

# Assuring the Future of Developmental Reform in Juvenile Justice

## Recommendations of the Fourth Wave Forecasting Project

The mid-1990s saw the beginning of resistance to the punitive reform in juvenile justice that had gripped the nation for about ten years. A new perspective on juvenile justice arose, acknowledging that adolescents needed a different response to their offending than for adults. The reform proposed that a developmental approach, consistent with adolescents' relative immaturity, would offer better prospects for youth and public safety. During the ensuing twenty years, this developmental reform took hold nationwide and began changing the face of juvenile justice.

Lessons of history tell us that policy reforms require maintenance. They may be robust initially but meet changing times that challenge their continuance. Sometimes they have inherent vulnerabilities.

What are the future challenges to the recent developmental reform in juvenile justice? How can it best be sustained?

The MacArthur Foundation, during the final year of its *Models for Change* initiative, supported a project to address these questions. It sought consensus among an expert panel about challenges facing the future of the developmental reform in juvenile justice and what might be needed to sustain it. This brief is based on the panel's consensus.

### The Rise of the Reform

The fundamental guiding point of the reform was simple: juvenile offenders are adolescents, not adults. More complex was the process that brought about the juvenile justice system's current developmental reform.

The new developmental perspective was driven in part by key scientific research initiatives, especially by the MacArthur Foundation's Research Network on Adolescent Development and Juvenile Justice (1997-2009).<sup>1</sup> The Network's research offered a scientific basis for the reform.

It demonstrated, consistent with new studies of brain development, that adolescents were relatively immature in their abilities to self-regulate their behavior, make decisions in risky situations, and resist being overly influenced by their peers.<sup>2</sup> Moreover, offending tended to decrease as youths matured beyond adolescence.

A number of advocacy projects—notably, the MacArthur Foundation's *Models for Change* initiative,<sup>3</sup> and the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative<sup>4</sup>—began to support developmentally-appropriate

implementation of laws and practices nationwide for responding to juvenile offenders. The tireless efforts of a network of juvenile advocacy organizations and experts eventually had enormous impact on grass-roots operations, policies and legislation for juvenile justice systems.

The most visible evidence of the reform's impact was adoption of its principles at some of the nation's highest levels of law and policy. In 2013, the National Research Council offered the new developmental perspective as the future guide for policy in federal agencies charged with improving juvenile justice.<sup>5</sup> And by that time, three U.S. Supreme Court cases had decided, based partly on the new developmental research, that the Constitution required courts to acknowledge juveniles' immaturity as potential mitigation when they were sentenced for major crimes.<sup>6</sup>

This developmental framework for juvenile justice has been called the "Fourth Wave" reform. The first reform was the birth of juvenile justice itself in 1899 as a system of law and rehabilitation for youth separate from the criminal justice system. The second wave of the 1960s and 1970s brought due process to juvenile courts, recognizing essential rights for youthful offenders. The third wave, beginning in the 1980s, transformed juvenile justice policies to emphasize punishment, making our responses to youthful offending more like those for adult offenders. The Fourth Wave reform contradicts premises of the third. It offers a developmentally-appropriate way to assure public safety and the positive growth of adolescents, whose offending most often is a consequence of their immaturity.

### How Can We Sustain the Reform?

The Fourth Wave developmental reform has demonstrated great strength in its ascendance. Yet we cannot say that it has transformed juvenile justice. The effort has gained national recognition in law and policy, but translating policy into effective practice requires many years. Grassroots model programs are in place across the nation to demonstrate the reform's value, but models do not accomplish their purpose until they are widely adopted. And many of the laws and practices of the punitive third-wave reform still are in place. Moreover, the financial and organizational support of philanthropic foundations that lifted the developmental reform to its current potential cannot be expected to continue indefinitely. What is

needed to assure the Fourth Wave's continued influence on positive outcomes for youthful offenders and public safety?

### A Fourth Wave Forecast

To address this question, the MacArthur Foundation commissioned a "Forecasting Project." The project sought not to predict the Fourth Wave's trajectory, but to forewarn the reform about its most likely future challenges and vulnerabilities. This forewarning could guide future efforts to sustain the reform's growth.

The Forecasting Project's method and structure employed a synthesis of strategies used in various other fields (e.g., national security, cyber systems security, commercial interests) for assessing potential vulnerabilities of organizations or systems. The process centered on a panel of national experts with diverse roles in the developmental juvenile justice reform. The panel met several times during 2015 to engage in both open-ended and structured exploration of challenges to the reform's future.

The process used features of the Delphi Method<sup>7</sup> to facilitate group consensus in forecasting the probability and potential consequences of vulnerabilities for the reform. From a large number of initial possibilities, the panel arrived at a set of future concerns that achieved consensus regarding their greater likelihood of occurring and greater damage if they occurred. The Project also reached consensus about potential ways to respond to these concerns to reduce their negative impact.

During its deliberations, the Forecasting panel decided to focus its concerns on sustaining the impact of the principles and imperatives of the Fourth Wave reform, not necessarily its current products. The reform has promoted many specific programs in juvenile justice systems—for example, improving diversion from juvenile justice, creating mental health screening in detention centers, reducing the school-to-prison pipeline, and reducing sentencing as adults. Yet the panel recognized that some programs are right for the time in which they are developed, but not necessarily for generations in a future America we cannot foresee. What must be sustained, then, are the developmental principles and concepts that guide the reform as it evolves and adapts to societal change. The National Research Council created seven hallmarks of a

*“There are risks and costs to a program of action—  
but they are far less than the long range cost of  
comfortable inaction.”* —JOHN F. KENNEDY

developmentally-informed direction for juvenile justice reform:<sup>8</sup>

- Accountability without criminalization
- Alternatives to justice system involvement
- Individualized response based on assessment of needs and risks
- Confinement only when necessary for public safety
- A genuine commitment to fairness
- Sensitivity to disparate treatment
- Family engagement

### What Will Challenge the Reform?

The Forecasting Project envisioned three clusters of likely challenges with important potential consequences for the Fourth Wave reform’s future: (a) collaboration and leadership, (b) societal demands, and (c) discontinuities within the reform itself.

#### ***Collaboration and Leadership***

The seeds sown in the early years of the reform have shown signs of taking root. This happened largely through the efforts of a nationwide network of organizations, programs and people, working collaboratively with coordination across diverse areas within juvenile justice, science, and the community. The roots of the reform, however, have not had time to sink deeply. The principles are not yet culturally embedded.

Strengthening the roots will be difficult if not coordinated across a network of organizations such as those that participated in the initial reform. Philanthropic organizations that enabled their initial collaboration cannot be expected to play that role indefinitely. Without centralized coordination, the reform may suffer from fragmented efforts in the future, each group engaged in its own limited initiative without networked collaboration.

Many of the leaders of organizations that guided the Fourth Wave’s ascendance eventually will move on to other roles, as will reformers at the state and community levels. The reform may falter if it lacks leadership for the future or if new persons in national and local leadership positions have inadequate knowledge of the reform’s lessons during its early development.

#### ***Societal Demands***

The Forecasting panel anticipated four factors that are likely to arise in American society generally or in specific social systems outside juvenile justice that could challenge the Fourth Wave’s growth.

- ***Trends in other Social Systems:*** Juvenile justice interacts with many other child-serving systems (such as education, medical services, and social services). Moreover, it is influenced by policies of non-child-serving entities (such as the criminal justice system, federal mental health policies, and federal immigration enforcement policies). Changes in these “external” policies and practices are inevitable across time. Although difficult to predict, they will produce challenges that require close monitoring.
- ***Public Safety Concerns:*** Crime rates historically rise and fall in cycles, whatever justice policies are in place. Crime rates have been low for a decade and therefore are very likely to rise. When they do, this may be misconstrued to discredit current policies. The annual recidivism rate is a short-sighted measure of success that does not recognize the longer-range benefits of practices aimed at youth development more broadly. Yet any rise in crime rates or recidivism could produce a call for a return to a more retributive public safety policy.

- **Racial Bias:** Racial and ethnic bias in policing, the justice systems, and society leads to disproportionate minority processing of youth through the courts. This is not only unfair, but also creates mistrust of the system as a whole, which could reduce minority community participation in Fourth Wave reforms.
- **Resistance:** The juvenile justice system still operates in part according to policies, practices, and administrative ideologies that conflict with the newer Fourth Wave developmental values. Resistance to Fourth Wave change sometimes offers constructive debate and positive evolution. Offered in a competitive, zero-sum context, however, ideological challenges to the Fourth Wave can influence public opinion in ways that may weaken the reform's effectiveness.

### **Internal Discontinuities**

Some challenges might come from within the reform itself. Initiatives operating under Fourth Wave principles could create conditions that are counter to the long-range objectives, offering points of vulnerability.

- **Behavioral Health Net-Widening:** The Fourth Wave's improvement of behavioral health services in juvenile justice programs can lead to increases in youths charged with delinquencies and entering the system. This can happen especially in communities in which behavioral health services are difficult to access, so that police and parents turn in frustration to the juvenile justice system as a behavioral health resource for their children.
- **Residual Changes<sup>9</sup> in the Juvenile Justice Population:** Some Fourth Wave initiatives are likely to change the demographics of the population that is in the juvenile justice system's custody. For example, raising the age of juvenile jurisdiction produces a slightly older juvenile justice population. Successful front-door diversion reduces the number of low-risk, first-time/one-time offenders entering the juvenile justice system. Thus, those who comprise the system's youth will be, on average, older and more persistent or serious offenders than our past youth in juvenile

custody. This has implications for future reports of recidivism rates (possibly higher) and for challenges to secure corrections programs (possibly greater management issues and poorer outcomes).

- **Conceptual Discontinuities:** Developmental rhetoric sometimes creates seeming "internal" contradictions and conflicts, thus offering challenges to maintaining the developmental message. For example, if youths' less-mature decision making reduces their blameworthiness, should it not also reduce their claims to make other rights-based decisions (e.g., medical consent)? Given evidence of youths' developmental immaturity, might this be converted to suggest their greater danger and greater need for incapacitation, especially for serious crimes at younger ages?

## **Assuring the Future of the Reform**

The Forecasting panel recommended several preemptive actions that could avoid or reduce the potential negative impact of the challenges and vulnerabilities it identified.

### **Creating an Enduring Infrastructure**

Philanthropic assistance created a network of organizations that fostered the reform's ascendance. Such assistance cannot be indefinite. We must seek other ways to nurture and grow those relationships, and new organizations must be added. In addition, some organizations should examine their capacity to provide training for future leaders of the developmental reform to replace those who have completed their work.

### **Advocacy Outreach**

The reform should seek supportive voices that can influence public and professional opinion in ways that will sustain Fourth Wave initiatives. For example, youth and family projects could give testimony to the value of developmentally-relevant juvenile justice responses in their own lives. A national prosecutors' organization that is open to progressive juvenile justice policies could offer professional alternatives to a juvenile justice system based on a criminal justice model.

### ***Monitoring and Vigilance***

The Forecasting Project recommended the design and initiation of a method for monitoring evolving challenges to the Fourth Wave reform. Early detection of national or local events and trends in real time could alert collaborators who might be able to address such challenges in a timely way.

### ***Promoting Theoretical and Empirical Supports***

Advancing a youth development perspective in juvenile justice will require continued research on a wide range of questions. Within that broader context, the Forecasting panel identified some research needs with specific importance for addressing challenges forecasted by the Project. The following are selected examples:

- Developing decision guides for police and courts that might reduce racial bias in juvenile justice processing
- Expanding research on secure juvenile corrections to determine the potential effects of a changing population of incarcerated youth due to diversion and other Fourth Wave reforms
- Creating ways to measure critical outcomes of juvenile justice programs that assess not only short-term recidivism but also the longer-term impact on youth development
- Carefully examining the potential benefits and liabilities of extending juvenile jurisdiction to include transition-age youth (e.g., ages 18-21)
- Examining ways to reduce “behavioral health net-widening,” by developing juvenile justice and community collaborative funding strategies, as well as standards for appropriate and inappropriate treatment objectives for juvenile justice programs

### **Going Forward**

The challenges identified by the Forecasting Project indicate that sustaining the “Fourth Wave” reform will require continued initiative on the part of organizations and individuals who so effectively contributed to the reform’s rise.

A major challenge will be maintaining collaboration without a central coordinating body. Individual organizations that have been at the heart of the reform must examine their capacities to link with other organizations in common initiatives. They must collaborate to find ways to convene, share, support and stimulate the maturation of the reform and to continue to grow its leadership. Sustaining the reform will require a continuous process of education to the reform’s principles in light of ordinary “turn-over” in local, state and national providers and policy makers.

Many of the challenges identified by the Project require vigilance as the landscape of juvenile justice changes in ways that might have negative implications for the reform. We must be alert to changes in other social systems with which juvenile justice interacts, changes in patterns of juvenile offending, new legislative proposals, and political and economic shifts. When detected, such changes may require adjustments to the reform or persuasion to mitigate effects that could weaken the reform. Vigilance is required at both local and national levels, as well as consciousness of the need to alert others and enlist their aid in responding.

Certain challenges identified by the Forecasting Project are best managed by research initiatives. The reform has engaged federal agencies that can support continuing research consistent with the developmental perspective in juvenile justice. Researchers in academic settings are encouraged to consider the Project’s recommendations for areas of research that can strengthen the future of the reform.

Having begun about twenty years ago, the Fourth Wave developmental reform in juvenile justice is at a critical stage in its history. The reform’s early years produced a solid basis for its future maturation. With proper attention to its potential vulnerabilities, the developmental reform in juvenile justice can evolve to adapt to future changes in society, continuing to better meet the needs of youth, families and public safety.

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- 1 <https://www.macfound.org/networks/research-network-on-adolescent-development-juvenil/>
  - 2 Elizabeth Scott and Laurence Steinberg, *Rethinking Juvenile Justice*, Harvard University Press (2010).
  - 3 <http://www.modelsforchange.net/>
  - 4 <http://www.aecf.org/work/juvenile-justice/jdai/>
  - 5 National Research Council. *Reforming Juvenile Justice: A Developmental Approach*. National Academy of Sciences Press (2013).
  - 6 Roper v. Simmons, 2005; Graham v. Florida, 2010; Miller v. Alabama, 2012.
  - 7 The Delphi Method employs a group process that generates an inventory of possible future events, then uses individual quantitative ratings of those possibilities as feedback for further group processing. The process is iterative until a reasonable consensus is reached. Rowe and Wright, The Delphi technique as a forecasting tool: issues and analysis. *International Journal of Forecasting*, Vol. 15, pp. 353-375, 1999.
  - 8 National Research Council. *Implementing juvenile justice reform: The federal role*. National Academy of Sciences Press (2014). See also MacArthur Foundation's *Models for Change* core values statement at <http://www.modelsforchange.net/>
  - 9 "Residual" refers to what is remaining when some quantity is removed.

**Models for Change: Systems Reform in Juvenile Justice** was a multi-state initiative of the John D. and Catherine T. MacArthur Foundation. It guided reforms in policy and practice in juvenile justice during 2004 to 2015, advancing a fair, effective, rational and developmentally appropriate juvenile justice system.

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