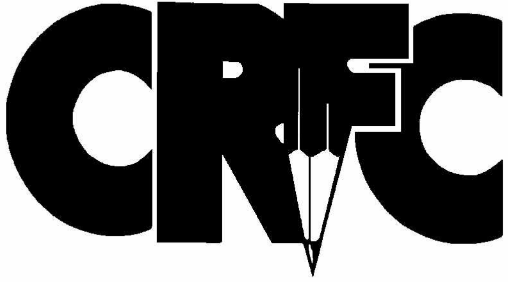

# Teen Offenders and the Law

# A Module for Democracy/Civic Mission Classrooms

Constitutional Rights Foundation Chicago
407 South Dearborn, Suite 1700
Chicago, Illinois 60605-1119
http://www.crfc.org ♦ crfc@crfc.org

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# Teen Offenders and the Law

## Overview

There is a fundamental – and controversial – question at the heart of juvenile justice law in the United States: When should the law treat a teenager like a child and when like an adult?

This unit offers an introduction to the juvenile justice system – how and when it began, who it involves, what it does, and why.

## Objectives

- Present basic information about the origins, purposes, and workings of the juvenile justice system.
- Highlight some leading decisions of the Supreme Court of the United States on the rights of juveniles under the U.S. Constitution.

## Materials

A: Reading: Juveniles and the Law

B: Activity: Same or Different?

C: Source: Defining Juveniles in Illinois and Federal Law

D: Source: Comparing Illinois Criminal and Juvenile Justice

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## A: Reading: Juveniles and the Law

Nineteenth and early 20th century reforms produced two separate systems of justice in America, based on almost opposite philosophies. The adult criminal justice system applies to supposedly mature, responsible persons who have lived, depending on the state, at least 16 or 18 years. All those younger than the specified age fall under the jurisdiction of the juvenile justice system. This is the story of how the American juvenile justice system began.

### Children and the Law in England

In Europe in the Middle Ages, children took part in adult activities as soon as they could walk and talk. They were working by the age of 5 or 6. Most families needed every available pair of hands to grow enough food or weave enough cloth to survive. Shorter life expectancy also forced people into early adulthood. The average life span was only 40 years. There was no time for a leisurely childhood, much less an adolescence.

Children not only were expected to work hard, they were also expected to obey adult laws. Anyone old enough to commit a crime was thought old enough to be punished for it. Painful forms of trial, like ordeal and combat, and harsh punishments, like being hanged or burned at the stake, were the fate of all criminals, no matter what their ages.

In the 16th and 17th centuries, medieval attitudes began to soften. Though children were still thrust into adulthood at the age of 4 or 5, most of Europe began to think of them as needing adult protection and guidance. In England, the common law reflected this change in attitude. The king or queen became the parens patriae—the parent of the country. Representing the monarch, English courts acted as parens patriae to manage orphans' estates, protect children's property from wasteful parents, and provide for abandoned young people.

About this same time, another important concept worked its way into English common law: the idea of intent. To commit a crime, a person not only had to perform a forbidden action, the person also had to intend to commit that act.

The concept of intent changed how children were treated under English common law. Society now believed that children were naive and innocent. Though they might accidentally cause harm, children did not know enough about right and wrong, or about the effects of their actions, to form criminal intent. Since they couldn't form intent, children couldn't commit crimes.

At what age could they form the intent necessary for committing crimes? The 18th century's answer to this question was based on traditional Christian beliefs which held that 7 was the "age of reason." After age 7, according to the church, children knew the difference between right and wrong and became responsible for their actions and moral decisions.

By the late 18th century, English common law had taken this rationale one step further. English judges usually dismissed cases against defendants under age 7. In recognition of society's changing view about the length of childhood, they also dismissed cases against persons aged 7 to 14 unless the prosecution could prove that the child was capable of forming criminal intent.

The English criminal justice system treated everyone over 14 years old—and everyone between 7 and 14 proven capable of forming criminal intent—exactly alike. Officially, all were tried in the same courts by the same rules. If convicted, all were locked up in the same jails and subject to the same harsh penalties. In actual practice, however, the system showed children and

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adolescents some leniency. For example, although English courts sentenced 103 persons age 8 and under to death between 1801 and 1836, not one of these executions actually took place. Even so, the law allowed people of a very young age to be executed or imprisoned.

Colonists transplanted the English common law, complete with the concepts of parens patriae, criminal intent, and the age of reason, to North American soil. The religious beliefs of many of these settlers emphasized training children for obedient, religious, and productive adult lives.

## Children and the Law in the United States

By the 19th century, America was rapidly changing. Factories sprang up across the Northeast, and the nation's urban population was growing faster than its rural population. In 1820, 7 percent of America's people lived in cities. That proportion had risen to 15 percent by 1850 and 35 percent by 1890.

Many of the new city residents were immigrants. Others were country people looking for greater opportunity and a path out of the exhausting routines of rural life. Survival in the city, however, was a full-time occupation. Crowded into small rooms with their struggling family, urban children could find life to be very unpleasant. Understandably, they often escaped to the streets. Other children were abandoned by their parents and turned to picking pockets, shoplifting, begging, and looting for survival. Young people often banded together. During the 19th century, gangs turned from pranks to serious crime, such as arson and mob violence.

Though citizens' groups in every American city expressed concern about these wayward youngsters, people were unsure of what to do about them. If caught in a crime, children over 7 and under 14 faced prosecution in the adult criminal justice system and often ended up in adult prisons. Many people questioned the wisdom of this result. Through contact with older criminals, children learned to perfect their skills at robbery, mayhem, and murder. Also, then as now, adults in prison regularly abused younger and weaker inmates.

## House of Refuge

Early in the 19th century, American cities began to provide alternatives to adult prisons for children. In 1824, using parens patriae as its rationale, the New York City government established the New York House of Refuge for abandoned, deprived, and criminal children. Other state and local governments soon followed suit. These institutions, which came to be known as reform schools, opened in almost every large urban center.

The reform schools tried to break youngsters' bad habits by a combination of religion, education, and hard work. Run by private organizations, many schools, however, began to operate not for reform, but for profit. They glossed over moral and practical education. As headmasters pressed for greater productivity, children spent more time in workshops and less in classrooms.

As living conditions deteriorated, many young people rebelled. In 1859, 15-year-old Dan Crean set fire to the Massachusetts Reform School. Two years later, in another part of the state, angry girls burned their school to the ground. Reform schools, like prisons before them, came to be known as "universities of crime."

Once in these schools, students could not easily get out. In 1838, for example, a court committed Mary Ann Crouse to the Philadelphia House of Refuge because her mother complained about her behavior. By the time her father found out, Mary Ann was already locked

up. When the House of Refuge refused to release her to his custody, Mr. Crouse began a legal battle to get his daughter back.

His battle eventually took him to the Supreme Court of Pennsylvania. He argued that the House of Refuge had violated his daughter's constitutional rights. Mary Ann had been locked up without a jury trial, a right guaranteed to all Americans.

After lengthy deliberation, the court ruled in favor of the House of Refuge. The court stated that the right to a trial by jury did not apply to juveniles taken to the House of Refuge. It only applied to people accused of crimes. Since Mary Ann was not accused of any crime, she had no right to a jury trial.

According to the court, Mary Ann was institutionalized not because of criminal guilt, but because her mother no longer wanted to take responsibility for her upbringing. Citing the doctrine of parens patriae, the court declared that the state, in this instance represented by the House of Refuge, had every right to assume the parental role. As the court concluded, Mary Ann "had been snatched from a course which must have ended in confirmed depravity, and not only is the restraint of her person lawful, but it would be an act of cruelty to release her from it" (Ex Parte Crouse, 1838).

## From the Criminal to Delinquent: A Time for Reform

Americans cities didn't rely entirely on reform schools to cope with young people in trouble. During the latter half of the 19th century, other innovative ideas developed as well. Since contact between juveniles and adult criminals was seen as a major problem, many states began setting aside special times for juvenile trials, keeping juvenile records separate from adults, and sentencing juveniles to age-segregated prisons.

Massachusetts began experimenting with probation as an alternative to imprisonment. But probation presented problems when applied to young urban criminals. Sending them back to their communities usually meant returning them to an environment which was the root of their problems. If a juvenile's family couldn't provide a good home, the courts sometimes tried to identify a relative or family friend to take responsibility for the child's probation.

This led to the development of another innovation: the foster family. Recognizing that reform schools or problem families could cause more harm than good, government officials compiled lists of trustworthy families and individuals who could provide temporary care for children in trouble. Abandoned or neglected children were also placed in foster homes.

Though each of the experiments in juvenile reform was successful to some degree, by the 1890s, it became obvious that more inventive methods were needed.

The situation in Chicago was especially bad. The Chicago Reform School reeked with vice and crime. Judges preferred to send all but the most hardened juvenile offenders to the adult jail. They felt the jail was a safer environment. The school's reputation was so bad that when it burned in 1871, the government refused to provide money to rebuild it. This left Chicago, one of the nation's largest cities, with no system for handling neglected or criminal young people.

The Chicago Women's Club stepped in to fill the gap. It set up a school for young people serving time in the city's jails. It opened a city police station for women and children arrestees so they wouldn't have to mingle with hardened male criminals.

Working with juveniles made club members come to some radical conclusions. Members felt that treating juveniles in the adult criminal justice system made matters worse. Why not start

over and build a separate justice system, just for juveniles, based on principles related to the needs and problems of children?

In the first place, club members believed that no rational adult could hold children responsible for their actions. Wayward, disobedient, and criminal behaviors, they believed, were diseases caused by poverty and neglect, circumstances over which a child had no control. One might as logically blame children for catching the measles as blame them for running away from troubles at home or following bad examples set by friends.

Secondly, the concept of crime—specific prohibited acts—was too limited to help children. Certainly, young persons must be prevented from robbing, raping, and murdering. But they also must be protected from other, less well-defined actions, like associating with immoral people, staying out too late at night, or disobeying authority. These actions greatly damaged young people by encouraging bad habits and leading to more destructive behavior.

Furthermore, it was unfair to label children as criminals. A new word for wrongdoers was needed. The word "delinquent" seemed much more appropriate. The Women's Club also decided that children convicted of crimes should not be punished. Instead, young persons who committed delinquent acts should be re-educated and rehabilitated so they would not repeat their offenses.

Moreover, young persons should not necessarily undergo the same rehabilitation programs. Some children would best benefit from the harsh life of reform school. Others would do better in the gentler care of foster parents. Still others could be returned to their families on probation. Each child should have individualized treatment.

Finally, since no one was being punished, there was no need for the carefully regulated trial process of the adult courtroom. That process tended to intimidate children and might be more a hindrance than a help, the Women's Club reasoned. To consider each child's best interests and deliver the personalized justice demanded by this new system, a judge needed more freedom than adult procedures permitted. Judges hearing juvenile cases should work in informal rooms, more like counseling offices than courtrooms. Questioning and decision making should also be flexible and informal. Only in such a non-adversarial atmosphere could judges determine appropriate ways to help young people in trouble.

When the Women's Club first raised these ideas in 1892, its own lawyers argued that the system was unconstitutional. Not only did it reverse or suspend the basic principles of American justice, it stripped the accused young persons of their rights. Club members retorted that children needed help, not rights.

In spite of the initial negative response, the Women's Club proposal was widely discussed. In 1898, the Illinois State Board of Charities asked the Chicago Bar Association to draft legislation based on the club's plan. After hearings, the Illinois legislature passed the Juvenile Court Act. The nation's first juvenile court officially opened its doors on July 1, 1899.

Other states responded enthusiastically to this new system. Within 25 years, all but Maine and Wyoming had passed laws based on the Illinois model. Over the years, court decisions and administrative policies have slightly modified the juvenile justice system. But the current juvenile justice systems throughout the United States owe their roots to that first Chicago experiment.

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## B: Activity: Same or Different?

Working in small groups, examine each of the four pairs of cases listed below. In each, after considering each person's intent and responsibility, decide whether the juvenile and adult should receive the same treatment or punishment. Be prepared to explain the reasons for your decision. After your group decides all the cases, present your findings to the class and compare your decisions with those made by others groups.

### Case 1

§ Jerry, 27, lives in an adult apartment complex. One of his neighbors regularly holds loud parties which last long into the night. After a frustrating confrontation late one evening, Jerry picks up a rock and throws it through his neighbor's window.

§ A neighbor chases Harold, 14, and his friends from her yard and warns them not to play baseball on her property. In retaliation, Harold throws a rock through her window.

### Case 2

§ Cynthia, 35, finds out that her husband is leaving her. At the height of an argument, she kills him.

§ Mike, 8, is furious with his 4-year-old sister for ruining his favorite toy. He picks up his father's shotgun and kills her.

### Case 3

§ When the store clerk's back is turned Connie, 23, slides an expensive scarf into her purse and walks out of the store. Apprehended by store detectives on the sidewalk, she complains that she tired of paying exorbitant prices for everything.

§ Nancy, 14, steals a digital watch from a department store display. Her only excuse, when she's caught, is that her friends dared her to do it.

### Case 4

§ Jim, 39, makes obscene phone calls to women in his neighborhood. He enjoys their confused and helpless reaction and likes to give them a good scare.

§ Andy, 15, makes an obscene phone call to one of his teachers. He wants to see how she will react.

### Followup Questions

§ Which cases were the most difficult to decide? Why?

§ Do you think the criminal justice system should treat children differently from adults? If so, at what age should they be treated the same as adults?

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## C: Source: Defining Juveniles in Illinois and Federal Law

The following is the definition of juvenile in the United States Code, Title 18, Part IV, Chapter 403, Section 5031 (18 U.S.C. 5031):

> For the purposes of this chapter, a "juvenile" is a person who has not attained his eighteenth birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday, and "juvenile delinquency" is the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult or a violation by such a person of section 922(x).

The following is the definition of Juvenile in the Illinois Public Law:

(705 ILCS 405/5-105 new)
Sec. 5-105. Definitions. As used in this Article:
(3) "Delinquent minor" means any minor who prior to his or her 17th birthday has violated or attempted to violate, regardless of where the act occurred, any federal or State law, county or municipal ordinance.
(10) "Minor" means a person under the age of 21 years subject to this Act.

(705 ILCS 405/5-120 new)
Sec. 5-120. Exclusive jurisdiction. Proceedings may be instituted under the provisions of this Article concerning any minor who prior to the minor's 17th birthday has violated or attempted to violate, regardless of where the act occurred, any federal or State law or municipal or county ordinance. Except as provided in Sections 5-125, 5-130, 5-805, and 5-810 of this Article, no minor who was under 17 years of age at the time of the alleged offense may be prosecuted under the criminal laws of this State.

(705 ILCS 405/5-130 new)
Sec. 5-130. Excluded jurisdiction.
(1)(a) The definition of delinquent minor under Section 5-120 of this Article shall not apply to any minor who at the time of an offense was at least 15 years of age and who is charged with first degree murder, aggravated criminal sexual assault, armed robbery when the armed robbery was committed with a firearm, or aggravated vehicular hijacking when the hijacking was committed with a firearm. These charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State.
(4)(a) The definition of delinquent minor under Section 5-120 of this Article shall not apply to any minor who at the time of an offense was at least 13 years of age and who is charged with first degree murder committed during the course of either aggravated criminal sexual assault, criminal sexual assault, or aggravated kidnaping. However, this subsection (4) does not include a minor charged with first degree murder based exclusively upon the accountability provisions of the Criminal Code of 1961.

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# D: Source: Comparing Illinois Criminal and Juvenile Justice

In Illinois, the treatment of juveniles differs greatly from that of adults. The chart below notes many common differences in the juvenile justice and adult criminal justice systems. Some differences represent little more than a change in terminology. Others denote major differences.

| Illinois Criminal Adult System | Illinois Juvenile Justice System |
|---|---|
| Persons can be legally arrested if they are suspected of committing a crime. | Juveniles can be arrested and taken into custody. |
| The state files formal criminal charges in the form of an indictment or information. | The state files a petition with the juvenile court. |
| Persons may be released on bail or on their own recognizance or may be held in jail until trial. | Juveniles may be released into custody of their parents; may be held in custody until an official hearing; or may be placed on supervision without an official hearing. |
| Decisions are made by judges and juries. | Decisions are made by juvenile court judges almost always without a jury. |
| A trial determines whether or not an accused person is guilty beyond reasonable doubt of a specific crime. | A trial determines the truth or falsity of the petition beyond a reasonable doubt. |
| After a verdict of guilty, a sentencing hearing is held to determine the sentence. | After a finding of delinquency, a sentencing hearing determines if the juvenile is in need of supervision or care. |
| A convicted person may be placed on probation, fined, or sentenced to a specified length of confinement in a jail or prison. | Juveniles found guilty are made wards of the court. They may be placed on probation, removed from their family committed and given an unspecified length of confinement to a state institution. |
| Before the end of a prison term, a prisoner may be released and put on parole. | After release from confinement, juveniles may be supervised in a program of aftercare or parole. |
| Proceedings and records are public. | Proceedings are for the most part confidential and records may be expunged. |
| The main goal is punishment. | The process is governed by principals of rehabilitation and restorative justice. |

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