Youth Violence

Are “get tough” policies the best approach?

Several recent violent crimes by youths, including the vicious beating death of a Chicago honor student by a mob of teenagers, have sparked a new look at urban youth violence. Despite a steep overall drop in youth crime in recent years, researchers say many urban areas continue to be plagued by homicide and other violence involving young offenders. Some experts say tougher sentencing laws and a greater focus on parental responsibility are the best ways to fight the violence, while others argue for more federal money for social programs and anti-violence efforts. In some cities, collaborative approaches involving police, educators, community leaders and neighborhood groups are aimed at pressing youths to forsake violence while offering them a path toward redemption. Meanwhile, two competing proposals are being considered on Capitol Hill, and major foundations are funding programs to help youths in trouble.
YOUTH VIOLENCE

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Youth Violence

BY THOMAS J. BILLITTERI

Charting statistical trends in youth violence is tricky, however. In many respects the news is positive. Juvenile crime is down sharply from the mid-1990s, when it spiked dramatically and some predicted an impending wave of adolescent “super-predators.” The Justice Department says, for example, that the juvenile murder arrest rate in 2008 was 74 percent less than its peak in 1993.

But such data don’t tell the whole story. Youth violence tends to be concentrated in certain neighborhoods, and it most often is committed not by juveniles but young adults, experts say.

“Serious violence, both in terms of those who commit it and the victims, is a young man’s problem,” says David M. Kennedy, director of the Center for Crime Prevention and Control at John Jay College of Criminal Justice in New York City and co-chair of the National Network for Safe Communities. “The peak years are late adolescence into the mid-20s. People often think this is a juvenile issue, but it’s not.

The offending rate for the 20-24 cohort is consistently much more severe than for actual juveniles.”

What’s more, youth violence disproportionately affects minorities. Among young people 10 to 24 years of age, homicide is the leading cause of death for African-Americans and second-highest cause for Hispanics, according to the Centers for Disease Control and Prevention.

Indeed, an Urban Institute study found, for example, that low-income black adolescents are less likely than low-income white adolescents to sell drugs or destroy property. Holder pointed to a Justice Department survey showing that more than 60 percent of respondents age 17 and younger had been exposed to violence, directly or indirectly, over the past year. Nearly half said they had been assaulted at least once in that time.

Eighteen-year-old Eugene Riley is among five young men ages 14-19 who face murder charges in the vicious beating death last September of 16-year-old Chicago honor student Derrion Albert. Among young people ages 10 to 24, homicide is the leading cause of death for African-Americans and second-highest cause for Hispanics, according to the Centers for Disease Control and Prevention.

Youth violence today “is much more serious, much more complex and it’s spreading,” says Carl Taylor, a Michigan State University sociologist who has studied the phenomenon for decades. Once limited largely to hardcore street gangs, he says, the problem now is “transcending race, class and gender.”

“Gang violence is a white problem,” U.S. Attorney General Eric Holder said after Albert’s death. “It’s something that affects communities big and small, and people of all races and colors.”

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particular neighborhoods, and in those neighborhoods, at a time when the national homicide rate is around five per 100,000 population, young black men are dying at a rate of over 500 per 100,000. It's astronomical.”

In a 2008 study, James Alan Fox, a nationally known Northeastern University criminologist, found that homicides involving black male juveniles as victims rose 31 percent and as perpetrators 43 percent from 2002 to 2007. The picture was even grimmer for gun killings. 11

“It's not race itself that's the issue,” Fox says. “It's the socioeconomic conditions associated with race. There are longstanding problems that the black community has faced, and it's related to the inferior schools that many of these kids attend and the lack of supervision they receive — partly because of the large number of single-parent families or two-career homes where both parents are working — and the attraction of gangs that pervade these neighborhoods.”

Finding solutions to youth crime and violence is not easy. In some circles, says Taylor, a “you do me, I'll do you” way of resolving conflict has become so deeply rooted, and the use of firearms so trivialized, that violence has become “almost a playful, recreational outlet.”

“It's going to take a lot more than policies and police,” said 28-year-old Miesha Houston, who grew up near Albert's school. “It's the poverty, drugs, rap music, the media. There are a lot of single-parent homes and parents on drugs, so the kids don't want to be home. And when they go outside, there's trouble.” 12

And that trouble can have a profound impact on young people who experience it, according to James J. Mazza, a professor at the University of Washington College of Education and director of its school psychology program. He studied the psychological effects of community crime and violence, including chronic drive-by shootings, gang activity, physical assaults and illegal drug sales on elementary-school students in Brooklyn's Bedford-Stuyvesant neighborhood and in Seattle. He found that the more violence the youngsters experienced, the greater the severity of their mental-health problems, including anxiety, depression, conduct disorders and risk of suicidal behavior.

Experts say some collaborative intervention approaches are making inroads into the youth-violence problem. For example, Operation Ceasefire, devised by Kennedy, forms partnerships among law enforcement officials, social-service agencies and community figures to engage with serious offenders, set clear standards against violence, offer help to those who want it and explain ahead of time the legal consequences for those who continue with crime.

On Capitol Hill, Congress has been considering several bills that offer competing approaches for dealing with youth crime. The $1.2 billion Youth Prison Reduction Through Opportunities, Mentoring, Intervention, Support and Education Act (Youth PROMISE Act) focuses on community-based prevention and intervention strategies. The Gang Abatement and Prevention Act, on the other hand, would set tough federal penalties for gang activity and provide more than $1 billion...
over five years for enforcement and other anti-gang efforts.

The renewed focus on juvenile crime comes amid harsh scrutiny of the juvenile-justice system. Child advocates and criminologists argue that while some juvenile crimes demand stringent punishment, too many youths are subjected to draconian incarceration, often for so-called status offenses such as truancy, running away, curfew violations and underage drinking, that is both abusive and ineffective.

Despite changes in some states, thousands of young delinquents (not status offenders) are incarcerated in adult jails, putting them at risk of physical and sexual assault, suicide and increased chances of being rearrested, according to the Campaign for Youth Justice, a Washington, D.C., advocacy group. 

A new U.S. Justice Department survey found that an estimated 12 percent of adjudicated youth in state-operated and large locally or privately operated juvenile facilities reported being sexually victimized by another youth or staff member in the past year or since their admission if less than 12 months.

A number of states are taking steps to reform their systems. Meanwhile, the Juvenile Justice Delinquency and Prevention Act of 1974, which provides incentives for states to provide alternatives to incarceration for nonviolent offenders, is due for congressional reauthorization. And the Supreme Court is weighing whether it is constitutional to impose life sentences without parole for non-homicide crimes committed as juveniles. (See sidebar, p. 204.)

As cities wrestle with youth violence, here are some issues under discussion:

**Is youth violence on the upswing?**

To read the news in recent months it would be easy to think the nation is in the grip of a new youth crime wave. In Patchogue, on Long Island, seven teens were charged in a fatal assault on an Ecuadorian immigrant, and prosecutors alleged a pattern of teen violence against Hispanics in the area. In Texas, two young men, 19 and 21, were charged with a church fire, and authorities said they may face charges in nine others.

But Barry Krisberg, former president of the National Council on Crime and Delinquency and now a distinguished senior fellow at the University of California, Berkeley, law school, says youth crime “is way down from the peak in the middle 1990s.” Since then, he adds, “it leveled off a little bit, and the latest numbers suggest it’s down again. There’s hardly a surge of it at any level.”

In testimony last year to a congressional hearing, Krisberg said much of the public’s perception of rising youth crime is based on the way news outlets report on crime.

A study conducted in Dallas, Washington, D.C., and San Mateo County, Calif., found that the media consistently reported increases in juvenile crime — if they were short-term increases — but not crime decreases, he said. In addition, Krisberg said, the media consistently attributed most of the violence problems to youth whereas most violence was committed by young adults. And, he said, the media often failed to offer context: “They don’t do a good job of answering the ‘why’ questions.”

The relentless airing of incidents over the Internet has only heightened the public’s view that youth crime is surging.

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**Half of Arson Arrests Involve Juveniles**

Nearly 50 percent of arson arrests in 2008 involved juveniles, the highest percentage for any violent crime. Juvenile arrests for other violent crimes — such as sexual offenses, murder and weapons charges — were considerably less.

**Percent of Arrests Involving Juveniles by Crime, 2008**

<table>
<thead>
<tr>
<th>Crime</th>
<th>Percent of Arrests Involving Juveniles</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arson</td>
<td>47%</td>
</tr>
<tr>
<td>Vandalism</td>
<td>38%</td>
</tr>
<tr>
<td>Disorderly conduct</td>
<td>27%</td>
</tr>
<tr>
<td>Robbery</td>
<td>27%</td>
</tr>
<tr>
<td>Burglary</td>
<td>27%</td>
</tr>
<tr>
<td>Larceny-theft</td>
<td>26%</td>
</tr>
<tr>
<td>Motor vehicle theft</td>
<td>25%</td>
</tr>
<tr>
<td>Weapons</td>
<td>22%</td>
</tr>
<tr>
<td>Liquor laws</td>
<td>21%</td>
</tr>
<tr>
<td>Stolen property</td>
<td>19%</td>
</tr>
<tr>
<td>Sex offense</td>
<td>18%</td>
</tr>
<tr>
<td>Other assaults</td>
<td>18%</td>
</tr>
<tr>
<td>Forcible rape</td>
<td>15%</td>
</tr>
<tr>
<td>Aggravated assault</td>
<td>13%</td>
</tr>
<tr>
<td>Drug abuse violations</td>
<td>11%</td>
</tr>
<tr>
<td>Murder</td>
<td>10%</td>
</tr>
<tr>
<td>Offenses against the family</td>
<td>5%</td>
</tr>
<tr>
<td>Fraud</td>
<td>3%</td>
</tr>
<tr>
<td>Drunkenness</td>
<td>3%</td>
</tr>
<tr>
<td>Prostitution</td>
<td>2%</td>
</tr>
<tr>
<td>Driving under the influence</td>
<td>1%</td>
</tr>
</tbody>
</table>

Still, in some cities, and in some neighborhoods, perception and reality can be one.

“These [aggregate crime] data are numbers from all over the country put into a blender, and in some communities the levels are very low, and in other communities they are crazy high,” says Melissa Sickmund, chief of systems research at the National Center for Juvenile Justice. “You can’t go into a community that’s experiencing a real problem in their world, on their streets, with their kids ending up dead or their kids ending up behind bars because they committed these crimes, and tell them nationally stuff is down, it’s not a problem.”

In Pittsburgh, an informal survey of students ages 9 to 18 in urban neighborhoods found that almost 80 percent have had family members or friends wounded or killed by gun violence. In South Philadelphia, parents, teachers and activists testified recently at a public hearing on school violence in the wake of several highly publicized incidents, including the fatal shooting of a high school football star.

Jeffrey Butts, a criminologist who this spring will become executive director of the Criminal Justice Research and Evaluation Center at the John Jay College of Criminal Justice, points out that while aggregate youth crime has not been going up nationally, it can seem that way. Crime, he says, is “very local,” meaning crime rates may vary among neighborhoods a few blocks from each other.

“If you’re living in a poor, disadvantaged neighborhood with no infrastructure and lots of gang activity, it can seem that [crime] has gotten lots worse in the last couple of years,” he says. Criminologists are only now developing reliable techniques to measure crime trends at the neighborhood level, he says.

Butts says violent youth crime generally has been fluctuating in a narrow range near what may turn out to be the bottom of a trough formed over the last dozen or so years. While youth crime is “not going up” he says, “I can’t imagine it will go down a whole lot more, especially given what’s going on in the economy.”

Whatever the direction of overall trends, youth violence continues to plague pockets of many big cities, with minorities often the heaviest victims. “There remains an extraordinary and unconscionable persistent problem of extremely high violent criminal victimization,” says Kennedy of John Jay College. “This is peer-on-peer stuff. . . . It’s extremely densely concentrated among young black men in particular neighborhoods.”

The crime is typically perpetrated by what Kennedy calls “a very small population of high-rate offenders involved in high-rate-offending groups like gangs, drug crews, neighborhood sets, and so on. . . . Most of the serious violent crime in these communities is perpetrated by members of these standout groups.”

In Cincinnati, where an Operation Ceasefire program is under way, “there are about 60 of these identifiable offending groups, and they have a totality of about 1,500 people in them,” Kennedy says. “They are associated — as victims, offenders or both — with 75 percent of all the killings in Cincinnati. Those identified by name — and therefore open to criminal-history background checks — average 35 prior charges apiece.” Still, Kennedy points out, those 1,500 and all the groups associated with the killings represent a tiny fraction of the metro area’s overall population.

Felix, the Northeastern University criminologist, says that in updating his study on homicides and gun killings among black youth, he found an improvement in the latest data, for 2008. Still, he says, “I don’t think it changes the overall argument and overall findings that this plummeting crime rate we’ve been seeing in this country is not across the board and that we still have rates among certain segments, particularly young black males, that remain elevated.

“These things can vacillate from year to year. Unless we see these numbers go down for several more years, I’m still very concerned about what’s happening among some Americans in some cities. And I’m concerned that there’s very little attention paid toward it because overall things are better.”

**Are minority youths singled out for arrest and detention?**

In the Pittsburgh area this year, three white undercover police officers were suspended with pay while the city investigated accusations that they severely beat a black Creative and Performing Arts High School student as he walked between his mother’s and grandmother’s house at night.

A criminal complaint said the 18-year-old resisted after officers confronted him. He seemed to be “sneaking around” a house with an object in his coat that the officers believed was a weapon. Police said the object turned out to be a bottle of Mountain Dew. The student alleged the officers attacked him without cause. His mother said he was attacked because he is black.

However the case turns out, it highlights a longstanding debate over whether the criminal-justice system deals differently with minority youths than with whites.

“There’s a lot of evidence to suggest that white youth and minority youth who commit the same crime are treated differently,” says Ashley Nellis, research analyst at The Sentencing Project, a research and advocacy group in Washington.

David Muhlhausen, a senior policy analyst at the conservative Heritage Foundation think tank, sees the issue differently. “It’s unfortunate, but a lot of young minorities commit a lot of
crime compared to young, white males,” he says. “We can argue about the reasons, but the fact is, young black males and young Hispanics have far higher rates of criminal activity than other groups. People who think the criminal-justice system is being discriminatory sort of have a false notion that the offending rates of all groups are equal, and that's simply not true.”

Criminal-justice researchers point to data showing an overrepresentation of minorities in the juvenile-justice system — a phenomenon experts call “disproportionate minority contact.”

For instance, a 2007 report by the National Council on Crime and Delinquency said that from 2002 to 2004, African-Americans constituted 16 percent of the American youth population but 28 percent of juvenile arrests, 35 percent of youths judicially waived to criminal court and 58 percent of youths admitted to state adult prisons.21

“This means that the black arrest rate in 2005 was more than double the white rate, documenting a racial disparity at arrest,” the report notes. But, it continues, “Does this imply a racial bias in the arrest process? Not necessarily. There could be many reasons other than racial bias that produced this racial disparity at arrest.” Data on relative rates of contact with the system say only “that disparity [exists] and additional exploration is needed to determine the source of the bias.” 22

Indeed, criminologists say it can be unclear why disparities exist. Possibilities range from outright bias to higher crime rates in some minority neighborhoods to the idea that more people are arrested in minority neighborhoods because, as criminologist Butts says, “that’s where the police are.”

If you’re a police department and you have 100 patrol cars, you don’t fan them out across your area equally. You focus on the high-probability areas. Part of that could be the reality of crime, and part of it could be old-fashioned discrimination. It’s just really hard to tease out.”

Butts also cautions against simply reciting arrest rates for various ethnic or racial groups and not taking into account the hard realities facing many youths in impoverished urban neighborhoods, including the notions that gangs often hold sway over vulnerable teens, housing may be dangerous and substandard and job opportunities may be few. “It would be nice if we could eliminate economic and housing disparities and then see what racial disparities are left over,” Butts says, “but we can’t.”

Nellis of The Sentencing Project says several recent trends have contributed to racial disparities in juvenile arrest and detention data. One, she says, is the presence of police officers in schools, a practice that has grown with the introduction of zero-tolerance discipline policies in recent years. 23

“Whereas altercations used to be handled by the school, now police are called in, and it’s considered an assault rather than just a scuffle. It’s more likely to happen in low-income school districts in urban areas, where there are more minority youth.” And once minority youths get a police record, she says, “they’re more likely to get another record and penetrate the [criminal-justice] system further.”

Nellis also says behavior such as drug and alcohol use that families in majority-white communities might handle through private therapists or social-service agencies are more likely dealt
with in the criminal-justice system in low-income minority communities. Often, she says, minority youths are inappropriately placed in juvenile facilities in order to receive services not otherwise available in their communities.

Sometimes, criminology experts say, minority youth are targeted by police not because their basic offenses are different from those committed by whites but because of the location of the offenses. Drug sales can be an example. Illegal street-corner transactions in low-income neighborhoods typically get more police attention than does drug distribution carried out circumspectly in wealthier white neighborhoods, says Sickmund of the National Center for Juvenile Justice.

“If there were unlimited police resources, they might have the luxury of observing what goes on in the suburban community,” says Sickmund. “A lot of white kids do drugs, but they’re being passed out at school or in a car or at home, so there’s less of an outcry.”

**Are “get tough” policies the best approach for fighting youth crime?**

Beginning this year, Connecticut raised, from 16 to 17, the age at which youths accused of crimes are automatically tried in adult courts. (The age rises to 18 in July 2012.) That left only two states — New York and North Carolina — that set the bar at 16.

Connecticut’s move reflects a broad national trend of easing away from “get tough” juvenile-justice strategies instituted during the 1980s and ’90s, when many feared the onset of a massive new crime wave.

Still, many say the juvenile-justice system remains in need of wholesale reform. Among the deepest concerns is the potential for abuse. “Most of our juvenile facilities, with very few exceptions, are abusive places,” the University of California’s Krisberg says. “We have an epidemic of abuse in juvenile facilities” that ranges from subjecting youths to isolation and seclusion to using excessive force. “These tend to be dangerous, gang-ridden environments. So the more kids we put in these places, the worse the situation gets.”

Sexual abuse is a prime concern. In its study of the issue in juvenile prisons, the Justice Department said six facilities had victimization rates of 30 percent or higher.

Sexual abuse of youths in prison “is one of those hidden closets of the system,” Bart Lubow, director of the Juvenile Justice Strategy Group for the Annie E. Casey Foundation, recently told USA Today. The abuse rates at the worst juvenile prisons are “so high they’re stunning,” he said. “I am, on the other hand, never surprised as people peel the layers of the youth corrections onion and expose more and more things that make you cry.”

Physical cruelty also is a worry. In New York State, a U.S. Justice Department report last August cited abuse by staff at four juvenile prisons. “Anything from sneaking an extra cookie to initiating a fistfight may result in a full prone restraint with handcuffs,” the report stated. “This one-size-fits-all

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**Sexual-Victimization Survey Names 13 Youth Facilities**

Thirteen out of 195 juvenile facilities surveyed by the National Survey of Youth in Custody had more than a 20 percent — or “high” — sexual-victimization rate. Six of the 13 had rates of 30 percent or above. Indiana, Texas and Virginia each had two facilities on the list.

**Juvenile Facilities With High Rates of Sexual Victimization, 2008-2009**

<table>
<thead>
<tr>
<th>Facility</th>
<th>Percentage of youths reporting victimization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Backbone Mtn. Yth. Ctr., Swanton (Md.)</td>
<td>36.4%</td>
</tr>
<tr>
<td>Pendleton Juv. Corr. Fac. (Ind.)</td>
<td>36.2%</td>
</tr>
<tr>
<td>Samarkand Yth. Dev. Ctr. (N.C.)</td>
<td>33.3%</td>
</tr>
<tr>
<td>Cresson Secure Treatment Unit (Pa.)</td>
<td>33.3%</td>
</tr>
<tr>
<td>Corsicana Res. Trmt. Ctr. (Texas)</td>
<td>32.4%</td>
</tr>
<tr>
<td>Cepheus Juvenile Corr. Ctr., Long Term (Va.)</td>
<td>30%</td>
</tr>
<tr>
<td>Shawnee Ctr. (Mich.)</td>
<td>27.3%</td>
</tr>
<tr>
<td>Woodland Hills Yth. Dev. Ctr. (Tenn.)</td>
<td>26%</td>
</tr>
<tr>
<td>L.E. Rader Ctr. (Okla.)</td>
<td>25%</td>
</tr>
<tr>
<td>Bon Air Juv. Ctr. (Va.)</td>
<td>25%</td>
</tr>
<tr>
<td>Victory Field Corr. Acad. (Texas)</td>
<td>24.6%</td>
</tr>
<tr>
<td>New Jersey Training School (N.J.)</td>
<td>23.3%</td>
</tr>
<tr>
<td>Indianapolis Juv. Corr. Fac. (Ind.)</td>
<td>22.8%</td>
</tr>
</tbody>
</table>


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approach has . . . led to an alarming number of serious injuries to youth, including concussions, broken or knocked-out teeth and spinal fractures.”  

In December, a state-appointed panel in New York concluded that the kind of abuse cited in the federal investigation prevailed throughout the state’s youth prisons. So severe were the problems that the state agency in charge of the detention centers asked family-court judges not to place juveniles there unless they pose a major risk to public safety. Instead, the agency urged other approaches, such as therapeutic foster care.  

Many juvenile-justice experts argue that incarceration not only is costly and leaves youths vulnerable to abuse but often also leads them toward more serious crimes.

The Justice Policy Institute, a Washington think tank that advocates less use of incarceration, said states spend some $5.7 billion annually to hold youths even though most are held for nonviolent offenses and can be managed safely in the community. Some community-based programs have cut recidivism rates as much as 22 percent, it said.  

Gladys Carrión, commissioner of New York’s Office of Children and Family Services and a reform advocate, said a longitudinal study in New York State found that 85 percent of boys and 65 percent of girls who are incarcerated are convicted of a felony as adults.  

“We have to recognize that incarceration of youth per se is toxic, so we need to reduce incarceration of young people to the very small dangerous few,” Krisberg says. “And we’ve got to recognize that if we lock up a lot of kids, it’s going to increase crime. Nothing could be more dramatic than California, where we moved our youth prison population from 10,000 inmates to 1,500 in a decade, and crime went down.”  

While child advocates say the juvenile-justice system has a long way to go before it is safe for youthful defendants and effective at keeping them from falling deeper into crime, a number of jurisdictions have been taking steps — both big and small — toward rethinking the way they treat young offenders.

In Missouri, for example, they are assigned to small cottage-style facilities staffed by highly trained adults called facilitators. The so-called Missouri Model stresses “rehabilitation in small groups, constant therapeutic interventions and minimal force,” according to a recent profile in The New York Times. “Perhaps most impressive,” it added, “Missouri has one of the lowest recidivism rates in the country.”  

“What Missouri does is to say, look, what’s important is not just that we have programs that meet individual needs and deficits, like a GED program or mental health treatment or drug treatment,” says John Jay College President Jeremy Travis. “What’s important is that we change the environment in which we are imprisoning young people, so that they are learning some social skills and ways to get along and how to manage their own impulses so that when they get out they’re better prepared.”  

Illinois, which in 2006 separated its juvenile and adult correctional systems, changed a nearly four-decade-old law under which 17-year-olds charged with misdemeanors were sent to adult court. Starting this year, they are being tried in the juvenile court system, with access to rehabilitative services such as drug and mental-health counseling.  

In Florida, the state Supreme Court in December barred the widespread practice of shackling juveniles in court, saying it is “repugnant, degrading [and] humiliating.” The court said handcuffs and leg shackles should be permitted only if a judge determines a youth will likely become violent.  

In Wisconsin, where 17-year-old criminal defendants are automatically tried as adults, a handful of bills have been introduced aimed at changing the way juvenile offenses are handled. For example, a measure that would require a judge to order a psychological assessment when a juvenile claimed a mental illness, developmental disability or substance-abuse problem passed 3-2 along party lines in December in the Senate Judiciary Committee.  

A joint legislative council said in 2008 that Wisconsin should send more youthful offenders into the juvenile system, citing a 48 percent recidivism rate among juveniles placed in the adult system — triple that of those in the juvenile system.  

**BACKGROUND**

### Early Reforms

Youth violence is by no means a uniquely modern problem. Youth gangs, for instance, date back to the dawn of the Republic.

“The earliest record of their appearance in the United States may have been as early as 1783, as the American Revolution ended,” the Justice Department noted. While experts debate when and why youth gangs first appeared, “[they may have emerged spontaneously from adolescent play groups or as a collective response to urban conditions in this country,” it said.

And by the early 1800s, it added, “gangs appear to have spread in New England . . . as the Industrial Revolution gained momentum in the first large cities in the United States: New York, Boston and Philadelphia.”  

As is the case today, some youths fell into serious crime, but many more found themselves in trouble for minor misdeeds. In the 19th century, those offenses might have been petty stealing, street begging or even less serious acts
such as loitering, partly a manifestation of the widespread poverty resulting from massive European immigration to American cities in the 1800s.

Yet back then, the United States had no separate justice system for dealing with juvenile offenders. Children and adolescents accused of crimes were tried in adult courts and, if found guilty, could be jailed alongside adults.

Reformers began to set up separate institutions for the confinement of juveniles, with “houses of refuge,” reform schools and “industrial schools” among the approaches. Yet, as law professor Lawrence M. Friedman noted, “Despite all these institutional changes, children could still be arrested, detained, tried and sent to prison in many states. In 1870, there were 2,029 minors in jail in Massachusetts; 231 of them were under 15. And even in states with specialized institutions . . . the trial process for juveniles was the same as for adults.”

That began to change at the turn of the 20th century with the formation of the nation’s first juvenile court, in 1899 in Cook County (Chicago), Illinois. The basic philosophy behind the emerging juvenile-justice system was that the state could exercise guardianship over children who found themselves in trouble with the law, treating them not as criminals but as youngsters who needed care and direction of the sort a parent gives a child.

“Courts focused on what was in the best interests of the child instead of concerning themselves solely with issues of criminal guilt or punishment,” a recent book on youth justice explained. “The underlying principle was that children were different and could be rehabilitated if given a second chance.”

As Judge Julian Mack, among the new juvenile court’s first judges, wrote: “Why is it not just and proper to treat these juvenile offenders, as we deal with the neglected children, as a wise and merciful father handles his own children whose errors are not discovered by the authorities? Why is it not the duty of the state, instead of asking merely whether a boy or girl has committed a specific offense, to find out what he is physically, mentally, morally, and then if it learns that he is treading the path that leads to criminality, to take him in charge, not so much to punish as to reform, not to degrade but to uplift, not to crush but to develop, not to make him a criminal but a worthy citizen.”

By 1910, juvenile courts and/or probation services were established in 32 states, and by 1925 they were in all but two states. Still, as researcher John L. Hutzler wrote, “the new weapons of diagnosis and treatment with which the [juvenile court] campaign began never achieved their anticipated accuracy or effectiveness, and the monetary resources needed to pursue the new strategy effectively were never provided. The failure of the movement to achieve its ultimate objective — the solution to juvenile misbehavior — eventually began to erode public confidence in the juvenile court.”

Even as the nation sought to address the challenges of juvenile justice and delinquency, it was not immune to instances of wanton violence committed by teens and young adults. One of the most notorious cases involved the 1924 Chicago “thrill” killing of 14-year-old Bobby Franks. Richard Loeb, the 18-year-old son of a retired Sears Roebuck vice president, and his 19-year-old partner, Nathan Leopold, a law student, were convicted of the murder and sentenced to life in prison.

As anxiety was growing over serious juvenile crime, confidence also was eroding in the juvenile-justice rehabilitation and treatment model devised at the turn of the 20th century. Many believed the approach simply wasn’t working effectively to reduce youth crime. Conversely, some argued that too many young people were being swept up in the justice system without being afforded proper legal rights.

Starting in the 1960s, the Supreme Court began to weigh in on the issue of juvenile rights. It rendered a series of rulings that granted juveniles greater constitutional protections but also drew the juvenile-justice system further from the paternalistic one created at the turn of the century and closer to that used for adult defendants. For example, in the landmark 1967 case In re Gault, involving a 15-year-old boy accused of making a prank phone call, the court declared that juveniles have basic constitutional rights in hearings that can lead to their confinement in an institution, including the right to question witnesses, the right against self-incrimination and the right to legal counsel.

In the 1970s, new laws and policies emphasized community-based programs and other approaches designed to minimize incarceration of juveniles involved in non-criminal offenses, such as truancy and underage drinking. But starting in the late 1970s and early ’80s, the public mood began to shift toward
1900-1960s
Juvenile-court system comes under scrutiny as legal reformers seek constitutional protections for juveniles accused of wrongdoing.

1924
Fourteen-year-old Bobby Franks is killed by two wealthy teenagers in Chicago “thrill” killing.

1925
All but two states have juvenile courts or probation services.

1924
Fourteen-year-old Bobby Franks is killed by two wealthy teenagers in Chicago “thrill” killing.

1953
Senate Subcommittee to Investigate Juvenile Delinquency urges more federal aid for state delinquency prevention and treatment programs.

1961
President John F. Kennedy signs Juvenile Delinquency and Youth Offenses Control Act, authorizing $30 million over three years for prevention and research.

1962
Youths under 18 are involved in more than 50 percent of car-theft arrests, half of larceny and burglary arrests and 8 percent of murder arrests.

1966-1970
Supreme Court extends constitutional due-process rights to defendants in juvenile courts.

1970s-1980s
Crack-cocaine epidemic spurs crime wave, leads to strict, new laws on youth crime.

1974
Congress amends Juvenile Crime and Delinquency Prevention Act of 1968 to require states receiving grants under the law to bar detention for “status” offenses, such as curfew violations and other acts that would not be crimes if committed by adults, and to separate juveniles from adult inmates in jails and prisons.

1978
MURDERS BY 15-YEAR-OLD WILLIE BOSKET JR. LEAD TO TOUGH, NEW JUVENILE-CRIME LAW IN NEW YORK.

1982
In Eddings v. Oklahoma, Supreme Court limits death penalty for juveniles.

1987
As crack epidemic takes off, youth murder arrests begin to climb.

1988
In Thompson v. Oklahoma, Supreme Court declares executions of youths under 16 as unconstitutional, but the next year, in Stanford v. Kentucky, the court upholds executions of 16- and 17-year-old defendants.

1990s
Youth violence soars in mid-decade but then falls even as states pass new laws allowing more juveniles to be tried as adults.

1992
Forty-seven states and the District of Columbia pass laws over the next five years to make juvenile-justice systems stricter.

1993
Juvenile-arrest rate for murder peaks at more than 14 per 100,000 juveniles ages 10-17, but then begins a steep decline, to about 4 per 100,000 in 2000.

1997
Forty-five states have made transferring juveniles to the criminal system easier.

2000s-Present
Supreme Court abolishes death penalty for juveniles and weighs life-without-parole sentences.

2005
In Roper v. Simmons, Supreme Court abolishes death penalty for juvenile offenders.

2006
Illinois separates its juvenile and adult correctional systems.

2007
Connecticut raises the age at which youths can be tried as adults from 16 to 18, leaving two states — New York and North Carolina — remaining with 16 as the threshold age.

2009
High-profile killing of Chicago honor student Derrion Albert leads Obama administration to call for more focus on youth violence; more than 60 percent of youths responding to Justice Department survey say they had been exposed to violence.

2010
Justice Department estimates 12 percent of youths in state juvenile facilities and large, non-state facilities reported at least one incident of sexual victimization by another youth or facility staff member in past year. . . . Supreme Court scheduled to decide whether it is constitutional to impose life sentences without the possibility of parole for non-homicide crimes committed by juveniles.
A less tolerant view of juvenile crime and delinquency, fueled by a perception that serious youth crime was on the upswing.

"Although there was substantial misperception regarding increases in juvenile crime, many [states responded by passing more punitive laws,]" a Justice Department report noted. "Some laws removed certain classes of offenders from the juvenile-justice system and handled them as adult criminals in criminal court. Others required the juvenile-justice system to be more like the criminal-justice system and to treat certain classes of juvenile offenders as criminals but in juvenile court." 47

The move toward a stricter law-and-order approach was spurred partly by street crime arising from the sale and use of crack cocaine and other illegal drugs. Beginning in 1987, violent crimes, including rapes, robberies, aggravated assaults and homicides, committed by juveniles and young adults began to escalate dramatically, reaching a peak in the mid-1990s. In 1994, juvenile arrests for violent crimes were 40 percent higher than the 24-year average, and in 1993 victim reports were more than 50 percent higher. 48 The juvenile arrest rate for murder rose 110 percent from 1987 to 1993, with roughly 14 arrests per 100,000 juveniles ages 10 to 17 in 1993. 49

As youth crime moved toward its mid-1990s peak, states began to pass
strict new laws, including provisions allowing more and more juveniles to be tried in the adult system. Between 1992 and 1997, a total of 47 states and the District of Columbia passed laws making their juvenile-justice systems stricter. Forty-five states made it easier to transfer juveniles to the criminal system. In 31 states, laws allowed criminal and juvenile courts to expand their options for sentencing juveniles. And 47 states made juvenile proceedings and records more open, undercutting confidentiality provisions that had been a hallmark of the traditional juvenile-justice system.

As laws grew more stringent, incarceration rates soared. From 1985 to 1997, the one-day count of state prisoners younger than 18 rose 135 percent, about the same as for older inmates. The average daily population in juvenile detention facilities more than doubled in that time span, to 28,000, according to data cited by the Annie E. Casey Foundation.

30 years — it’s just ludicrous,” he says. “To deny even the possibility of permitting a reconsideration of the case seems foolish not only on compassionate grounds, but on the grounds of cost-effectiveness, too. It doesn’t help any of us to incarcerate a 50-year-old who’s no longer a public safety threat when those funds could be better used to deal with teenagers who are beginning to get into trouble and need some kind of intervention.”

But others argue that life sentences fit some crimes. “An overwhelming national consensus exists that a life-without-parole sentence is appropriate and constitutional for juvenile offenders who show an exceptional disregard for human life,” the National Organization of Victims of Juvenile Lifers argued in a brief filed in the Supreme Court case.

“Courts, legislatures and American people have strongly approved of these sentences as an effective and lawful device to deter juvenile crime and protect law-abiding citizens. These institutions understand that violent crimes are no less traumatizing to victims because the offenders are underage. A criminal-justice system which categorically denies constitutional and proper sentences for juvenile offenders perpetuates no justice at all.”

Charles D. Stimson and Andrew M. Grossman of the conservative Heritage Foundation argued in a report last year that a life-without-parole sentence “for the very worst juvenile offenders is reasonable, constitutional and (appropriately) rare. In response to the Western world’s worst juvenile crime problem, U.S. legislators have enacted commonsense measures to protect their citizens and hold these dangerous criminals accountable.”

In testimony in support of Scott’s bill, Mark William Osler, a former federal prosecutor and a professor at Baylor Law School, said that while the measure would not allow children who commit serious crimes to escape prosecution or long sentences, “it would . . . give them hope that someday, perhaps in middle age, they might see something other than the inside of a prison. Life with the possibility of parole would be both a reasonable and a principled incremental change.”

But James P. Fox, a district attorney in California and chairman of the National District Attorneys Association, called the bill an “overly broad and one-sided attempt to require state legislatures to revise juvenile codes across America to make it more difficult to prosecute juvenile offenders as adults for egregious crimes and to punish juvenile offenders less seriously for their criminal behavior solely because of their perceived immaturity.”

And Rep. Louie Gohmert, R-Texas, ranking member of the crime subcommittee, said the bill “violates the principles of federalism.” He said, “It is inappropriate at best and unconstitutional at worst for Congress to seek to regulate the manner in which states determine appropriate sentences for state crimes committed and prosecuted within their jurisdiction.”

— Thomas J. Billitteri

1 Roper v. Simmons, 543 U.S. 551 (2005)
2 Rep. Scott’s bill is HR 2289.
6 Written testimony of Mark William Osler, House Subcommittee on Crime, Terrorism and Homeland Security, ibid.
7 Written testimony of James P. Fox, House Subcommittee on Crime, Terrorism and Homeland Security, ibid.

Helping Hands

While overall crime and violence has fallen sharply since the mid-1990s, it remains a scourge in some inner-city neighborhoods, and the consequences for young people who experience it are grave, experts say.

Timothy Brezina, an associate professor of criminal justice at Georgia State University, says research he and others have conducted on the attitudes of young
When Offenders and Victims Sit Down and Talk

"Restorative Justice" provides an alternative to the courtroom.

Like many victims of violent crime, Phyllis Lawrence ended up in a courtroom. But when she later heard about a unique alternative to the judicial process — in which the victim and perpetrator sit down and talk — “it sounded like what was missing for me in the whole courtroom process,” Lawrence says.

The process is called restorative justice, and it encourages offenders to take responsibility for their actions, such as by apologizing to the victim, repaying money or participating in community service. Lawrence is a lawyer and has been a consultant in restorative justice and victim issues in Alexandria, Va., for the past 15 years. Typically used in juvenile criminal cases, restorative justice brings the offender and victim of a crime together with a facilitator as well as their respective “support systems” — usually friends or family members — to openly discuss what happened.

The fundamental idea behind the process is to provide support for victims while holding offenders accountable.

“When I started 15 years ago, you could practically name every program,” Lawrence says.

There are now more than 290 restorative justice programs throughout the United States. The Community Conferencing Center of Baltimore (CCC), which uses restorative justice and community conferencing practices in cases ranging from petty theft and neighborhood disputes to murder, has handled over 10,000 cases since its founding in 1998. Lauren Abramson, an assistant professor of psychology at Johns Hopkins University and founder of the CCC, estimates that 90 percent of the cases the center handles involve young people, many of them dealing with assault. Abramson said that the CCC has not handled a murder case with a juvenile offender.

“I think it’s a process that’s very effective with human beings regardless of the age,” Abramson says. “Our society just seems more comfortable using this with young people before we start using it with adults.”

Especially in the case of juveniles, restorative justice allows many people to substitute conferencing for the legal system, in what is called a diversion case — usually involving first or second-time offenders.

Lawrence says that every case operates differently. In diversion cases, restorative justice is used in place of going to court. The starting point is often a local court-services unit that will talk to courts that use the restorative justice approach about deferring a case to a restorative justice organization. For cases involving severe violence, conferencing is often used in conjunction with the court system, as a rehabilitation tool for offenders after sentencing.

In a community conference session, everyone involved in a crime or dispute sits in a circle and talks about how what happened and what can be done to fix it. Participants are prepared for the meeting by the facilitator, who talks to them individually beforehand to decide what they want to get out of the discussion.

“The key to the restorative justice process is preparation,” says Lawrence. “People who watch sessions are often shocked at how quiet they are. That’s because a lot of anger and fear has been expressed in the preparation process.”

At the end of most conferences, participants compose a written agreement about how to resolve the situation, usually addressing what the offenders will do to change their behavior. Abramson says almost all of her conferences result in an agreement and that they have a 98 percent compliance rate. However, in a diversion case, if the conferencing doesn’t work out, the case is handled as it normally would be through the court system.

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Offenders shows that children exposed to violence often become perpetrators themselves as they get older.

Often, youngsters become desensitized to violence and come to believe it is normal, Brezina says. What’s more, he says, being a victim can breed a desire for retaliation or revenge. And “to prevent becoming a victim, people may arm themselves, not just with guns but other weapons, for self protection, which increases the likelihood that future altercations may result in violence or injury.”

In interviews with young offenders in Atlanta, Brezina says he found a strong sense of “futurelessness” — a feeling of hopelessness, heightened by the violence and economic disparity around them, which sometimes leads them to flout the law or otherwise ignore the consequences of their actions.

“Without having certainty that you have a stable future to look forward to, future planning didn’t seem to make a lot of sense” to the youths, Brezina says. “Or avoiding certain things because you didn’t want to jeopardize your future — that didn’t seem to register with a lot of these young men, because the future for them is something they didn’t necessarily count on or could count on. Many suggested that surviving this day is the challenge, and five years from now might seem like another century to them.”

That view has policy implications, Brezina says. “The idea of being apprehended, convicted and serving a long sentence — that assumes you have a future that can be jeopardized by being wrapped up in the criminal-justice system,” he says. But “if you don’t have a stable future to look forward to, there’s less reason to defer or delay gratification, to be cautious or careful. That may help to explain why deterrence-based strategies alone [haven’t been] a solution for youth violence.”
According to the CCC, recidivism rates for juveniles who go through community conferencing are 60 percent lower than rates for youths who go through the juvenile justice system.

In addition to being more effective in holding offenders accountable, Lawrence says the process also provides sensitivity toward the victim’s experience that is often lacking in a courtroom.

“When you hear how you hurt the victim, it’s much more effective in hitting them at the core than having a judge talk to you,” Lawrence says.

“I think it’s a pretty strong underground movement in this country,” says Abramson. “The hope is that it will eventually be funded at the level it should be because it’s getting far better social outcomes at about one-tenth of what current court proceedings cost.”

Restorative justice advocates say the technique also has the potential to save some of the taxpayer money that is poured each year into prison upkeep. According to a July 2009 report by The Sentencing Project, there are 2.3 million people in prisons or jails in the United States, a 600 percent increase since 1972. 2 If implemented on a large scale, restorative justice practices could greatly decrease the number of prisoners in the United States while also helping to rehabilitate criminals, the group says.

Restorative practices are also being used to solve conflict within schools. Abramson and the CCC have started school-community conferencing programs and say they have worked with about 70 percent of the schools in Baltimore.

“Especially in our work in schools, we notice that so many serious fights were a result of poor social skills and poor relationship management skills,” says Abramson. “So we started an in-class dialogue process with teachers for them to facilitate with students called the Daily Rap.”

That, Brezina says, points to the need for the juvenile-justice system to focus more strongly on the underlying causes of youth violence. “I’m not suggesting it’s an easy problem,” he says. “But to focus on deterrence and not deal with some of the root causes has done little to address the problem.”

Intervention approaches that seek to give young offenders a path away from trouble have made some inroads into the youth-crime problem.

One approach is Operation Ceasefire. Kennedy of John Jay College says it began as a way to deal with high rates of gun homicides in Boston and now is being used in Chicago, Cincinnati and more than 40 other cities to address violence and sometimes open-air drug dealing. He says the program has helped to cut homicides by 35 to more than 50 percent across cities where it operates.

Because most homicides and other serious crimes are committed by “a very small population of high-rate offenders,” Kennedy says, it is possible to identify them by name and engage them personally.

In the case of gangs, probation and parole authorities direct one or two members of each gang to come to a meeting. There, people in the gangs’ community, such as ex-offenders and mothers of murdered children, tell the gang members that their own community needs the violence to stop.

Social-service providers explain how the gang members can get special access to a wide range of services, and law enforcement officials explain that a killing or shooting by any member of their gang will lead to focused police attention around, for instance, street drug dealing, on all members.

“You have a message of standards and redemption” and accountability, Kennedy says, “a message of help and of uncompromising community standards.

The CCC has provided three-hour training sessions for about 1,500 teachers, supplying them with a classroom-management tool that allows students and teachers to sit down regularly to discuss issues that concern them, in order to be proactive in avoiding conflict and miscommunication.

“I think it’s vital that we start in the schools,” says Lawrence, who currently volunteers with Northern Virginia Mediation Services, which works with Fairfax County schools.

This type of mediation has proven successful in reducing violence as well as fostering better relationships between teachers and students. When West Philadelphia High School implemented what the faculty and students call “circles,” they quickly saw positive results.

“Before we had circles at our school there were a lot of fights, riots, problems,” said Ashai Peterson, a student at West Philadelphia High School, in a video documenting the school’s transformation. “It was just a lot of confusion.” 3

The school had consistently been on the city’s “persistently dangerous” school list. Within a year of starting the “circles,” crime rates dropped 52 percent.

“We need these kinds of structures in our culture that provide a chance for people to talk to each other,” says Abramson. “In doing so we increase our chances of survival as a species.”

— Dagny Leonard

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1 Barron County Restorative Justice Programs, Inc., www.bcrj.org/victim_off.html.
4 Ibid.
that violence is wrong and will not be tolerated. Law enforcement says, 'we would like you to listen to your own and put your guns down — we don't want to lock you up. But at the end of the day, this is not negotiable.' "

The approach does several things, Kennedy says. “You’re giving people a way out” by providing them help. In addition, “you are articulating these very, very powerful, simple community standards that say violence is not OK. You’re directly undercutting the street rules that drive the violence. You are reversing the dynamic within the group that promotes the violence by creating this collective accountability for it.”

Another collaborative approach — this one in Philadelphia — is the 11-year-old Youth Violence Reduction Partnership (YVRP). Its goal is to redirect youths ages 14 to 24 who are at the highest risk of killing or being killed away from violence and toward productive lives.

YVRP provides juveniles and young adults who are already on probation for serious offenses with “intense supervision and support,” says Wendy S. McClanahan, vice president for research at Public/Private Ventures, a national nonprofit organization that evaluates the program’s results. Now working in six violence-prone police districts in Philadelphia, the program is a collaboration among law enforcement officials, probation officers, child-welfare agencies, nonprofit community groups, district attorney offices, school districts and others.

It uses a carrot-and-stick approach. It has a zero-tolerance policy for guns, uses a system of graduated sanctions for noncompliance and holds youths accountable with “swift sanctions” if they get into further trouble, McClanahan says. Probation officers work in teams with a system of “street workers,” with the probation officers mainly supervising the youths and the street workers serving as mentors to them and linking them to community resources for everything from childcare and drug and alcohol therapy to employment counseling.

The street workers are not social workers following a formal case-management approach, but rather “paraprofessionals” who may or may not have been in trouble themselves, McClanahan says. All, however, come from backgrounds similar to that of the youths they work with, she adds.

McClanahan said an evaluation of the program’s effects on individual participants is in the final stages of completion, but that fewer murders have occurred among youths in the police districts where it has operated.

While punishment is necessary when youths commit crimes, particularly violent ones, McClanahan says, policy makers must also use collaborative approaches to address the needs of urban youths at risk of committing or being victimized by violence.

“When we think about youth violence, we cannot forget that these are kids,” she says. Many youths in big-city urban cores, particularly males, “are really at risk for violence and for being murdered. . . . There are just so many stressors for them: poverty, being surrounded by violence, perhaps lack of employment opportunities, not good schools and not the safety net that middle-class and upper-class kids have. . . . When you think about public opinion, I don’t feel there is a lot of discussion about the fact that these are kids. And what does that mean for how we try and solve this problem?”

“Our responses to this issue . . . have been fragmented,” he said at a news conference. “The federal government does one thing, states do another, and localities do a third. We need a comprehensive, coordinated approach to address youth violence, one that encompasses the latest research and the freshest approaches.”

Holder said the Obama administration is committed to putting such strategies into practice, noting that it asked for $24 million in next year’s budget for community-based crime prevention programs.

Still, the ballooning federal deficit doesn’t help. President Obama’s fiscal 2011 budget request would sharply reduce federal spending on overall juvenile-justice programs, upsetting reform groups.

“While children as a whole stand to benefit from Obama’s proposed budget, America’s most vulnerable youth — those at risk of involvement in the juvenile-justice system — continue to be ignored,” stated Nellis of The Sentencing Project. “Federal spending on juvenile justice has dropped steadily since 2002 and needs to be restored at least to these 2002 levels to give at-risk juveniles a fair chance.”

On Capitol Hill, ideas on how to attack youth crime and violence are contained in a pair of competing bills making their way through Congress. The Youth PROMISE Act, introduced by Rep. Bobby Scott, D-Va., and Mike Castle, R-Del., emphasizes prevention and intervention approaches in communities most challenged by youth crime and gangs. The measure would provide $1.2 billion over five years to help locally based collaborative councils of police, schools, social-service agencies and community groups implement “evidence-based” strategies that proponents say are built upon sound research. The bill also would help police gain more expertise in dealing with juveniles.
At Issue:

Should juveniles be sentenced to life without parole for non-homicide crimes?

NATIONAL DISTRICT ATTORNEYS ASSOCIATION  
FROM AMICUS CURIAE BRIEF IN SUPPORT OF STATE OF FLORIDA*

Sentencing a juvenile to life imprisonment without the possibility of parole is a weighty matter. Prosecutors do not seek such punishment lightly, nor do courts impose it without careful consideration and compelling reasons. But youthful offenders sometimes commit heinous crimes — rapes, kidnappings, and violent robberies and assaults that may leave the victim maimed for life, or worse. Many do so with full knowledge of the wrongfulness of their actions, and with callous disregard of both the demands of the law and the rights of their victims. And many are already repeat offenders with histories of recidivism.

Such offenses cannot be chalked up to “youthful indiscretion.” It is in these rare and tragic cases of heinous crimes committed by already-hardened and violent juvenile offenders that a State can and must be allowed to impose the severe sanction of life imprisonment without parole.

The crimes committed by juveniles, like those committed by adults, vary in severity. And individual juvenile offenders, like adult criminals, have different levels of maturity, culpability, and potential for rehabilitation. But the petitioners would have this Court impose a categorical rule that the imposition of a life sentence without parole on a juvenile is always “cruel and unusual punishment” — regardless of the nature and severity of the crime, the individual defendant’s maturity and criminal history, or the procedural safeguards the State has put in place to avoid grossly disproportionate sentences.

This one-size-fits-all approach is not mandated by the Constitution. Indeed, it runs squarely afoul of this Court’s holding that for non-capital punishments, the Eighth Amendment “forbids only extreme sentences that are ‘grossly disproportionate’ ” to the individual crime. . . . As the Court has recognized, such cases are “exceedingly rare.” . . . To proportionately punish the guilty, adequately protect the public, and deter future crimes, prosecutors and judges must have the flexibility to ensure that violent crimes committed by the most dangerous juvenile offenders may be met with an appropriately severe sanction. . . .

Prosecutors (and courts) recognize that life without parole is a severe sanction that should be imposed on a youthful offender only in extreme circumstances, and as a consequence, the penalty is rarely imposed. But that does not mean that the Constitution bars such punishment on those rare occasions when it is necessary to protect society.

*Cases (Graham v. Florida and Sullivan v. Florida) involve appeals by two men sentenced to life without parole: Terrance Jamar Graham, who was sentenced after participating in a home invasion committed at age 17, and Joe Harris Sullivan, convicted of raping an elderly woman at age 13.

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EXECUTIVE DIRECTOR, THE SENTENCING PROJECT  
WRITTEN FOR CQ RESEARCHER, MARCH 2010

Children are different than adults. That’s why we don’t permit 15-year-olds to drink, drive, vote or join the military, because children lack the maturity of adults. For the same reason it should be unconscionable to permit juveniles who commit non-homicide offenses to be sentenced to life without parole.

Unfortunately, though, 109 children currently are serving such sentences in the United States, the only nation in the world that engages in this practice. It’s not that kids in other nations don’t commit serious crimes. Some do, but no other country believes in routinely denying any possibility of release. The limited capacity of children is not just a function of inexperience, but of immature brain development as well. In particular, those areas of the brain that control reasoning and risk taking are less developed than in adults, contributing to poor impulse control. As any parent knows, few teenagers are thinking about the long-term consequences of their actions. As a result, they are particularly immune to any deterrent effect of sentencing policies.

Children also differ from adults with regard to their propensity to develop and change. Looking back, most adults now regret some of their actions as teenagers, some of which were merely foolish, others illegal. But the vast majority outgrow those behaviors as they take on adult roles and responsibilities. Such transitions are equally true for incarcerated children. None of us can predict whether a 15-year-old today will be dangerous or law-abiding at the age of 30 or 40. By imposing a sentence of life without parole we exclude any opportunity to account for a youth’s reformed behavior and lifestyle.

Some juveniles commit serious offenses, and they should certainly be held accountable for their actions. And there may be some youths who are not capable of change and will present a long-term threat to public safety. But this is why we need professional parole boards to make such determinations, and to avoid a “one-size-fits-all” approach to sentencing.

Ultimately, a policy of life without parole impedes efforts to promote public safety. By incarcerating many juveniles long past the time they present a threat to the public, we are diverting resources and attention from investments in strengthening families and communities that would be more effective in preventing crime. Moreover, carving out an exception to life without parole for juvenile non-homicide offenses is a minimum standard for maintaining a humane and fair justice system.
“In a nutshell, it would treat the problem of juvenile crime much earlier in the process, rather than just respond to crime after kids have gotten into trouble and exhibited a whole variety of symptoms,” says Nellis.

Scott, chairman of the House Judiciary Committee’s Subcommittee on Crime, Terrorism and Homeland Security, has said the bill would ultimately save money but not eliminate current tough anti-crime laws. “While it is understood that law enforcement will still continue to enforce those laws, research tells us that no matter how tough we are on the people we prosecute today, unless we are addressing the underlying root causes of criminal activity, nothing will change,” Scott’s office said. 55

The measure has garnered 234 co-sponsors in the House, including some 18 Republicans, and in December was approved by the House Judiciary Committee.

Companion legislation in the Senate, sponsored by Sens. Bob Casey, D-Pa., and Olympia J. Snowe, R-Maine, has a dozen cosponsors. The act also has the support of more than 200 national and state juvenile-justice, education and religious groups as well as the U.S. Conference of Mayors and cities including Los Angeles, Philadelphia, Pittsburgh and Richmond, Va. 56

But the act also faces opposition. In testimony last summer before Scott’s subcommittee, Muhlhausen of the Heritage Foundation raised a variety of objections to the bill, including its federal approach for dealing with local crime. “Establishing grant programs . . . that subsidize the routine responsibilities of state and local governments is a misuse of federal resources and a distraction from concerns that are truly the province of the federal government,” he said.

Muhlhausen also questioned the measure’s promotion of “evidence-based” prevention strategies, arguing that “there is not enough emphasis on evaluating programs implemented in the real world.” 57

A competing approach, the Gang Abatement and Prevention Act, sponsored by Sen. Dianne Feinstein, D-Calif., takes a harder line. It would set strict new federal penalties for illegal street-gang activity. The bill has 14 Senate co-sponsors and endorsement from law-enforcement groups. 58

In endorsing the measure, the National Sheriffs’ Association said that while prevention and intervention programs are important, legislation that “fails to include strong enforcement measures falls short of dealing with highly organized and violent gangs, and should not be offered as a solution to the rising violent gang crimes across the country.”

Like the Youth PROMISE Act, the Gang Abatement bill has raised concerns about federalization. “Basically, it’s taking ordinary crimes and making them federal crimes,” Muhlhausen says.

While Congress mulls the proposed crime bills, it also faces reauthorization of the Juvenile Justice and Delinquency Prevention Act of 1974. A bill sponsored by Sen. Patrick J. Leahy, D-Vt., chairman of the Senate Judiciary Committee, would authorize more than $4 billion over five years, most of it for Justice Department grants to state and local governments for programs to reduce juvenile delinquency and improve the juvenile-justice system. 59

One aim of the bill is to push states to move away from incarcerating juveniles in adult prisons. “After years of pressure to send more and more young people to adult prisons, it is time to seriously consider the strong evidence that this policy is not working,” Leahy said in introducing the measure last March. 60 The bill also seeks to curb the detention of runaway, homeless and other “at risk” youths for status offenses.

In addition, the measure would encourage states to identify reasons for minority overrepresentation in the juvenile-justice system and work with the federal government and localities to address the problem.

But the bill would not require states to reduce overrepresentation, says Nellis of The Sentencing Project. She says the bill’s lack of an enforcement mechanism on the issue is a “major flaw” in the legislation. Earlier reauthorizations of the act, going back to 1988, have included provisions urging states to study the issue, but the problem of overrepresentation has gotten worse in many places, she says.

Private Reform Efforts

As Congress considers ways to push states toward reforms in juvenile justice, private groups are continuing efforts of their own. Among the most active are the Chicago-based John D. and Catherine T. MacArthur Foundation and the Baltimore-based Annie E. Casey Foundation.

MacArthur’s “Models for Change” program supports reform efforts in 16 states. In its core states of Illinois, Pennsylvania, Louisiana and Washington, it has been focusing on such issues as community-based alternatives to incarceration for juveniles and ways to coordinate the juvenile-justice system with other community groups, such as education, child-welfare and mental-health systems.

MacArthur also has special “action network” programs in a variety of states focusing on racial and ethnic disparities in the juvenile-justice system, mental health needs of youths in the system and indigent defense — making sure that poor youths have adequate legal counsel. 61

The Casey Foundation’s Juvenile Detention Alternatives Initiative (JDAI), started in the early 1990s, aims to reduce the reliance on incarceration of juveniles, with a key focus on safely reducing detention of youths in the early stages of the process as they await trial or placement in a correctional
program. Reducing racial disparities in the juvenile-justice system also is a key priority.  

Through technical support and other aid, Casey helps local entities — among them juvenile courts, probation agencies, prosecutors, defenders and community groups — form collaborations aimed at reducing detention levels and instituting broader juvenile-justice reforms in their locality.

The Casey initiative is now active in 110 sites in 27 states and the District of Columbia, says Lubow, director of Casey's Juvenile Justice Strategy Group. On average, participating JDAI sites reduced their detention populations by 35 percent, and a significant number reported declines of 50 percent or more, Lubow says. “These decreases in detention population did not result in decreases in public safety and in fact most JDAI sites report significant improvements in public safety,” he says.

The program is “an effort to create a smarter, fairer and more effective juvenile-justice system using detention as the entry [point] for system reform,” Lubow says. “Unnecessary and inappropriate detention,” he says, poses a “grave risk to children and public safety and represents a huge public expenditure.”

Lubow points to research showing that juvenile detention makes behavior problems worse rather than better.

For example, a recent Canadian study that tracked 779 low-income Montreal boys into adulthood found that the deeper the involvement in the juvenile-justice system, the greater the likelihood of being arrested as an adult, according to a summary in Youth Today.

“The study joins a stream of recent research indicating that, both here and abroad, juvenile-justice systems are more likely to exacerbate delinquency than cure it, especially when young people are incarcerated or placed into group treatment programs where they interact with other troubled and trouble-making teens,” Youth Today said.

OUTLOOK

‘Cautious Optimism’

Many youth-crime experts hope that new approaches and new insights into adolescent behavior will lead to further strides in curbing youth crime rates.

“The overall picture is one of cautious optimism,” says Marc Mauer, executive director of The Sentencing Project. “In lower-income minority communities, where the rates have historically been higher, those communities are safer today than 15 years ago, but not as safe as more well-off communities. Certainly there are very significant problems that need to be addressed.”

At the same time, he says, “there’s growing interest and attention in trying to look at more collaborative models of how to address these problems. . . . Punishment per se is increasingly viewed as of only limited value in terms of preventing or deterring kids from engaging in violence and crime.”

The Obama administration’s attention to youth violence in the days following the Derrion Albert murder has given young advocates reason for optimism, though the administration has said little on the subject since then. Meanwhile, the deep recession is making a return to the levels of the early 2000s less likely anytime soon.

At the same time, anti-terrorism efforts are competing for Justice Department funds, even as concern about gang violence and other organized criminal activity grows in some urban areas.

Meanwhile, the deep recession is likely to continue to play a role — both positive and negative — in the outlook on youth crime. In some neighborhoods, economic pressure could lead some young people to engage in violent behavior. What’s more, cash-strapped local and state governments are under pressure to cut spending, which could result in further cuts in prevention and intervention programs aimed at deterring youth crime.

On the other hand, states and localities seeking to save money are reducing prison construction, incarcerating fewer people and looking for less expensive ways to stem crime, such as collaborative prevention and intervention programs. That bodes well for programs such as Ceasefire, says Kennedy, the John Jay College criminologist.

“What I’m seeing in a strange way is the reverse” of budget cuts posing a problem, he says. “Economic restraint is making people look very seriously at the utility of the money they’re spending, and because most money that goes at this issue doesn’t work, it’s raising the profile of cheap things that do work.”

Notes

6 Marla McDaniel and Daniel Kuehn, "Vulnerable Youth and the Transition to Adulthood:
25 K atel, op. cit.
29 Quoted in ibid.

About the Author

Thomas J. Billitteri is a CQ Researcher staff writer based in Fairfield, Pa., who has more than 30 years’ experience covering business, nonprofit institutions and public policy for newspapers and other publications. His recent CQ Researcher reports include “Auto Industry’s Future,” “Afghanistan’s Future” and “Financial Literacy.” He holds a BA in English and an MA in journalism from Indiana University.

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FOR MORE INFORMATION

Campaign for Youth Justice, 1012 14th St., N.W., Suite 610, Washington, DC 20005; (202) 558-3580; www.campaignforyouthjustice.org. Seeks to end the practice of trying, sentencing and incarcerating youths under age 18 in the adult criminal-justice system.

John Jay College of Criminal Justice, 899 10th Ave., New York, NY 10019; (212) 237-8000; www.jjay.cuny.edu. Research and academic institution focusing on criminal justice and part of the City University of New York.

Justice Policy Institute, 1012 14th St., N.W., Suite 400, Washington, DC 20005; (202) 558-7974; www.justicepolicy.org. Research and policy group focusing on prison and incarceration issues.

National Center for Juvenile Justice, 3700 S. Water St., Suite 200, Pittsburgh, PA 15222; (412) 227-6950; www.ncjj.org. Provides research and data on juvenile justice and is the research division of the National Council of Juvenile and Family Court Judges.


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57 Ibid.
60 Maryam Ahranjani, Andrew G. Ferguson and Jamin B. Raskin, Youth Justice in America, CQ Press (2005), p. 16.
67 Ibid., p. 88.
69 Ibid., p. 133.
70 Snyder and Sickmund, ibid., 1999 report, p. 89.
71 Snyder and Sickmund, ibid., 2006 report, p. 238.
74 Ibid.
80 Mendel, op. cit.
A study finds that juvenile detention in Montreal, Canada, makes the behavior of troubled youths worse.

**Reports and Studies:**


In its second report on the juvenile-justice system, the nonprofit institute argues that “states spend approximately $5.7 billion each year imprisoning youth, even though the majority are held for non-violent offenses” and that “most youth could be supervised safely in the community with alternatives that cost substantially less than incarceration and that could lower recidivism by up to 22 percent.”


Criminal-justice scholars at Northeastern University provide data showing that “while overall homicide levels in the United States have fluctuated minimally in recent years, those involving young victims and perpetrators — particularly young black males — have surged.”


The report draws on lessons from a Philadelphia program dedicated to steering young people who are at risk of killing or being killed away from violence and toward productive lives.


The Office of Juvenile Justice and Delinquency Prevention report summarizes juvenile-crim e data from the FBI and shows a 3 percent decline in overall juvenile arrests from 2007 to 2008, and a 2 percent drop in juvenile arrests for violent offenses during the same period.


The authors argue that life without parole for violent youths is “reasonable, constitutional and (appropriately) rare.”

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**Books**


Legal scholars provide a useful mix of material from criminal-law cases and expert commentary on crime and youth rights.


The authors present research by various experts and conclude that anti-violence-prevention efforts are “never too early” and intervention efforts for serious and violent juvenile offenders “can never be too late.”


A medical doctor, founder of Boston’s Young Men’s Health Clinic and recipient of a MacArthur Foundation “Genius Grant,” explores the emotional and psychological effects of violence against urban victims.

**Articles**


The United States spends $5 billion annually on juvenile courts, but studies suggest the money isn’t helping juveniles who need help the most.


The Justice Department has conducted at least 11 probes into juvenile facilities since 2000, consistently finding problems of overreliance on physical restraint and insufficient mental-health services.


The so-called Missouri Model for dealing with juvenile offenders — in which youths are placed in small groups with minimal force and constant therapeutic interventions — is among the most promising reform movements.

Life Sentences

Biskupic, Joan, “Juvenile Life Sentences Go to High Court,” USA Today, Nov. 9, 2009, p. 5A.

The Supreme Court will debate whether life-without-parole sentences for juveniles are unconstitutionally harsh.


Florida has handed out more life sentences to juveniles for non-murder crimes than all other states combined.


Life sentences for juveniles are unfair because youths have not attained enough mental and emotional development to make mature decisions.

Minorities


Native-born Hispanic-Americans are faring better than their immigrant parents, but remain exposed to more violence.


The disappearance of black history and culture has led to the self-destructiveness of America's black youth.


Black youths represent an overwhelming majority of crime perpetrators and crime victims, despite the fact that youth violence has decreased nationwide since 2004.


Low-income and minority students at poorly funded schools tend to engage in more violent activities than other students.

Policies


Hanes Mall in North Carolina is requiring visitors under 18 to be accompanied by an adult after 6:00 p.m. on Fridays and Saturdays, largely to reduce youth violence.


Northern California’s top federal prosecutor has asked Salinas, Calif., to commit to a long-term plan for dealing with gang violence.


The chief officer of public schools in Chicago is developing policies to identify the most vulnerable students in the school system and to saturate them with adult attention.


Civil injunctions against gangs do not improve public safety and unfairly target youths and communities of color.

Restorative Justice


Hennepin County, Minn., has approved a $150,000 restorative justice program for Minneapolis.


Criminal offenders — despite their misdoings — are still part of a community and need to be treated as such.


Restorative justice resonates with many university mission statements about personal growth and community.

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