

**Resource
Center
Partnership**

**Because Kids are Different: Five Opportunities
for Reforming the Juvenile Justice System**

Models for Change: Systems Reform in Juvenile Justice

Launched in 2004, *Models for Change* is a multi-state initiative working to guide and accelerate advances in juvenile justice, to make systems more fair, effective, rational and developmentally appropriate.

The Resource Center Partnership is expanding the reach of the *Models for Change* initiative—its lessons, best practices, and knowledge built over a decade of work—to more local communities and states. The Partnership provides practitioners and policymakers with technical assistance, trainings, tools, and resources for juvenile justice reform.

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ModelsforChange

Systems Reform in Juvenile Justice

“[T]he incorporation of contemporary scientific knowledge about adolescence and juvenile crime is likely to result in juvenile justice policies and practices that are both fairer and more effective at reducing crime than policies of earlier periods.”

—National Research Council, *Reforming Juvenile Justice*

INTRODUCTION

Juvenile courts in the United States ostensibly operate with the overarching goals of holding youth accountable for wrongdoing, reducing crime, and increasing public safety. However, the actual policies and practices of state juvenile justice systems frequently work against these goals. “Holding youth accountable” is often simplified to involve only punishment—formal court processing with harsh consequences or incarceration for even minor offenses, despite more and more studies confirming the ineffectiveness of these approaches. Too few juvenile justice systems use programs and practices that teach youth about the consequences of their wrongdoing in a holistic way, or give youth opportunities to restore damage they have caused, when feasible, and the tools to learn from their mistakes and make better choices in the future.

In recent decades, a great deal has been learned about what interventions are most effective for youth in trouble with the law—both in terms of facilitating healthy youth development and decreasing future crime. First, a growing body of research demonstrates that the current system of intensive oversight and placement of youth in large prison-like facilities has, at best, only a modest positive effect on recidivism, and can actually have negative effects, while therapeutic programs focused on youth development have very positive effects, even for youth who commit serious offenses. Second, thanks in part to the

decision by the MacArthur Foundation to fund the interdisciplinary Research Network on Adolescent Development and Juvenile Justice in 1996, psychological and neuroscience research into adolescent behavioral and brain development have cemented our understanding of the developmental factors that make adolescents different from adults, showing definitively that youth are less culpable for their behavior, and more amenable to change and rehabilitation.

As the National Research Council noted in *Reforming Juvenile Justice* (2013), this knowledge is starting to bring about a sea change in the way youth in the justice system are characterized in legal, policy, and media contexts. The idea of youth as “superpredators” has faded; youth offending is now more likely to be attributed to developmental immaturity, as local, state, and federal lawmakers increasingly recognize that this immaturity must have a significant bearing on policy in the juvenile justice arena.

Heartening as these changes are, policymakers continue to struggle with how to create a developmentally appropriate juvenile justice system. For example, issues such as disparities in the treatment of youth of color or confinement of youth who commit status offenses continue to present policymaking challenges. However, *Models for Change* has played an important role in developing and replicating new models of policy and practice that show the way. Between 2004 and 2007, *Models for Change* launched in

four states—Illinois, Louisiana, Pennsylvania, and Washington—with a focus on locally-defined opportunities for changes in policy and practice. In 2007 and 2008, it launched three action networks active in 16 states that focused on (a) addressing racial and ethnic disparities; (b) meeting the mental health needs of youth in the juvenile justice system; and (c) improving juvenile indigent defense.

More recently, at the federal level, *Models for Change* has partnered with the Substance Abuse and Mental Health Services Administration (SAMHSA) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to work with local jurisdictions on adopting practice and policy innovations from *Models for Change*, including mental health screening and risk/needs assessment; mental health training for the juvenile justice workforce; reducing racial and ethnic disparities; and improving coordination of the juvenile justice and child welfare systems.

Models for Change has also invested in a Resource Center Partnership to provide administrators, practitioners, and policymakers with technical assistance, trainings, and proven tools and resources. At its heart are four Resource Centers that focus on areas critical to continued advancements in juvenile justice:

- better response to mental health needs;
- stronger public defense for indigent youth;
- appropriate interventions for youth charged with status offenses, like truancy, running away and curfew violations; and
- improved coordinated systems of care for dual status youth, or youth who come into contact with both the child welfare and juvenile justice systems.

As of 2014, *Models for Change* has had a positive impact on juvenile justice policy in more than 35 states and over 100 local jurisdictions. With its partnerships with the Council of State Governments, International Association of Chiefs of Police, National Association of Counties, National Center for State Courts, National Conference of State Legislatures, and National League of Cities, the initiative continues to build ever-stronger networks of juvenile justice reform leaders committed to a developmentally appropriate juvenile justice system.

New Prospects for Reform

As broader acceptance of recent findings in the field of adolescent development has opened the way for change, juvenile justice policymakers, stakeholders, practitioners, and advocates across the country have not been slow to champion numerous innovations in policy and practice, generating remarkable momentum for reform. This momentum can be leveraged to change policy in five areas where current practice is fundamentally incompatible with healthy adolescent development:

- prosecution of youth in the adult criminal system;
- solitary confinement;
- confidentiality of juvenile records;
- registries for youth who commit sex offenses; and
- courtroom shackling.

This document seeks to concisely frame these policies in light of the research on adolescent development, and thereby aid the juvenile justice reform field in taking strategic action to create a developmentally appropriate juvenile justice system that keeps everyone safer.

WHAT WE KNOW: RESEARCH ON ADOLESCENT DEVELOPMENT AND JUVENILE JUSTICE INTERVENTIONS

There is now a solid scientific foundation for transforming the juvenile justice system so that it takes into account the ways in which adolescents are different from adults. And over the past decade, the U.S. Supreme Court has laid a strong legal foundation for this approach as well (see sidebar, “The U.S. Supreme Court: Youth Must Be Treated Differently than Adults”). New data has also been gathered on what works best to rehabilitate youth and protect the public: a system that responds to youth with interventions that make the most of the period of adolescence by capitalizing on youth’s capability to learn and change and by thoughtfully avoiding practices that can have lasting, damaging effects. Such interventions have been found to be the most cost-effective in the long run, further underscoring the benefit of change.

Research Findings: Adolescents Are Different

The body of research demonstrating the differences in the way youth and adults make decisions and respond to situations is now well-established, and can play an important role in steering us toward developmentally appropriate juvenile justice policy. Researchers in adolescent behavioral psychology have found three pivotal differences between adults and youth:

- adolescents are less able to self-regulate in emotionally charged situations than adults;
- they have a heightened sensitivity to peer pressure and immediate incentives; and
- they are less able to consider the long-term consequences of their actions.

The U.S. Supreme Court: Youth Must Be Treated Differently than Adults

Four recent U.S. Supreme Court cases have firmly established the profound differences between adults and youth in the eyes of the law. The cases rely heavily on “what any parent knows” about adolescents, as well as social science and adolescent brain development research, including research supported in part by the investments of the MacArthur Foundation’s Research Network on Adolescent Development and Juvenile Justice.

- **2005, *Roper v. Simmons*** – *Roper* eliminated the death penalty for crimes committed by youth under age 18. The court noted three key distinctions between adolescents and adults that require the law to hold youth to a different standard: (1) adolescents lack maturity and a sense of responsibility, which can lead to “impetuous and ill-considered” actions and decisions;¹ (2) adolescents are more vulnerable and susceptible to negative influences and peer pressure; and (3) the personality traits of adolescents are not fixed, and are more transitory than those of adults. According to the court, a youth’s ability to grow, mature, and change must be recognized by the law for reasons of basic logic, science, and morality.
- **2010, *Graham v. Florida*** – Next, the court prohibited a sentence of life without parole for a non-homicide offense committed while a youth was under age 18. The sentence was particularly troubling to the court, which stated that life without parole for a youth “forswears altogether the rehabilitative ideal . . . [and is] not appropriate in light of a juvenile non-homicide offender’s capacity for change and limited moral culpability.”²
- **2011, *J.D.B. v. North Carolina*** – In this decision, the court held that police must take a youth’s age into account when deciding whether an individual is in a custodial interrogation that warrants reading his or her *Miranda* warnings. The court stated bluntly that “children cannot be viewed simply as miniature adults.”³
- **2012, *Miller v. Alabama*** – Most recently, the court held that youth may not be sentenced to mandatory life without parole for an offense committed when under 18 years of age. The court stated that the “science and social science supporting *Roper*’s and *Graham*’s conclusions have become even stronger”⁴ and that youth have “diminished culpability and greater prospects for reform.”⁵

1 543 U.S. 551 (2005), <http://bit.ly/144m6YE>, at 569, citing *Johnson v. Texas*, 509 U.S. 350, 367 (1993).

2 560 U.S. 48 (2010), <http://1.usa.gov/1tygZED>, slip op. at 23.

3 564 U.S. ____ (2011), <http://1.usa.gov/1oClouC>, slip op. at 11.

4 567 U.S. ____ (2012), <http://1.usa.gov/1tyhwq3>, slip op. at 9, footnote 5, citing *amicus* brief for J. Lawrence Aber, et al.

5 *Ibid.*, slip op. at 8.

The existence and interrelationship of these qualities can explain why adolescents are more likely than adults to engage in risky behaviors that have a high probability of immediate reward, but which may also harm themselves or others, such as stealing a car, using drugs, or getting into a fight.

Newer research on adolescent brain development has linked some of these differences between youth and adults to concrete changes in the structure and function of the brain. This new information has been especially persuasive to policymakers and courts, confirming decades of research from the field of developmental psychology, revealing that the brain takes far longer to fully mature than scientists had previously thought, with changes continuing into the mid-20s, and showing that certain aspects of adolescents' behavior stem from biological factors that are out of their control—interfering with their ability, in certain contexts (e.g., when among a group of their peers), to make better behavioral choices.

Taken as a whole, the research shows there is an overall imbalance of the systems of the adolescent brain; the tensions one can see and intuit within teens are manifestations of their constantly growing and changing brains. Adolescent brains are hard-wired to seek pleasure, social rewards, and peer approval, yet are still developing the circuits needed to weigh risks and rewards, regulate their emotions, and make complicated decisions in times of pressure. This imbalance, however, is transient, and the behavior of individuals during their youth is rarely representative of who they will become as adults: of particular relevance here is that most youth age out of impulsive and criminal behavior. Lastly, it is noteworthy that throughout the period of major brain growth and development, the adolescent brain is especially sensitive to its environment, which corroborates other research highlighting the importance of the social context in which youth develop, including the influences of

parents, peers, schools, and community activities, as well as racial discrimination's corrosive toll.

Fairness Demands a New Approach to Youth Offending

The scientific findings about the differences between youth and adults strengthen the moral foundation for establishing a separate justice system for youth distinct from the adult criminal justice system, and point us to a system rooted in fairness, appropriately mitigating the culpability of youth, adjusting for the different capacities and capabilities of youth, and having clear and unbiased legal proceedings. What's more, a growing body of legal precedent states that because children are not as culpable as adults for acts of wrongdoing, it is unfair and immoral to hold children accountable in the same way.

Naturally, fairness matters for adults and youth alike. However, youth, by virtue of their developmental stage, are particularly sensitive to perceived injustice, and unfair treatment can actually increase their antisocial behavior. Conversely, youth are more likely to take responsibility for their actions and avoid future offending if they feel they have received treatment that is fair, transparent, and reasonable. This is especially important for youth of color, who have a long history of disparate treatment in the justice system, which contributes to perceptions of unfairness and impedes the success of system interventions.

A Developmental Approach Makes Communities Safer

Data on public safety outcomes highlights the advantages of a developmentally appropriate approach to youth who commit crimes. The use of harsh punishments like incarceration as a general deterrent to youth crime is contrary to the science of adolescent development. In fact, youth are generally more responsive to the anticipated reaction of their peers than the threat of sanctions from an authority figure. Given the influence of

peers on adolescent behavior, congregating young people in large institutions can, not surprisingly, have a criminogenic effect—precisely the opposite of the intended result.

Statistics on arrests of youth suggest that using alternatives to confinement and harsh treatment that are based on principles of youth development can actually help reduce future crime. Arrests of youth steadily declined during a decade when states drastically reduced the rate of youth confinement and closed many youth facilities. Instead, more and more youth who are at low risk for reoffending are being served in their communities or diverted from the justice system altogether. Research continues to reveal that well-designed community-based programs and evidence-based practices can effectively reduce recidivism without relying on harsh, punitive treatment. The most effective programs and services are those that seek to meet youth's needs and influence their development in a positive way, by promoting contact with prosocial peers and adult role models, actively engaging parents and family members, offering tools to deal with negative influences that youth may face in their communities, and engaging youth in educational programming and employment that will prepare them for conventional adult roles.

Treating Youth Differently Costs Less

There are many obvious costs of crime—law enforcement, property damage, services to victims, and punishment for those who commit crimes.

According to a recent report, the average annual cost of institutional placement alone is nearly \$149,000, for just one youth, with costs ranging from \$47,000 to \$353,000 per year, per youth.⁶ What are harder to see and measure are those costs associated with the wholesale criminalization of human beings and communities—“social costs” or losses of “human capital.” For example, youth placed in institutions

frequently receive inadequate educational services while incarcerated, and they face many obstacles to successful reentry into school when they are released. This, in turn, leads to decreased graduation and employment rates for youth who have been incarcerated or system-involved. Individuals with juvenile or adult records can also face explicit barriers to employment and housing, even decades after conviction. These collateral consequences of contact with the justice system can profoundly damage a youth's chance of successfully transitioning to adulthood and living independently, and lead to further involvement in the justice system. Researchers estimate that the total lifetime cost to society for each cohort of youth confined annually—including costs of recidivism, lost future earnings, lost future tax revenue, increased expenses from reliance on public benefits, and the expenses stemming from victimization of youth in facilities—ranges from \$8 billion to \$21.5 billion.⁷

Conversely, interventions rooted in adolescent development provide youth with a foundation for success by cultivating educational, vocational, and social skills; helping youth form meaningful relationships; teaching youth how to cooperate in groups; and teaching youth how to act responsibly without adult supervision—all essential developmental tasks. These interventions can be highly cost-effective. Two decades of national cost-benefit research on juvenile justice interventions from the Washington State Institute for Public Policy (WSIPP) documents the cost-effectiveness of certain evidence- and research-based programs that provide services focused on supporting youth development. These programs can yield a net benefit from \$3,600 to over \$67,000 per youth, and the researchers note that even programs that lead to relatively small reductions in crime can provide substantial long-term returns on states' investments.⁸

⁷ Ibid.

⁸ Stephanie Lee, et al., “Return on Investment: Evidence-Based Options to Improve Statewide Outcomes, April 2012 Update” (Olympia, WA: Washington State Institute for Public Policy, April 2012): 4, 25, <http://bit.ly/1G1kNd>.

⁶ “Sticker Shock: Calculating the Full Price Tag for Youth Incarceration” (Justice Policy Institute, December 2014), 3.

Four Lessons for Juvenile Justice Policymakers from the National Research Council

In 2011, the federal Office of Juvenile Justice and Delinquency Prevention commissioned the National Research Council (NRC) of the National Academy of Sciences to study juvenile justice reforms over the past 15 years in light of current knowledge about adolescent reform. A two-year study led to the publication of *Reforming Juvenile Justice: A Developmental Approach*, a comprehensive review of current practice and knowledge with key recommendations for reform.

- 1. Youth are less culpable than adults.** Fundamental characteristics of normal adolescent development can contribute to youth involvement in criminal activity. Therefore, youth are less culpable than adults, and the justice system's response to youth in trouble with the law should take into account their stage of development.
- 2. Most youth grow out of criminal behavior.** Therefore, justice system interventions should not impede their maturation or increase their risk of offending.
- 3. Youth need environments that help them mature.** Healthy development is facilitated by "opportunity structures" in youth's social environments. Therefore, facilities or programs for justice-involved youth have a strong potential to either nurture or harm youth's development.
- 4. Concerted effort is required to make the system fair for youth.**
 - a. Adolescents' capacities for judgment and self-regulation are not yet mature; therefore, the justice system should reduce the severity of its sanctions so they are proportionate to youth's actual culpability.
 - b. By reason of their stage of development, youth may be less capable than adults of understanding legal proceedings and their long-term implications—which is fundamental to the system's legitimacy.
 - c. Teens are especially sensitive to the fairness with which they and their peers are treated by adults—unfair treatment can reinforce anti-social attitudes. As a result, it is especially important for the justice system to have fair and transparent procedures and outcomes, particularly in the case of youth of color because of their historical experience with disparate treatment.

FIVE OPPORTUNITIES FOR DEVELOPMENTALLY APPROPRIATE POLICY CHANGE

Shifting toward a developmentally focused approach to youth in trouble with the law will have benefits for youth and public safety no matter where in the juvenile justice system reforms are applied. However, the five policy areas below are especially ripe for change nationally when viewed through a developmental lens. While policies and practices in each of these areas can have negative effects on both youth and adults, the damage these policies do is especially severe in the case of children and teens, given what researchers now know about their culpability and developmental needs.

Prosecution of Youth in the Adult Criminal System

Current Practice

All states have one or more mechanisms to send certain youth to the adult system and impose harsh adult sentences on youth, such as adult probation or adult prison. As many as 175,000 youth a year are sent directly to adult court when they are charged with a crime, simply based on age-of-jurisdiction laws, which dictate the maximum age at which a youth may enter the juvenile justice system. Recently, some states—Connecticut, Illinois, Massachusetts, and New Hampshire—have raised the age of juvenile court jurisdiction so that the cases of all youth under age 18 start in juvenile court. Meanwhile, legislatures in other states, including New York, North Carolina, Texas, and Wisconsin, are considering raising the age of juvenile jurisdiction.

Youth are also criminally prosecuted through various kinds of “transfer” laws, including statutory exclusion laws, which require cases involving certain crimes to go straight to adult court; prosecutorial discretion or “direct file” laws, which provide prosecutors with discretion to prosecute certain cases in adult court; judicial waiver laws that allow judges to transfer cases to adult court; and “once an adult, always an adult” laws that mandate criminal prosecution for youth who have been tried or convicted as adults for previous offenses. Some states have moved to limit the transfer of youth to the adult system by restricting the ability of prosecutors to file cases directly in adult court, or increasing judicial discretion with regard to transfer decisions. The regulations of the Prison Rape Elimination Act (PREA) have also recently provided a basis for states to restrict the placement of youth in adult jails.

Once in criminal court, youth—no matter their age—are treated as if they are adults: they are charged with adult crimes, they are subject to adult sentencing laws, they are sent to adult prisons, and they leave with an adult criminal record. Additionally, youth in the adult system lose many of the essential services and protections afforded to them in the juvenile justice system, such as educational programming or the federal prohibition on being housed with adult prisoners.

The Developmental Perspective

Sending youth under age 18 to the adult criminal system is one of the most egregious ways that juvenile justice system policy runs contrary to principles of adolescent development.

- The more retributive and punitive goals of the adult criminal system differ fundamentally from the original rehabilitative goal of the juvenile justice system. The adult system also relies on principles of deterrence, which, as noted above, are generally ineffective with adolescents, due to the ways in which youth analyze consequences differently than adults.

- Research supports the conclusion that much teenage criminal activity stems not from a failure of character, but from developmental pressures. Because of this, youth are less culpable than adults, whose criminal behavior stems from different motivations.
- Youth in adult court face the same sentences as adults who have committed similar crimes—including mandatory minimums—despite scientific evidence of the reduced culpability of adolescents. And, perversely, youth’s experience of the extreme sentence of life without parole is generally longer and harsher than an adult’s, given their age.
- Adult prisons are “developmentally toxic settings” for adolescents: youth in adult prisons mingle daily with adults with long histories of offending, and receive little to no programming that meets their developmental needs.⁹
- Due to their youth and ongoing development, youth in adult jails and prisons are especially vulnerable to sexual and physical abuse, and they face greater risks of mental health problems, trauma, and suicide.

Characteristics of a Model System

Laws and policies that funnel youth into the adult criminal justice system solely based on age or crime are contrary to the research on adolescent development and successful interventions for youth in trouble with the law. Such policies are also out of line with public sentiment, which favors rehabilitation and does not support transfer. The following would be hallmarks of a model system’s approach to transfer:

- **Transfer is never automatic; whenever possible, youth remain in the juvenile justice system.** Youth are transferred to the adult system only on an individualized basis and after careful deliberation by a judge, who takes into account the experiences, characteristics,

⁹ National Research Council, *Reforming Juvenile Justice* (Washington, DC: National Academies of Science, 2013): 134, <http://bit.ly/1zhoVmM>.

and vulnerabilities that can place adolescents at greater risk of becoming involved in criminal activity, as well as their ability to change.

Prosecutors are no longer granted the unilateral ability to file cases in adult court without judicial review.

- **Adult sentencing guidelines are not applied to youth.** Given their mitigated responsibility and capacity to change, youth receive more lenient dispositions than adults, even for the same crime. Extreme sentences that have a disproportionately harsh impact on youth, such as life without parole, are not imposed on adolescents and there is a lower ceiling for punishment for youth.
- **Adolescents are not placed in adult jails or prisons.** Placement of youth in adult jails and prisons, even for a short time, is recognized as damaging to the child and contrary to public safety. Policies are influenced by research showing that transferring youth to criminal court bears no relationship to changes in the rates of youth violence and that holding adolescents with adults can actually make youth more likely to commit new crimes.
- **If youth are nevertheless placed in an adult facility, the Prison Rape Elimination Act (PREA) is strictly enforced to protect them.** The three prongs of PREA are enforced: the prohibition on youth under 18 being housed in the general adult population of an adult prison or jail; the requirement that adult facilities maintain “sight and sound” separation between adults and youth; and the prohibition on youth being subjected to isolation as a means of complying with the regulations. PREA regulations are used as a guide for the development of statewide policies to protect youth who are placed in adult facilities.

Solitary Confinement

Current Practice

Solitary confinement involves physical and social isolation, often for 22 to 23 hours per day. Youth in solitary confinement are generally deprived of educational programming, recreational time, exercise, visits from family members, and other services. Sometimes, youth are placed in solitary confinement for weeks or months at a time.

Solitary confinement or isolation of youth is often thought to be necessary as a tool for punishing youth who break the rules, a way to keep youth “safe” from themselves or others, or as a means of keeping youth separate from adults if they are held in an adult facility. However, some states, such as Missouri, have demonstrated that it is entirely possible to handle youth who are confined without over-use of isolation, by having smaller home-like facilities, well-trained staff, interactive and developmentally appropriate programming, and an emphasis on positive reinforcement.

Although the federal government does not collect or analyze data on solitary confinement, it is evident that isolation of youth is widespread in both juvenile and adult facilities. For example, data from Michigan show that 35 percent of youth in adult prison have been placed in isolation at least once.¹⁰ Over the course of just one month in a California facility, 184 youth were placed in “restricted housing,” receiving between 30 minutes to three hours of out-of-room time per day.¹¹ Many states have regulations that circumscribe the use of solitary confinement and isolation of youth, but monitoring of actual practices has revealed arbitrary and excessive use.

10 Analysis of data from the Michigan Department of Corrections from July 26, 2010 to July 25, 2013. See International Women’s Human Rights Clinic, City University of New York Law School, et al., “Children in Adult Jails and Prisons: Shadow Report to the U.N. Committee Against Torture” (September 22, 2014): 3, <http://bit.ly/10LUC7P>.

11 Michael K. Brady, “Review of the Office of Special Master’s Identified Concerns: Ventura Youth Correctional Facility” (Office of Audits and Court Compliance, California Department of Corrections and Rehabilitation, March 25, 2011): 5-6.

The Developmental Perspective

Placing adolescents in solitary confinement flies in the face of developmental research, as well as international law and human rights standards. It is contrary to the principle that youth are less culpable than adults, and are especially vulnerable.

- Solitary confinement can be profoundly damaging to youth. It can cause psychological harm, creating or exacerbating mental health problems. Youth report experiencing hallucinations, suicidal thoughts or attempts, anxiety, depression, insomnia, nightmares, and uncontrollable anger or rage while in solitary confinement.
- Solitary confinement interferes with the social and physical development of youth: they suffer from a lack of exercise, inadequate nutrition, no contact with loved ones, and no rehabilitative programming, all essential components of healthy development.
- Youth in solitary confinement are often deprived of educational services or access to teachers—even those youth with intellectual disabilities.
- Young people are not equipped with the resilience to handle solitary confinement, and, given the malleability of the adolescent brain, the traumatic experience of isolation can have a negative effect on a youth's ability to successfully rehabilitate and mature.
- Youth with mental disabilities or past trauma can be particularly vulnerable to the harm caused by isolation, and face additional barriers to mental health care while they are isolated.

Characteristics of a Model System

Federal, state, and local governments, as well as system practitioners, all have a role in ending solitary confinement of youth. Given the tools at their disposal, here are possible features of a model system:

- **Solitary confinement of youth under age 18 is prohibited in federal facilities.** Additionally, the Juvenile Justice and Delinquency Prevention Act (JJDP A) prohibits solitary confinement of youth under 18. States face sanctions if they attempt to use solitary confinement as a means of complying with the JJDP A and PREA's prohibitions on housing youth with adults.
- **Under local and state law, no youth under 18 can be placed in solitary confinement.** Juvenile justice facilities use means other than solitary confinement to sanction youth and protect them from harm. Youth in trouble with the law are served in the juvenile justice system rather than the adult criminal system, where solitary confinement is common, harsh, and used for longer durations.
 - Juvenile facilities emphasize positive reinforcement over punishment and provide youth with interactive programming and services, which, in turn, reduces the number of circumstances and problem behaviors that trigger the need for isolation in the first place.
 - Juvenile facilities have adequate numbers of well-trained and supervised staff who are equipped to serve the range of needs of youth, especially those youth with specialized needs, such as mental health or substance abuse issues.
 - Smaller community-like facilities are used in order to better respond to youth misbehavior and needs without resorting to isolation.
- **Where not banned outright, isolation is only used as an emergency measure for as short a duration as possible.** In order to increase the transparency of the use of solitary confinement and its effect on youth, facilities gather and publicly report data on their use of solitary confinement and isolation, and state and local governments closely monitor the practice.

Safeguarding Confidentiality

Current Practice

The first juvenile courts believed that keeping children's records confidential was necessary to effectively serve the goal of rehabilitation: how were youth to achieve success in the community if they carried the stigma of a conviction? Many people still assume that juvenile law enforcement and court records are kept confidential and do not carry the same consequences as adult criminal records. However, a juvenile record can have profound consequences, leading to barriers to employment, restrictions on access to housing and public benefits, restrictions on joining the military, placement on registries, difficulty pursuing higher education, and the stigma of being a "delinquent."

Most states do not currently maintain strict confidentiality of juvenile records while a case is open or after it is closed, but have statutes that allow or require records of juvenile adjudications to be disclosed to law enforcement, schools, employers, landlords, government agencies, researchers, the media, crime victims, or even the general public. Often, these disclosures are said to be justified in the name of public safety, to make community members aware of potentially dangerous individuals. In other cases, such as with schools or certain government agencies, records are shared in an effort to provide continuous services and informed planning. While some states do attempt to be especially protective of juvenile records—by limiting exceptions to confidentiality requirements by age or type of offense, or requiring a court order for records to be released outside of the court or law enforcement—the increasing number of exceptions to confidentiality rules have essentially swallowed the original protections afforded to youth.

Sealing of records (closing them to public view) or permanent expungement (physical destruction of records) are additional means to protect youth

from the negative consequences of having a juvenile record. Nearly two-thirds of states allow for sealing of records or allow for record expungement (although 15 do not actually physically destroy the records). Five states—Indiana, Maryland, Missouri, Oregon, and Wisconsin—have both complete sealing and expungement available for juvenile records. However, most of these states make expungement far from easy, often requiring the filing of a petition, providing inadequate notification of expungement rights and eligibility, or charging fees that become a barrier for indigent youth and their families.¹²

The Developmental Perspective

Juvenile systems may be intended to reduce future offending and help youth become valuable members of their communities, but if youth automatically leave the system with a record, or must go through numerous hurdles to eliminate those records, these goals are not being served; systems are actively limiting youth opportunities instead of providing them with additional opportunities for success.

- Given that most children age out of criminal activity, and that most offending by adolescents is not an indicator of the kinds of people they will be as adults, it is particularly inappropriate to saddle youth with records that will follow them into adulthood.
- Disclosing juvenile records is not necessary to protect the public: research shows that making records available to the public is not linked to community safety.
- The significant consequences of a juvenile adjudication can make it extremely difficult for youth to successfully rehabilitate and transition into adult life.

12 Riya Saha Shah and Lauren A. Fine, "Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records" (Philadelphia, PA: Juvenile Law Center, November 2014), <http://bit.ly/1xvmhYY> and Riya Saha Shah, Lauren A. Fine, and Jamie Gullen, "Juvenile Records: A National Review of State Laws on Confidentiality, Sealing and Expungement" (Philadelphia, PA: Juvenile Law Center, November 2014), <http://bit.ly/14wgc2w>.

Characteristics of a Model System

No state has a perfect system for keeping youth's records confidential and appropriately destroying records after a case is closed. However, many states already employ various tools to protect youth from long-term damage due to a juvenile record. In a model system:

- **Law enforcement and court records are always confidential.** These records are never available online and employers are prohibited from allowing a youth's juvenile record to inappropriately influence their hiring decisions.
- **Records related to any offense are eligible for sealing or expungement.** Given the potential for all youth to change their behavior, even records of serious offenses may be expunged.
- **Youth become eligible for expungement at the time their cases close and they separate from the justice system.** To avoid forcing youth to go through complicated, drawn-out processes, lengthy waiting periods are eliminated and sealing and expungement are automatic.
- *If sealing and expungement are not automatic, procedures are simplified.* Rules and processes are easy to understand and youth can apply for expungement on their own, without needing help from an attorney and without having to pay a fee.

“Laws, rules, regulations and policies that require disclosure of juvenile adjudications can lead to numerous individuals being denied opportunities as an adult based upon a mistake(s) made when they were a child.”

— American Bar Association

Registries for Youth Who Commit Sex Offenses

Current Practice

There are a number of federal and state laws that require youth convicted of certain sex offenses to register as “sex offenders,” often for decades or even a lifetime. Title I of the federal Adam Walsh Child Protection and Safety Act of 2006—the Sex Offender Registration and Notification Act (SORNA)—sets forth broad mandates for all states with regard to registries, including the registration of youth adjudicated for certain sex offenses in juvenile court. All states and the District of Columbia have laws requiring youth who are convicted of sex offenses in adult court to register; and this information is made available to the public through online databases. Twenty-seven states subject children adjudicated for sex offenses in juvenile court to the same public notification requirements as adults, making their information publicly available.¹³

Youth must comply with registration requirements for a range of offenses—including indecent exposure, public urination, false imprisonment of a child, and possession of child pornography—and they are subject to penalties for failure to meet registration requirements. SORNA is offense-focused, requiring jurisdictions to classify the risk of a person convicted of a sex offense based solely on the offense, rather than an individualized risk assessment. However, some states take a different approach, at least for certain youth. Oklahoma, for example, conducts individualized risk assessments of youth charged with sex offenses in juvenile court. The state also keeps juvenile adjudications private (accessible only by law enforcement) and allows juvenile registration to expire automatically at age 21.¹⁴ While states risk losing federal funding

¹³ “Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US” (Human Rights Watch, 2013): 17-8, <http://bit.ly/1qAoQ4L>.

¹⁴ *Ibid.*, 78-9.

for noncompliance with SORNA, the cost of implementing its expansive requirements can far exceed any penalty. And, federal enforcement of SORNA appears to vary. Some states have been found to be in compliance with SORNA, despite not adhering to the law's specific requirements regarding registration of youth under age 18.

Regardless of specific state approaches, the breadth of laws like SORNA have led to registries that now include thousands of individuals who have been convicted of an array of crimes, ranging from truly serious sex offenses to other, less serious offenses, such as streaking. And, while registries were created in an effort to help keep communities safe from dangerous predators, they have not been proven to actually reduce the incidence of sex offenses. Instead, they have grave consequences for youth, and make it nearly impossible for registered youth to develop into adults leading normal, healthy lives.

The Developmental Perspective

The differences between youth and adults—the way they make decisions, their culpability, their amenability to treatment and rehabilitation—are particularly important with regard to youth who commit sex offenses and registries for people who commit sex offenses.

- Youth who commit sex offenses are very different than adult sexual predators: sexual misconduct by children and teens is less aggressive, tends to be more experimental, and occurs over shorter periods of time.
- Multiple studies have shown that youth who commit sex offenses are unlikely to commit another sex offense in the future.
- The very fact of their youth—their continuing development and growth, their interest in experimenting and risk-taking, their ability to change over time—can often explain adolescent sex offending and make youth who commit sex offenses more amenable to treatment.

Life on a registry is also particularly damaging to youth and the family members who support them.

- Youth on sex offender registries are stigmatized, alienated, and isolated at a time in their lives when they are particularly in need of socialization and healthy relationships.
- Registered youth and their family members can be subject to harassment and attacks in their homes and schools, the very places where youth are supposed to feel safe.
- Registration can so severely restrict where youth can live, that their families risk of homelessness. It can also disrupt a youth's education and foreclose opportunities for higher education.
- Being on a public registry can make finding employment difficult, as registered individuals are explicitly prohibited from certain kinds of employment and are often discriminated against by employers.
- If youth fail to meet the complicated and demanding requirements of registries, they are subject to additional punishment, including fines and imprisonment.

Any one of these effects of registration could cause lasting damage to a vulnerable and developing adolescent by disconnecting him or her from needed services and supports. Taken as a whole, the effects can be devastating.

Characteristics of a Model System

A model system recognizes the unique reasons why youth commit sex offenses and their particular amenability to changing their behavior, and changes its policies related to sex offender registries accordingly. In a model system:

- **All youth under age 18 are exempt from registration requirements.** The exemption is based on their particular vulnerability, fundamental differences between youth and adults who commit sex offenses, and the lack of

scientific proof that registries actually increase public safety.

However, if registries are nevertheless employed, a system can take the following approach to lessen their damaging impact:

- **Normative adolescent behavior is not classified as deviant sexual behavior.** Policymakers and system personnel understand the differences between normative adolescent behavior and sexual offending, the true causes of youth sexual offending, and the actual risks of future sexual offending.
- **Youth are not added to registries on the basis of their offense alone, but are instead evaluated individually, through use of a validated risk assessment tool.** Additionally, youth facing potential registration are entitled to evidentiary hearings in court where they are represented by qualified counsel.
- **Registration periods are relatively brief.** Young people are never subjected to lifetime registration requirements or decades upon decades of registration, which make it nearly impossible for youth to ultimately lead healthy adult lives.
- **Registry information is confidential.** Information about youth who are on registries is protected and only available for the purposes of law enforcement. In order to facilitate rehabilitation and reintegration, registry information is not available to the public.
- **Restrictions on residency are limited and youth do not have to register with schools or employers.** Registration requirements do not impede the ability of a youth to live safely with his or her family, become actively engaged with school, or secure employment.

Courtroom Shackling

Current Practice

Across the country, youth in the juvenile justice system are shackled in court—regardless of their age, regardless of the charge, regardless of whether they have been found guilty, and regardless of the actual risk they pose. Laws in 36 states and the District of Columbia allow indiscriminate shackling of youth in court. Youth are shackled with handcuffs and/or leg irons, which are sometimes attached to belly chains around a youth's waist, and some youth are even shackled to furniture in the courtroom. Shackling is justified as a means to protect individuals in the courtroom, or the youth him/herself, or to prevent a youth from attempting to escape.

Some states have begun to recognize the dangers of indiscriminate shackling of youth and have taken steps to ban the practice via legislation, regulation, appellate case law, or court policy. However, even in these jurisdictions, adherence to such bans has been inconsistent. Policymakers, judges, attorneys, and court personnel would benefit from a more comprehensive understanding of the harm done by shackling youth, and that this harm usually outweighs current justifications for the practice.

The Developmental Perspective

Indiscriminate shackling harms youth, is contrary to the rehabilitative stance of the juvenile court, and violates due process protections.

- Shackling can be physically painful and can also cause significant psychological harm. The humiliation of being shackled in public is particularly problematic for adolescents, because of their increased vulnerability to lasting harm caused by humiliation and shame.
- Adolescents can be more sensitive to the blatant unfairness of indiscriminate shackling, which can in turn affect their ability to fully

engage in and understand the proceedings in the courtroom.

- Shackling can interfere with a youth’s legal right to effective assistance of counsel. An adolescent in shackles can become distracted by the restraints and have difficulty communicating with his or her attorney, which can be a difficult task for youth even under the best of circumstances.
- The demeaning treatment of being shackled without any individual consideration increases any feelings of alienation that a youth may already be experiencing and reinforces feelings of low self-worth, which works against the goals of rehabilitating youth, or building up their confidence and trust in adults.
- Shackling can also re-traumatize youth who have already experienced trauma, again working entirely contrary to the purposes of the juvenile justice system. It can be especially traumatizing for youth of color—such public degradation smacks of overt racism and can harm youth’s development of a positive identity.
- Blanket shackling policies that require no individualized finding that restraints are necessary to protect youth or others, or to prevent the youth from fleeing, undermine the presumption of innocence, a core principle of the justice system.

Characteristics of a Model System

In a model system, youth are protected from the harms of shackling without compromising public safety:

- **Indiscriminate shackling of youth in court is abandoned.** Restraints are used only in individual situations when there is concrete evidence that they are necessary to prevent a youth from escaping or to prevent harm to the youth or others.
- **Attorneys for youth advocate in court against the use of restraints.** Their rationale is based on the manner in which restraints interfere with due process protections and the emotional, psychological, and physical harm they cause to youth.

“Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment” and “it would be misguided to equate the failings of a minor with those of an adult.”

— *Roper v. Simmons*

TOWARDS AN AGE-APPROPRIATE JUSTICE SYSTEM FOR YOUNG PEOPLE

Models for Change has helped to identify and spread practices that have already gone a long way toward creating a developmentally appropriate juvenile justice system. Its work is part of the reason that more and more policymakers, state and local officials, practitioners, judges, prosecutors, defense attorneys, and advocates acknowledge that a developmental approach advances public safety, and should infuse the juvenile justice system and the programs devised to intervene with youth in trouble with the law. Yet many are unsure of how to make this a practical reality.

In another era, it would have been natural to look to the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) for guidance and assistance in this task—after all, OJJDP is the only federal agency specifically mandated to provide assistance to this system. Unfortunately, Congress has significantly weakened the agency by failing to reauthorize the Juvenile Justice and Delinquency Prevention Act from which OJJDP’s authority derives—and by drastically reducing its appropriated funding. Furthermore, directives from Congress and the Department of Justice have deprived OJJDP of much of its discretionary authority over its budget, so that OJJDP’s current ability to support local jurisdictions in incorporating a research-based developmental approach to juvenile justice is severely limited.

With federal leadership thus restricted, it is all the more important that local officials, policymakers, practitioners, and advocates across the nation carry out the work. Each of the policy opportunities identified above—prosecution of youth in the adult criminal system, solitary confinement, juvenile record confidentiality, registries for youth who commit sex offenses, and courtroom shackling—offers an opportunity where advocates could reasonably expect to make a difference in multiple states within a short time period.

Accomplishing that goal will not be easy. Fortunately, it is apparent that the field is populated by a vibrant and talented mix of juvenile justice reformers, made stronger by a generation of practitioners and advocates woven into a loose network by *Models for Change* and other efforts. The next decade of reform—which has the potential to dramatically extend the positive impact of *Models for Change* on the lives of youth well into the future—belongs to them.

“If there is an overarching theme to emerge from the science of adolescent brain development, it is that teenagers are less mature than we might have thought. This, in turn, begs the following policy question: If adolescents are less neurobiologically mature than adults, shouldn’t our policies and practices involving young people take this immaturity into account?”

— Laurence Steinberg, “Should the Science of Adolescent Brain Development Inform Public Policy?”

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