

Reforming Juvenile Justice

Should teens who murder be treated as adults?

Youth advocates are seizing on bipartisan interest in criminal justice reform and historically low crime rates to lobby states to lighten sentencing standards for juveniles. They also advocate more efforts to prepare troubled teenagers — even those convicted of the most violent crimes — to be productive members of society. In 2012 the U.S. Supreme Court ruled that mandatory life terms without parole for juveniles were unconstitutional, and this fall it will hear a case on whether to make that decision retroactive for adult prisoners who committed their crimes as juveniles. But prosecutors and victims' rights advocates say youths still must be held accountable for their crimes and judges should be able to refer repeat and violent offenders to adult court. Forming a backdrop to the debate is neuroscientific research on adolescent brain development that indicates juveniles' reasoning abilities and impulse control are limited well into their 20s. The research also suggests that they can change their behavior, raising questions about youths' culpability and likelihood of rehabilitation.



Twelve-year-old Morgan Geysler, above, and another girl will be tried as adults this fall in the stabbing of a classmate in the so-called Slenderman case in Wisconsin. Both girls reportedly were obsessed with the evil fictional character. The girl they allegedly stabbed survived.

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Reforming Juvenile Justice

BY CHRISTINA L. LYONS

THE ISSUES

Fifteen-year-old Adrian Jere Gonzalez of Santa Cruz, Calif., lured his 8-year-old neighbor to his family's apartment last July, then raped and killed her, according to police.¹

Gonzalez was soon arrested, and the district attorney charged him as an adult for murder, sexual assault and kidnapping. Youth advocacy groups immediately criticized the prosecutor's decision to send the boy to criminal court, where he could be subject to a much longer sentence than in juvenile court.²

"When you have somebody as young as 15, this shouldn't just be decided arbitrarily by a district attorney but by a judge in a hearing hopefully informed by experts in adolescent psychology and psychiatry," says Barry Krisberg, director of research and policy at the University of California-Berkeley's Chief Justice Earl Warren Institute on Law and Social Policy.

But victims' rights advocates say a teen accused of such a heinous act should be tried in adult court. "He knew what he was doing; he has to be held accountable," says Harriet Salarno, board chairperson of Crime Victims United of California, a nonprofit in Auburn that advocates on behalf of crime victims. She says a jury — not available in juvenile court — should be able to decide the case.

The dispute highlights a growing debate about how state judicial systems handle minors who get into trouble. At a time of declining youth crime, many lawmakers, psychologists and advocates for juveniles want to reform heavily punitive systems to take into



Getty Images/The Baltimore Sun/Kenneth K. Lam

Eighteen-year-old Rodney Stallworth of East Baltimore spent eight months in detention at the J. DeWeese Carter Center in Chestertown, Md., on a drug charge. He said fights would break out among the young inmates that sometimes turned into melees. Maryland juvenile detention centers have had problems with violence and excessive use of force by the staffs, according to the state's Juvenile Justice Monitoring Unit.

account neuroscientific research showing adolescents have limited reasoning abilities but are greatly amenable to rehabilitation. The reformers are lobbying for states to focus on the juvenile justice system's founding ideal of keeping young offenders in family courts, where their sentences can involve rehabilitation rather than simply punishment and incarceration in large state prisons far from home.

"Kids are not just small adults," says Nate Balis, director of the Juvenile Justice Strategy Group for The Annie E. Casey Foundation, a private Baltimore-based philanthropy that focuses on issues affecting children. "Not only do they look different, but they are different."

Yet some prosecutors, legal experts and victims' rights advocates contend

that youth crime is down precisely because of the deterrence of harsh punishments. Juvenile offenders, particularly the most violent, must be held accountable and public safety must remain a priority, they say.

"Even a 5-year-old knows it's wrong to kill people," says Steven Erickson, a forensic scientist in York, Pa.

State laws vary on when and how juveniles can be sent to adult criminal court, where they could face the same punishment as adults, including life in prison. For example, in Wisconsin, 10-year-olds charged with murder can be sent to adult criminal court. New York and North Carolina treat all 16- and 17-year-olds as adults, regardless of the crime. California allows prosecutors to decide whether to charge a 14-year-old as an adult for murder or other violent offenses, while juvenile court judges in Alaska and

Washington can send a child of any age to adult court for any criminal offense. Often, juveniles convicted as adults begin their sentences in a juvenile facility and are transferred, usually at age 18 or 21, to an adult facility.³

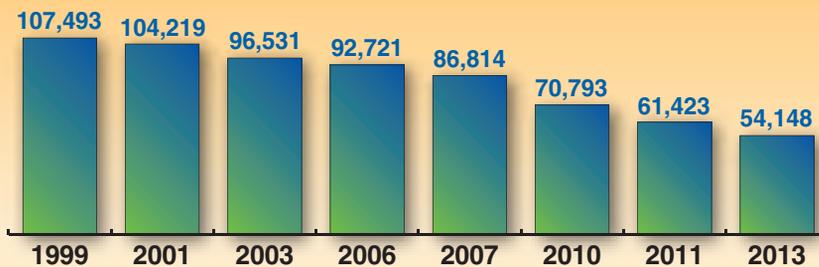
In the early 20th century, most states automatically dealt with youths under 18 in juvenile court, where judges could decide to transfer them to adult court. Then, in the early 1990s after juvenile crime began to rise and some political scientists warned of a coming wave of "brutally remorseless" young "super-predators," legislatures began cracking down on young offenders.⁴

However, the predicted wave of super-predator criminality never developed, and juvenile crime in fact began declining after spiking in the mid-1990s. By 2010, the number of juveniles arrested was

Juvenile Detentions Down Sharply

About 54,000 juveniles were housed in detention centers, shelters, group homes, wilderness camps and other residential correctional facilities in 2013, roughly half the number detained in 1999. Some experts have attributed the drop to the deterrence effect of get-tough approaches to juvenile crime; others link the drop to fewer school referrals to police of misbehaving students and states' increased use of community programs instead of detention facilities.

Number of Youths in Residential Placement, 1999-2013



Source: Melissa Sickmund et al., "Easy Access to the Census of Juveniles in Residential Placement," Office of Juvenile Justice and Delinquency Prevention, 2015, <http://tinyurl.com/qendwcp>

down 21 percent from 2001. By 2003, homicides committed by youths had dropped to the lowest level since 1980. And after an uptick between 2003 and 2006, juvenile arrests fell in 2012 to their lowest level in 33 years.⁵ Likewise, the number of youths detained in juvenile facilities fell about 50 percent between 1999 and 2013.⁶ (See graph, above.)

Theories vary on the reasons for the declines. "Crime rates are down because we've had a system of increasing consequences," says Michael Rushford, president of the Sacramento, Calif.-based Criminal Justice Legal Foundation, a group of legal and academic experts that supports tougher prosecution and sentencing. But Krisberg cites improved economic circumstances, more early-childhood education, fewer gangs and less reliance by schools and law enforcement on 1990s-era "zero tolerance" policies in dealing with juvenile delinquency.⁷

Experts cite similar reasons for the drop in juvenile detentions, and they say dwindling state budgets made authorities more willing to divert youths to com-

munity rehabilitation programs instead of expensive state-run detention facilities. In addition, lawsuits alleging overcrowding or abuse in such facilities forced some states to seek other alternatives.⁸

Meanwhile, reports indicate that juvenile detainees are often physically or sexually abused by guards or other inmates. For example:

- The Casey foundation recently found systemic "maltreatment" of youths in juvenile facilities in 29 states since 2000.

- The U.S. Department of Justice in 2014 reported that male juveniles at New York City's Rikers Island detention facilities were routinely abused by guards and other inmates.

- Also in 2014, the American Civil Liberties Union reported about harm caused by solitary confinement, widely used as a punishment in juvenile facilities and to protect juveniles in adult facilities from the regular prisoner population.⁹

Nell Bernstein, an investigative reporter and author of the 2014 book *Burning Down the House*, found that youth in juvenile facilities receive limited education

and counseling — and even less in adult facilities — although judges often believe teens will be rehabilitated so they can re-enter their communities.¹⁰

Punitive sentencing of young offenders is contrary to the founding principle of the juvenile justice system to rehabilitate delinquent youths, reform advocates say. And, recent neuroscientific research bolsters their argument that young people should be handled differently than adults, they say.

Magnetic resonance imaging (MRI) of the adolescent brain has shown that the prefrontal cortex — responsible for cognitive processing, reasoning and self-regulation — does not fully develop until youths are in their early- to mid-20s, researchers say. Thus, they add, adolescents are highly susceptible to peer pressure and unlikely to consider long-term consequences, making them potentially less culpable for their crimes.¹¹

"There's a reason that kids do incredibly stupid things, especially when they are in a group," says Kathleen R. DeCataldo, executive director of the New York State Permanent Judicial Commission on Justice for Children.

But some prosecutors and psychologists say brain research does not prove that youths who commit violent crimes cannot control their actions and shouldn't be punished as adults. Further, such a philosophy "doesn't lead people to be able to take responsibility for their actions and choices in life," says Nita Farahany, a law and philosophy professor at Duke University.

Temple University psychology professor Laurence Steinberg says that while the research may not prove juveniles lack culpability, it shows promise that they can be rehabilitated. In his 2014 book, *Age of Opportunity: Lessons from the New Science of Adolescence*, Steinberg described adolescence as a period of "brain reorganization," when the mind is easily influenced and shaped by outside factors.¹²

Such research shows that youths should not be punished the same as adults and

need counseling to change their behavior, says Michael Harris, senior attorney for the Oakland, Calif.-based National Center for Youth Law, which provides legal resources for child advocates. “No young person should be tried in adult court,” he says. “It’s more counterproductive than going through the juvenile justice system, and nothing is done to help them become productive citizens.”

Youth advocates also say juveniles should not face life sentences without the possibility of parole. Given young peoples’ “unique capacity to change,” accountability measures “should focus on rehabilitation,” says Jody Kent Lavy, director and national coordinator of the Baltimore-based Campaign for the Fair Sentencing of Youth.

But Charles “Cully” Stimson, a senior legal fellow with the conservative Heritage Foundation think tank, stands by his opposition to that approach, as reflected in his 2009 report: “Adult Time for Adult Crimes.”

In 2012 the U.S. Supreme Court, in *Miller v. Alabama*, declared it unconstitutional for states to make it mandatory for juveniles found guilty of certain crimes to receive life in prison without the possibility of parole.¹³ Since then, states and courts have disagreed on whether that ruling should apply to sentences imposed before 2012. The high court is expected to rule on that issue this fall.¹⁴

As reform advocates, legislators, psychologists and lawyers continue to debate how the justice system should handle youths, they are focusing on these key issues:

Does brain research prove adolescents are less culpable for their crimes?

Wallace Mlyniec, senior counsel at Georgetown University’s Juvenile Justice Clinic, says advances in brain imagery have helped researchers understand that the human brain continues to mature until about age 25, meaning adolescents are less able to make rational decisions.

“The cognitive part really is pretty good by the age of 16,” he says. “Most 16-year-olds have the cognitive capacity of adults, but they don’t have the impulse control, the decisionmaking ability, the experience to understand what is the consequence of their behavior, and they are influenced by peers in the ways adults are not.”

“The future, for a 15-year-old, is Friday night,” he says. Therefore, adolescents should not be held to the same standards of culpability as an adult, he contends.

The Supreme Court began suggesting that in its 1998 ruling in *Thompson v. Oklahoma* barring capital punishment for anyone under 16. “The susceptibility of juveniles to immature and irresponsible behavior means ‘their irresponsible conduct is not as morally reprehensible as that of an adult,’” the court stated. It reiterated this statement in 2005, when it banned the death penalty for juveniles under 18, and reaffirmed that stance in 2012, when it barred mandatory life sentences without parole for youths.

Harris, of the National Center for Youth Law, points out: “What we have learned . . . over the last couple of decades through research on adolescent brain development is that teenagers and adolescents are very susceptible to peer influence. They are very much thrill-seeking. And they do not have the ability to consider long-term consequences the same way an adult can.”

UC-Berkeley’s Krisberg is a strong proponent of adolescent brain research, saying it “puts a fine point on what we knew for a long time” about adolescent behavior. But, he warns, it should not be the only factor considered at trial. Lawyers on both sides in a case should be able to also provide psychological and psychiatric evaluations of the youth involved and information about his or her family and social background, and prior criminal convictions and evidence of motive, he says.

Sally Satel, a resident scholar at the conservative American Enterprise Institute think tank in Washington and co-

author of the 2013 book *Brainwashed: The Seductive Appeal of Mindless Neuroscience*, says lawyers and psychologists rely too heavily on the rhetorical power of science to sway juries. “What we know from neuroscience does not deepen the picture” of why adolescents behave a certain way but only “adds new vocabulary,” she says. Further, she argues, neuroscience is not well enough advanced to explain culpability on a case-by-case basis.¹⁵

Erickson, the forensic scientist, agrees. “Most people in the system are impulsive, risk takers, [who] don’t see the future,” he says. “The Supreme Court said these qualities are what make juveniles less morally culpable. Then who in the criminal justice system is morally culpable?”

Likewise, says Duke’s Farahany, who serves on the Presidential Commission for the Study of Bioethical Issues, the brain science “doesn’t tell us what competency an individual has, nor what competencies you have to have to be answerable to the law.”

Stephen Morse, a professor of law and psychiatry at the University of Pennsylvania, warns against “brain-over-claim syndrome,” in which “people make claims based on the neuroscience that don’t follow from the neuroscience.” The “criteria for responsibility are entirely behavioral — meaning acts and mental states,” he says. “We don’t hold brains responsible; we hold people responsible.”

Society already knew that juveniles tend to be more impulsive and susceptible to peer pressure, he says. He objects to the argument that neuroscience shows that certain legal policies are necessary. Whether sentences for juvenile offenders should be mitigated is “not a scientific argument or question; it’s a moral and legal question.”

Temple psychology professor Steinberg agrees the science has only bolstered what society long knew about adolescent behavior, and that the science doesn’t mitigate youths’ culpability. Like Erickson, he asks, “If we argue

that young people are less able to control their impulses, what do we do about adults who for some demonstrable reason have less ability to control their impulses?”

However, Steinberg says, “It’s not just that adolescents are less mature, it’s that adolescents are transient. A 30-year-old who has poor judgment and is short-sighted is always going to be that way.” But an adolescent could change, he maintains. Thus, he says, when deciding sentences, courts should consider research showing brains are malleable, and therefore youths can reform.¹⁶

“The brain’s malleability makes adolescence a period of tremendous opportunity — and great risk,” Steinberg wrote in 2014. “If we expose our young people to positive, supportive environments, they will flourish. But if the environments are toxic, they will suffer in powerful and enduring ways.”¹⁷

DeCataldo, of New York’s commission on justice for children, uses adolescent brain research to teach legislators, educators and policymakers “that we can really change these kids.” She says the research shows that a youth development approach that involves input from a school and community “is so much more effective than a punitive approach.”

She adds: “I think people can come back from doing the most heinous acts.”

Should states raise the age at which juveniles can be charged as adults?

Based on recent brain research, justice reform advocates have been pushing states to raise the age at which juveniles can be charged for any offense in adult court, where they can be subject to lengthy or lifelong prison sentences,

“With all the research on the adolescent brain, the idea of treating a 16-year-old as an adult is a hard case to make,” says the Casey Foundation’s Balis.

Many advocates cite inconsistencies in U.S. laws regarding teens and young adults. “A society that tries 12-year-olds who commit serious crimes as adults

because they are mature enough to ‘know better,’ but prohibits 20-year-olds from buying alcohol because they are too immature to handle it, is deeply confused about how to treat people in this age range,” Temple University’s Steinberg wrote in 2014.¹⁸

Youth advocates say when children under 18 are held in adult facilities they are exposed to harmful conditions, ranging from physical abuse by adult inmates to lengthy periods of solitary confinement. In 2010, for example, 16-year-old Kalief Browder was sent to Rikers Island, an adult prison in New York City, after being accused of stealing a backpack. While awaiting trial in the adult system, he spent three years in jail, including nearly two in solitary confinement. He was released in late 2014 and committed suicide several months later.¹⁹

The Bureau of Justice Statistics estimated that about 7,600 youths under 18 were held in adult facilities in 2010. That is far more than the 2,300 held in June 1999 but 20 percent fewer than the 9,500 held in 1990, when the juvenile population in adult prisons peaked. However, observers on both sides of the issue say reliable estimates are hard to collect because few courts keep records of the number of juveniles incarcerated with adults.²⁰

Americans have “a deep cultural instinct to punish as a way of changing behavior,” says Jeffrey Butts, director of the Research and Evaluation Center at the John Jay College of Criminal Justice in New York. “And most people making decisions about policy are thinking about someone else’s kid,” not their own.

Such severe punishment for young people also doesn’t reliably change behavior, Butts and others say. The Department of Justice reported that six major studies found higher recidivism rates among juveniles convicted for violent offenses in criminal court when compared with similar offenders tried in juvenile court.²¹

Moreover, says DeCataldo of New York state’s commission on justice for children, “when kids go through adult facilities, they aren’t getting any type of education.” New York requires imprisoned youths to attend classes only until they are 16, she says.

Mlyniec, of the Juvenile Justice Clinic at Georgetown University, says the juvenile system should change how it deals with typical adolescent behavior that can result in mistakes. He cites the experience of 19-year-old Zachery Anderson of Elkhart, Ind. Anderson met a girl on an online dating website who said she was 17 — a year above the age of consent in her home state of Michigan. Anderson eventually traveled to Michigan where the two had sex. However, it turned out she was 14. Originally convicted of criminal sexual conduct, Anderson would have been placed on a sex offender registry. Mlyniec asks, “Should it even be a crime?” — a question many observers asked, prompting a district court judge in September to vacate the sentence. A new judge will consider whether to sentence Anderson under a Michigan law for youthful offenders and not place his name on the state’s sex offender registry.²²

Judges sometimes impose overly harsh sentences, and youths should not be incarcerated with adults, says Heritage’s Stimson. But “first-degree murder is still first-degree murder,” he says. “It’s not debatable the brain is developing, but whether at some point in the development [adolescents] can appreciate the difference of right and wrong.”

Forensic scientist Erickson doesn’t entirely agree. He says, “It’s fine to have a system that wants to treat juveniles differently” for such crimes as theft. “But when you are talking about murder, that’s different. Retribution has to be part of the criminal justice system; we punish them because they deserve it.”

Juries should consider each case individually, says Rushford of the Criminal Justice Legal Foundation. “A major focus of the trial is the age of the defendant,”

he says. “So let the jury look at the case on its own merits.”

A major worry is that a violent youth could hurt someone else, says Steve Doell, president of the Oregon chapter of Crime Victims United. In a recent Oregon case, a juvenile who had been charged with burglary and harassment was treated as a low-level offender, but later raped a 39-year-old woman and killed a 29-year-old woman, he says.²³

For a crime victim, or for the surviving family members, “it really doesn’t make any difference if the person is 16, 24 or 66 years old,” Doell says. “You have got the same result; you have got the family member that’s been raped, you have got a family member that’s dead at the hands of another person.”

Texas state Sen. John Whitmire, a Democrat and strong proponent of justice reforms, says legislators should carefully consider the consequences of changing laws. “Advocates say the poor 17-year-old shouldn’t be in [facilities] with adults,” Whitmire says. “But if you put him in a juvenile facility, what about my 12-, 13-, 14-year-olds? You want to protect them from 17-year-olds.”

Further, if all 17-year-olds typically charged as adults in Texas — about 26,000 last year — are handled in the juvenile system, he says, “it will crash the system. I’m actually trying to de-populate the juvenile system.”

Should juveniles be sentenced to life in prison without parole?

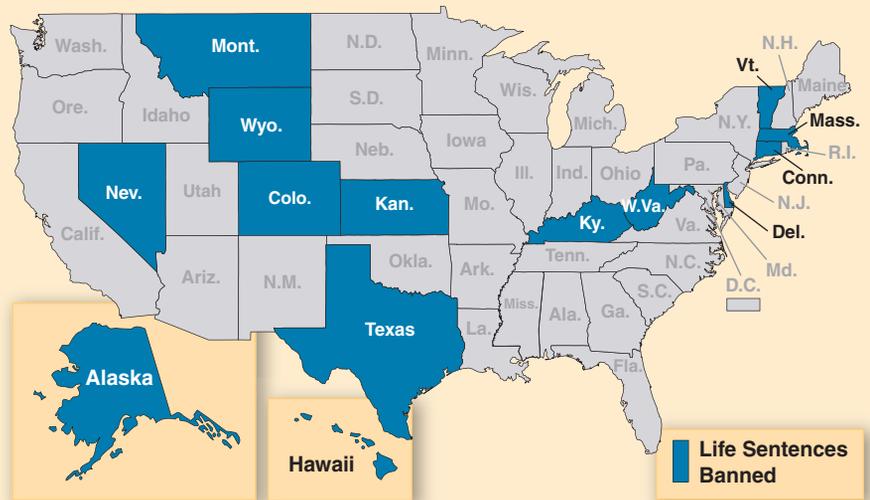
Many youth advocacy groups balk at the prospect of young people facing life sentences without the possibility of parole. “The idea that they would get effectively a death sentence, that they will die in prison, without ever having the opportunity to prove that they could change just seems wrong,” says the Casey Foundation’s Balis.

Advocacy groups such as the Campaign for the Fair Sentencing of Youth want a ban on life sentences for juveniles. Currently, there are about 2,500 prisoners nationwide who were sentenced as ju-

Few States Ban Juvenile Life Sentences

Fourteen states — most recently Vermont, Hawaii and West Virginia — have banned life sentences for juveniles without the possibility of parole.

States that Ban Juvenile Life Sentences without Parole



Source: “States that have eliminated JLWOP,” *The Campaign for the Fair Sentencing of Youth*, undated, <http://tinyurl.com/p2anypr>

veniles to life in prison, according to The Sentencing Project, a Washington-based research group that opposes life without parole for juveniles.²⁴

According to the fair sentencing campaign, 14 states have banned life sentences without parole for juveniles, nine after the Supreme Court’s 2012 ruling in *Miller v. Alabama* that mandatory life sentences for juveniles are unconstitutional. Also following the ruling, five states abolished life without parole as an option for juveniles “in most cases,” the campaign said.²⁵ (See graph, above.)

Many juveniles serving life in prison “have demonstrated that, even with limited programming on the inside, they have been able to grow and change,” says Jody Kent Lavy, the campaign’s director and national coordinator. “It’s important to check on them later in life to determine that they have been rehabilitated.”

She adds, “We know young people can commit serious crimes, and the consequences are no less tragic. But the question we face as a society is, how

do we hold them accountable as youth? Do we want to encourage them to better themselves while in prison and prove they can come home as productive members of their community?”

Many young criminals have been exposed to violence as a child, she explains, an argument Associate Justice Elena Kagan made in the Supreme Court’s *Miller* ruling. “Mandatory life without parole . . . prevents taking into account the family and home environment that surrounds him — and from which he cannot usually extricate himself — no matter how brutal or dysfunctional.”²⁶

Moreover, says The Sentencing Project, housing juveniles for life “requires decades of public expenditures,” averaging \$34,135 per year — and double that for an inmate over 50.²⁷

Lavy says the United States does not align with the rest of the world on this issue. She says the U.N. Convention on the Rights of the Child, ratified by 140 signatory countries but not the United States, prohibits life

Key Supreme Court Rulings on Juveniles

Case	Year	Court decision/effect of ruling
<i>Stanford v. Kentucky</i>	1989	Upheld Kentucky and Missouri supreme court rulings that juveniles age 16 or older can be sentenced to death.
<i>Roper v. Simmons</i>	2005	Overtured <i>Stanford v. Kentucky</i> on the ground that executing minors is “cruel and unusual punishment” under the Eighth Amendment.
<i>Graham v. Florida</i>	2010	Determined that state laws permitting life imprisonment for juveniles without parole for non-homicidal crimes are unconstitutional.
<i>Miller v. Alabama</i>	2012	Determined that state laws permitting life imprisonment without parole for juveniles who commit homicide are unconstitutional.
<i>Montgomery v. Louisiana</i>	2015	Will hear case involving question of whether the court’s previous ruling in <i>Miller v. Alabama</i> should apply retroactively to prisoners serving life sentences without parole for crimes committed as juveniles.

Source: Case pages at The Oyez Project at IIT Chicago-Kent College of Law, www.oyez.org/cases

sentences for juveniles.²⁸ Yet, she says, the United States has ratified the International Covenant on Civil and Political Rights, considered an international bill of rights, and the International Convention on the Elimination of All Forms of Racial Discrimination — relevant because a disproportionate percentage of juveniles of color are incarcerated.²⁹ The Campaign for the Fair Sentencing of Youth says life without parole for juveniles also undermines the U.N. convention against torture.³⁰

“There’s no merit to those arguments,” says the Heritage Foundation’s Stimson, a former deputy assistant secretary of Defense who in 2006 helped defend the department’s compliance with the convention against torture before the United Nations. That convention and the International Covenant on Civil and Political Rights are silent on the issue of life without parole sentences, he says.

“States are fully within their rights and their decision-making fully within the debate of the social science experts to offer life without parole sentences

for those convicted of first degree murder,” he says.

State justice systems allow judges to use discretion, as the Supreme Court directed in its 2012 ruling in which it stated that “the judge must take youth and experience and other factors into consideration,” Stimson points out. “So they get an individualized sentencing procedure.” In any case, he adds, most juveniles convicted of murder are not given life sentences, and prosecutors “are sensitive to the unique circumstances of each case.”

Salarno, of Crime Victims United, says, “We aren’t making anybody accountable and responsible.” She contends there is a “movement . . . going on in this country” in which “the victim has become the perpetrator and the perpetrator has become the victim.”

Her group opposed a California measure, ultimately passed in 2013, to allow those sentenced to life without parole before age 18 to ask for a re-hearing. “Those families went through all that trauma and all that fear, and a jury gave them that sentence,” Salarno

says. “And now they live in fear because [the inmate] is going to get out. That is wrong to do that to those families.”

In his dissent in the *Miller* case, Chief Justice John G. Roberts Jr. said the court had confused decency with leniency. “It is a great tragedy when a juvenile commits murder — most of all for the innocent victims,” Roberts wrote.

Erickson, the forensic scientist, warns, “If the Supreme Court eventually decides we will have a categorical ban, is that not at war with the doctrine that juries get to decide?”

Rushford of the Criminal Justice Legal Foundation opposes banning life without the possibility of parole (LWOP), and says some murderers, even those under 18, “should never see the light of day.” However, he adds, “the juveniles on LWOP who are performing well, behaving and making themselves productive should be in a different kind of housing from the hard-core gang banger.”

Moreover, he continues: “There is a guaranteed way to reduce sentences for 17-year-old multiple murderers. There is something called a commutation by the governor. In California, we have a governor who has done that. He’s putting his butt on the line every time when he makes those calls.”

Muhammad, of Impact Justice, says paroled inmates released in recent years by Democratic Gov. Jerry Brown have become productive citizens. He says those convicted at 14 and sentenced to life terms likely didn’t have a brain that had fully developed yet. “Thirty years later they would be a human being.”

He supports banning life-without-parole sentences. He warns, however, that courts can impose sentences that are not termed life without parole but are effectively the same. “There are courts and judges who get around [a ban on mandatory life without parole] by giving 150-year sentences. That hasn’t been outlawed.”

Erickson and others explain, however, that such sentences typically provide for a parole hearing after a certain number of years. ■

BACKGROUND

Early Sentencing

Juveniles were treated as adults in the criminal system until the start of the 18th century, when the Roman Catholic Church said children under age 7 could not form the intent to commit a crime. In 1704 Pope Clement XI created a center for “profligate youth,” and over the next two centuries governments began creating separate judicial systems for youths.³¹

In the 1760s legal scholar William Blackstone refined judicial guidelines for children. In his *Commentaries on the Laws of England*, Blackstone said an individual must meet two criteria to be accountable for a crime: He must have committed the crime and have had a “vicious will” to commit the crime. Children 6 and under could not be found guilty, he said, while children 15 and older could be tried and sentenced as adults.³²

In the American colonies, children under 14 were incarcerated or even executed for certain crimes such as murder or rape well into the 18th century.³³ The Society for the Prevention of Pauperism formed in 1818 to oppose the sentencing of youths to adult jails and prisons, and in 1825 New York City established the first House of Refuge, where children ages 8 to 17 who were accused of a range of offenses attended classes and did carpentry, sewing or housework. Those sent to the facility were thought to include “children of poor and often vicious emigrants; from the intemperance of parents, and the frequent want, misery and ignorance of their children.”³⁴ Dozens more such facilities opened around the country over the next 15 years.

For many years some states tried “reform schools” for law-breaking youths, the first of which opened in Massachusetts in 1849. But the schools

proved ineffective and later were determined to have subjected inmates to severe abuse, sometimes leading to death. Recent investigations have revealed, for instance, that boys held at the Arthur G. Dozier School for Boys, which operated for more than 100 years in Marianna, Fla., suffered “unspeakable abuses” at the hands of authorities there. The bodies of at least 51 who died there have recently been discovered.³⁵

States tried other methods to deal with wayward juveniles. In 1876, the U.S. Navy transferred the ship *Jamestown* to San Francisco’s Industrial School for Boys to provide training for work on merchant ships. But three years later the school returned the *Jamestown* to the Navy after public complaints that it was being used as a training ship for criminals.³⁶

In 1899 the Illinois Legislature created the first juvenile court in Cook County (Chicago), where judges ruled on cases ranging from truancy to major crimes. Other states followed suit, creating juvenile systems based on the philosophy that children should be treated differently from adults. By the 1930s, with urban populations and crime rates growing, community leaders tried to determine the cause of juvenile misbehavior.³⁷ Lawmakers and civil reformers sought ways to reform youths rather than just punish them.

The California Youth Correction Authority Act, passed in 1941 and applicable to anyone under 23, was the first law to state that the purpose of juvenile corrections was rehabilitative rather than punitive.³⁸ By the end of 1950, Wisconsin, Minnesota, Massachusetts and Texas had enacted similar laws.³⁹

In 1950 Congress passed the Youth Corrections Act, which gave judges flexibility in sentencing youths, such as imposing probation or requiring special services for incarcerated juveniles. The law also allowed a youth’s record to be cleared.⁴⁰ And the Justice Department in 1954 set aside six federal corrections facilities for programs aimed

at turning “young law violators into useful citizens.”⁴¹ During the 1850s, many states built “work camps” and “training schools” for youths who ran afoul of the law.⁴²

Urban crime rates rose drastically in the 1960s and ’70s, as post-World War II Baby Boomers reached their teens and 20s. In 1962, arrests of juveniles under 18 for serious crimes had risen three times faster over the previous six years than the rate of growth of the youth population.⁴³ The rate of juvenile arrests for homicide doubled during the decade after 1964.⁴⁴

Meanwhile, news reports on overcrowding and abuse in training schools and detention facilities led to a push for reforms. The Supreme Court issued a series of rulings giving juveniles the right to due process and limiting the use of the death penalty, although in 1971 it ruled that youths were not entitled to a jury trial in juvenile court.⁴⁵

In 1968, Congress passed the Juvenile Delinquency and Prevention Act to encourage states to create delinquency prevention and rehabilitation programs. Yet reports of abuse continued.

Sen. Birch Bayh Jr., D-Ind., in 1973 opened a series of hearings to investigate a growing trend of youth incarceration, estimating that at least 500,000 youths were in detention centers at the time. And he said he would look into reports of abuse of young inmates, citing reports that four cellmates in a Louisiana parish jail had reportedly gang-raped a 17-year-old, and a 15-year-old boy being held in a Niles, Mich., jail hanged himself.⁴⁶

The hearings culminated in renewal of the Juvenile Justice and Delinquency Prevention Act, providing funds for community delinquency-prevention programs if states pledged to house convicted juveniles separately from adults and not to imprison them for minor felonies. Under the law, states also had to try to reduce the disproportionate number of minority youths caught up in the justice system.⁴⁷

'Get Tough' Approach

For a while, the juvenile arrest rate for violent crimes stopped rising. From 1975 to 1987, it hovered at around 300 arrests per 100,000 youths ages 10 to 18. But over the next seven years, at the height of the urban crack cocaine epidemic, the rate rose by more than 60 percent, to about 500 per 100,000.⁴⁸ The growing illegal drug trade and gang activity contributed to the rise.⁴⁹ Meanwhile, the number of school discipline cases that ended up in state and federal courts increased between the 1960s and '90s.⁵⁰

In the 1970s and '80s, states cracked down hard on juvenile criminals. New York passed new laws in 1978 in response to two murders by 15-year-old Willie Bosket Jr., who, despite a history of violent crimes, was subject to a maximum five-year placement in a juvenile facility. The new law made 14- and 15-year-olds criminally responsible in adult court for 14 different crimes and allowed 13-year-olds to be prosecuted for murder in adult court.⁵¹

By 2000, 45 states and Washington, D.C., allowed prosecutors to file adult charges against juveniles for serious felonies.⁵² Many states lowered the age at which youths could be tried in adult court, expanded the eligible offenses for transferring juveniles to adult courts and increased the severity of penalties available in juvenile court. In Illinois, the legislature in 1995 lowered from 13 to 10 the age limit at which youths could be sentenced to prison. Subsequently, a 12-year-old convicted (with a 13-year-old friend) for the murder of a 5-year-old became the nation's youngest prison inmate.⁵³

California voters in 1994 supported a "three strikes and you're out" law, which imposed a life sentence for almost any crime if the defendant had two prior convictions for serious or

violent crimes.⁵⁴ Juvenile convictions counted.⁵⁵

The Comprehensive Crime Control Act of 1984 had repealed the 1950 Youth Corrections Act, which had provided sentencing benefits to defendants up to the age of 26, including the potential clearing of records for those paroled early.⁵⁶ A decade later, the Violent Crime Control Act of 1994 authorized millions of dollars for boot camps, and jurisdictions began privatizing criminal justice services.⁵⁷ And between 1992 and 1997, 45 states made it easier to transfer juveniles to the criminal justice system.⁵⁸

The public backed tough-on-crime laws in part because a group of academics had predicted an impending surge of youth violence. In a 1996 report to the U.S. attorney general, Northeastern University criminology professor James A. Fox reported that while overall violent crime was going down, youth violence was rising.⁵⁹ And the rates would continue to increase as the Baby Boomers' offspring grew up, he said, noting that a record 39 million children were under age 10.

"Millions of them live in poverty. Most do not have full-time parental supervision at home," wrote Fox. "They will reach their high-risk years before too long [and] we likely face a future wave of youth violence that will be even worse than that of the past ten years." He also reported that a growing proportion of perpetrators ages 14 to 24 were black males, and warned the percentage would increase.⁶⁰

That same year, another academic, Princeton political science professor John J. DiIulio Jr., forecast the rise of "super-predators," described as "radically impulsive, brutally remorseless youngsters, including ever more pre-teenage boys, who murder, assault, rape, rob, burglarize, deal deadly drugs, join gun-toting gangs and create serious communal disorders." He predicted that "By the year 2010, there will be approximately 270,000 more juvenile

super-predators on the streets than there were in 1990."⁶¹ But the predicted super-predator onslaught never occurred.

However, the country witnessed a rise in school shootings in the 1990s, prompting schools to adopt zero-tolerance discipline policies and provide more police officers on campus.⁶² That presence was boosted after a mass shooting at Columbine High School in Colorado in 1999, during which two seniors killed 12 students and a teacher before committing suicide.⁶³

Pushback

By the time the super-predator warnings were issued, the rate of homicides committed by youths had already started to decline, and they continued to decrease through the 1990s and during the subsequent decade — apart from a brief increase between 2004 and 2006.

By 2005, the number of homicide arrests of suspects under 18 had dropped by two-thirds since 1994.⁶⁴ By 2011, violent juvenile crime had declined to levels "not seen since 1970," said Butts of John Jay College and Douglas N. Evans, an assistant professor of criminal justice at Mercy College in Dobbs Ferry, N.Y.⁶⁵

Liberals opposed the new harsh penalties, arguing that the juvenile system had failed to fulfill its promise of rehabilitation and that recidivism rates were high. In the 1990s, newspaper reporters portrayed physical and sexual abuse of juveniles by staff and other inmates, long-term solitary confinement and lack of educational opportunities in California Youth Authority facilities.

The stories led to the *Farrell v. Harper* ruling in 2003, in which a teen inmate's aunt charged the California Youth Authority with subjecting inmates to illegal and "inhumane" treatment.⁶⁶

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Chronology

1825-1950

States devise methods to charge and detain delinquent and criminal youths separately from adults.

1825

New York House of Refuge, nation's first known juvenile reformatory, opens with nine youths.

1899

Illinois establishes first juvenile court.

1941

California passes Youth Corrections Authority Act, declaring that the purpose of juvenile corrections is rehabilitation, not punishment.

1950

Congress passes Youth Corrections Act, giving judges flexibility in sentencing juveniles.

1968-1974

As juvenile crime rises, states impose tough penalties on juvenile offenders; Supreme Court, Congress uphold juvenile rights.

1968

Congress passes Juvenile Delinquency and Prevention Act, encouraging states to create new ways to handle youthful offenders.

1970

Supreme Court in *In Re Winship* says criminal charges against youths must be proved "beyond a reasonable doubt."

1971

Supreme Court in *McKeiver v. Pennsylvania* rules juveniles are not entitled to trial by jury in juvenile court proceedings.

1974

Congress passes Juvenile Justice and Delinquency Prevention Act, authorizing the first federal oversight of justice systems governing youths.

1989-1996 In the wake of rising crime during crack cocaine epidemic, states allow teens to be tried as adults; juvenile crime spikes, then drops.

1989

Supreme Court of Missouri upholds death penalty for 16- and 17-year-olds.

1994

Violent Crime Control Act authorizes millions of dollars for boot camps and other private juvenile justice services. . . . Youth crime rate begins to drop.

1996

Drug czar William J. Bennett and think tank director John P. Walters warn of era of ultra-violent youths. . . . Youth crime rate continues to drop.

2003-Present

Adolescent brain research advances; lawmakers provide protections for juvenile offenders; Justice Department investigates state juvenile justice systems.

2003

Congress passes Prison Rape Elimination Act, requiring 17-year-old prisoners to be separated from adults.

2005

In 5-4 ruling, Supreme Court in *Roper v. Simmons* rules death sen-

tence for juveniles under 18 is unconstitutional.

2008

President George W. Bush signs Second Chance Act authorizing funding for states and communities to help incarcerated or released juveniles re-enter society.

2010

In *Graham v. Florida*, Supreme Court bars mandatory sentences of life without the possibility of parole for juveniles under 18 in non-capital cases.

2012

In *Miller v. Alabama*, Supreme Court bars mandatory sentence of life without possibility of parole for all juveniles, regardless of offense.

2013

Juvenile prison inmates in Michigan file class action lawsuit alleging abuse.

2014

Sens. Charles Grassley, R-Iowa, and Sheldon Whitehouse, D-R.I., propose reauthorization of Juvenile Justice and Delinquency Prevention Act. . . . U.S. secretary of Education and U.S. attorney general send letter to schools and attorneys calling for reduction in youth contact with adult criminal justice system.

2015

Rep. Robert Scott, D-Va., introduces reauthorization of Juvenile Justice and Delinquency Prevention Act. . . . Supreme Court agrees to hear case this fall to determine if ruling in *Miller v. Alabama* is retroactive. . . . Several states debate legislation to raise the age at which juveniles can be charged as adults. . . . Federal investigators report abuse of juveniles at Rikers Island jail in New York City.

States Urged to Protect Juveniles' Confidentiality

Call for secrecy conflicts with public's right to know.

Craig Sparks finds himself in a quandary: how to protect the confidentiality of youths entering the juvenile detention center under his supervision in Bernalillo County, N.M., while honoring the public's desire to know about violent criminals in their community.

As director of the Youth Services Center, Sparks convinced the county in May to halt its longstanding practice of releasing teenagers' arrest information. He and the county attorney believed that releasing the records violated the New Mexico Children's Code, which bars public access to juvenile records — from arrest through probation.¹

But the county reversed course again in July, after news organizations and open-government advocates demanded copies of the arrest information and booking photos of six teens charged with murdering a 60-year-old man.²

"These are records of alleged criminal activity in our community," said Gregory Williams, board president of the New Mexico Foundation for Open Government, "and nothing in New Mexico law prevents their release."³ The children's code says that "all records pertaining to the child" be kept confidential but does not specifically require that arrest records be kept secret.

Laws on the confidentiality of juvenile arrest and court records vary by state, often depending on the age of the youth and the type of alleged offense. Cases involving juveniles under 17 or 18 typically are considered in juvenile court before a judge in closed proceedings, depending on the youth's age and the alleged offense. Many states allow, or even mandate, prosecutors or judges to send youths charged with violent crimes such as murder or rape to adult criminal court, where cases are considered by a jury and typically are open to the public.

But youth advocates are pushing agencies to keep law enforcement and juvenile court records confidential and to comply

with laws mandating that such records be sealed or physically destroyed, or "expunged," which usually occurs when the individuals finish their probation or reach a certain age between 21 and 25. Such policies — which governed the handling of juvenile records in the past — are designed to enable juvenile offenders, as adults, to seek education, housing and employment without being stigmatized as criminals, say youth advocates.⁴

"What many of us are trying to do with young adult justice is reduce the level of consequences for youth up to 25, so when they come out, they don't have a felony on their record," says David Muhammad, vice president of Impact Justice, a new advocacy and research center in Oakland, Calif.

However, prosecutors, victims' rights advocates, open government groups and news media organizations contend that public safety could be at stake and that the public has a right to know how its juvenile justice system is being administered. "I believe that juveniles who commit any degree of homicide, first-degree violent crimes and first-degree sex offenses should not be able to have their records expunged and that the conviction should not be sealed," says Steve Doell, president of Crime Victims United of Oregon.

Sparks says limiting information available to the public will "help youth with their future" but acknowledges that "the public also wants to know . . . what kinds of crimes kids are allegedly committing. I can see both sides of it. It's not simple."

Early juvenile justice systems kept court records confidential, says Wallace Mlyniec, senior counsel at Georgetown University's Juvenile Law Center. And courts sought to avoid labeling youths as criminals by having juvenile offenses adjudicated in civil rather than criminal courts, according to James B. Jacobs, director of New York University School of Law's Center for Research in Crime and Justice.⁵

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The case resulted in a consent decree that closed many juvenile detention facilities, increased the use of probation, established rules on solitary confinement and assigned some juvenile offenders to community-based rehabilitation programs.⁶⁷

In 2002, Congress reauthorized the Juvenile Delinquency and Prevention Act and in 2003 enacted the Prison Rape Elimination Act, which required 17-year-olds to be separated from adult prison inmates. And in 2005, the Supreme Court ruled, 5-4, in *Roper v. Simmons*, that executing a minor violated

the Constitution's Eighth Amendment protection against "cruel and unusual punishment" and the 14th Amendment's guarantee to "equal protection of the laws," as well as "the evolving standards of decency that mark the progress of a maturing society."⁶⁸

That case introduced neuroscience into legal and policy debates on juvenile justice. The American Medical Association wrote in a friend-of-the-court brief that "to a degree never before understood, scientists can now demonstrate that adolescents are immature not only to the observer's naked eye but in the very fibers of their brains."⁶⁹

In the late 1990s, studies began showing what many already presumed: The adolescent brain was not as anatomically mature as the adult brain, Temple University's Steinberg says. Then, in the first decade of the 21st century, magnetic resonance imaging (MRI) technology showed that adolescent brains are less mature, both anatomically and developmentally, he says.

Yet some psychologists warned against overemphasizing the science. A "careful look at relevant data shows that the teen brain we read about in the headlines — the immature brain that supposedly causes teen problems

By the 1920s, most states had restricted the disclosure of juveniles' arrest and court records, and some required a case to be automatically sealed when an individual turned 21 so he "could embark upon adulthood without a criminal stigma," Jacobs said. In 1950, Congress passed the Federal Youth Corrections Act, allowing certain individuals ages 18 through 26 to have their convictions expunged.⁶

In the 1970s, the Supreme Court ruled in two cases that a state cannot bar the media from publishing the name of a juvenile who is arrested if the information was acquired legally.⁷ And as juvenile crime spiked in the 1980s and '90s, "those confidentiality rules began to go away," Mlyniec says, "because even liberals believed the community should know that a juvenile delinquent was among them."

Today, laws still exist governing the confidentiality of juvenile records, but they often are ineffective, the Juvenile Law Center, a nonprofit law firm based in Philadelphia, found in a 2014 study.⁸ And the National Center for Juvenile Justice reported that in 20 states, delinquency hearings are open to the public depending on the age of the juvenile and the alleged offense.⁹

Individuals with juvenile records often face difficulty gaining access to college, military service or employment, say attorneys for the Juvenile Law Center, because an applicant must release that information or a prospective employer, for instance, can search online for the records.¹⁰ "Permanent open records are like a ball and chain that prevent young people from becoming productive adults," said Riya Saha Shah, an attorney at the center.¹¹

Some states are complying with juvenile confidentiality laws. For example, the Washington Supreme Court in June ruled that state juvenile court records must be sealed.¹² The Juvenile Law Center's study gave New Mexico the strongest rating for protecting juvenile records, but Sparks says the state legislature should

make the law clearer. A state statute requires juvenile court records to be sealed after a certain amount of time, typically at the end of a probationary period, Sparks says. Yet the county has been releasing arrest records.

"To me, it didn't make sense that one part of the statute would allow the juvenile detention center to release records on a kid pre-adjudication, yet another agency [the judicial probation office], can't release anything" about the case, he says.

— Christina Lyons

¹ New Mexico statute 32A-2-32 (2013), <http://tinyurl.com/o8rzvt8>.

² Ryan Boetel, "County refuses to release teens' booking mugs," *Albuquerque Journal*, July 10, 2015, tinyurl.com/onllkv5; Dan McKay, "Bernalillo County agrees to release juvenile arrest information," *Albuquerque Journal*, July 29, 2015, <http://tinyurl.com/p3243yb>.

³ *Ibid.*, McKay.

⁴ See for example, Laurie Parise, "Know Your Rights," Legal Action Center, <http://tinyurl.com/q3mptdr>.

⁵ James B. Jacobs, "Juvenile Criminal Record Confidentiality," in Franklin E. Zimring and David S. Tanenhaus (eds.), *Choosing the Future for American Juvenile Justice* (2014), p. 150; also available at <http://tinyurl.com/qapnmzl>.

⁶ *Ibid.*, p. 151.

⁷ *Oklahoma Publishing v. District Court*, no. 76-867, March 7, 1977, <http://tinyurl.com/nmjxau9>; *Smith v. Daily Mail Publishing*, No. 78-482, June 26, 1979, <http://tinyurl.com/pa8y6vw>.

⁸ Riya Saha Shah and Lauren Fine, "Juvenile Records: A National Review of State Laws on Confidentiality, Sealing and Expungement," Juvenile Law Center, 2014, p. 6, <http://tinyurl.com/nosh4hx>.

⁹ Melissa Sickmund and Charles Puzzanchera (eds.), "Juvenile Offenders and Victims: 2014 National Report," National Center for Juvenile Justice, December 2014, p. 97, <http://tinyurl.com/nvepoan>.

¹⁰ Jacobs, *op. cit.*, pp. 157-165.

¹¹ Lynn Anderson, "States Are Failing to Protect Juvenile Records, Study Shows," Juvenile Justice Information Exchange, Nov. 13, 2014, <http://tinyurl.com/nc6wcvr>.

¹² Mike Carter, "State ruling affirms easier sealing of juvenile-court records," *The Seattle Times*, June 11, 2015, <http://tinyurl.com/o59mw7e>.

— is nothing less than a myth," Robert Epstein, a senior research psychologist at the American Institute for Behavioral Research and Technology, wrote in 2007. He said the images of the brain "do not necessarily provide useful information about the causes of thought, feeling and behavior."⁷⁰

In *New Mexico State v. Garcia*, defense attorneys failed to persuade the state Supreme Court in 2007 that automatically transferring juveniles charged with murder to adult court represented a "rejection of biology."⁷¹

Then in *Graham v. Florida* in 2010, the high court barred mandatory sen-

tences of life without parole for juveniles in noncapital cases — a ruling New York University Law School professor Martin Guggenheim called the most significant case to advance children's rights.⁷²

And in 2012 in *Miller v. Alabama*, the court barred states from employing a mandatory sentence of life without parole for juveniles, regardless of the offense. It said "a sentencer needed to examine all [the] circumstances before concluding that life without any possibility of parole was the appropriate penalty."⁷³ ■

CURRENT SITUATION

Federal Efforts

Lawmakers across the political spectrum are proposing an array of criminal justice reforms in response to stories of harsh sentencing and abusive prison conditions for juveniles as well as adults. The Obama administration is pushing to end the so-called school-to-prison pipeline,

Youth Advocates Seek Alternatives to Prison

“Our goal should be to change their behavior.”

Five boys sued the Idaho Juvenile Corrections Department in March, alleging they were abused by a staff nurse and an intern at a state juvenile corrections facility.¹

Their complaints echo those made in cases involving other youths held in both juvenile and adult facilities across the country. For example:

- Officials in Palm Beach County, Fla., in August terminated a contract with a private company operating a youth corrections facility for high-risk males ages 13-18 after many reported they had been “sexually victimized” or forced to fight with other inmates.²

- In Michigan, hundreds of plaintiffs await action on their 2013 suit against the state Department of Corrections and several employees for not protecting them from alleged rape and other abuse at the hands of older inmates while the plaintiffs were incarcerated at adult facilities while minors.³

Such stories are spurring support for alternative juvenile justice programs designed to keep troubled youths — including, sometimes, those convicted of violent crimes — out of large, state- or privately operated juvenile or adult prisons where they may be vulnerable to abuse or rape or placed in solitary confinement. Victims’ advocate groups, however, warn that some youths, particularly the most violent, should remain in high-security facilities to ensure the public’s safety.

Among the alternatives being tried by states and communities are “positive youth development” or “restorative justice” programs, which offer options ranging from home-based approaches to locked community residential facilities. Such programs are designed to keep youths engaged with their schools and community services, provide therapy for the juveniles and their families and sometimes allow victims to provide input on how an offender should be sentenced.

“We are working to help kids change,” says Michael Harris, senior attorney for the Oakland, Calif.-based National Center for Youth Law, which provides legal aid for youth advocates. “So everything we do for them is about that, . . . even for kids who committed the most serious offenses.”

Community programs, typically funded by federal or private grants, are based on brain research showing that adolescents have limited reasoning ability, heightened susceptibility to peer

pressure and greater amenability to rehabilitation than adults. The programs also acknowledge that many youths in the juvenile justice system have a history of trauma or abuse.⁴

The aim is to limit incarceration and reduce recidivism. Program specialists evaluate the delinquents’ behavior and home and school environments to determine whether they should be placed in a locked or unlocked residential facility or released on probation at home with community supervision or in supervised foster care with therapeutic treatment.⁵

For instance, The Baltimore-based Annie E. Casey Foundation provides funds for communities to divert juvenile offenders to local rehabilitation programs, closely oversee incarcerated juveniles and encourage collaboration among community agencies to monitor youths on probation.⁶ The foundation and others cite the so-called Missouri model, which provides for a variety of youth facilities: day treatment centers for the least serious offenders; group homes that house 10 to 12 offenders who have committed less-serious acts; moderately secure facilities that house 20 to 50 youths; and highly secure facilities for the most violent offenders.⁷

The New York State Permanent Judicial Commission on Justice for Children oversees partnerships between schools and justice systems to determine sentencing for juvenile offenders and allows victims to play a role in determining punishment and treatment, says Kathleen R. DeCataldo, executive director of the commission. The Vera Institute of Justice, a nonprofit research firm, operates a similar program in Brooklyn for 16- to 24-year-olds charged with violent felonies and their victims.⁸

Such efforts have helped reduce the number of youths in large state prisons. In 2012, more juvenile offenders were in local facilities than in state-operated ones for the first time since 2000, according to the Department of Justice.⁹ California, for example, had 10,000 juveniles in the state system in 1997, more than any other state, says David Muhammad, former chief probation officer of Alameda County, Calif. “Now there’s less than 700,” he says.

Some victims’ advocates say alternative programs must be careful in determining which juveniles can be rehabilitated and which should be placed in high-security detention facilities. “A sociopath cannot be rehabilitated,” says Harriet Salamo, chairperson and co-founder of

in which children arrested for minor school infractions end up in prison, and to reform a juvenile system that relies heavily on incarceration.⁷⁴ Meanwhile, an unlikely coalition of advocacy groups created by the conservative billionaire Charles Koch and including the liberal Center for American Progress is battling what Koch calls the “overcriminalization of America.”⁷⁵

At the same time, some House and Senate lawmakers are pushing for reauthorization of the Office of Juvenile Justice and Delinquency Prevention (OJJDP), which hasn’t been reauthorized since 2002 and whose appropriations fell by 50 percent between 2003 and 2010.⁷⁶

In April the Senate Judiciary Committee held a hearing to review alle-

gations that states receiving juvenile justice grants were violating federal law governing those grants by incarcerating juveniles for minor offenses.⁷⁷ Chairman Charles Grassley, R-Iowa, and Sen. Sheldon Whitehouse, D-R.I., responded by proposing reauthorization of the Juvenile Delinquency and Prevention Act, approved by the Judiciary Committee in July. The measure would au-

Crime Victims United of California, which represents victims and their families. She contends many juvenile offenders are not rehabilitated but instead are released quickly back into the community.

Michael Rushford, president of the Criminal Justice Legal Foundation, which represents prosecutors and victims, says violent repeat offenders and “hard core incorrigibles who won’t change” should be kept in secure facilities and “reprogrammed.” They should “learn some skills and some values, and when they go out the door, we should not be done watching them,” he says. “But that [requires] an investment.”

Many youth advocates say courts continue to send juveniles to detention centers for low-level, nonviolent crimes and that a disproportionate number are minorities. The Justice Policy Institute, which advocates changes in the justice system, reported that 62 percent of youths detained in 2011 had committed non-violent offenses. And the nonprofit National Council on Crime and Delinquency, which supports reforms of the justice system, said the proportion of minority youths sent to “secure” facilities rose from 12.4 percent in 2002 to 22.3 percent a decade later; the proportion of whites increased less than 3 percentage points.¹⁰ The report called for research into the cause of disparities.

The Casey Foundation in June reported continued “widespread maltreatment” of youths in state-run juvenile corrections facilities. It called for states to close all such prisons in favor of community prevention and intervention methods.¹¹

“We are putting young people in large facilities, far away from their homes, that are punitive in nature,” says Nate Balis, director of Casey’s Juvenile Justice Strategy Group. “Relationships take a back seat to coercion to behave, and everything is based on compliance in order to keep order. . . . It’s hard to walk into a place like that and see it as some place that will help people to turn their lives around and be better than when they walked in.”

— Christina Lyons

¹ John Sowell, “Suit alleges five more teen victims of sexual abuse at state juvenile detention center,” *The Idaho Statesman*, March 22, 2015, <http://tinyurl.com/mn3w5t4>.

² “State Seeks New Provider at Troubled Juvenile Correctional Facility,” CBS12, Aug. 21, 2015, <http://tinyurl.com/pn9s3qv>; Margie Menzel, “FDLE to review



Getty Images/The Washington Post/Jahi Chikwendu

Terrence Jones, a counselor and probation officer, works with a young detainee at the Fairfax County (Va.) Juvenile Detention Center school, which serves youths serving sentences or awaiting trial.

Palm Beach County juvenile facility,” *Orlando Sentinel*, May 30, 2015, <http://tinyurl.com/ntrkqpr>.

³ Jim Lynch, “Juvenile prisoners in Michigan allege abuse, rape,” *The Detroit News*, April 1, 2015, <http://tinyurl.com/nwj5vr8>;

⁴ Vanessa Sacks *et al.*, “Adverse Childhood Experiences: National and State-level Prevalence,” *Child Trends*, July 2014, <http://tinyurl.com/nh2oaka>; also see “A Hidden Crisis: Findings on Adverse Childhood Experiences in California,” Center for Youth Wellness, 2014, <http://tinyurl.com/ntrkqpr>.

⁵ Robert Butters, “Community-Based Treatment Interventions,” in Wesley T. Church II *et al.* (eds.), *Juvenile Justice Sourcebook* (2014), pp. 313-336.

⁶ Richard A. Mendel, “Juvenile Detention Alternatives Initiative: Progress Report 2014,” The Annie E. Casey Foundation, 2014, <http://tinyurl.com/pafp9ys>.

⁷ Richard A. Mendel, “The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders,” The Annie E. Casey Foundation, 2010, <http://tinyurl.com/oyd454u>.

⁸ “Common Justice,” Vera Institute of Justice, www.vera.org/project/common-justice.

⁹ Sarah Hockenberry *et al.*, “Juvenile Residential Facility Census, 2012: Selected Findings,” U.S. Department of Justice, March 2015, <http://tinyurl.com/n957etn>.

¹⁰ Antoinette Davis, Angela Irvine and Jason Ziedenberg, “Stakeholders’ Views on the Movement to Reduce Youth Incarceration,” National Council on Crime and Delinquency, April 2014, p. 4, <http://tinyurl.com/osmbwgc>.

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thorize \$159 million annually for five years for grants to help states crack down on juvenile system abuses and provide prevention and rehabilitation services. It also would phase out a provision in the law allowing children convicted of “status offenses” — such as truancy, running away or curfew violation — to be incarcerated.⁷⁸

Rep. Robert Scott, D-Va., offered a

companion bill in the House in June. He is also pushing a measure that would provide funding for local grants aimed at keeping youths out of prison. As of early September, Republican Party leaders had not scheduled any hearings or action on the measure.⁷⁹

Approval of the grant funding could be difficult. In June Republican House appropriators pushed through a bill to

fund the departments of Commerce, Justice and State in fiscal 2016 that reduced spending on several programs in each agency, including a \$68 million cut for juvenile justice, mostly by eliminating funding for state delinquency prevention grants.⁸⁰ Due to those cuts and other reductions in the spending bill, the Obama administration has threatened to veto the legislation if it is not changed.⁸¹

Although the Supreme Court has prohibited states from mandating that children guilty of certain violent crimes, such as first-degree murder, be sentenced to life in prison without the possibility of parole, neither the House nor Senate has proposed legislation to prevent states from allowing such sentences. However, Rep. Tony Cardenas, D-Calif., in late July introduced a resolution, which does not carry the force of law, calling for an end to the practice.⁸²

Meanwhile, the Justice Department is investigating state juvenile justice systems for possible violations of youths' due process rights. In March, for example, the department said it was looking into juvenile district courts in Texas and the Dallas County Truancy Court to determine whether they deprived about 20,000 children of their due process rights in 2014 by prosecuting them for failure to attend school.⁸³

In June the Justice Department reached a settlement with Mississippi calling for the overhaul of the state's juvenile justice system, after federal investigators found that youths' due process rights were being violated and that some ended up in the system for such minor infractions as truancy.⁸⁴ In New York City, a recent U.S. attorney's report found abuses and poor conditions at juvenile detention facilities on Rikers Island.⁸⁵

Many advocacy groups are pushing officials to find ways to reduce adolescent recidivism and prevent juvenile crime. In a 2014 report, the National Academy of Sciences, a private, Washington-based organization representing researchers nationwide, called for increased funding for state and local juvenile rehabilitation programs and increased OJJDP staffing and employee training.⁸⁶

Youth advocates also are calling for more research on racial disparities in the juvenile justice system and the increase in girls being arrested. In 2010 African-American youths — who represented about 15 percent of the nation's youth

population — made up a disproportionate share (40 percent) of juvenile detentions; all minority youths made up 75 percent of those held for violent offenses. The proportion of girls arrested has risen from 17 percent in 1980 to 29 percent in 2010, largely attributed to more arrests for aggravated assault, often related to domestic violence.⁸⁷

Meanwhile, the President's Commission for the Study of Bioethical Issues is considering the role of neuroscience in criminal law and has called for guidance for the criminal justice system on the proper use of brain science.⁸⁸

Youth advocates believe the prospects for change are promising. They point, for example, to bipartisan support for reforming the criminal justice system from groups such as the Koch-backed coalition. It has begun a multimillion-dollar campaign to advocate for reducing prison populations, overhauling sentencing procedures and reducing recidivism.

In the Courts

State lawmakers, courts and youth advocates await the Supreme Court's decision — following arguments scheduled for this fall — in *Montgomery v. Louisiana*. The case involves lower court discrepancies on whether the 2012 *Miller* decision barring mandatory life sentences without parole for juveniles should apply to sentences handed down before 2012.

The case follows the appeal of Henry Montgomery of Louisiana, who in 1963 at age 17 killed a police officer in Baton Rouge and was sentenced to life in prison without the possibility of parole. He now argues that, based on the court's 2012 ruling, he should have a chance at parole.⁸⁹

Several appeals courts have allowed individuals to file petitions in federal court for their sentences to be reconsidered, while two others have ruled that the *Miller* decision already applies retroactively to sentences imposed before the decision. Meanwhile, supreme

courts in 14 other states have ruled that it does apply retroactively, while seven have ruled it does not.⁹⁰

Since the 2012 decision, supreme courts in California, Massachusetts, Mississippi, Nebraska and Wyoming have ruled that various portions of the states' juvenile sentencing statutes were unconstitutional. The Wyoming court also said a state law that allows for parole only after a certain term of years is unconstitutional.

In Michigan, a lawsuit is pending against the Department of Corrections on behalf of several juveniles, age 17 and younger, who charge the department did not protect them from sexual assaults in the adult prison system.⁹¹

State Efforts

Legislatures continue to debate changing their juvenile justice laws, focusing on the effects of the *Miller* ruling and proposals such as those to raise the age at which juveniles can be charged as adults — all with mixed success.

According to the Campaign for the Fair Sentencing of Youth, 14 states bar the life-without-parole sentencing option for youths, nine of which abolished the sentence after the *Miller* ruling. Five states ban the sentencing option for youth "in most cases," according to the campaign.⁹²

In California, lawmakers continue to change sentencing laws to provide juveniles more leniency, and in 2013 Democratic Gov. Brown signed a law that established a new parole process for those who initially were charged as juveniles.⁹³ This year, the legislature expanded the law to apply to those who were 23 or younger at the time of their crimes.⁹⁴

After reports of abuses at Rikers Island, New York City juvenile advocates and lawmakers are pushing for reforms, including raising the age of criminal responsibility to 18 (from 16 and 17),

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At Issue:

Should life-without-parole sentences for juveniles be banned?



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WRITTEN FOR *CQ RESEARCHER*, SEPTEMBER 2015

as conservative Republican legislators, we helped lead the efforts in our states to end life-without-parole sentences for juveniles and replace them with age-appropriate sentences that consider children's capacity to change and become rehabilitated. In West Virginia and Nevada, the states we represent, the legislatures overwhelmingly passed these measures.

The impact of serious crimes is no less tragic because a child is involved, and youths must be held accountable for their conduct. However, as a modern society we must balance protecting public safety and justice for victims with the psychological and developmental differences between children and adults. In fact, many victims' families who have come to know the child offenders in their cases have found healing when the children were given the possibility of a second chance. Not everyone should be released from prison, but children who change and become rehabilitated should be given that hope, and we should support healing for the victims' families and their communities.

Adolescent-development research has shown children do not possess the same capacity as adults to think through the consequences of their behaviors, control their responses or avoid peer pressure. Often the children who commit serious offenses have suffered abuse, neglect and trauma, which affect their development and play a role in their involvement in the justice system. Drawing in part on this research, the U.S. Supreme Court has said children are "constitutionally different" and should not be subject to our harshest penalties.

But our motivation goes beyond what the court said. Redemption is a basic tenet of nearly every religion. When we sentence a child to die in prison, we forestall the possibility that he or she can change and find redemption. In doing so, we ignore Jesus' fundamental teachings of love, mercy and forgiveness. As the Rev. Bernard Healey, director of the Rhode Island Catholic Conference, recently pointed out, Moses, David and the Apostle Paul were all guilty of killing but found redemption and purpose through the grace of God. Shouldn't we show this same mercy to our nation's children, allowing them a chance at redemption?

Fourteen states have abolished life-without-parole sentences for children. All states should do so, and as Congress looks to criminal justice reform, it would do well to make banning these sentences a priority.



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What punishment should society impose on the very worst 17-year-old murderers? Punishment in the worst cases is the real question when someone proposes an absolute, no-exceptions ban on a given punishment for a given group. Limitations already in place will result in lesser sentences in typical cases. What about the atypical, exceptionally heinous crimes?

Take, for example, Renaldo Adams. In 1997, when he was 17 years old, Adams put on a stocking mask and gloves and broke into the Montgomery, Ala., home of the Mills family, where the two parents and three young children were sleeping. He held Mrs. Mills, who was four months pregnant, hostage at knifepoint and forced Mr. Mills to go out to get money. While he was out, Adams raped Mrs. Mills and stabbed her multiple times. She and her unborn child both died.

A jury decided, appropriately, that Adams should die for this crime. His sentence was reduced to life without parole when the U.S. Supreme Court imposed a blanket ban on the death penalty for anyone who has not reached his 18th birthday, regardless of how heinous the crime, how extensive his criminal record, or how close he was to the magic day. Now it is proposed that heartless, raping murderers such as Adams receive a double discount on murder, making them exempt from life without parole as well.

Such a simplistic rule would be both bad science and bad policy. It is one thing to say younger people generally have a greater capacity to change for the better, and it is quite another to say we must draw a bright line at the 18th birthday and treat 17-year-olds radically different from 18-year-olds. The science of brain development that is so often cited in support of more lenient treatment of youths does not remotely support such a bright-line cut off.

Age should be considered, but it should not be a trump card. It is already the law that a person under 18 cannot be sentenced to life in prison without parole for any crime less than murder. For murder, it is already the law that the sentencing judge must consider the defendant's age along with other valid factors and have the option of a lesser sentence. The law presently provides plenty of room for leniency when it is appropriate.

We do not need a simplistic cutoff.

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except for certain violent crimes, such as first-degree murder. After a similar measure failed earlier this year, Democratic Gov. Andrew Cuomo ordered that individuals younger than 18 be transferred from adult prisons to juvenile detention centers.⁹⁵

Many states continue to debate raising the age for prosecuting juveniles as adults to 18 for all or most offenses, and since 2005 at least 29 states and the District of Columbia have made it harder to prosecute and sentence ju-

veniles as adults. New Jersey in August raised from 14 to 15 the age at which teenagers can be charged as adults, and increased from 16 to 18 the age at which they can be placed in adult facilities. In some states they can stay in juvenile facilities until age 21.⁹⁶

South Dakota is changing its juvenile justice system to abide by a measure passed this year calling for only “serious” juvenile offenders — those charged with violent crimes — to be incarcerated in adult facilities.⁹⁷

In Texas — after removing a provision that would have raised the age at which juveniles could be charged as adults from 17 to 18 — the legislature

passed a broad juvenile justice reform bill that aims to place juveniles being punished for lesser crimes in regional facilities close to their homes.⁹⁸ The bill’s author, Democratic Sen. Whitmire, says he will study how raising the age affects the juvenile system.

Meanwhile, youth advocates continue to push other measures that would end solitary confinement, protect the confidentiality of juvenile records, ban registries for youths who commit sex offenses and end courtroom shackling, among other things. ■

years. As soon as crime starts to go back up, the support and bipartisan consensus will go away again. The punitive forces are still in the trees, and they will run back out as soon as the time is right.”

Cully, of the Heritage Foundation, fears a long campaign to weaken sentencing standards. “What’s really going on here is a long-term effort by some to not only eliminate the death penalty . . . for everyone . . . but then to get rid of life sentences without parole, then long sentences.”

But observers on all sides agree on a need for rehabilitative services for young people. Rushford, of the Criminal Justice Legal Foundation, says the focus should be on improving rehabilitation services for incarcerated youths so they can become productive members of society.

UC-Berkeley’s Krisberg says he expects the “large-scale secure juvenile facility” to become “a dinosaur. It will be like the Confederate flag” and fully removed in favor of home-based care or community programs. “There is an overwhelming consensus bubbling its way up to the courts and to the legislators,” Krisberg says. He predicts the number of incarcerated youths will dwindle as governors and legislators become reluctant to spend more on prisons. The next step, he says, will be a focus on reinventing probation.

“Some common-sense recognition that something is wrong with locking children up will move us forward,” says Mlyniec, of Georgetown University. “But it’s going to take money, and it will take money out of communities that want jails built [for] employment. Jails employ an incredible number of people.”

Muhammad, of Impact Justice, warns that even with some reforms, changing the attitudes of justice system workers will be difficult.

Members of the Research Network on Adolescent Development at the John D. and Catherine T. MacArthur Foundation plan to issue studies on the adolescent brain and juveniles’ culpability.¹⁰⁰

The University of Pennsylvania’s Morse, a member of the MacArthur



Getty Images/Alex Wong

U.S. Attorney General Loretta Lynch addresses the federal Coordinating Council on Juvenile Justice and Delinquency Prevention on June 22, 2015. The Obama administration is pushing to end the so-called school-to-prison pipeline, in which children arrested for minor school infractions end up in prison, and to reform a juvenile system that relies heavily on incarceration.

OUTLOOK

Window of Opportunity

Broad bipartisan support exists to pass criminal justice reform measures in light of reduced crime rates and an ongoing desire to tighten government budgets. But some reform advocates say lawmakers should act quickly, before the economy changes.⁹⁹

“Let’s take advantage of all these opportunities right now,” says Butts of John Jay College, “because the heat has turned down on the crime issue in the last 15

research network led by Temple University's Steinberg, is participating in research to distinguish between two mental states, one in which individuals commit a crime knowingly or one in which they commit a crime recklessly. Further research could help pinpoint a neural marker that could enhance the accuracy of predictions about recidivism, he says.¹⁰¹

Some justice professionals call for more study of the brains of 18- to 25-year-olds, although many predict that reforming sentencing standards for that age group would be difficult to push through legislatures.¹⁰² "Tradition and custom is so deeply inbred about adulthood being 18 or 21," says Harris, of the Center for Youth Law. "It would be hard across the board to go there." ■

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Criminal Justice Legal Foundation, 2131 L St., Sacramento, CA 95816; 916-446-0345; www.cjlf.org. Advocates for victims' rights.

Equal Justice Initiative, 122 Commerce St., Montgomery, AL 36104; 334-269-1803; www.eji.org. Provides legal representation for youthful offenders and inmates.

National Center for Juvenile Justice, 3700 S. Water St., Suite 200, Pittsburgh, PA 15203; 412-227-6950; www.ncjj.org. Studies juvenile crime and gathers statistics on state juvenile justice activities.

National Organization for Victims of Juvenile Murders, 248-736-1737; www.teenkillers.org. Advocates for the rights of family members of those murdered by juveniles.

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