of one percent of their arrests were for homicides" (McCord, Widom, & Crowell, 2001, p. 33).

The one notable exception that provided some support for the doomsday predictions involved homicide. From the mid-1980s to the early-1990s, there was an increase in homicide involving firearms that involved both juveniles and young adults (Cook & Laub, 1998). However, the biggest absolute change was for young adults (p. 60). Studies conducted by the National Center for Juvenile Justice have shown that adults, not juveniles, accounted for two-thirds of the increase in murders in the late 1980s and early 1990s, and that the adults were responsible for nearly three-fourths of the increase in violent crime arrests during this period (Snyder et al., 1996, p. 20). Public policy analysts and the research communities attribute the dramatic growth in homicide largely to the availability of firearms—primarily handguns—the recruitment of young people into illicit drug markets (Decker, 2007; Blumstein, 1995b), and, more importantly, increased gang homicide (Howell, 1999; Howell & Decker, 1999).

Scholars have offered several explanations for the adoption of extremely punitive crime and delinquency policies and practices in the United States that began in the 1970s (cf. Beckett & Sasson, 2003; Bishop, 2006; Cullen, 2005; Feld, 1999; Feld, 2003; Garland, 2001; Mears, 2006; Tonry, 2009). Martinson's (1974) negative assessment of the effectiveness of rehabilitation provided one impetus. In addition, arrest, prosecution, and confinement rates for juveniles and adults increased dramatically in the 1980s and 1990s, driven by a succession of four domestic U.S. "wars": the "war on crime," the "war on drugs," the "war on gangs," and the "war on juveniles" (Howell, 2003b). The centerpiece of the war on drugs

was the battle against the perceived crack cocaine epidemic (Brownstein, 1996; Hartman & Golub, 1999; Reeves & Campbell, 1994). According to these sources, no one has presented convincing empirical evidence that a nationwide crack cocaine epidemic in fact occurred (see also Howell, 2012). The mass media, politicians, and law enforcement attributed escalating violent youth crime to a gun violence and crack cocaine epidemic, a claim that fueled support for more punitive sentencing policies (Brownstein, 1996; Reeves & Campbell, 1994). Other scholars have argued that racial animus contributed to "get tough" policies in both the juvenile and criminal justice system (Feld, 1999; Tonry, 2009; Tonry & Melewski, 2008). In turn, such policies have contributed to disproportionate minority confinement (Feld, 1999; 2003; Snyder & Sickmund, 2006).

Inconsistencies in the juvenile and adult justice systems. By the end of the 1990s, all states had enacted laws to make their juvenile justice systems more punitive or eased transfer of more juveniles to the criminal justice system and to confine them in adult prisons (Howell, 2009, pp. 288–290). Juvenile courts designated larger proportions of juveniles as serious and violent offenders and incarcerated more juveniles. States abandoned rehabilitative programs and used boot camps—military-style regimented discipline, "Scared Straight" programs, and increased confinement in detention centers and juvenile reformatories (Males, 1996; Roush & McMillen, 2000).

Some observers erroneously declared that the rehabilitative mission of juvenile courts had "collapsed" (Scott & Steinberg, 2008, pp. 88–95). Although many state legislatures rewrote their juvenile codes to endorse punitive objectives in the 1990s, virtually all of them maintained allegiance to juvenile courts' traditional rehabilitative mission (Bishop, 2006; Tanenhaus, 2002, 2004). Bishop's review of laws enacted during 2003–2005 observed that "efforts are underway to mitigate or even abandon punitive features [of juvenile laws enacted in the past decade and] to address the treatment needs of most juvenile offenders" (p. 660; see also Butts & Mears, 2001).

By contrast, in the criminal justice system, retributive policies continue to predominate, as evidenced by the dramatic increase in persons under probation or parole supervision (Glaze & Palla, 2005), the growth of state prisons (Mears, 2008; Irwin, 2005) and supermax prisons (Mears, 2005). At the beginning of 2008, for the first time in our nation's history, one out of every 100 Americans was confined in state or federal prisons and jails and the U.S. incarceration rate was five or more times higher than in any other Western country (Tonry 2004; Tonry & Farrington 2005). The absence of a clear or consistent emphasis on rehabilitation or on evidence-based practices has led some scholars to observe that "what is done in corrections would be grounds for malpractice in medicine" (Latessa, Cullen, & Gendreau, 2002). Since 2000, 20 *Civil Rights of Institutionalized Persons Act* (42 U.S.C. § 1997a et seq.), investigations have been made of 23 juvenile justice facilities in more than a dozen states (U.S. Department of Justice, 2007).

Research consistently shows lower recidivism rates in the juvenile justice system than in the criminal justice system, but the prospect of released youth or adults going on to lead crime-free lives leaves considerable room for improvement. For example, one large-scale study found that 27% of released youth were readmitted within one year of their release; male readmission rates were much higher than for females (28% and 16%, respectively), and a strong relationship existed between prior correctional commitments and readmission rates (Krisberg & Howell, 1998). A recent survey of juvenile correctional administrative agencies (Virginia Department of Juvenile Justice, 2005), included 33 states. Some states measured recidivism by rearrests (nine states), others used reconvictions (12 states), and still others measured reincarceration (12 states). The average recidivism rates suggest room for improvement with this population: rearrests (57%), reconvictions (33%), and reincarceration (22%). Outcomes for adults are worse. About two-thirds of adult probationers commit other crimes within three years of their sentences, and many of them are serious (Manhattan Institute, 1999). Analysts report similar recidivism rates from prisons, with two-thirds of released prisoners rearrested within three years (Langan & Levin, 2002).

In sum, the shift from rehabilitative to punitive justice policies has not produced the anticipated results. Although offense-oriented sentencing policies did result in longer sentences for juvenile offenders, these did not lower recidivism, and they may well have produced an increase among juveniles sentenced to adult prisons where recidivism rates are higher. The next section explores in more detail the disjunction between ideal and actual juvenile justice practices.

Ideal versus actual responses to young offenders. As a result of the changes during the past 30 years, young people today face a bewildering and inconsistent array of juvenile and adult justice system responses. Broadly speaking, the juvenile justice system is tougher today than it was in the past, but it remains more rehabilitative than the adult justice system. As a result of inconsistencies in juvenile and criminal justice processing, whether youths receive treatment depends fortuitously on which system handles them. This creates a substantial disjunction between ideal and actual responses to young offenders. In what follows, we discuss some of the processing and sentencing decisions and policies that affect young people. The discussion serves (1) to illuminate the inconsistency in the processing and sentencing of young people, (2) to highlight the disjunction between ideal and actual practice, and (3) to draw attention to critical issues (e.g., racial and ethnic variation in the use and effects of sentencing laws, sentencing of the most serious juvenile offenders). The flowchart shown in Figure 8.1 illustrates the juvenile justice system's processing stages and the decision points at which juvenile offenders can be transferred into the criminal justice system, beginning at the prosecution stage, following arrest.

Arrests. Criminologists have long assumed that arrests contribute to desistance during and after the juvenile years (Blumstein, Cohen, Roth, & Visher, 1986; but

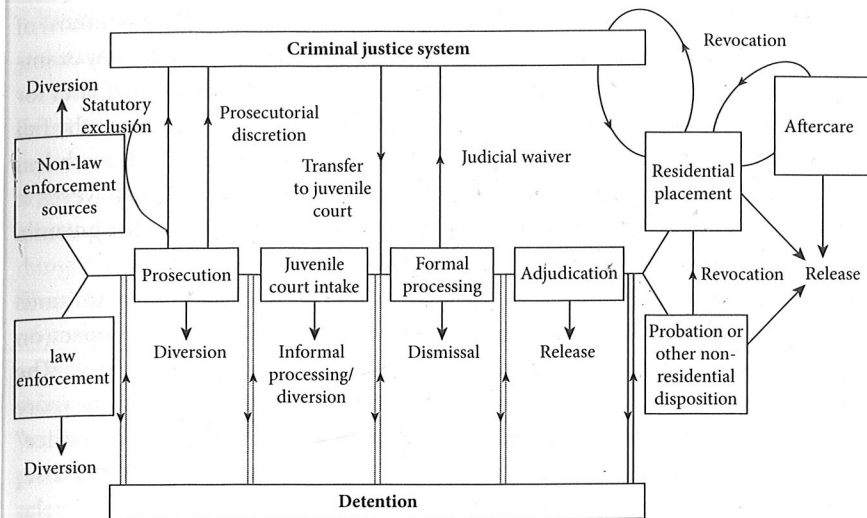


FIGURE 8.1 Juvenile justice system flowchart.

Source: Snyder and Sickmund, 2006, p. 107.

see Zimring & Hawkins, 1973). This decision point of course precedes any sentencing decision, but nonetheless is critical for young people. Ideally, arrest alone would have a deterrent value for juveniles. However, at least in some locations, arrest may exacerbate a youth's future involvement in the justice system (Bernburg & Krohn, 2003; Bernburg, Krohn, & Rivera, 2006; Huizinga & Henry, 2008).

Effects of prosecution practices on persistence or desistance after the juvenile years. No studies exist that systematically examine the effects of different prosecution practices on offenders' persistence or desistance during the juvenile through post-adolescent years. Recidivism studies typically rely on limited operationalizations of recidivism. For example, they do not examine the effects of sanctions on trajectories of offending or the persistence in or desistance from offending. Persistence and desistance refer to patterns of offending that occur over a period of time. By definition, then, they are established through multiple observation points. For example, some youth may fit a "frequent offender" profile and their desistance is defined by a reduction in the level or rate of offending (Piquero, Farrington, & Blumstein, 2007). Traditional recidivism studies which operationalize recidivism as "offended/did not offend" at one point in time provide little to no insight into how adjudicatory and correctional practices amplify or suppress desistance.

Studies rarely examine the impact of prosecutorial practices on recidivism. Instead, they focus simply on the end outcome—that is, the effects of receiving a given sanction. Studies of transfer, for example, examine the impact of sending youth to adult prisons. They typically show that this practice can actually increase rather than decrease recidivism (see, e.g., Winner, Lanza-Kaduce, Bishop, & Frazier, 1997; see, more generally, Bishop & Frazier, 2000; Feld, 2009; Hahn et al., 2007; Kupchik,

2006; Lanza-Kaduce, Lane, Bishop, & Frazier, 2005; Mears, 2003). However most of the studies to date do not adequately control for selection effects, nor do they examine the practice of threatening to invoke transfer laws or the use of such laws for specific cases (Podkopacz & Feld, 2001). Accordingly, we know little about the full impact of transfer laws as they are used in practice (Mears, 2003), and much less about their effects on persistence or desistance after the juvenile years. However, it is clear that punishment per se has little or no effect on recidivism for juvenile offenders (Lipsey, 2009; Lipsey & Cullen, 2007).

Effects of prosecution practices on different ethnic minorities. A voluminous literature exists on court and correctional decision-making and its impact on racial and ethnic minorities (see, e.g., Hawkins & Kempf-Leonard, 2005). The literature on front-end decision-making finds that "minority youths are more likely than whites to be arrested, referred to court, and detained by police" (Bishop, 2005, p. 45). However, relatively little attention has been given to subsequent decision-making by prosecutors. Bishop's (2005) review found that "relatively few studies have explored the influence of race/ethnicity on prosecutorial decisions to file formal charges" (p. 52). Some studies reported that prosecutors are more likely to charge minorities than white youths while others find the opposite (p. 52; see also Tracy, 2005). In some cases, direct effects largely disappear once researchers control for type of offense or offense severity (Podkopacz & Feld, 1995). By and large, however, we know little about how race and ethnicity affect formal charging practices and plea negotiations.

The impact of targeted prosecution on conviction of offenders ages 15–29. Targeted prosecution involves selective identification and prosecution of serious, chronic, or violent offenders, sometimes coupled with efforts to enhance treatment or intervention. Little research has directly examined prosecutorial practices and their impact on juveniles' transition into early adulthood. However, some studies suggest that selective prosecution—for example, vertical prosecution, which involves assigning an experienced prosecutor to handle juveniles' cases from charging through disposition (Backstrom & Walker, 2006)—can produce more rapid court processing, more convictions, more placements in secure confinement, and less plea bargaining (Office of Juvenile Justice and Delinquency Prevention, 1988). Even so, we know little about the gap between ideal and actual practice, much less how the level and quality of implementation can influence the impact of vertical prosecution on recidivism.

Transfer methods. Every state in the United States uses one or more statutory approaches to prosecute some juveniles as adults (Feld, 2000; Snyder & Sickmund, 2006; Griffin, 2008, and Chapter 7, this volume). Although the details of states' transfer laws vary considerably, all rely on variations of three general strategies to prosecute children in criminal courts: judicial waiver, legislative offense exclusion, and prosecutorial direct-file (Snyder & Sickmund, 2006; Griffin, 2008, and Chapter 7, this volume). Because transfer served as a central focus of juvenile justice reforms in recent decades, and because it illustrates the "get tough" trend in

juvenile justice, we discuss it in more detail than we do the other decision-making points and sentencing policies in juvenile and criminal justice.

Judicial waiver statutes represent the most prevalent transfer mechanism used in 45 states (Griffin, 2008, and Chapter 7, Table 7.3, this volume), although it accounts for the fewest number of youths tried in adult criminal courts. Judicial waiver laws allow a juvenile court judge to waive jurisdiction after conducting a hearing to determine whether a youth is "amenable to treatment" or poses a danger to public safety (*Kent v. United States* 1966; Feld, 2000; Zimring, 2000). These assessments reflect the individualized sentencing discretion characteristic of juvenile courts and consider clinical evidence and a youth's social background as well as the offense and criminal history (Feld, 1999, 2000). Although 14 is the minimum age for transfer in most jurisdictions, some states permit waiver of youths as young as age 10 or specify no minimum age, and others require adult prosecution of children as young as age 13 (Snyder & Sickmund, 2006; Griffin, 2008, and Chapter 7, Table 7.4, this volume).

The number of delinquency cases judicially waived to criminal court peaked at 13,200 in 1994 (Snyder & Sickmund, 2006, p. 186). By 2001, waived cases were down to 6,300—below the 1985 level. We attribute the overall decline in judicially waived youths since the mid-1990s to states' adoption of offense exclusion and prosecutorial direct-file laws that shifted discretion from the judicial branch to the executive branch—to prosecutors making offense charging decisions that determine jurisdiction. These changes eliminated the need for judicial hearings and increased the number of youths transferred to criminal courts by other methods (Feld, 2008; Griffin, 2008, and Chapter 7, Tables 7.7 and 7.8, this volume).

Although 45 states have judicial waiver statutes, statutory exclusion and prosecutorial direct-file laws account for most of the juveniles tried as adults (see Feld, 2008; Griffin, 2008, and Chapter 7, Tables 7.7 and 7.8, this volume). Analysts estimate that states annually try more than 200,000 juveniles under age 18 as adults simply because juvenile court jurisdiction ends at age 15 or 16, rather than at age 17 (Butts & Mitchell, 2000; Feld, 2008; Snyder & Sickmund, 2006). "If only half of these cases actually went forward for criminal court processing, they would still far exceed the number of juveniles ending up in adult court by all other methods combined" (Butts & Mitchell, 2000, p. 186). Analysts estimate that states try an additional 55,000 youths a year in criminal courts who were within the age jurisdiction of juvenile courts through transfer mechanisms (Human Rights Watch, 2005; Snyder & Sickmund, 2006).

Legislative offense exclusion frequently supplements judicial waiver provisions (Griffin, 2008, and Chapter 7, Table 7.7, this volume). This approach emphasizes the seriousness of the offense, rather than characteristics of the offender, and reflects the retributive values of the criminal law (Feld, 2000, 2008). Because legislatures create juvenile courts, they may define their jurisdiction simply to exclude youths charged with serious offenses from their jurisdiction without any hearing (Feld, 2000; Griffin, 2008). For example, several states exclude from juvenile court

jurisdiction youths aged 16 or older charged with first-degree murder (Griffin, 2008, and Chapter 7, Table 7.7, this volume).

In 15 states, juvenile and criminal courts share concurrent jurisdiction over certain ages and offenses, typically older youths and serious crimes (Griffin, 2008, and Chapter 7, Table 7.8, this volume). Prosecutors can direct-file or charge youths in either the juvenile or criminal justice system without any judicial review of their charging/forum-selection decision (Snyder & Sickmund, 2006; Griffin, 2008; *Manduley v. Superior Court of San Diego*, 2002). A prosecutor's decision to charge a youth in criminal rather than juvenile court determines which court has jurisdiction (Feld, 1999, 2008). Analysts estimate that prosecutors determine the adult status of 85% of all youths tried as adults based on age and the offense charged (Juszkiewicz, 2000, pp. 13–14).

The exact number of juveniles transferred to the criminal justice system each year remains unknown. Criminal justice authorities do not maintain these data because the age at which an offender committed his or her crime is not a crucial fact for adult correctional authorities' decision-making. In addition, the juvenile justice system does not systematically compile data on the various types of transfer proceedings because most of these decisions are made by prosecutors. In addition, two key actors—legislators (statutory exclusion) and prosecutors (direct-file authority)—have created a “dark figure of waiver” in the transfer picture (Mears, 2003, p. 159). The data on judicial waiver indicates that between 1985 and 2002, judges were most likely to transfer person offense cases to criminal court, except between 1989–1991, when they most frequently waived drug offense cases (Snyder & Sickmund, 2006, p. 186). It remains unknown to what extent transfer laws are used to plea bargain cases to traditional juvenile court sanctions (Mears, 2003). Below, we discuss research on the effectiveness of transfer laws.

Sentencing of the most serious juvenile offenders. No standard sentencing approach governs states' criminal justice systems. Thirty years ago, indeterminate sentencing was the prevailing model, but this has given way to a wide variety of sentencing options, including determinate and mandatory minimum sentences, three-strikes laws (designed to increase prison terms for repeat offenders), and “truth in sentencing” laws (which require offenders to serve some specified proportion of their sentences). The result is “a national crazy quilt made up of piecemeal sentencing reforms—without a public rationale that would explain the relationship between imprisonment and release” (Travis & Petersilia, 2001, p. 296).

In the 1980s, the punish-rehabilitate pendulum began to swing toward punishment for juvenile offenders and this trend accelerated in the 1990s. New state laws generally increased eligibility for criminal court processing and adult correctional sanctioning and reduced confidentiality protections for some juvenile offenders. Between 1992 and 1997, all but three states changed laws in one or more of the following areas (Snyder & Sickmund, 2006, pp. 96–97):

- Transfer provisions—Laws made it easier to transfer juvenile offenders from the juvenile justice system to the criminal justice system (45 states).
- Sentencing authority—Laws gave criminal and juvenile courts expanded sentencing options (31 states).
- Confidentiality—Laws modified or removed traditional juvenile court confidentiality provisions by making records and proceedings more open (47 states).

These laws increased sentences for a broader range of juvenile offenses and transferred more juveniles to criminal courts for sentencing as adults, especially those charged with violent and drug offenses (Torbet & Szymanski, 1998). Another purpose of these legal reforms was to “criminalize” juvenile courts. In Texas, for example, the legislature created a “determinate sentencing” law that permitted the juvenile court to impose lengthier terms of confinement than otherwise would be allowed, depending on a youth’s age and the type of offense committed (Mears, 1998). In addition, youth incarcerated in juvenile justice facilities could complete their sentences in adult prisons, subject to judicial review. In essence, prosecutors gained an additional tool with which to seek tougher sentences that would extend beyond the age limits of the juvenile justice system. Many other sentencing reforms nationally aimed at enhancing the penalties that youth could receive in juvenile court (Mears, 2002).

In sum, the disjunction between intended and actual system responses—arrest, prosecution, transfer, and sentencing—and our limited knowledge about the nature or magnitude of the disjunction pose enormous problems for policy-makers who wish to improve the transition of young offenders into law-abiding adulthood. The legal responses are highly variable and inconsistently applied. Moreover, there is a lack of research (and knowledge of the consequences) of different prosecutorial strategies. At the same time, evidence suggests that many of the responses are applied more intensively to racial and ethnic minorities and in ways that exceed what might be anticipated from potential differences in the level or severity of offending. These same issues arise even when the focus is on the most serious and violent young offenders. Against that backdrop, we turn now to several changes that further highlight the complexity of, and inconsistency in, how society responds to young offenders.

The Effectiveness of Transfer and New Approaches to Sanctioning Young Offenders

This section examines research on the effectiveness of transfer laws while emphasizing new studies addressing the impact of transfer laws.

Transfer laws: new research on their effectiveness. Earlier reviews of transfer studies reported that transferred youths are more likely to re-offend, re-offend

more quickly and at higher rates, and commit more serious offenses following release from prison than do juveniles retained in the juvenile justice system (Bishop & Frazier, 2000; Fagan, 2007; Howell, 1996; Howell & Howell, 2007). A more recent and systematic review of transfer studies conducted by the Community Preventive Services Task Force of the Centers for Disease Control and Prevention (McGowan et al., 2007) synthesizes the cumulative findings. The Task Force examined whether trying juveniles in the adult criminal justice system prevented or reduced interpersonal violence. It found that transferring juveniles to the adult justice system generally increases, rather than decreases, rates of violence—that is, waiver had an iatrogenic effect. The Task Force (2007) found that transferred juveniles are 34% more likely to be rearrested for a violent or other crime than are juveniles retained in the juvenile justice system (McGowan et al., 2007, p. S14). In other words, “available evidence indicates that juveniles who experience the adult justice system, on average, commit more subsequent violent crime following release than juveniles retained in the juvenile justice system” (p. S5). Evidence was insufficient for the Task Force to determine the effect of such laws and policies in reducing violent behavior in the overall juvenile population. Other studies buttress the CDC’s negative findings. Prior work indicates that changes in transfer laws or practices do not produce a specific or a general deterrent effect (Bishop & Frazier, 2000; Fagan, 2007; Steiner & Wright, 2006). There appear to be collateral consequences of criminal convictions (Mauer & Meda, 2003), including an elevated risk of violent victimization in adult jails and prisons (Bishop & Frazier, 2000; Forst, Fagan, & Vivona, 1989; Parent, Lieter, Kennedy, Livens, Wentworth, & Wilcox, 1994). In addition, transfer of youth may be developmentally disruptive because it interferes with acquisition of crucial educational, vocational, and social skills (Scott & Steinberg, 2008). Not least, concerns have been raised about the potential net-widening effects (transfer of less serious offenders) that transfer laws, as well as blended sentencing (Cheesman, Green, Cohen, Dancy, Kleiman, & Mott, 2002; Podkopacz & Feld, 2001), create (Mears, 2003).

Transfer laws, if implemented as intended, should result in youth being processed in adult court and sentenced to adult prisons. Prior theory and research suggests that such exposure likely increases offending. Prison environments can serve as “schools for crime” (Irwin, 1980; Nagin, Cullen, & Jonson, 2009). Indeed, Bishop and Frazier (2000) found that “youths in prison were exposed to an inmate subculture that taught criminal motivations as well as techniques of committing crime and avoiding detection” (pp. 263–64). In addition, “youths were more likely to learn social rules and norms that legitimated domination, exploitation, and retaliation. They routinely observed both staff and inmate models who exhibited these behaviors, and they observed these illegitimated norms being reinforced” (ibid.). Not least, youths reflected on their experiences of being prosecuted and confined as adults rather than as juveniles and expressed “very negative reactions to criminal court processing. Many youths experienced the court process not so

much as a condemnation of their behavior as a condemnation of them" (p. 263). Once in adult prison, facilities provided fewer than 10% with any type of counseling or treatment program. They viewed correctional officers as "hostile and derisive. Many respondents reported feeling threatened by correctional staff, both physically and emotionally" (p. 266).

The efficacy of criminal, juvenile, and blended sentencing on future offending. Many new sentencing laws have "criminalized" juvenile courts and changed their procedures to operate more like adult criminal courts. The changes have included expanding adversarial procedures, increasing the role for prosecutors, formalizing due process, eliminating confidentiality, routinely gathering fingerprints, using "blended sentencing," and emphasizing offense-based sanctions rather than rehabilitative dispositions in juvenile courts (Fagan & Zimring, 2000; Feld, 1993, 1998; Singer, 1996). The increased criminalization of juvenile courts has proceeded without any evidence that it effectively reduces crime or recidivism and runs counter to the traditional mission of the juvenile court (Butts & Mitchell, 2000; Feld, 1999; Mears, 2000, 2001). To illustrate, 15 states, including Texas (Mears, 2000; Mears & Field, 2000), Florida (Bishop & Frazier, 1996), and Minnesota (Podkopacz & Feld, 1995, 1996, 2001), have introduced blended sentencing laws without any obvious improvement of recidivism outcomes or enhanced ability of either the juvenile or adult justice systems to manage better the youth with whom they come into contact. Because blended sentencing laws are now ubiquitous and affect large swathes of the young offender population, these bear further discussion, as follows.

Some have described "blended sentencing" legislation as "a marriage of convenience between those that [*sic*] want to punish more and those that [*sic*] want to give kids one more chance" (John Stanoch, chief juvenile court judge for Hennepin County, Minnesota, quoted in Belluck, 1998, p. A26). In blended sentencing systems, youths are entitled to receive all adult criminal procedural safeguards, including the right to a jury trial. Following conviction, judges may combine a sentence in the juvenile system with an adult criminal sentence, which is stayed pending successful completion of the juvenile disposition. If a youth violates conditions of probation or re-offends, then a judge may revoke the juvenile's probation and execute the criminal sentence. There are five versions of blended sentencing law—three based in juvenile courts and two based in criminal court. The five models vary according to the authority vested in the respective courts.

Zimring (2000) has described the "Byzantine complexity" of blended sentencing laws (p. 215). In Kansas, judges can impose a blended sentence on a youth as young as age 10 for any offense, and several states specify no, or a very low, minimum age (e.g., 12 or 13) for imposition of a blended sentence (see the state-by-state discussion of blended sentencing provisions in Griffin, 2008, and Chapter 7, Table 7.9, this volume). Many youths who receive blended sentences fail their juvenile probation, which then leads the courts to execute the adult

criminal sentences. This process can result in “net widening” and, in particular, criminal sentences for youths convicted of less serious offenses. Net widening occurs when a new sanction that was intended to serve as an alternative to a given level of system processing brings more youths into the system’s net (Merlo, Benekos, & Cook, 1997).

Torbet and colleagues (1996) have observed that “confusion exists about [blended sentencing] statutes and the rules and regulations governing them, especially with respect to the juvenile’s status during case processing and subsequent placement” (p. 15). They found that the selection of sentencing options is confusing “for all system actors, including offenders, judges, prosecutors, and corrections administrators” (p. 15). Thus they conclude that “blended sentencing initiatives may cause more confusion than good” (p. 15; see also Mears, 1998). In addition to procedural confusion, system ambivalence about what to do with serious and violent juvenile offenders is evident (Torbet, Gable, Hurst, Montgomery, Szymanski, & Thomas, 1996).

Specialized courts. Juxtaposed against a clear “get tough” trend in juvenile justice stands a countervailing trend toward embracing sanctioning options that include both punishment and rehabilitation as central guiding tenets (Butts & Mears, 2001; Mears, 2002). Specialized courts—including at least 840 juvenile or family drug courts and more than 125 mental health courts—are operating in both the juvenile and adult justice systems (personal communication, National Council of Juvenile and Family Court Judges, August 16, 2010). In addition, more than 1,000 youth courts are now operating in the United States according to the National Youth Court Center (<http://www.youthcourt.net/>). However, as with the “get tough” trends, little is known about the implementation or impact of these courts. Several studies that have focused on teen courts and drug courts, respectively, nonetheless bear mention.

Butts, Buck, & Coggeshall (2002) evaluated four youth courts and found that recidivism rates among teen court youth were lower than those of youth in the regular juvenile justice system in all four sites and significantly lower in two of the four sites. Researchers have studied drug courts more than any other kind of specialized court. A recent meta-analysis tentatively suggests that drug offenders participating in a drug court are less likely to re-offend than similar offenders sentenced to traditional correctional options (Wilson, Mitchell, & Mackenzie, 2006). However, the equivocal conclusion stems from the weak methodological research in this area (Butts & Roman, 2004). Although there are too few studies on juvenile drug courts to draw any conclusions at this time, the studies to date suggest that courts are less effective with juvenile offenders than with older ones (Shaffer, Hartman, Listwan, Howell, & Latessa, 2011). A very recent evaluation of the Akron, Ohio, Municipal Drug Court for adults found that it reduced recidivism among different types of drug users, although the sample was primarily composed of low-to moderate low-risk clients (Shaffer et al., 2011).

Special Considerations When Deciding How to Respond to Young Offenders

Culpability. Culpability focuses on an actor's blameworthiness and degree of deserved punishment. Youths' diminished responsibility requires mitigated sanctions to avoid permanently life-changing penalties and provide room to reform. Compared with adults, youths' immature judgment reflects differences in appreciation of risk, appraisal of short- and long-term consequences, self-control, and susceptibility to negative peer influences (Scott & Steinberg, 2008). The Supreme Court's 2005 decision in *Roper v. Simmons* (543 U.S. 551), to abolish executions of juvenile offenders in the United States, provides the backdrop for our discussion of adolescents' reduced criminal responsibility.

In *Roper v. Simmons*, the Supreme Court conducted a proportionality analysis of adolescents' culpability to determine whether the death penalty ever could be an appropriate punishment for juveniles. A majority of the Court offered three reasons why states could not punish as severely as adults youths found to be criminally responsible (*Roper*, 2005). First, juveniles' immature judgment and lesser self-control caused them to act impulsively and without full appreciation of the consequences of their actions and thus reduced their culpability. Second, juveniles are more susceptible than adults to negative peer influences. In addition, juveniles' greater dependence on parents and community extends some responsibility for their crimes to others, which further diminishes their criminal responsibility. Third, juveniles' personalities are more in flux and less well-formed than those of adults and their crimes provide less reliable evidence of "depraved character." Although the differences between adolescents and adults seem intuitively obvious, *Roper* provided minimal scientific evidence to support its conclusions (Denno, 2006).

The Court's *Roper* decision (2005, p. 569) also attributed youths' diminished culpability to a "lack of maturity and . . . underdeveloped sense of responsibility . . . [that] often result in impetuous and ill considered actions and decisions." *Roper* focused on adolescents' immature judgment, rather than the narrower criminal law inquiry into the ability to distinguish right from wrong, and concluded that their immaturity reduced culpability. The Court's rationale recognized both adolescents' reduced moral culpability and their greater capacity for growth and change—that is, their diminished responsibility for past offense, and their unformed and perhaps redeemable character. In sum, the Supreme Court concluded that juveniles' reduced culpability warranted a categorical prohibition of execution (Feld, 2008; Johnson & Tabriz, 2010).

Although *Roper* barred the death penalty for juveniles, the Court's rationale has wider implications for sentencing adolescents. The Court's capital punishment jurisprudence insisted that "death is different" (*Eddings*, 1982; *Harmelin*, 1991; *Graham*, 2010). However, youths' diminished criminal responsibility is just as relevant when states seek to impose life without parole (LWOP) or other lengthy sentences as it is when they seek to execute them (Johnson & Tabriz, 2010; Logan, 1998;

Feld, 2008). The same developmental psychological characteristics and penal considerations that distinguish youths' criminal responsibility for purposes of execution reduce their culpability and warrant mitigated sentences (Zimring, 1998). Despite youths' diminished responsibility, 42 states permit judges to impose an LWOP sentence on any offender—adult or juvenile—convicted of serious offenses, for example murder or rape, and 27 states require mandatory sentences for offenders convicted of those crimes. And, of course, judges may impose very lengthy or consecutive terms that create the functional equivalent of life sentences.

Mandatory LWOP sentences preclude consideration of youthfulness as a mitigating factor (Human Rights Watch, 2005; Johnson & Tabriz, 2010). Several states abrogated the common-law infancy defense for very young children and removed the only substantive criminal law protections for youth (Carter, 2006). Appellate courts regularly uphold LWOP sentences and long terms of imprisonment imposed on youths as young as age 12 and reject juveniles' pleas to consider youthfulness as a mitigating factor (Feld, 2008; Human Rights Watch, 2005; Deitch, 2009). About one of every six juveniles who received an LWOP sentence was age 15 or younger when they committed their crimes (Human Rights Watch, 2005). More than half (59%) of these juveniles received an LWOP sentence for their first-ever criminal conviction (Human Rights Watch, 2005). More than one-quarter (26%) of these youths received an LWOP sentence for a felony—murder to which they were an accessory rather than the principal (Human Rights Watch, 2005).

Although the Court's death penalty jurisprudence treats youthfulness as a mitigating factor, trial courts perversely treat it as an aggravating factor and sentence juveniles more severely than their adult counterparts (Snyder & Sickmund, 2006). Perhaps the clearest example is the "juvenile penalty" that researchers have discovered—that is, *juvenile offenders sent to adult court are more likely to be incarcerated and to receive lengthier sentences compared with their young adult counterparts* (Kurlychek & Johnson, 2004, 2010; Steiner, 2009; see also Kupchik, 2006, 2007). In addition, a larger proportion of juveniles convicted of murder receive LWOP sentences than do adult murderers (Feld, 2008). The "juvenile status" penalty can be seen in nationwide sentencing patterns. In a federal Bureau of Justice Statistics study (Brown & Langan, 1998), transferred juveniles convicted of felonies were given longer prison sentences than adults. Transferred juveniles were sentenced to prison for a maximum of nine years on average, compared to seven years for adults under age 18 (as defined by state statutes) and five years for adults aged 18 and older. Similar disparities persist in more recent studies (Fagan, 2007; Johnson & Tabriz, 2010; Kurlychek & Johnson, 2010). These inequities demonstrate the inability of the criminal justice system to treat juvenile offenders fairly and apply a reasonable measure of proportionality to their cases.

In *Graham v. Florida* (2010), the Court applied *Roper's* diminished responsibility rationale to youths convicted of non-homicide crimes sentenced to life without parole. Historically, the Court's Eighth Amendment proportionality analyses had distinguished between capital sentences and long terms of imprisonment and

deferred to legislative decisions about deserved punishments. However, *Graham v. Florida* (2010) concluded that offenders who did not kill were “categorically less deserving of the most serious forms of punishment than are murderers.” Because of juveniles’ diminished responsibility, those who did not kill have “twice diminished moral culpability. . . . The age of the offender and the nature of the crime” categorically precluded the penultimate penalty for non-homicide crimes as well. *Graham* emphasized youths’ immature judgment and reduced self-control, susceptibility to negative peer influences, and transitory character development. *Graham* asserted that subsequent research in developmental psychology and neuroscience bolstered *Roper*’s conclusion that adolescents’ reduced culpability required somewhat mitigated sentences in that studies show marked differences between juvenile and adult minds. Most noteworthy, it is well established that sections of the brain that control behavior generally do not mature until late adolescence. *Graham*’s Eighth Amendment analyses referred to many factors—penal justifications for sentencing practices, the *Roper* conclusion about adolescent developmental differences, states’ laws and sentencing practices, and international law—and neuroscience provided one more piece of confirming data in the Court’s holding (Maroney, 2009).

To what extent do the Supreme Court’s views conform to the scientific study of child and adolescent development? For many years, developmental psychologists focused on logical reasoning capacity as the linchpin of maturity. A new perspective on adolescent risk-taking has emerged that begins with “the premise that risk taking in the real world is the product of both logical-reasoning and psychosocial factors” (Steinberg, 2007, p. 56; see also Steinberg, 2004). “However, unlike logical-reasoning abilities, which appear to be more or less fully developed by age 15, psychosocial capacities that improve decision-making and moderate risk-taking—such as impulse control, emotion regulation, delay of gratification, and resistance to peer influence—continue to mature well into young adulthood” (Steinberg, 2004; Steinberg & Monahan, 2007; see Figure 8.2).

Developmental psychologists have described many aspects of mental immaturity (Steinberg, 2004), yet “trying to understand why risk taking is more common during adolescence has challenged psychologists for decades” (Steinberg, 2007, p. 55). What stymied them most, Steinberg suggests, is that the logical-reasoning abilities of mid-adolescents are comparable to those of adults (see also Scott, 2000; Steinberg & Cauffman, 2000; Scott & Steinberg, 2008). This is where neuroscience has made an important contribution. As Steinberg (2007) explains, “advances in developmental neuroscience provide support for [a] new way of thinking about adolescent decision making” (p. 56). Specifically, it “appears that heightened risk taking in adolescence is the product of the interaction between two brain networks. The first is a socio-emotional network that is especially sensitive to social and emotional stimuli, that is particularly important for reward processing, and that is remodeled in early adolescence by the hormonal changes of puberty” (ibid). “The second network is a cognitive-control network that [supports] executive

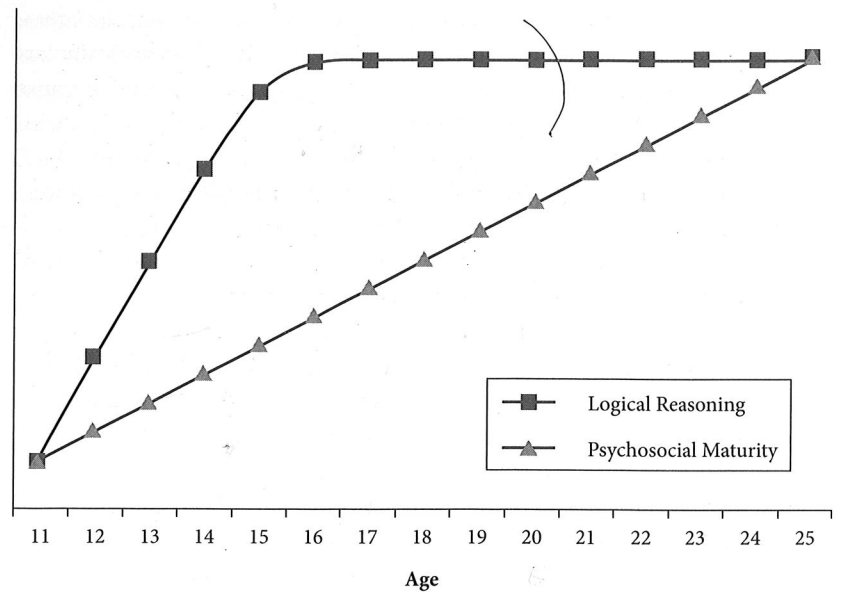


FIGURE 8.2 The reasoning-maturity gap.

Source: Steinberg, 2007, p. 56.

functions such as planning, thinking ahead, and self-regulation, and that matures gradually over the course of adolescence and young adulthood largely independently of puberty” (ibid; see also Steinberg, 2004). Thus risk-taking is the product of a competition between the socio-emotional and cognitive-control networks. The implication is that adolescence is a period in which the socio-emotional network abruptly becomes more assertive (i.e., at puberty) while the cognitive-control network gains strength only gradually, over a longer period of time, as illustrated in Figure 8.2.

The importance of this reasoning-maturity gap is buttressed by developmental neuroscience studies undertaken in recent years. Researchers at the Harvard Medical School, the National Institute of Mental Health, the UCLA School of Medicine, and others have collaborated to map the development of the brain from childhood to adulthood and to examine its implications (Juvenile Justice Center, 2004; National Institute of Mental Health, 2001). Their research used magnetic resonance imaging (MRI) to measure brain development. Until recently, most neuroscientists believed that the essential “wiring” of the brain was completed very early—perhaps by age 6—and that the brain matured fully in childhood, certainly by early adolescence. However, neuroscientists have discovered a second spurt in brain development, one that occurs during the adolescent years. In other words, the teen brain is not a finished product but a work in progress, with maturation continuing well into the 20s (Giedd et al., 1999; Paus et al., 1999; Sowell, Thompson, Jernigan, & Toga, 1999; Sowell, Thompson, Tessner, & Toga, 2001).

Many of the differences between adolescents' and adults' thinking and behaving reflect these developmental differences in the human brain. Adolescents simply do not have the physiological capacity of adults to exercise judgment or control impulses (Gruber & Yurgelun-Todd, 2006). The prefrontal cortex (PFC) of the frontal lobe of the brain operates as the "chief executive officer" to control advanced cerebral activities (Gruber & Yurgelun-Todd, 2006; Kandel et al., 2000). Executive functioning includes reasoning, abstract thinking, planning, anticipating consequences, and impulse control (Aronson, 2007; Sowell et al., 1999; Sowell et al., 2001). During adolescence and into the early 20s, increased myelination of the prefrontal cortex improves cognitive function, reasoning ability, and executive functioning in general (Paus et al., 1999; Sowell et al., 2001). By contrast, the amygdala—the limbic system located at the base of the brain—controls instinctual behavior, such as the "fight or flight" response. Adolescents rely more heavily on the amygdala and less heavily on the PFC than do adults when they experience stressful situations (Baird et al., 1999). Their impulsive behavior reflects a "gut reaction" rather than sober reflection. Novel circumstances and aroused emotions especially challenge youths' ability to exercise self-control and to resist impulsive decisions. Building on these discoveries, behavioral scientists have developed a more explicit explanation of the gap between reasoning capacity and psychosocial maturity in adolescents.

Established in 1997, the MacArthur Foundation's research network on Adolescent Development and Juvenile Justice (ADJJ) has studied juveniles' decision-making and judgment, adjudicative competence, and criminal culpability (Feld, 2008; Scott & Steinberg, 2008). The ADJJ research reports a disjunction between youths' cognitive abilities and their maturity of judgment. Even though adolescents may exhibit intellectual and cognitive abilities comparable with adults, they do not develop the psychosocial maturity, ability to exercise self-control, and competence to make adult-quality decisions until their early 20s (Feld, 2008; Scott & Steinberg, 2003). The "immaturity gap" represents the cleavage between cognitive maturity—the ability to distinguish right from wrong—which reaches near-adult levels by age 16, and adolescents' psychosocial maturity of judgment, risk assessment, and self-control, which may not emerge fully for nearly another decade (Feld, 2008). This latter deficit provides the basis for finding reduced criminal responsibility in youths. Youths' immature judgment in several areas—perceptions of risk, appreciation of future consequences, self-management, and ability to make autonomous choices—distinguishes them from adults (Scott & Steinberg, 2003). As *Roper* concluded, youths' characteristically bad choices are categorically less blameworthy than those of adults because differences in knowledge and experience, short-term versus long-term time perspectives, attitude toward risk, and impulsivity are features of normal adolescent development (Scott & Grisso, 1997; Scott & Steinberg, 2003).

The ADJJ researchers also studied juveniles' ability to evaluate risks and to delay gratification (Feld, 2008). This research suggests that adolescents' risk

perception actually *declines* during mid-adolescence and then gradually increases into adulthood, and that 16- and 17-year-old youths perceive fewer risks than do either younger or older research subjects. Mid-adolescents are the most "present-oriented" of all the age groups studied, with future orientation gradually increasing into the early 20s (Feld, 2008). Youths weigh costs and benefits differently than adults and give different subjective values to outcomes, which affect their ultimate choices (Scott, 2000; Scott & Steinberg, 2008). In a study of individuals' ability to delay gratification, adolescents more often opted for an immediate but smaller reward, whereas adults delayed a reward unless the immediate value was only slightly discounted (Feld, 2008). Youths also view *not* engaging in risky behaviors differently than adults, which also leads to riskier choices by adolescents (Scott, 2000; Scott & Steinberg, 2003, 2008). Youths engage in risky behavior because it provides heightened sensations, excitement, and an "adrenaline rush" (Scott & Grisso, 1997; Spear, 2000). The widest divergence between the perception of and the preference for risk occurs during mid-adolescence when youths' criminal activity also increases. Youths' feelings of invulnerability and immortality heighten these risk proclivities.

To calculate risks, an individual has to identify potential positive and negative outcomes, estimate their likelihood, and then apply value preferences to optimize outcomes (Furby & Beyth-Marom, 1992). To a greater extent than adults, adolescents underestimate the amount and likelihood of risks, employ a shorter time frame in their calculus, and focus on gains rather than losses (Furby & Beyth-Marom, 1992; Grisso, 2000; Scott, 2000). Juveniles aged 15 and younger act more impulsively than do older adolescents, but even 16- and 17-year old youths fail to exhibit adult levels of self-control (Feld, 2008). Because of youth and inexperience, adolescents may possess less information or consider fewer options than adults when they make decisions (Scott, 2000). Although youths and adults use similar amounts of time to solve simple problems, the length of time used to solve complex problems increases with age.

Adjudicative competence. The same developmental characteristics that diminish youths' criminal responsibility also adversely affect their adjudicative competence. Competence is the constitutional prerequisite to the exercise of other procedural rights. Due process requires a defendant to be competent to assure a fair trial. To be competent to stand trial, a criminal defendant must have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding [and have a] rational as well as factual understanding of the proceedings against him," as well as the capacity "to assist in preparing his defense" (Dusky, 1960). Adjudicative competence involves a defendant's ability to communicate with lawyers or aid in his or her defense, make legal decisions and understand and participate in such legal procedures, and to waive *Miranda* rights, waive or assist counsel, to stand trial, and to exercise other constitutional protections. Judges evaluate a youth's competence by assessing his or her ability to: "1) understand the charges and the basic elements of the adversary system (understanding),

2) appreciate one's situation as a defendant in a criminal prosecution (appreciation), and 3) relate pertinent information to counsel concerning the facts of the case (reasoning)" (Bonnie & Grisso, 2000, p. 76).

Developmental psychologists have examined adolescents' adjudicative competence, their capacity to exercise or waive *Miranda* rights or the right to counsel, and their ability to participate in legal proceedings. This research strongly questions whether juveniles possess the cognitive ability, psychosocial maturity, and judgment necessary to exercise legal rights. Many young offenders, especially those under age 16 and those confronted with the complexities of criminal courts, are unable to meet the legal standards for competence (Grisso et al., 2003; Scott & Grisso, 2005; Scott & Steinberg, 2008). Developmental psychologists argue that immaturity per se produces the same deficits of understanding, impairment of judgment, and inability to assist counsel as does severe mental illness, and renders many juveniles legally incompetent (Grisso, 1997, 2000; Scott & Grisso, 2005). This vulnerability is enhanced for certain juvenile categories: (a) those who are marginal or weak in intelligence, (b) those who are mentally ill, and (c) those who are otherwise mentally impaired from injury or child abuse. For adolescents, generic developmental limitations, rather than mental illness or mental retardation, adversely affect their ability to understand legal proceedings, to receive information, communicate with and assist counsel, and to make rational decisions (Grisso, 1997; Scott & Grisso, 2005; Redding & Fuller, 2004).

Despite clear developmental differences between adolescents and adults, the Court and most states' laws do not provide youths with additional procedural safeguards to protect them from their own immaturity and vulnerability. About half of the states address juveniles' competency to stand trial in statutes, court rules of procedure, or case law and conclude that delinquents have a fundamental right not to be tried while incompetent (Scott & Grisso, 2005; Feld, 2009). However, states use adult legal standards to gauge juveniles' competence to stand trial and ability to waive *Miranda* rights and counsel. Because of developmental differences, formal legal equality results in practical inequality for juveniles in the justice system.

Developmental psychologists contend that all children and adolescents younger than age 16 should receive automatic competency assessments and express serious reservations about the competency of 16- and 17-year-olds (Scott & Steinberg, 2003). Although older adolescents may have adult-like cognitive capacities for reasoning, their ability to exercise sound judgment in ambiguous or stressful situations may be limited (Scott, 2000). A critical challenge to assessing competency is the fact that many jurisdictions do not provide adequate or appropriate youth competency assessments (Grisso, 2004).

Reentry challenges and contexts unique to young people. An estimated 200,000 juveniles and young adults ages 24 and younger leave secure juvenile correctional facilities or state and federal prisons and return home each year (Mears & Travis, 2004). Most reentry research has focused on adults, and we know little about the reentry of young people. This deficiency is critical because it would be risky to

assume that the challenges young offenders face upon returning to society are the same as those for adults. Despite some overlap, substantial differences exist. For example, young people who are released from secure confinement confront several barriers unique to their age group:

- School systems may not be receptive to working with them and may warehouse them in special classrooms or alternative schools.
- Developmental disabilities may have gone undiagnosed, or untreated, or mistreated.
- Family settings may include violence and drug-dealing.
- Peer networks may foster criminality, a particular concern because of the greater importance of peer association among adolescents.
- They are likely to be unemployed, because they typically will not have graduated from high school, will be less likely to complete school, and will have a limited, if any, employment history. One-third of the general population had received a high school diploma versus only 21% of state prison inmates (Harlow, 2003).
- They have little experience in what it means to have positive, prosocial experiences with (a) friends, (b) recreation, (c) intimate emotional relationships, (d) the self-discipline needed for employment, etc.

These constitute but some of the broad array of challenges young people face upon reentry into society, and if unaddressed are likely to contribute to a trajectory of criminal involvement. Because parole/probation violations account for a large proportion of all incarcerations, states need to use proven techniques more widely to reduce violations or keep parole/probation violators out of prison. Nationwide, the vast majority (about 80%) of released prisoners are subject to a period of supervision in the community. Large numbers of parolees return to prison for new crimes or technical violations of their parole and account for 35% of new prison admissions nationally (Baer et al., 2006, p. 18). Juvenile parole violations are governed by the same impairments that affect offending.

A major obstacle to successful offender reentry are civil disqualifications that affect offenders after incarceration. The Urban Institute's *Returning Home* study documented the pre-release needs and post-release experiences of prisoners in Illinois, Maryland, Texas, and Ohio (Baer et al., 2006; see also Annie E. Casey Foundation, 2005). Even so, few studies have systematically compared these needs and experiences among youth populations.

A few effective post-release programs are available for young adult offenders. A systematic review of prisoner reentry programs (Seiter & Kadela, 2003) indicated a positive result for several of them, including vocational training and/or work release, drug rehabilitation, education programs (to some extent), halfway house programs, pre-release programs, and promising results for sex- and violent-offender programs. Another review of adult inmate programs found small but positive benefits for work release programs (versus

in-prison incarceration) and job counseling/search for inmates leaving prison (Aos, Phipps, Barnoski, & Lieb, 2001). Once again, however, few studies exist that have systematically compared the effectiveness of reentry programs among youth versus adult offender populations.

International law and practice. The United States is the only developed nation that tries its youngest offenders in regular criminal courts without modified procedures.¹ Until *Roper v. Simmons* (2005) banned executions of adolescents who commit capital murder before age 18, the United States was the only country in the world that gave official sanction to the juvenile death penalty.

The U.N. Convention on the Rights of the Child (CRC) codified the basic human rights of children and was adopted by the United Nations General Assembly in 1989. The United States and Somalia are the only U.N. member countries that have not ratified this convention. Other international covenants provide special protections to juvenile offenders around the world. These include Articles VII (right to special protection), XXV (right to due process), and XXVI (right to protection against cruel, infamous, or unusual punishment) of the American Declaration of the Rights and Duties of Man.

Race, ethnicity, and gender. The disproportionate overrepresentation of racial and ethnic minorities in the juvenile and adult criminal justice systems raises issues of justice, fairness, and equity. Although a few earlier studies have found no race effect in arrests (Pope & Snyder, 2003), most research reports that minority youth are overrepresented in all stages of juvenile and criminal justice processing from arrests to confinement (Feld, 1999; Hawkins & Kempf-Leonard, 2005; Hawkins, Laub, Lauritsen, & Cothorn, 2000; Howell, 2003b, 2006; Liebman, Fagan, & West, 2000; Snyder & Sickmund, 2006; Tonry, 1994, 2009). Disproportionate minority contact with the justice system occurs even when self-reported delinquency is taken into account (Huizinga et al., 2007). In particular, black youths are disproportionately arrested and processed in the juvenile and criminal justice systems for drug offenses in comparison with white offenders, even though their drug use rates are no higher than those of white youths (Centers for Disease Control and Prevention, 2006). Latino youth are also overrepresented in the U.S. juvenile and criminal justice systems and receive harsher treatment than white youth (Arya, Villarruel, Villanueva, & Augarten, 2009; Villarruel & Walker, 2002). Disparities associated with defendants' race or ethnicity occur at all stages of the criminal justice system: arrest, pre-trial release, prosecutor decision-making, sentencing, imprisonment, and prison release decision-making (Howell, 2009, p. 297). More attention is needed to understanding why such differences exist and to reducing minority youth overrepresentation in juvenile and adult justice systems.

Gender disparities exist in juvenile and criminal justice administration. It is an accepted fact in criminology that in both the juvenile and adult criminal justice systems "official female criminality, as well as self-reported delinquency, is less serious, begins later in adolescence, and is less persistent than male criminality

and delinquency [and that] the gap is largest for serious offenses" (Cernkovich, Lanctôt, & Giordano, 2008, p. 4; see also Feld, 2006; Lanctôt & Le Blanc, 2002; Steffensmeier, Schwartz, Zhong, Ackerman, & Ackerman, 2005). Although relatively more girls are present in the juvenile justice system than in previous years, it is not presently flooded with them (Snyder & Sickmund, 2006). Similarly, more women are now present in the adult criminal justice system, particularly for violent assault, but "we have changed our laws, police practices, and policies in other ways toward enhanced identification and criminalization of violence in general and of women's violence in particular" (Steffensmeier, Zhong, Ackerman, Schwartz, & Agha, 2006, p. 94). The evidence is persuasive that "it is the cumulative effect of policy shifts, rather than a change in women's behavior toward more violence, that accounts for their higher arrest rates and the narrowing gender gap in official counts of criminal assault" (ibid). Studies of gender differences in juvenile courts attribute some of the perceived increases in girls' violent offending to a relabeling of former status offenders, charging them instead with simple assault, and thereby allowing their institutional confinement (Feld, 2009).

This does not mean, however, that public policy should ignore the progression from juvenile careers to involvement in adult criminality among females. In a Philadelphia study, Kempf-Leonard, Tracy, and Howell (2001), found that violent and chronic female delinquents constituted just 2% of all the female delinquents in the sample, but 44% of this subgroup had adult careers in crime, accounting for 11% of the total number of police encounters. Here, the violent and chronic female share is 5.5 times as great as parity would suggest. This study suggests that serious, violent, and chronic female offender careers deserve far more attention in research concerning criminal careers than they have received in the past, particularly with respect to the role of mental health problems in offending careers. Girls are at significantly higher risk (80%) than boys (67%) for a mental health disorder, with girls demonstrating higher rates than boys of internalizing disorders (Shufelt & Coccozza, 2006). Separate from a focus on recidivism, there is a need to better understand the processing, sanctioning, and effects of sanctions on young women.

Effective Programs for Juvenile Offenders

Effective programs for both juvenile and young adult offenders are reviewed by Welsh et al. in Chapter 9 of this volume. However, much of the delinquency intervention research involves rather generic kinds of programs not likely by themselves to attract the attention of a reviewer performing program-by-program reviews. Meta-analysis has many advantages. As Lipsey (1999) notes, "Most striking, perhaps, is the power of meta-analysis to identify intervention effects not clearly visible to traditional reviewers" (p. 619; see also Lipsey & Wilson, 1998). Lipsey's (1999) discovery of the delinquency reduction potential of "practical" juvenile justice program interventions is an excellent example. Another

advantage of meta-analysis is that this technique enables users to easily assess program effectiveness on a number of other dimensions, such as the types of offenders with whom program interventions work best, gender effects of different interventions, and supplementary program interventions that work well with particular interventions. These are features that cannot be assessed comprehensively in program-by-program reviews. Thus the narrative review method lacks the scope and depth of meta-analysis procedures.

In a comprehensive meta-analytic review of more than 600 controlled studies on various interventions conducted in English-speaking countries from 1958 to 2002, Lipsey (2009) found that the most consistently effective generic types of services (i.e., those with the largest mean recidivism reductions) are cognitive-behavioral therapy (26% reduction), behavior management services (22%), group counseling (22%), mentoring (21%), and case management (individually tailored service plans) (20%)—provided that these services are implemented with high fidelity and target high-risk offenders (p. 142). Importantly, these evidence-based program services are about equally effective with girls and boys and both minority and nonminority offenders (Lipsey, 2009)—and also with serious and violent offenders (Lipsey & Wilson, 1998).²

Research-based program guidelines have been incorporated into a Standardized Program Evaluation Protocol (SPEP), which allows juvenile justice agencies to compare their current services to best practices shown in the research to improve outcomes for youth involved with juvenile justice. More specifically, the SPEP creates a metric by assigning points to programs according to how closely their characteristics match those associated with the best recidivism outcomes for similar programs, as identified in Lipsey's large (2009) meta-analysis of evaluation studies. Programs are scored along four critical dimensions: (1) type of program, (2) amount of treatment, (3) quality of treatment, and (4) youth risk level. Viewed from a diagnostic and program improvement perspective, low ratings on any of these factors identify aspects of a program that, if improved, should improve effectiveness. The SPEP is thus designed not only to evaluate each program against an evidence-based best practice profile, but to provide guidance for improving programs that fall short in that evaluation. As Lipsey (2009, p. 145) says, "It does not take a magic bullet program to impact recidivism, only one that is well made and well aimed."

The success of this approach to evidence-based practice can be increased by embedding it in a forward-looking administrative model, a system organized around risk management. The Office of Juvenile Justice and Delinquency Prevention's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders (Wilson & Howell, 1993; Howell, 2003a, 2003b, 2009) is a framework for putting research into practice in the juvenile justice and human service field in order to improve outcomes. More specifically, it involves applying "best practices" derived from sound program evaluation research and the use of advanced management tools into state and local prevention and intervention systems. The key management tools in this framework are validated risk and needs assessment

instruments, a disposition matrix that guides placements in a manner that protects the public, and protocols for developing comprehensive treatment plans that facilitate matching effective services with offender treatment needs and evaluating those services on an ongoing basis (using the SPEP instrument described above). Use of this forward-looking administrative framework and advanced management tools should increase the capacity of state juvenile justice systems to more effectively control and rehabilitate adolescents on the verge or at high risk of becoming transition offenders (Howell, 2009). It has been implemented successfully in a number of states (Howell, 2003a, 2003b, 2009).

A promising forward-looking model for offenders who are candidates for transitioning into the criminal justice system is specialized services for young adult offenders by an intervention team of professionals. The British T2A (Transition to Adulthood) initiative is particularly noteworthy (Helyar-Caldwell, 2010). Experimental pilot programs were recommended by the Barrow Cadbury Commission on Young Adults and the Criminal Justice System (2005). The Barrow Cadbury Trust then established three pilot programs (in London, Worcestershire, and Birmingham). Each is implementing a team approach to sentencing and to meeting the specific needs of 18–24-year-olds, to build support for desistance (see Helyar-Caldwell, 2010, pp. 8–9 for the 10 guiding recommendations and descriptions of the three programs). Sentencing and placements are based on maturity assessments. A Maturity Assessment Framework is outlined in the Marburg Guidelines. This tool and additional information on the pilot programs can be accessed at the T2A Alliance Web site: <http://www.t2a.org.uk/>. These programs are being evaluated by the Oxford Centre for Criminological Research. Preliminary research findings would be instructive in developing an American model in jurisdictions where American courts are inclined to consider such factors as maturity assessments in the administration of justice for young transition offenders.

Future Research

We must acknowledge that little research has evaluated the performance of state systems in handling serious and violent juvenile offenders. Hence, several fundamental questions remain to be answered:

- In what important ways do state juvenile justice systems differ in their handling of serious and violent juvenile offenders? Similarly, how do state criminal justice systems differ in their handling of their youngest serious and violent juvenile offenders? How can the chasm between these systems be bridged in a way that mirrors the research link between juvenile delinquency and adult crime?
- Which combinations of sentences and interventions work best and for whom to reduce recidivism and shorten serious and violent juvenile

offender careers? Which ones produce the greatest improvements, not only in recidivism and criminal careers but also in other important outcomes, including education, housing, employment, and mental health?

- Which correctional system approaches in either juvenile or criminal justice are most effective? At present, states vary greatly in the upper age of juvenile court jurisdiction that they use, the upper ages of jurisdiction for youth sentenced to juvenile justice custodial facilities, and the ages at which youth can be transferred to adult court for various offenses. The result is a situation of enormous complexity, with youth between ages 15 and 21 being handled in markedly different ways within and across juvenile and criminal justice systems and within and across states. As a result, similar youth can and do receive highly different types of correctional intervention. At the same time, the variation affords an opportunity to investigate whether some types of intervention are more effective than others for reducing persistent offending.
- How, if at all, does the effectiveness of different sanctioning, treatment, and correctional system approaches vary by age, gender, and race and ethnicity? System-wide client flow studies would be required to assess this vitally important issue. Some research studies suggest that arrest and juvenile court exposure (Bernburg & Krohn, 2003, Bernburg, Krohn, & Rivera, 2006; Huizinga & Henry, 2008) may produce an unintended criminogenic effect. Yet these studies do not control for risk level. If a juvenile justice system was doing its job in protecting public safety, higher-risk offenders would penetrate the system more deeply and have higher recidivism rates.
- What, if any, are the unintended consequences of the many large-scale efforts to address crime among young people? Some recent efforts appear to have produced unintended outcomes. For example, substantial evidence suggests that transfer laws may actually increase rather than decrease recidivism (Hahn et al., 2007; McGowan et al., 2007) and blended sentences may produce net-widening and consign younger, less-sophisticated offenders to prison (Podkopacz & Feld 2001). Any adequate assessment of juvenile justice reforms therefore requires systematically identifying the full range of intended and unintended effects of these reforms (Mears, 2000).
- Of the many new initiatives and laws enacted annually to address crime among young people, which are effective and feasible to implement on a large-scale basis? For example, specialized courts (drug, teen, mental health) exist but, to be effective, require sustained funding and quality implementation over the long term (Butts & Roman, 2004). Such efforts may be feasible in large metropolitan communities but typically will not be

feasible in those that are smaller. Other efforts, such as the widespread use of validated screening and assessment instruments to guide the selection of appropriate interventions, are now feasible on a statewide basis.

- Alongside efforts to improve system responses to serious and violent juvenile offending, how do we ensure that both the juvenile and adult justice systems afford adequate due process protections to youth and that they accommodate, where appropriate, developmental differences in the emotional, cognitive, and psychosocial development of young people?

Critical importance of rigorous evaluations of new initiatives. Evaluation of juvenile and young adult court processing, treatment, and sanctioning is critical for identifying problem areas, programs and policies that are effective, and ways to introduce efficiencies and fairer, more just, and cost-effective processing (Mearns, 2010). The recommended evaluation design for outcome measurement should incorporate a system flow perspective, using a system-wide framework that encompasses the entire juvenile justice system from primary prevention to discharge from post-dispositional placement (Figure 8.3). In this evaluation scheme, developed by Lipsey (see Howell, 2009, p. 251), youths who enter the juvenile justice system are viewed as moving along alternative pathways of services and sanctions during which they interact with juvenile justice service programs and supervision contexts. This figure can also be viewed in relation to the juvenile justice system flowchart (Figure 8.1), which illustrates processing stages in the middle of the figure: that is prosecution, juvenile court intake, formal processing, adjudication, and residential placement. In that figure, juvenile justice system program evaluation would commence when the offender advances to the intake stage, the point at which services are more likely to be provided. Multiple services are even more likely at the next stage, following adjudication, because this is the point at which comprehensive treatment plans are often developed and intensive services are provided, including "intensive supervision" in conjunction with graduated sanctions (possibly detention) and particularly close surveillance and home visits by a probation officer. It is here and in residential placement that an array of services is commonly provided, as shown in Lipsey's evaluation design (Figure 8.3).

Each of the pathways taken is associated with certain outcomes and costs, with the outcomes themselves entailing later costs or cost savings according to how positive they are. The key concept of the evaluation design is to use the automated state data systems and Lipsey's SPEP to continuously evaluate and monitor outcomes and costs in a way that will allow periodic assessment of the effectiveness of service and sanctions combinations and, collectively, the overall juvenile justice system. The critical data elements of this evaluation design are risk and needs information for each juvenile at entry, program ratings, recidivism outcomes after completion of a pathway, service and supervision costs, and expected costs associated with recidivism and reentry into the juvenile justice system. This evaluation design can easily be extended to encompass the adult criminal justice system.

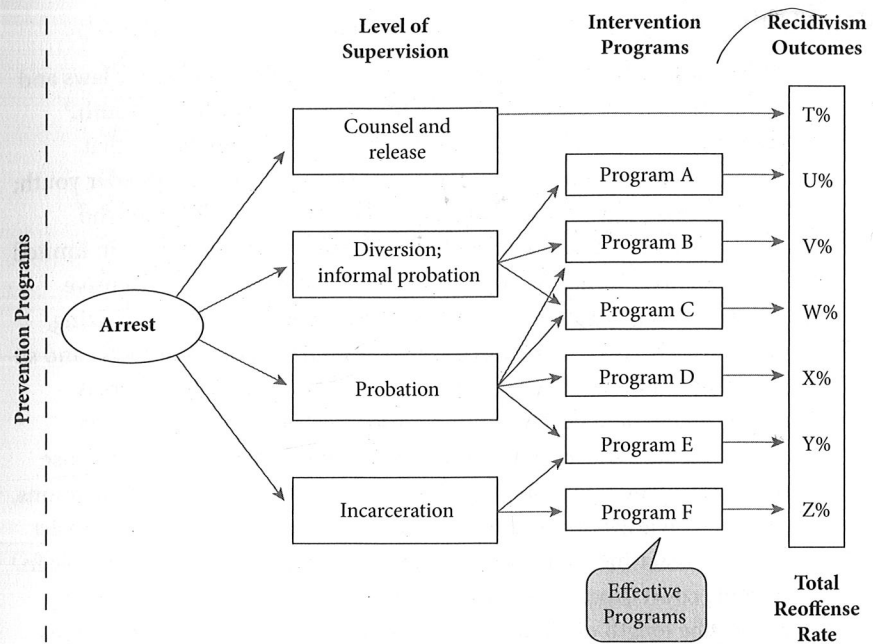


FIGURE 8.3 System-wide evaluation design.

Source: Lipsey, 2006.

Application of research on systems to the target age group. This model permits an examination of the impacts of system interventions on various subgroups, males versus females, minorities versus nonminorities, low-risk versus moderate-and high-risk offenders, and among various age groups. Two of these groups are of priority interest, characterized here as the “target age group.” By this, we refer to young offenders in the juvenile justice system who are prime candidates for continuing their criminal careers into adulthood. This group is distinguished by age (older offenders) and risk level (who are persistent serious and violent offenders). The system flow evaluation design can be employed to examine system effectiveness in providing services and sanctions to this group in both the juvenile and adult criminal justice systems.

Policy Recommendations

We cannot overstate the sense of urgency surrounding the need to reform juvenile and criminal justice policies and practices with respect to the transitioning young offender group. In some instances, this transition can have life or death implications. For this reason, we urge state legislators, judges, and policy-makers to implement the following actions immediately.

IMMATURITY DISCOUNTS

- Given the evidence to date, policy-makers should revisit waiver laws and policy with an eye towards limiting the option of transfer for youth.³ Waiver constitutes a less-than-ideal option, and we emphasize that waiver should be used only in the most serious cases and for older youth; it is these youth who, on average, would be more culpable and who would spend less time incarcerated in juvenile justice facilities. In limited instances, waiver may be appropriate with youth who have extensive records of recidivism or unsuccessful treatment. It bears emphasizing, however, that repeated recidivism may stem from poor treatment, and so it is important that, when considering waiver in such cases, there is careful assessment of the quality of prior treatment. Waiver criteria should identify those combinations of serious present offenses, offense histories, offender culpability, criminal participation, clinical evaluations, and other aggravating and mitigating factors that some advocates insist deserve "real time" sentences substantially longer than those available in juvenile court. Because an "immaturity discount" should substantially reduce the length of adult sentences, only extraordinarily serious cases should warrant consideration for transfer. An adversarial waiver hearing at which both the state and defense can present evidence about the offense, culpability, and clinical responsiveness will produce more accurate and fair transfer decisions than prosecutors will make in their offices without access to clinical information and subject to political considerations (e.g., Feld, 1999, 2003a; Zimring, 1998a, 2000; Bishop, 2000a, 2004; Kupchik, 2006; Scott & Steinberg, 2008). Finally, in cases where waiver occurs, youth who are sent to adult facilities should be housed primarily with younger offenders and offered similar services and treatment to what they would receive in the juvenile justice system. The separate housing and greater emphasis on treatment reflects an evidence-based approach to sanctioning young offenders (Lipsey & Cullen, 2007) and accords with the tenets of the juvenile court and with public opinion (Mears, 2001; Cullen, 2007).
- When sentencing youth, judges should apply an "immaturity discount" to the sentence that he or she would impose on an adult offender. A categorical "immaturity discount" would provide adolescents who are sentenced as adults with fractional reductions in sentence-lengths and would use age as a proxy for culpability (Feld, 1997, 1999, 2008; Scott & Steinberg, 2003, 2008; Tanenhaus & Drizin, 2002). In addition to recognizing youths' diminished responsibility, an "immaturity discount" provides a corrective that addresses the fact that same-length sentences exact a greater "penal bite" from younger offenders than from older ones (Von Hirsch, 2001). The "immaturity discount" includes a sliding scale of

diminished responsibility and gives the largest sentence reductions to the youngest, least mature offenders (Scott & Steinberg, 2003; Tanenhaus & Drizin, 2002). The deeper discounts for younger offenders correspond with their greater (on average) developmental differences in maturity of judgment and self-control.

- Legislatures should abolish life without parole sentences and instead apply immaturity discounts. Realistically, life without parole sentences for juveniles are but a “slower form of death” (Feld, 2008; Johnson & Tabriz, 2010). By definition, an immaturity discount would preclude imposing life without parole sentences and other “virtual life” sentences. Apart from adolescents’ diminished responsibility, the likelihood of recidivism decreases with age and the costs of confining geriatric inmates increase substantially (ibid. p. 63).

CATEGORICAL RULE OF YOUTHFULNESS

- A categorical rule of youthfulness as a mitigating factor in sentencing is preferable to individualized discretion. The *Roper* court opted to treat adolescents’ diminished responsibility categorically rather than individually. It adopted a categorical prohibition because “the differences between juvenile and adult offenders are too well marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability” (*Roper*, 2004, pp. 572–573). *Roper* concluded that neither clinicians nor jurors could accurately distinguish between the vast majority of immature juveniles who deserve leniency, and the rare youth who might possess adult-like culpability. Despite individual variability, the Court reasoned that a rule which occasionally “under-punishes the rare, fully-culpable adolescent still will produce less aggregate injustice than a discretionary system that improperly, harshly sentences many more undeserving youths” (*Roper*, 2004, p. 573).

CULPABILITY AND COMPETENCE

- Adolescents’ reduced culpability should be incorporated in sentencing decisions. This recommendation is supported by two observations. The first is our inability either to define or identify what constitutes adult-like culpability among offending youths. Despite adolescents’ developmental differences, clinicians lack the tools with which to assess youths’ impulsivity, foresight, or preference for risks in ways that relate to maturity of judgment and criminal responsibility (*Roper*, 2005; Zimring, 1998). Development and validation of such tools is a top priority. The

second reason to treat youthfulness categorically is the inability of judges or juries to fairly weigh an abstract consideration of youthfulness as a mitigating factor against the aggravating reality of a horrific crime.

TOOLS AND PROTOCOLS FOR ASSESSING ADJUDICATIVE COMPETENCE

- Tools and protocols are available to assess objectively adjudicative competence, and these should be further tested and moved into more widespread use. Many youths in the juvenile and criminal justice systems lack adjudicative competence because of developmental immaturity (Grisso et al., 2003). Moreover, the prevalence of mental illness among young offenders heightens concerns about their ability to understand and participate in legal proceedings or to assist counsel (Grisso, 2004). In some young offenders, reasoned judgments may be impaired by incomplete brain maturation. The combination of generic developmental immaturity and mental illness requires the development of protocols to assess adolescents' competence. Depending on whether states try youths in juvenile or criminal courts, this requires clarification of the operative legal standard—adult standard or juvenile-normed standard (Scott & Grisso, 2005). It requires training of judges and lawyers to recognize the developmental limitations of younger offenders (Grisso, 2004). It also poses a challenge for mental health clinicians who evaluate juveniles' competence (Kruh & Grisso, 2009). It is important to focus on individual differences in maturation.

With the support of the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, the MacArthur Competency Assessment Tool-Criminal Adjudication (MacCAT-CA; Hoge, Bonnie, Poythress, & Monahan, 1999) was developed to assess an individual's competency to stand trial. MacCAT-CA consists of three scales, Understanding, Reasoning, and Appreciation, along with several other variables (age, IQ, achievement level, experience with the juvenile justice system, and a screen for psychopathology) that may be related to competence to stand trial. Results of a validation study suggest that performance on the MacCAT-CA varied with age, with younger participants performing significantly worse than older juveniles (Ficke, Hart, & Deardorff, 2006). The most extensive data on application of the MacCAT-CA, reported by Grisso, Steinberg, Woolard, and colleagues (2003), gathered data on approximately 1,400 adolescents and adults in pre-trial detention/jail and community settings at four sites (Los Angeles, Philadelphia, northern Florida, and Virginia). This study indicated that the MacCAT-CA can be successfully administered to adolescents and that it discriminated well among age groups. Woolard & Harvell (2005) remind us

that this instrument is intended to serve as one tool for making a comprehensive forensic evaluation that should include a social history, mental status exam, and personal interviews with the client and collateral informants, among other components.

However, research on developmental immaturity (incompetence) of judgment and decision-making suggests that adolescents may differ from adults in important ways that compromise their effectiveness as defendants but are not included in adult assessment instruments or protocols (Woolard & Harvell, 2005). The Virginia Juvenile Competence Program of the Institute of Law, Psychiatry, and Public Policy (ILPPP) provides court ordered services to all youth found incompetent to stand by juvenile court judges in each of the court jurisdictions throughout the state (<http://ilppp.virginia.edu/research-initiatives/policy-development/restoring-juveniles-found-incompetent-to-stand-trial.html>). In addition, the ILPPP conducts a training program on principles and practices of juvenile forensic evaluation.

COMMUNITY PROGRAMS

- Expenditures saved from lower custody rates should be reinvested in front-end, evidence-based community programs that address the specific needs of young adults and the causes of their offending. Community-based programs are far more cost-effective than correctional institutions. Moreover, the earlier successful intervention occurs in offender careers, the greater the cost savings (Cohen, Piquero, & Jennings 2010; Welsh et al., Chapter 9, this volume).

YOUNG OFFENDER COURTS

- Consideration should be given to establishing in the United States Young Offender Courts for transitioning offenders that are more focused on rehabilitation. Pilot programs should be tested for the utility of this structure for bridging the gap between the U.S. juvenile justice and criminal justice systems.

A forward-looking administrative model. Both the juvenile and criminal justice systems in every state should be developing forward-looking organizational models that are built around risk management, using offender management tools that increase the capacity of state justice systems to more effectively control and rehabilitate transition offenders. The Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders (Howell, 2003a, 2003b; Howell, 2009; Wilson & Howell, 1993) is a user-friendly forward-looking administrative framework that promotes system-wide management of juvenile offenders,

services, and resources. The necessary tools are available (validated risk and needs assessment instruments, a disposition matrix that guides placements in a manner that protects the public, and protocols for developing comprehensive treatment plans that improve the matching effective services with offender treatment needs) to make system-wide improvements and to perform state-wide evaluations of all service programs against research-based guidelines (Howell, 2009; Lipsey, 2009; Lipsey, Howell, Kelly et al., 2010). This framework can easily be adapted within the criminal justice system.

Conclusions

This chapter has addressed what happens with older adolescents who transition into the criminal justice system, what should happen, and what we need to know. On the first topic, our review emphasizes that neither the juvenile nor the criminal justice system handles this offender group well. The wide diversity of measures that have been introduced has not been found to be effective, and little research has accompanied them. The states are left with dysfunctional—and sometimes contradictory—policies and practices that would be very challenging to isolate and evaluate, if not impossible in some instances. What *should* happen is systematic adoption of research-based policies. We need to know if these work, but this cannot be accomplished without a major investment in evaluation of experimental policies and practices.

We recommend several specific reforms pertaining to young offenders in the criminal justice system:

- An “immaturity discount” should be taken off the appropriate sentence that judges would impose on an adult offender.
- A categorical rule of youthfulness as a mitigating factor in sentencing is preferable to individualized discretion.
- Adolescents’ reduced culpability should be incorporated in sentencing decisions. Development and validation of tools to assess young offenders’ maturity of judgment and criminal responsibility is a top priority.
- Tools and protocols that are available to assess objectively competence to stand trial should be further tested and moved into more widespread use.
- Expenditures saved from lower custody rates should be reinvested in evidence-based community programs that address the specific needs of young adults and the causes of their offending.
- States should develop or expand forward-looking administrative models organized around risk management, using advanced tools that increase system capacity to more effectively control and rehabilitate transition offenders.

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