

**IS ALTERNATIVE SENTENCING MORE BENEFICIAL THAN  
INCARCERATION: A FOCUS ON JUVENILES**

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## Acknowledgements

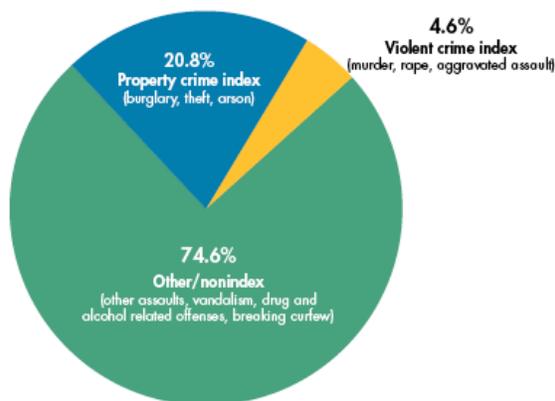
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## Introduction

The purpose of this thesis is to highlight some of the reasoning behind juveniles' criminal behavior, describe how they are processed through the criminal justice system, discuss different kinds of alternative sentencing, and show evidence of who/what these sentences benefit. I hope to educate the public and explain that although some sentences do not send a person to prison this does not mean they are not being punished for the offense they have committed. Alternative sentencing can satisfy the concept of punishment. These juveniles will not be "let off the hook" rather their punishment will be in a nontraditional way. Offenders who are young when they are sentenced will eventually be released and reenter society in their later years of life. Alternative sentencing allows for offenders to remain in society, in a monitored manner, thus giving them the opportunity to turn their life around not be isolated from society.

Would the use of alternative sentencing be more beneficial for young offenders due to their young age? They have an underdeveloped brain which can cause these juveniles to make bad decisions. These youth offenders have their whole life ahead of them and having prison on their record can have a negative impact on their future. Alternative sentencing is not only beneficial for juveniles but also for the community and the criminal justice system.



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Juvenile Justice in the US: Facts for Policymakers

## Delinquency

A juvenile is an individual who has not yet reached their eighteenth birthday. Juvenile delinquency is the violation of a law committed by a person younger than 18 (United States Department of Justice, n.d.).

Figure 1. Population of juvenile arrest rates by category of crime (2008).

The pie chart indicates juvenile arrests however self-reported data may show a different trend. These crimes in the chart are among the most serious (Office of Justice Programs, 2017).

The most common types of crime juveniles commit are vandalism, breaking curfew, and drug and alcohol related offenses. Other crimes committed by juveniles are motor vehicle theft and burglary. Robbery is the completed or attempted theft, directly from a person, of property or cash by force or threat of force, with or without a weapon, and with or without injury. Arson is a person's deliberate, willful, and malicious burning of a building or personal property. Vandalism is criminal damage to property. Motor vehicle theft is the stealing or unauthorized taking of a motor vehicle, including attempted thefts. Burglary is the unlawful or forcible entry or attempted entry of a residence (Office of Justice Programs, 2017).

### **Correlation of Delinquency**

Risk factors are defined as different variables which can either increase or decrease the chance of a youth to commit crimes. Some risk factors include their socioeconomic status, peers, level of intelligence, and their upbringing. Unfortunately, the more risk factors a juvenile is exposed to the higher their chance is of becoming a criminal. Juvenile delinquents, in the system, are typically male rather than female because of the difference in treatment they receive by initial contact with law enforcement. Females are less likely to be formally arrested as well as the risk factors young females and males are exposed to are different (Thompson, 2016).

Not only are males more represented within the criminal justice system but minorities are also overrepresented. According to the Arizona Department of Juvenile Corrections, Hispanic youth were the most represented in the criminal justice system. Caucasian juveniles were second to Hispanic and preceded by African Americans. Although the data collected was from an Arizona juvenile corrections facilities, that is just one of the many states with a large amount of

youth minorities within the criminal justice system. In 1974, the Juvenile Justice and Delinquency Prevention Act was created to reduce the large gap between the amount of young minority individuals and Caucasian juveniles. The majority of juveniles who commit crimes and arrested are typically over the age of 15 (Thompson, 2016).

There have been many justifications found as reasoning to why juveniles should be treated differently from adults. Not only is there an age difference but there are also differences in characteristics between young children and adults. Some of the characteristics are “poor decision making, poor impulse control, more likely to take risks, commit crimes for excitement, and juveniles are thought to be more susceptible to peer influences and more changeable” (Farrington, 2012, p.729). There have been studies done focusing on the development of people’s brains. As one grows and matures their brain does as well. It has been proven that the brain does not fully develop until the age of twenty-five. This is the age when there is a significant improvement in an individual’s reasoning, impulse control, abstract thinking, planning, and anticipating consequences (Farrington, 2012).

Unfortunately, juvenile’s brains are so underdeveloped that they are easily influenced. Many youths have a desire to be liked and want to fit in. They want the “cool kids” to like them and will do just about anything to be accepted by the perceived most popular group. In some instances, juveniles become delinquent because that is the method they believe will get them accepted. Therefore, some crimes are committed out of peer pressure or innocent children are conned into committing a crime (Farrington, 2012).

Data collected on brain development has led car insurance companies to have a much higher premium for young adults than adults. Along with car insurance, car rental companies have also adjusted the age in which one can rent and drive a rental car. These stipulations are a

result of data regarding reckless behavior being more evident in youth under the age of 25. Research has been done focusing on brain development and behavioral controls, concluding that one's cognitive functioning and maturity is not complete until the mid-20's (Farrington, 2012). Not only does scientific research prove a human brain does not fully develop until the mid-20's there is also no true scientific reasoning as to why the cut off age for an individual to be entered into adult prison or tried in adult court is 18 years of age (Loeber, 2012).

### **Court Process**

Juveniles have similar rights as adults do when it comes to the court system such as due process, the right to counsel, and waiver of counsel. There is no nationwide set of procedures and regulations when it comes to juveniles however every state has their own regulations. Not only do states have their own process but local courts may also have their own rules for juvenile proceedings. The following process being discussed will be focused on Massachusetts juvenile court proceedings for both traditional and non-traditional approaches of sentencing. In Massachusetts courts a juvenile is tried by a jury unless they, or their parent/legal guardian, sign a waiver which would result in a trial by court rather than a jury (National Juvenile Detention Center, 2014).

In the event a juvenile delinquent appears before the court without representation, the judge is able to advise the youth on their right to counsel. These young offenders, by law, can be counselled throughout their experiences within the criminal justice system. They are entitled to counsel during the initial appearance, arraignment, transfers, prosecutions, appeals, and final judgement appeals. In regards to paying for the court fees and any public assistance they may have received the court will determine whether a juvenile/parent or legal guardian are indigent. Indigent is "a level of poverty in which real hardship and deprivation are suffered and comforts

of life are wholly lacking” (Merriam-Webster Dictionary, n.d.) (National Juvenile Detention Center, 2014).

### **Sentencing**

Prison is a place of survival for both the guards and prisoners. There is always a chance of dangerous activity. Studies have shown there is a lasting effect on people who have been in prison for long periods of time. Those who serve time in prison tend to come out of prison with a more criminal behavior than their behavior going into prison (Farrington, 2012).

#### **Traditional**

A major pitfall for juveniles is the sense of institutionalization of either being in a detention facility or adult prison (mandatory for juveniles who had committed first or second degree murder at age 14 years of age or older). If a youth offender is not given the tools to better themselves or learn how to adjust their behavior, there will not be any improvements and their criminal record will grow (National Juvenile Detention Center, 2014).

In some cases, juveniles are sent to adult prison. As mentioned earlier, being in prison for any amount of time, for both correctional officers and inmates, has an impact on one’s personality and well-being. When a youth offender is released from adult prison there is a higher chance of recidivism. Also, the future crimes they commit are more severe than if they had experienced a juvenile detention facility. These juveniles would commit future crimes at a faster pace than youth offenders released from detention facilities (Farrington, 2012).

#### **Non-Traditional**

Juvenile court has the ability to give a wide range of sentences and punishments to juveniles. The sentencing options which do not place youth in prison are called alternative sentencing (also called disposition orders or alternative sanctions). These are methods to punish a

youth offender in ways which will keep them a part of society such as participating in community service, probation, and day reporting. Alternative sanction focuses on low to high risk offenders and due to the nature of alternative sentencing it is normal for more than one kind of alternate sanction to be given to a single delinquent juvenile. A few different kinds of alternative sentencing will be discussed and explained. (Michon, n.d.).

Juveniles are typically either given probation (most common) or the Department of Youth Services (DYS). When an individual is sentenced to probation, they are assigned to a probation officer and the requirements and terms they must comply to are determined by the judge. However, when an individual is sentenced to a DYS commitment, they meet with a case worker. Then the case worker proceeds to determine, with the assistance on the offender's family, which placement will be most beneficial. These placements vary depending on the crime committed, the offender's history, the severity of the crime, thus the decision to be made is the level of security and the correct help the juvenile needs (O'Keefe, n.d.).

Probation or the Department of Youth Services are not the only options for judges to sentence a juvenile. Juveniles who are non-violent, not a threat to society, and meet the requirements for the specific state or county they are in can be given a disposition order. When an officer takes a juvenile into custody there are many options which can be decided. They can choose to refer them to juvenile court, adult court, or referred to a social welfare agency. When a youth offender is referred to juvenile court, the court personnel decides whether to detain, charge, or decide if the young offender is delinquent. These options are similar to adult court proceedings: bail, jail, dismissal, or prosecute. Unlike adult court proceedings, there are more people involved in the fate of a juvenile such as probation officers, defense attorneys, prosecutors, and a judge (Whitehead, 2015).

If a judge and other court personnel come to a decision to refer a juvenile to alternative sanction such as home detention, remedial work, or community service they are redirecting the youth into a less isolated place from the community. A few of the advantages of alternative sentencing, especially for juveniles, is “to shield offenders from the stigma of institutionalization, help offenders avoid associating with youths who have more serious delinquent histories, and maintain positive ties between the juvenile and his or her family and community” (Austin, 2005). A juvenile given a disposition order does not experience institutionalization (which along with that is trauma from any bad experiences from a detention facility or adult prison). There is less separation from society, more specifically their family, and due to not serving prison time there is also a decreased chance they would be labelled (Austin, 2005).

In regards to recidivism and alternative sanctions, the results vary by state, program, study, and type of dispositions. Overall, there is an increase in the rate of recidivism for youth who had experienced an alternative sanction as opposed to youth who were detained or referred to adult prison. It has been found the treatment programs which included an employment or a behavioral focus were very beneficial because they not only targeted the origin of the criminal act but also helped the young offender find different outlets for their energy. A necessity for a successful stint in an alternative sentence is the placement. Every case is different as well as the circumstances, thus juveniles should be placed in an appropriate treatment program in order for their chances of reoffending to be low (Austin, 2005).

**Types of Alternative Sentencing.** House arrest, also called home confinement, is when a juvenile is restricted to their home except for activities preapproved by the judge for them to attend such as school and work. A juvenile who is given house arrest is also, typically, subject to

electronic monitoring. One would be given an ankle or wrist bracelet which allows the judge to keep track of where the delinquent is at all times. (Jones, 2001) (Michon, n.d.).

One type of sentence which benefits the community is giving a delinquent the punishment of community service. This type of sentence is given to replace a sentence of a short time in jail. A judge will give a youth offender a project or program to volunteer at and also the amount of time they must put in in order to satisfy their sentencing. The studies on community service, in regards to recidivism rates, shows there is no significant difference in recidivism rates between those who go to prison and those who are given an alternate sentencing. However, there were other goals met. These goals would be prison diversion and saving taxpayers' money (Jones, 2001).

Sometimes juveniles commit petty crimes such as vandalism, trespassing, or disorderly conduct. These types of crime do not call for a sentencing of prison therefore monetary sanctions are given as punishment. Monetary sanctions can come in the form of fines, court fees, or restitution. Fines are financial punishments which is typically attached to convictions, for example a drug conviction can result in a fine of two thousand dollars. Court fees are given on a discretionary basis by the judge. These fees may be given to defendants to compensate prosecutor's time, charge to request a jury trial, or the cost to use a public defender (Harris, 2017).

Unlike fines and fees, restitution is money paid to the victim. These payments to the victim are to compensate on any damage done, medical expenses, or any costs which have been caused by the crime committed. Depending on the severity of damage caused by the offender of the crime the monetary fine is handled on a case by case basis. The higher the severity the larger the amount of the fine given (Harris, 2017).

There are two types of probation a juvenile offender could be sentenced to. The difference between the two kinds is the level of supervision. Intensive Supervision Probation (ISP), as the name suggests, has the most required contact with an individual's probation officer or case worker. The stipulations and requirements are different for every youth offender because intensive supervision programs differ as well as state requirements. However, the concept is the same throughout the different programs. Juveniles who are given ISP are repeat offenders, have committed serious nonviolent offenses, or was given regular probation but there was no effect on the individual (Krisberg, 1994).

ISP requires a significantly more amount of contact with a probation officer, requires a youth offender to be given more release conditions, and the consequences for breaking any probation rules is higher than probation. The purpose of ISP is to guide an offender towards a more productive and less delinquent lifestyle. Studies show this type of alternative sentencing results are either more or just as effective as incarceration in regards to recidivism. Although there is not much of a significant difference for recidivism, the community benefits more if an individual is given an ISP sentencing rather than being incarcerated. These benefits are savings on the cost of juvenile facilities, there are less juveniles in detention facilities therefore there is less of a need for construction to expand, and the youth offender is placed in an environment where they are still apart of society and must interact with others instead of being isolated from the community (Krisberg, 1994).

The lesser intense form of probation is commonly used for juveniles who are low risk or first time offenders. Unlike ISP, these juveniles are not required to interact with their probation officer as frequently nor are they subject to as many added release conditions. With a traditional probation, the court expects the juvenile's family, specifically their parents or guardians, to play

an active role in their release conditions. Probation, for many young offenders, is they have limited range in freedom: they may go to school, work, and their conditions such as community service, meetings, or therapy sessions (Michon, n.d.).

Although the level of intensity in regards to supervision is different between traditional probation and intensive supervision probation, it is found that the way in which an individual's probation officer or case worker treats and handles the juvenile has a huge impact on the likeliness of their recidivism. In other words, the more respectful and the better a mentor they are, the juvenile's rate of recidivism decreases (Jones, 2001).

Some offenders are required to meet or check in with their parole officer a certain amount of times every week, the amount is decided by their supervisor. This type of disposition order is called day reporting. It is a common sentencing for offenders with alcohol or substance abuse problems. Along with mandatory checkups, these offenders are also subject to random drug testing. The length of time one is a part of this program varies as well as being combined with other disposition orders such as electronic monitoring. Research shows offenders who have been released from this type of program are twice as likely to remain crime free after their release compared to offenders who were released from a correctional facility without day reporting (Jones, 2001).

### **Benefits**

There are many advantages to alternative sanctions which benefit more than the juvenile themselves. Along with keeping a young offender a part of society it also allows them to adjust their behavior and learn to become a productive member of society. Unfortunately, due to a young offender's age they can be easily influenced thus some of the actions they do was not their decision. As for the prison system, if more offenders are given alternative sentences there will be

less incoming inmates thus slowing down the process of overcrowding. When alternative sentences are given to offenders there are less cases on judge's dockets which take less time. Therefore, alternative sanctions not only benefit offenders but also the court system (especially judges), prisons, and the community at large.

Alternative sentencing benefits more than the juvenile, it also assists the community, the prison system, and the criminal justice system as well. Recidivism is one of the primary goals of alternative sentencing. According to the National Institute of Justice, recidivism is an offender's tendency to reoffend. An offender may relapse back into their criminal behavior regardless of their sentencing. However, there are a few alternate sanctions which decrease an offender's recidivism. Recidivism is measured by criminal acts which result in an arrest or reconviction within three years of the prisoner's release (National Institute of Justice, 2014).

There are some alternative sanctions that do not necessarily have high recidivism rates but are very advantageous in regards to other aspects of the criminal justice system. Alternative sanctions benefit juveniles in more ways than not sending a young offender to prison. They do not have a record of going to prison thus giving them less of a chance of being labeled as an ex-inmate. Alternative sentences can direct youth to a better path of life. In some cases, juvenile offenders come into contact with people or mentors who change the course of their life for the better. However, in prison this would not be a possibility. These young offenders have a future ahead of them and with a criminal record (specifically prison time under their belt) can be detrimental to their future in regards to careers and education (Farrington, 2012).

As mentioned earlier, prisons also receive benefits from disposition orders. For example, if an offender is given a different punishment other than prison there is at least one less offender heading to incarceration. Thus, decreasing the issue of overcrowded prisons. Another benefit in

regards to prisons is alternative sentencing cuts the cost to state and federal corrections system. Prison diversion causes less money to have to be put into the prison system due to the fact that less offenders are being sentenced to prison. Prisons benefit very much from prison diversion programs because not only are there less offenders being sent to prison, it also saves tax payer money (Families Against Mandatory Minimums, 2011).



*Figure 2. Daily cost at secure juvenile facilities compared to other sanctions (2015). (The PEW Charitable Trust, 2015)*

The community benefits as well from alternative sentencing. However, this depends on the type of disposition order a young offender is sentenced to. When an individual is given community service, this benefits the community by having an individual volunteering their time (although it

is required) to assist in any way they can. Another benefit is there is an increase in safety which may sound contradictory. A juvenile serving their time while still being included in the community is less of a threat when are released from their disposition order because prison did not alter their behavior. When offenders are released from prison or a juvenile detention facility they are more likely to reoffend in a short time period from their release date. However, alternative sentences focus on resolving the “why” a person commits crimes which in the long run creates a safer environment for the community (Families Against Mandatory Minimums, 2011).

In regards to the cost of prison as opposed to alternative sanctions, the latter saves the community (the taxpayers) money because there is less of a need to put more money into prisons or juvenile detention facilities. According to Justice Policy Institute, taxpayers spend about 5.7 billion dollars a year imprisoning youth offenders while alternative sanctions cost much less. States have been looking over their programs regarding juveniles and the criminal justice system. They are altering the pathway of their funds and putting more money into alternative sanctions for juveniles rather than putting money into residential facilities or other forms of youth lock up (Justice Policy Institute, 2009).

There are different paths an individual could go through the criminal justice system. When juveniles are given disposition orders this allows for more violent cases be handled with better care. The court system and judges benefit from alternative sanctions by having smaller caseloads, a judge's docket is not overwhelming large, and court personnel are able to focus more attention on serious cases. Disposition orders include many different kinds of sentencing options which allows judges to make decisions to benefit the offender in a more appropriate way (Families Against Mandatory Minimums, 2011).

### **Other Countries**

It had been previously mentioned there is no true reason for the cut off age for a young offender to be treated is 18, in other countries this does not hold true. In Germany and Austria, no juvenile under the age of 18 can be tried as an adult. These two countries also, with discretionary decisions made by the authorities, allow young adults between the ages of 18 to 20 be tried and treated as juveniles. This decision is based on factors such as their maturity is that of a juvenile and the crime was spontaneous or unplanned. Although the age of juveniles is higher than the United States, these countries have significantly longer maximum sentences for youth

under the age of 18: Austria is 15 years and Germany is 10 years. In Switzerland, young adults can be tried as a juvenile until the age of 25. Sweden's court proceedings allow youth mitigation to be utilized until an individual is 21. Another country which views young adults under the age of 21 as juveniles, within their court system (Farrington, 2012).

Many countries have altered their laws to accommodate the data which shows there is a scientific difference in behavior for young adults. The International Association of Penal Law in had passed a resolution in 2004 which stated "the applicability of the special provisions for offending by juveniles could be extended up to the age of 25" (Farrington, 2012). There are many programs, commissions, and alliances which are researching and trying to change laws regarding juveniles, how the government sees individuals between the ages of 18 to 25, and using the results of scientific research about brain development (Farrington, 2012).

### **Conclusion**

Unlike adults, juveniles' court documents and records can be expunged, or erased completely, once the individual turns 18 years of age. After a young offender is released from any type of sentencing they had received there is a label on them. These labels are very unfortunate for juveniles. When an individual is labeled as having a criminal record, there are fewer opportunities for them in regards to a higher education or possible employments. Studies have shown that youths that transition from a facility back to society without any type of reentry program are more likely to reoffend and in a shorter period of time. However, juveniles who were involved in school, activities, or other programs were less likely to reoffend and stay committed to the program they were involved in (Grigorenko, 2016).

There was a focus on misdemeanor and petty crimes in this thesis. Unfortunately, there are juveniles and youth offenders who commit the most heinous and felony crimes such as

homicide. Therefore, alternative sentencing is not for everyone nor should it be given to every young offender. In some cases, prison or juvenile facilities are the best place for a young violent offender. For cases like these, it is in the best interest of the offender to be behind bars due to their inability to change. There are stipulations for alternative sentencing which is how the decision of an offender's sentencing is made.

This is a literature review and there had been no data collected for this research. It is purely based on peer-reviewed journal articles and texts. Not every article regarding juveniles, sentencing, or benefits of alternative sentencing had been read or used. Thus, there is more information out there.

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