



The impact of incarceration on juvenile offenders



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HIGHLIGHTS

- ▶ Incarcerating youth in prison has little positive impact in reducing crime.
- ▶ The literature highlights this problem, particularly in adult facilities.
- ▶ There are many negative effects from incarcerating young people in prisons.
- ▶ Incarceration fails to address both the young person's developmental and criminogenic needs.

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ABSTRACT

Increasingly, research points to the negative effects of incarcerating youth offenders, particularly in adult facilities. Literature published since 2000 suggests that incarceration fails to meet the developmental and criminogenic needs of youth offenders and is limited in its ability to provide appropriate rehabilitation. Incarceration often results in negative behavioral and mental health consequences, including ongoing engagement in offending behaviors and contact with the justice system. Although incarceration of youth offenders is often viewed as a necessary means of public protection, research indicates that it is not an effective option in terms of either cost or outcome. The severe behavioral problems of juvenile offenders are a result of complex and interactive individual and environmental factors, which elicit and maintain offending behavior. Therefore, the focus of effective treatment must be on addressing such criminogenic needs and the multiple “systems” in which the young person comes from. Recent research demonstrates that in order to achieve the best outcomes for youth offenders and the general public, community-based, empirically supported intervention practices must be adopted as an alternative to incarceration wherever possible.

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Contents

1. Introduction	449
2. Youth in the justice system—a special population	450
2.1. Females	450
3. Outcomes of transfer and incarceration	450
3.1. Disruption of a natural “age out” of criminal behavior	451
3.2. Behavior and iatrogenic effect of juvenile justice	451
4. Rehabilitative limitations and negative effects of juvenile incarceration	452
4.1. Victimization within the criminal justice system	452
4.2. Mental health	453
4.3. Suicidal behaviors and ideation within the criminal system	453
4.4. Social relationships	454
4.5. Physical health	454
4.6. Education	454
4.7. Reentry into the community and impact on adulthood wellbeing	454
5. What are the alternatives?	455
6. Conclusion	456
References	456

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1. Introduction

This paper reviews literature published since 2000 (and earlier if of particular importance) concerning the outcomes of incarceration on youth offenders and the rehabilitative limitations of their incarceration, as well as evidence-based alternatives. For the purposes of this review, youth will be defined as any young person below the age of 18, with adolescence occurring between the ages of 13 and 18.

The United Nations Convention on the Rights of the Child (UNCRC) was established in 1989 to recognize the rights of children worldwide (Muncie, 2009). This legal framework advocates for the protection of any person under the age of 18, as it recognizes children warrant special attention due to their age and associated developmental needs (Independent Police Conduct Authority, 2012). Thus, the UNCRC proposes 40 specific rights for children, in particular advocating for the special protection of ‘children in conflict with the law’ (Muncie, 2009). Specifically relevant to this review, in all actions concerning children in conflict with the law, the best interests of the child shall be a primary consideration where the needs of persons of his or her age need to be taken into account. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interests not to do so (United Nations, 1989). The UNCRC has been ratified by every recognized country in the world apart from the United States (Mildred & Plummer, 2009).

Although the ratification of the UNCRC highlights international recognition of the protection of children and adolescents, a number of law reforms in recent decades, particularly in the United States, have imposed harsher penalties on serious young offenders, and have consequently increased rates of incarcerated youth and made it easier for youth to be treated and incarcerated as adults within the justice system (Redding, 2003; Snyder & Sickmund, 2006). In most states throughout the US, a juvenile is legally defined as anyone below 18 years of age (Siegel & Welsh, 2008). However, children as young as 14, and sometimes younger, may be transferred and sentenced in adult court, and incarcerated in adult prisons (Steinberg, 2009).

Based on two recent court cases, namely *Roper v. Simmons* (2005) and *Graham v. Florida* (2010), the United States Supreme Court’s current position on juvenile offenders is that mandatory life sentences without the possibility of parole violates the Eighth Amendment ban on cruel and unusual punishment with regard to juvenile offenders (Miller, 2012). Accordingly, juvenile offenders cannot receive the death penalty, or receive a life sentence without parole except in the case of homicide. However, law reform in the United States has greatly increased the chance of adolescents being transferred to the criminal court, which has jurisdiction over criminal cases involving adult defendants (Fagan, 2008). Consequently, many juvenile offenders are tried as adults, resulting in a greater likelihood of incarceration and much harsher sentences than they would receive in juvenile court (Carmichael, 2010). The changes have included lowering the minimum age for transfer, expanding the list of crimes for which transfer is an option, vesting greater discretion in prosecutors, and eliminating some of the factors judges must consider before transferring youth (Redding, 2003). The number of delinquency cases that were judicially transferred to criminal court in the United States peaked in 1994, then declined until 2001, and increased between 2001 and 2007 (Puzzanchera, Adams, & Sickmund, 2010). Several authors suggest that the decline in the second half of the 1990s is likely to be a result of changes to the law, which enabled some serious young offenders to be tried directly in the criminal court and for juvenile court to be bypassed entirely (Puzzanchera et al., 2010).

Despite growing numbers of incarcerated adolescents throughout the 1990s, in countries such as the United States, the United Kingdom and New Zealand, since 2000, there has been a general stabilization, or decline, in both youth offending and incarceration (Sickmund, 2010; Workman, 2011). It is estimated that adolescents comprise

around 5% of all those held in correctional facilities in developed countries (Sabol, West, & Cooper, 2009). In the United States, 263 juvenile offenders were in placement for every 100,000 in the general population in 2008 (Sickmund, 2010), and approximately 160,000 adolescent offenders are placed in residential facilities annually (Henggeler & Schoenwald, 2011). In 2007, 25% of delinquency cases resulted in residential facility placement (Puzzanchera et al., 2010). Increasingly, youth are also being placed in detention centers while they await trial or placement in another facility or program (Holman & Ziedenberg, 2006).

Barry (2011) describes increased rates of youth custody in Scotland as a result of the politicization of youth crime and a shift from values of the juvenile justice system (which has jurisdiction over under-age defendants) that prioritize the adolescent’s best interests and minimize intervention. Fagan (2010) argues that there is an inherent contradiction between the existence of a juvenile justice system intended to provide more remedial interventions and increasingly punitive sanctions. A study of dispositional outcomes (i.e., probation vs. confinement) in Philadelphia and Phoenix juvenile court jurisdictions found that legal factors such as having a higher number of court referrals, rather than factors such as developmental maturity and mental health, were predictive of dispositional outcomes (Cauffman et al., 2007). This suggests that the juvenile court system in these jurisdictions fail to prioritize an individual’s intervention based on rehabilitative need over court processes (Cauffman et al., 2007).

Although only around 1% of all formally processed delinquency cases in the United States are judicially transferred to criminal court (Puzzanchera et al., 2010; Puzzanchera & Kang, 2011), transfer can have serious consequences for the adolescents involved. While the consequences of juvenile transfer differ between states, they can include being placed on the public record of convictions, the compulsory reporting of the conviction on employment applications, being subject to criminal court jurisdiction for all subsequent offenses committed as a juvenile, registration in a state’s sex offender registries, and the potential to receive an adult sentence and incarceration in adult prison (Redding, 2003).

The Juvenile Justice and Delinquency Prevention Act (JJJPA) of 1974 requires that juvenile offenders be “sight and sound” separated from adult inmates when detained in a jail or lock-up facility. However, juvenile offenders who have been waived to adult court no longer fall under the jurisdiction of the JJJPA as they are thereby considered as adults in criminal court (Levitt, 2010; Sickmund, 2004). Consequently, juvenile offenders incarcerated in adult prisons are not protected separately from adult offenders by federal law (Levitt, 2010). While it is likely that some youth offenders are separated from the general population in some adult prisons, research suggests that in a majority of states (i.e., 31 states), youth offenders are housed with the general adult prison population (Bishop, 2000). A minority of states allow for the segregation of juvenile and adult offenders or graduated incarceration, whereby inmates under the age of 18 begin their sentences in juvenile facilities until they reach the age of 18 where they are then transferred to adult prisons (Austin, Johnson, & Gregoriou, 2000; Storm, 2000). Subsequently, Storm (2000) also found that only 6 states in the US require separate housing in state prisons for offenders under the age of 18. Due to youth being more vulnerable because of their age, this puts youth at greater risk of victimization from adult inmates within adult correctional facilities (Fagen & Kupchik, 2011).

The justifications for incarcerating juveniles range from rehabilitation and punishment to providing a deterrent for future offending. However, a growing body of evidence suggests that there are numerous negative psychological and behavioral consequences for young people who are incarcerated, particularly for those incarcerated in adult prisons and with adult offenders (Lane, Lanza-Kaduce, Frazier, & Bishop, 2002; Tie & Waugh, 2001).

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