

Revealing Justice: An Appraisal of the Case for Increasing the Minimum Age of Criminal Offense in England and Wales

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Introduction

In England and Wales is ten years the minimum age of criminal responsibility (MACR)ⁱ. It means children younger than ten will not be subject to arrest or criminal charges. In spite of this, once they reach the age of 10, they are deemed fit for illegal activity and can face trial. Children are treated differently in the criminal justice system than adults in many significant ways. Juvenile court for juveniles is where they are put to death, with varying sentences, and in some cases, they end up in special security facilities for adolescents instead of adult prisons. Individuals aged 10-17 have access to distinct features in the criminal justice system's processes. Protecting children's crimes is a key aspect of the process, as reporting restrictions prevent the disclosure of their names, addresses, and schools. Lord Dholakia's evidence has raised questions concerning the appropriateness of putting young children under criminal investigation. He argues that the current view of MACR is critical and questions why children as young as ten years old should be criminally prosecuted. According to him, the fact that children can distinguish between good and bad doesn't necessarily make them subject to the criminal justice system. This perspective will prompt debate on whether MACR should be increased to facilitate cognitive capacity and moral development phases better. Among the issues of concern, the MACR for England and Wales is one of the lowest in Europe; it has legal, social, and psychological implications for young offenders.

This critically discusses the reasons and effects of maintaining the MACR in England and Wales for ten years. The debate will encompass a wide range of topics, from developmental psychology to comparative international practices and legal principles. The MACR currently in effect is being reviewed to ensure a balance between the concerns of children's well-being

and public safety. Based on evidence from developmental psychology, international legal standards, and a comparative analysis of juvenile justice systems, this paper proposes that the MACR should be increased in England and Wales. The argument is made that a higher MACR indicates broader human rights concerns, aligns with child development, and may result in fewer instances of juvenile justice that are less harsh and more humane.

Legal and Historical Context

The age of criminal responsibility in England and Wales has its roots in English common law, which was established at ten years. This law was originally developed in accordance with a principle called "doli incapax". It is stated that children under seven can reasonably be considered incapable of committing a crime. During the age range of 7 to 13, the assumption is unfounded, meaning prosecutors may seek to demonstrate that the child understands their actions and recognizes them as violating laws. Age is the only factor considered responsible according to these seven laws. However, in 1998, Doli Incapax was abolished in England and Wales for children over the age of 10, effectively setting the minimum age of criminal responsibility at 10. This change reflects changing legal perspectives on children's ability to understand and take responsibility for their actions, especially in light of modern sensitivities and understandings of child development. Therefore, the minimum age for criminal accountability become a matter of disapproval and disputeⁱⁱ.

Various countries have distinct minimum ages of criminal responsibility (MACR), subject to variations in legal, cultural, and psychological considerations related to the juvenile justice system. While some have called for a review of the MACR in England and Wales, it is expected to maintain its status from approximately 10 years ago. Internationally, MACR varies widely, with some countries having only six years of MAMR and others having it as long as 18 years. Across the world, the average age is 12 years. In South Africa, the Children's Justice Act 2008 is a reflection of efforts to improve access to justice for children. The MACR was established over ten years ago and provides time for evaluation. Compared to other countries, the situation in the United States is diverse, with California proposing its MACR for 12 years under UN recommendations. Despite this, the United Nations Committee on the Rights of Children

consistently suggests that the minimum age for MACR should be at least 12 years and encourages countries to consider higher ages^{3,4,5}.

The suggestion forms part of a broader campaign to reform the juvenile justice system in line with international child rights standards. The definition and treatment of juvenile delinquency vary depending on the jurisdiction. Youth incarceration rates are relatively low in countries with high MACR, such as Finland and Argentina. In contradiction, MACR age caps in Belize are challenged in juvenile justice cases due to their conflicting legal and social standing, leading to potential biases and unjust consequences. State-level juvenile justice systems in the United States exhibit distinct patterns. With an MACR of 10, he must demonstrate competency in Texas before the trial can proceed and again in Florida for another competency review. A second hearing may be necessary. The disparities between MACR and juvenile justice approaches indicate that the system requires ongoing review and reform to ensure equal protection for children's rights.^{iii,iv,v}

In addition, the Minimum Age of Criminal Responsibility in different countries worldwide is mentioned in Figure 01.

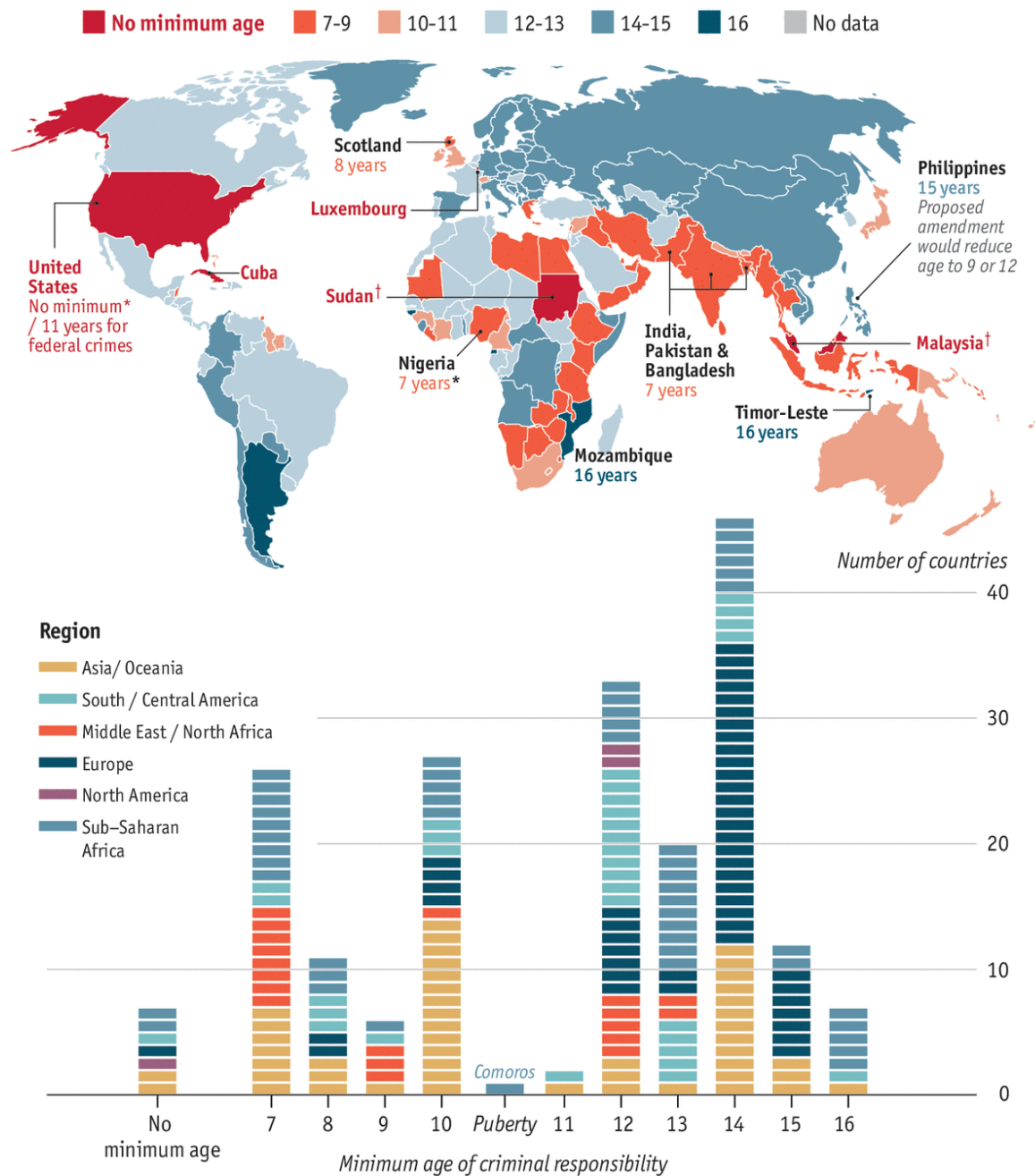


Figure 1: Minimum Age of Criminal Responsibility in different countries across the world^{vi}.

Arguments for Augmentative the MACR

Developmental Psychology View

Depending on the developmental stage of their cognitive and moral development, children's understanding of outcomes develops gradually according to developmental psychology. Basic

causal relationships can be grasped by infants as early as eight months, but this knowledge is restricted to direct physical causal relations. At the ages of 12 and 18, babies start to act towards uncomplicated objectives and gain more insight into the relationship between actions and cause and effect. A child will typically have grasped basic cause-and-effect scenarios by the time they turn two. The ability to consider the potential consequences of actions and predict future outcomes continues to develop from the age of 3 until the child is seven years old. When children reach the age of three or four, they are already acquainted with the consequences that come with hitting a friend, which can be difficult to comprehend. During the ages of 6 or 7, children can learn more extensive chains of cause and effect and make decisions based on anticipated outcomes. Despite this, the prefrontal cortex, which regulates emotions and behavior, is only fully developed in late childhood/adolescence, indicating that the brain's ability to evaluate consequences and make sound judgments has yet to reach its peak. Based on these developmental factors, experts widely accept that children as young as ten cannot be held criminally accountable. Planning and organization require executive functions that only develop in the brain around 25. Due to ongoing development, children and teenagers frequently exhibit impulsive behaviors and struggle to comprehend the consequences.^{vii,viii}

Sociological Influence

Early criminalization has significant and varied sociological influence over children's futures. Evidence suggests that incarceration among adolescents has an adverse impact on their prospects of finishing high school, as well as an increased likelihood of being imprisoned as adults. Children's early involvement in the criminal justice system can result in detrimental effects that may negatively impact their academic and social growth over time, potentially leading to their continued participation in illegal activities. In addition, the consequences of parental imprisonment are considerable for children. Children of parents in prison are frequently at risk for mental health issues such as depression and antisocial behavior, according to research. Children of parents in jail exhibit antisocial behavior more regularly than those under other conditions, such as mental health issues or drug use. Adverse childhood experiences, like parental incarceration, can cause problems in adulthood, including severe depression and substance abuse. These factors are often overlooked.

Additionally, their economic status is frequently affected. This financial pressure may cause more suffering among children and hinder their access to resources or secure living conditions.

Early criminalization and parental confinement have a significant sociological influence on children. Rather than resorting to punitive measures, they suggest exploring alternative approaches to juvenile justice that prioritize rehabilitation. These long-lasting negative effects can be lessened by reducing youth incarceration and providing support systems for affected children.^{ix,x}.

Human Rights and Legal Considerations

Legal and human rights issues pertaining to children include the United Nations Convention on The Rights of the Child (CRC), which stresses the importance of considering "the best interests of" an individual child. The principle outlined in Article 3(1) of the CRC mandates that all measures related to children should prioritize the child's best interests. Including court rulings, parliaments, and social institutions' decisions, this covers a wide range of children's cases. Children are considered particularly vulnerable and require special protection and care under the CRC, a widely accepted human rights treaty. Children need adequate legal safeguards due to their immaturity and development. Children's rights are addressed in the Convention, which includes safeguarding against discrimination, ensuring the 'Sustainability and Development of the children, respecting the children's identity, and including the right to free speech on issues concerning the children.

In accordance with the 'best interests, best practices' principle, measures affecting children should prioritize those that serve their best interests. This involves taking into account your situation and requirements. This principle is the basis for interpreting laws and creating policies that address children in a legal setting. Furthermore, procedural safeguards must be implemented to ensure the representation and consideration of children's interests in decision-making processes. A holistic plan grounded on the CRC seeks to safeguard and advance the rights and welfare of children globally, ensuring their access to safe and nurturing environments for growth and education. According to the UK Supreme Court's ruling in *ZH (Tanzania) (FC) v Secretary of State for the Home Office, 2011*, it is important to consider the child's best interests first and that this principle should be considered where other interests are not considered^{xi,xii}.

The UK Supreme Court has heard a significant case, 'Case of *Re B (A Child) [2013] UKSC 33*', that deals with adoption and placement with biological families. According to the court,

the primary objective in adoption cases is to ensure the child's welfare. The difficulty and complexity of navigating child welfare litigation were highlighted by this case, which involved balancing the concerns of birth parents' rights and interests with those of adoption. However, the UK Supreme Court also considers the child's "best interest" principle^{xiii}.

Refutations and Counterargument

Refutations

From different points of view, arguments and counterarguments against increasing the Minimum Age of Criminal Responsibility (MACR) can be drawn from various sources, including counter-evidence and discussions of alternative approaches to juvenile justice.

1. The effectiveness of harsher punishments as a deterrent has been suggested by some studies to be achieved in adults. It implies that being 18 may help discourage young people from engaging in criminal activities. The argument that increasing the MACR will lead to a decrease in youth crime is challenged by this, as it suggests that the implementation of more severe adult penalties may deter youth crimes.
2. The use of alternative approaches to juvenile detention, rather than community-based confinement, is a more cost-effective and effective way to reduce both crime and recidivism. In general, the cost of a bed in juvenile prison is much higher than that of participating in incarcerated individuals' communities through community-based programs that focus on "the causes of juvenile delinquency" and provide services and support to youth and their families. Youthful programs that adhere to the principles of restorative justice encourage victims to make positive changes and become active members of their communities.
3. State facilities are being replaced with locally operated facilities in Ohio, Illinois, California, Texas, Alabama, and New York, which succeed where community-based alternatives are available. The trend is evident. Adopting the transfer law resulted in a significant reduction in juvenile detention rates. Compared to a program that is centered around the community. The evidence from these efforts suggests that implementing

rehabilitation and therapeutic measures rather than punitive measures may lead to better outcomes for juvenile offenders.

4. Providing homegrown alternatives to prison, which link youth with mentors and therapists while also providing cognitive behavioral therapy, family support, and constructive activities, is showing promising results. Individualized programs that aim to reduce the impact of childhood trauma are tailored specifically for young people and may be on par with or better than established program models^{xiv,xv}.

Arguments against increasing the Minimum Age of Criminal Responsibility (MACR)

Increasing the minimum age of criminal responsibility (MACR) is often opposed due to concerns about public safety and the belief that children can reason morally and comprehend why they are acting inappropriately. Hence, counterarguments are;

1. Critics contend that an increase in juvenile crime could result from raising MACR. Nonetheless, this viewpoint overlooks the potential for rehabilitation and the necessity of addressing the root causes of juvenile delinquency. Furthermore, it ignores the potential benefits of preventing the criminalization of children in their early years due to the possibility that this could result in a cycle of repeat offenses.
2. The MACR's implementation may be contested by the idea that children can reason morally and grasp the consequences of their behavior. The development of moral reasoning skills in children is ongoing. Still, research indicates that the prefrontal cortex, which controls impulses and decision-making, develops fully around 25 years old.^{xvi}
3. The role of victims in the criminal justice system is a common theme in arguments against increasing MACR, with cases like the UK murder of James Bulger.^{xvii} Being used as examples. Despite their tragic nature, the criminal element alone is insufficient to prevent such crimes.
4. The criminal justice system's current methods of criminalizing young children can result in a vicious cycle of recidivism.^{xviii} Studies indicate that adolescents who enter the criminal justice system are prone to repeating their offenses. This cycle could be broken if MACR is increased to focus on rehabilitation rather than just treating the symptoms; mental health, substance abuse, and social inequalities are also factors that need to be addressed.

5. The International Standards and Human Rights Committee recommends a minimum age of 14 years, suggesting that lowering this age goes against international human rights standards. In this viewpoint, the justice system is more effective in meeting children's developmental needs and rights.^{xix,xx}.

Case Studies and Empirical Evidence

Success Stories

Nations with strict minimum criminal age requirements vary in their approach to juvenile justice and the consequences of this practice. A high MACR score of 15 in Finland demonstrates the importance of community sanctions and supervision over imprisonment, which has led to relatively low juvenile incarceration rates. The MACR of California and Massachusetts in the United States was recently extended to 12 years by international standards set by the UN. These reforms will strengthen protection for young people, and rehabilitation will take precedence over punishment. Special-purpose courts and competency/jurisdiction mechanisms address juvenile issues in many other countries, like the United States. The justice system in England/Wales includes youth courts with dedicated youth boards that offer probation services and supervision to all young people involved. State facilities are available to state prisoners under age 15, while juvenile detention facilities can be assigned to those over the same age as those in special courts.^{xxi}.

South Africa's Children's Justice Act 2008 limits the MACR to 10 years and allows for its consideration. The legislation highlights the importance of establishing an improved juvenile detention facility. Evidence suggests that the law's effectiveness in improving juvenile competency evaluations did not lead to faster case processing and increased costs. The MACR 10 in Texas necessitates competence to proceed. The court may require the child to undergo reassessment in the hospital for 90 days if they must be informed of their rights or legal process. Florida will also stop the practice of reviewing if an individual child's competency has been assessed every six months for up to two years before proceeding. New York's MACR, which lasts for seven years, requires the judge to determine a defendant's competency, unlike other states where trained professionals conduct assessments.^{xxii}.

On the other hand, juvenile justice systems in certain nations like Argentina and Belize face difficulties due to their distinct MACRs and legal issues. Belize's MACR age is incompatible with the law, resulting in potential injustice and unjust punishment. Depending on the circumstances, juveniles may face trials in Family Court or Juvenile Court, and sometimes in District Court as well as in Supreme Court in Belize. Even though the system is separated, children can be placed in the same wards as adults in residential facilities, which creates conflicts. The 2018 report revealed that her MACR values were inconsistent, lasting nine years (under the Crime Control and Criminal Justice Act), ten years under the Criminal Code, and 12 years with UNCRC international law. The outcome may result in greater inequality and unfair penalties across the nation.^{xxiii,xxiv}.

Rehabilitation and community-based approaches that prioritize the individual needs of young people and aim to reduce the impact of childhood trauma are often essential components for these systems' effectiveness. This method is now widely acknowledged as a more efficient approach to combating juvenile offenses, necessitating ongoing efforts to ensure systemic compliance and consideration of children's developmental milestones and rights. It is emphasized that it must be evaluated and reformatted.^{xxv}.

Juvenile Crime and Rehabilitation in the UK

The latest research and statistics on youth offending and rehabilitation in the UK offer valuable insights into the current state of the justice system, potential problems, and strategies for addressing them.

England's youth justice statistics for 2021/22 indicate important changes and trends in the system. Unusually, the number of children enrolled in juvenile detention centers has dropped to an all-time low of just over 8000. In addition, the mean number of children held in custody dropped to 450, the lowest figure since records began. The decrease in juvenile detention rates and the influx of new individuals into the justice system indicate a positive shift toward treating adolescent criminal activity more effectively. The data presented may reflect fluctuations caused by pandemic restrictions, but they still depict post-trending events more precisely^{xxvi}. Figure 2 demonstrates the percentage of children arrested based on ethnicity in England and Wales from 2012 to 2022.

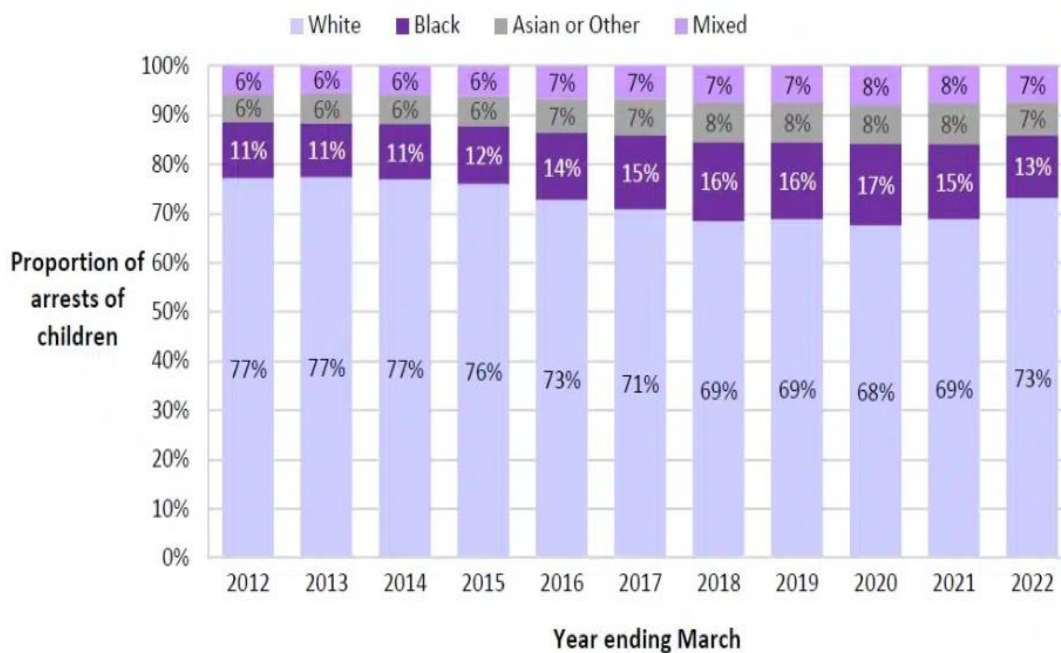


Figure 2: Proportion of total arrest of children in England and Wales with respect to ethnicity.

Evidence from studies on the effects of prison on adolescents provides additional insight into problems and solutions within juvenile detention facilities. Studies indicate that immaturity in the brain, which is commonly present before turning 25, can aid in youth criminal activity. Risky behaviors, such as law-breaking, become more common during adolescence due to the lack of maturity. Young people's brain development often leads to avoiding such behavior, which is abnormal for most people. The problems are frequently worsened by imprisonment, which causes retraumatization of young people and complicates successful rehabilitation.^{xxvii}.

In response to these challenges, there has been an emphasis on community-based alternatives to incarceration. Compared to imprisonment, this procedure is considerably less expensive and has the potential to curb criminal activity and improve people's quality of life. The programs offered are Multisystemic Therapy (MST), Youth Advocate Programs (YAP), Functional Family Therapy (FFT), credible messenger mentoring, and wraparound. Moreover, employment-oriented initiatives like YouthBuild strive to involve young people in educational and skills-building activities and equip them for success.^{xxviii}.

Policy reforms have been instrumental in reducing the number of young people behind bars. Prosperity has been found in various methods, such as separating young people from the formal

justice system, redesigning juvenile probation, and restricting access to prison for low-level crimes. In these programs, attention is given to addressing juvenile justice violations beyond the confines of the law and prioritizing long-term outcomes over punitive measures²⁸.

In essence, the data on youth offenders and their subsequent rehabilitation in Britain shows a decreasing number of young people entering the justice system and being detained. Understanding the developmental factors influencing youth behavior and evaluating the impact of community-based alternatives and policy reforms has become more important. The prevention of youth crime is also addressed through these approaches, which help the youth's well-being and successful reintegration. Some of the main findings and implications regarding Juvenile delinquency and rehabilitation are summarized in Table 1.

Table 1: findings and implications regarding Juvenile delinquency and rehabilitation across the globe.

Source	Key Findings	Implications
OJJDP News @ a Glance, Jan/Feb 2023	The 2022 National Report provides latest data on youth in the juvenile justice system, covering youth population characteristics, youth victimization, offending by youth, and their progress through the justice system.	Highlights the necessity of updated and comprehensive data to effectively serve system-involved youth and to understand the dynamics of youth victimization and offending.
Harvard Undergraduate Law Review	Increased involvement of SROs in schools led to a rise in student arrests, especially among people of color. States and districts required reporting of student misbehavior to law enforcement, leading to a higher proportion of juvenile charges from schools.	Indicates a need to reevaluate the role of SROs and school policies in the juvenile justice system to avoid criminalizing minor misbehavior and exacerbating racial disparities.
Youth and the Juvenile Justice System: 2022 National Report	This report provides insights into youth victimization, offending by youth, and their experiences in the juvenile justice system, with a focus on the most requested information in the U.S.	Serves as a resource for professionals working with the juvenile justice system, offering a comprehensive view of the challenges and experiences of youth.
National Conference of State Legislatures, March 2023	Key findings include a decline in serious violent crimes committed by youth, but a rise in certain offenses by young females. The report also highlights racial disparities in juvenile justice system involvement.	Suggests the importance of addressing the specific needs of different demographic groups within the juvenile justice system and the necessity of tackling racial disparities.
The Sentencing Project	The report reviews evidence showing the ineffectiveness of youth incarceration and suggests alternatives. It highlights the negative impacts of incarceration and emphasizes community-based alternatives as more effective.	Advocates for policy reforms to reduce youth incarceration, emphasizing community-based alternatives and the importance of addressing the root causes of delinquent behavior.

Alternative Approaches and Solutions

Rehabilitative and Restorative Justice Models

In the criminal justice system, rehabilitation and therapeutic (literal) models prioritize rehabilitating offenders, addressing root causes of criminal behavior, and helping them return to society rather than just punishing them. By implementing this approach, the likelihood of recidivism reduction and social integration of offenders has been proven to be significant.

The rehabilitation process involves various methods, such as therapy, education (clinical and vocational training), and counselling. These initiatives aim to empower people with the knowledge and abilities required to serve society effectively. Academic recovery is emphasized in educational rehabilitation, while vocational programs emphasize skills for employment and career advancement. Programs in treating substance abuse are a comprehensive way to recover from addiction.

Instead of relying on trial as the standard, restorative justice seeks to repair or restore the original offense. Mediation or conferences are utilized by the perpetrators, victims, and community members to discuss crime-related harm while planning for compensation. They also seek support. Evidence suggests that this approach has a lower likelihood of recidivism than litigation.

These systems are advantageous for reducing the risk of repeat offenses, are less expensive than jail time, and offer better resources such as rehabilitation centers, support groups, etc. Studies indicate that these programs can save up to \$5 per dollar compared to prison sentences, with reduced incarceration expenses and fewer potential offenses. The community's involvement is crucial for the successful reintegration of a person, as it helps build relationships and improve skills.^{xxix,xxx}.

Education role in reducing crime rate

Crime prevention can be aided by various components such as education, social services, and community programs. Research indicates that community organizations have a substantial impact on decreasing crime. The emergence of new nonprofit community organizations in a city with 100,000 residents has led to significant decreases in crime rates, particularly in crime prevention, neighborhood development, substance abuse prevention, and youth programs^{xxxi}.

Moreover, education has the ability to significantly decrease crime. It has been demonstrated that modifying expulsion laws to prolong teens' stay in school can have a significant impact on crime rates. The decrease in crime is not only due to better employment opportunities but also because teenagers continue their education during the most critical criminal years, around 18 years old, preventing further illegal activity. The occurrence is believed to be caused by dynamic disengagement, which is also helpful. The education program is a preventative measure and helps to keep young people out of criminal activities. The significance of education and engagement during critical developmental phases in young people's lives is emphasized by this study.^{xxxii}.

Evidence suggests that a surge in the mandatory school age in America has led to accelerated crime rates, which is referred to as "dynamic incapacitation. According to this idea, enrolling young people in schools at risky times, such as when they are 18 can lower their chances of committing crimes. The research discovered that reducing arrest rates by 6% was a long-term strategy that had an impact on crime reduction beyond the school setting. This reform had an interesting effect on a subset of young people who were less likely to make significant advancements in education or employment, and the overall reduction in crime rates was not due to higher-level education. The findings indicate that involving young people during critical times is crucial for decreasing crime rates over time, and these changes in educational policies may have limited effects on the economy^{xxxiii,xxxiv}.

Conclusion

The dispute concerning the Minimum Age of Criminal Responsibility (MACR) in England and Wales reflects a multifaceted legal, psychological, sociological, and human rights perspective. Developmental psychology, international practice, legal principles, and alternative approaches to juvenile justice were all examined systematically in the analysis of maintaining her MACR after ten years. Developmental psychology suggests that children's cognitive and moral competence develops over time. Researchers have found that until age 25, impulse control and decision-making are still closely linked to the prefrontal cortex, which doesn't develop fully.

The argument for criminalizing children may be compromised due to the lack of cognitive maturity in young children, who may not be as young as ten years old and may never have experienced such consequences. Children are negatively affected by the sociological implications of early criminalization. Adolescents who go to jail have a higher chance of being sent to prison, which has been shown to harm their educational experience. Moreover, children who are subjected to parental confinement experience substantial psychological and social consequences, which frequently result in mental health and academic challenges. The United Nations Convention on the Rights of Children (CRC) is a framework for human rights and legal matters, which emphasizes that the welfare of children is paramount. According to the CRC, the MACR was established to safeguard and advance the welfare of children and their rights. Yet, objections to this approach center on concerns related to public safety and the perception that more severe punishments would serve as a deterrent.

It is believed by some that children possess the ability to make ethical choices. Even so, these perspectives often overlook the potential for rehabilitation and the importance of addressing root causes of juvenile delinquency. Case studies indicate the differences between the immature judicial systems of each country. Community sanctions and supervision in Finland are responsible for high MACR and relatively low prison sentences for juveniles. In contrast, in countries where her MACR does not meet legal criteria (such as in Belize), potential inequalities arise from issues related to juvenile justice. Models of restorative justice and rehabilitation must also be considered in this context.

Rehabilitating individuals who have committed crimes and addressing the causes of their crimes is one of these approaches that are more cost-effective than imprisonment.. Moreover, education is crucial for decreasing crime. Studies indicate that extending education during critical developmental stages can prevent individuals from engaging in criminal activities. Various community organizations contribute significantly to reducing crime, including combating poverty and supporting underprivileged groups. The evidence suggests that her MACR should be raised in England and Wales, aligning with developmental psychology findings, international legal standards for juvenile justice reforms to date, and a more rehabilitative approach to juvenile detention. Implementing a more humane, effective, and socially responsible juvenile justice system could better serve children and society.

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