

# Juvenile Policy and Code Development Virtual Learning Series- Session Two

## Philosophy of Your System Findings & Purpose Provisions that Represent the Values of the Community

**Host: The OJJDP Tribal Youth Resource Center**

Presentation Date: October 30, 2020

Time: 11am AKT/ 12pm PT/ 1pm MT/ 2pm CT/ 3pm ET



Developed and Presented By:  
Hon. Pat Sekaquaptewa

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# Tribal Youth Resource Center



As a training and technical assistance provider for the Office of Juvenile Justice and Delinquency Prevention, the Tribal Youth Resource Center as part of the Tribal Law and Policy Institute and its partner the National Native Children's Trauma Center bring an in-depth understanding and appreciation of American Indian and Alaska Native history, customs, and Indigenous justice systems.

Native youth benefit from a value held by Native peoples:  
*Our Children are Sacred.*

# Course Presenter:



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# Session Facilitation:



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OJJDP Tribal Youth Resource Center

# Tribal Youth Resource Center

## Coordinated Tribal Assistance Solicitation

- Purpose Area 8- Tribal Juvenile Healing to Wellness Courts
- Purpose Area 9- Tribal Youth Programs



# Overview of Session 2

- This session will cover:
  1. The development of juvenile justice processes that:
    - reflect local values
    - have the desired impacts
    - have the preferred outcomes
  2. Development processes that provide for:
    - meaningful behavior change
    - fairness
    - accountability
  3. Ineffectual system responses that:
    - may thrust youth toward harm
    - further delinquency
    - may thrust youth toward the adult criminal justice system



Earth Trekkers

<https://www.earthtrekkers.com/ultimate-guide-monument-valley/>

# Learning Objectives for Session 2

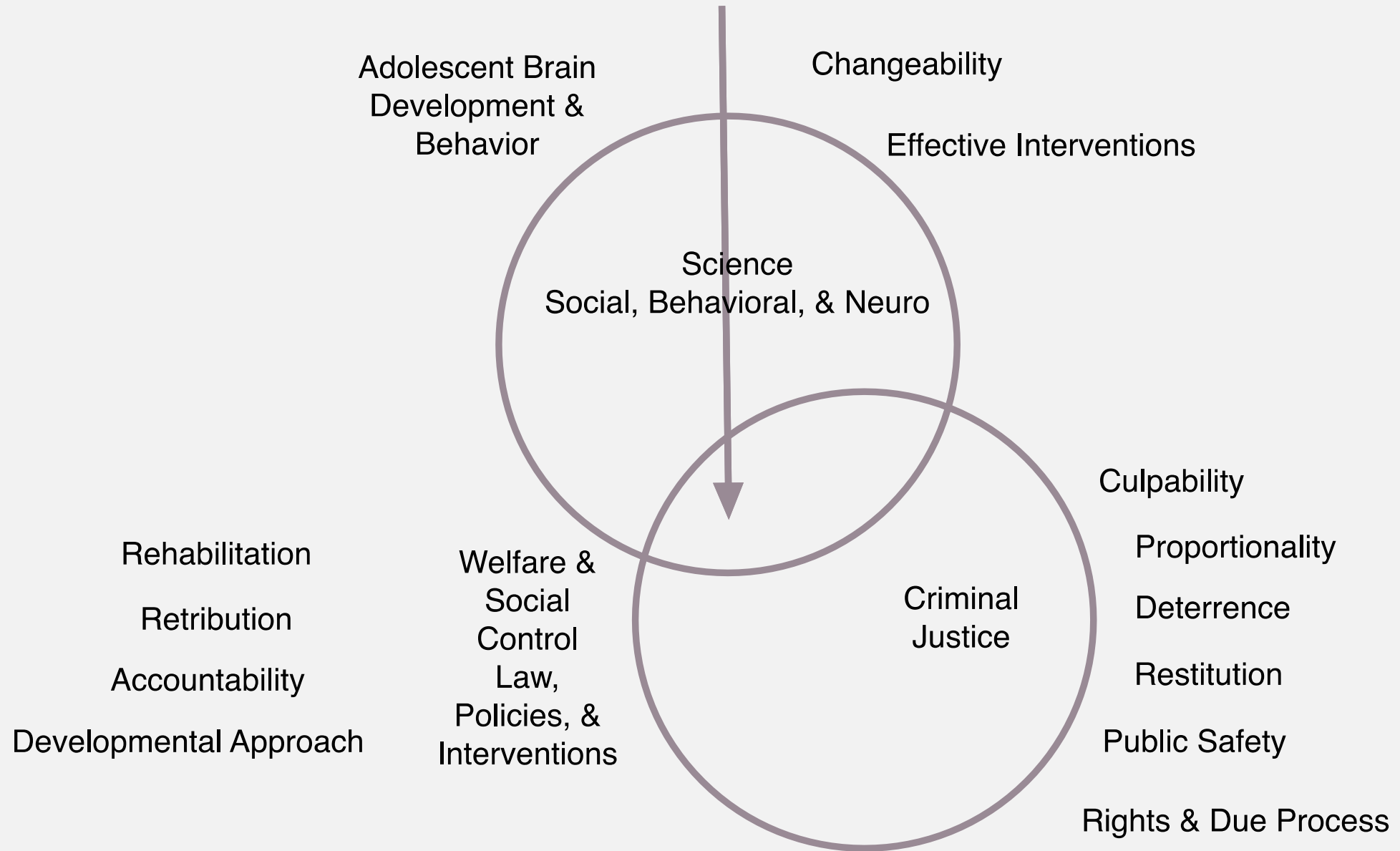
- Series Participants will learn about:
  1. Different views about which philosophy should underly the juvenile justice system
    - values & social control
    - fairness, justice, accountability, & public safety
    - adolescent development & behavior
  2. The hybrid philosophical approach of the Model Indian Juvenile Code (2016 Revision)



<https://lawliberty.org/book-review/has-philosophy-lost-its-way/>



# Juvenile Justice Arena



# The History of the Juvenile Court & Philosophical Approaches

- The Traditional Court – Young Offenders as Children
  - Early 1900's establishment of the juvenile court
    - @ the heart of the Progressive Agenda
  - Mission of Juvenile Court
    - Promoting the welfare of youths involved in crime
    - As well as, that of children whose parents failed to provide proper care
  - Goal
    - Expand the boundary of childhood to include adolescence (previously only young children insulated from criminal responsibility)
  - Reformers envisioned ...
    - A court & correctional system in which older as well as younger youths would receive rehabilitation rather than punishment

*"[T]he child of proper age to be under [the jurisdiction of the juvenile court is encircled by the arm of the state, which, as a sheltering, wise parent, assumes guardianship and has power to shield the child from the rigors of the common law and from neglect or depravity of adults."*



[https://en.wikipedia.org/wiki/Miriam\\_Van\\_Waters](https://en.wikipedia.org/wiki/Miriam_Van_Waters)

**Miriam Van Waters** (October 4, 1887 – January 17, 1974) was an American prison reformer of the early to mid-20th century whose methods owed much to her upbringing as an Episcopalian involved in the Social Gospel movement.

# The History of the Juvenile Court & Philosophical Approaches (cont.)

- The Traditional Court – Young Offenders as Children (cont.)
  - Some scholars argued ...
    - The Progressives' intentions were mixed – along with their concern for child welfare, many reformers had a social control agenda, aiming to Americanize immigrant youths and generally to minimize the influence of poor, urban (often foreign) parents
- BUT, it is important to remember that Progressives had faith in the effectiveness of rehabilitation
  - The profession of social work was established
  - Psychiatry & psychology emerged as scientific disciplines
  - Optimism about the potential to understand human behavior & to treat pathological conditions
- Reformers believed that this knowledge & expertise would provide a basis for treatment that would lead delinquents to abandon their criminal ways



<https://interactive.wttw.com/playlist/2017/03/07/groundbreaking-contributions-women-hull-house>

The framework for the nation's first juvenile court was created in the late 19th century by a group of Progressive Era women in Chicago. They were impassioned social activists, and many were among the first generation of American women to attend college. At the time, increased immigration, rapid industrialization, and urbanization presented new challenges and inequities. From their base at Jane Addams' Hull House they envisioned, advocated for and created bold new solutions, including a separate justice system that would be designed specifically to meet the unique needs of kids and families.

<https://www.wbez.org/stories/how-chicago-women-created-the-worlds-first-juvenile-justice-system/e1c8262c-a6ae-4c20-8fd3-f9ed4ab26ba9>

- 20th Century – the rehabilitative model shaped the operation of the juvenile court
  - English Common Law supported youth as young as 7 being held criminally accountable for behavior & receiving the same sanctions as adults including incarceration
- 1899 – 1<sup>st</sup> juvenile court established in Chicago, IL
- 1905 – Example: Minnesota
  - 1<sup>st</sup> juvenile court established for youth under 17
  - Youth 7-12 presumed incapable of committing crime
  - Youth over age 12 presumed criminally liable
- 1925 – Juvenile courts in almost every state
- 1909 – Example: Minnesota
  - 1<sup>st</sup> set of statutes for “delinquent children” included:
    - “incorrigible, idle, absent from home, those associating with thieves and other immoral persons; frequenting saloons, pool rooms and houses of ill-fame; wandering the train yards or streets; and using vile or obscene language”



[https://us.sagepub.com/sites/default/files/upm-assets/95059\\_book\\_item\\_95059.pdf](https://us.sagepub.com/sites/default/files/upm-assets/95059_book_item_95059.pdf)

# The History of the Juvenile Court & Philosophical Approaches (cont.)



In 1907, the world's first official juvenile court and detention center was built in Chicago at Halsted and Ewing streets (formerly 202 Ewing St), right across the street from Hull House. Courtesy [chuckmanchicagonostalgia.wordpress.com](http://chuckmanchicagonostalgia.wordpress.com)

<https://www.wbez.org/stories/how-chicago-women-created-the-worlds-first-juvenile-justice-system/e1c8262c-a6ae-4c20-8fd3-f9ed4ab26ba9>

- The Rehabilitative Model & the Juvenile Court
  - Goal of treatment influenced ...
    - Informal processes/no need for procedural safeguards
    - Process of “adjudication”
      - Not a criminal trial
      - Not an adversarial hearing
      - Purpose of Hearing
        - To discern the sources of the child’s criminal conduct
        - To determine the correctional disposition that would set him on the right path



<http://www.encyclopedia.chicagohistory.org/pages/346.html>

*From the establishment of its first court of record in 1831, Chicago has developed an innovative and influential court system. Chicagoans created the first juvenile court to deal with the unique problems of young offenders*

- Goal of treatment influenced ...
  - Process of disposition
    - Delinquency dispositions were open-ended & indeterminate
      - Made sense given their rehabilitative purpose ...
        - Treatment should end when the youth is cured
        - Duration bore no relation to the seriousness of the offense (principle of penal proportionality)
  - Juvenile court judges relatively free to order dispositions based on their judgement about the youth's "needs," without regard to the seriousness of his criminal conduct



<https://theyouthforum.net/category/juvenile-justice/>

*115 years ago, Illinois passed the Juvenile Court Act of 1899, the nation's first such law recognizing that children enmeshed in the criminal justice system require specialized treatment. Juvenile crime was a pressing problem of the late nineteenth century, especially in poor immigrant city neighborhoods, and the only legal remedy was to try children as adults and incarcerate them with older offenders. Reform-minded Chicagoans began campaigning for an alternative, and pressed for the enactment of this law, authorizing judges to find that children were delinquent, dependent, or neglected, and encouraging alternatives to jail, including probation at home or in a foster home, or placement in a training school or reformatory. 14*

- Goal of treatment influenced ...
  - Roles of those involved
    - The judge, probation officers, & social workers were all to work together on the youth's behalf
    - Also mental health professionals (diagnosis & prescriptions for treatment)
    - No need for a defense attorney
    - Juvenile judges lacked legal training



[https://us.sagepub.com/sites/default/files/upm-binaries/19434\\_Section\\_I.pdf](https://us.sagepub.com/sites/default/files/upm-binaries/19434_Section_I.pdf)

A juvenile court proceeding in 1910. Judges often conducted hearings informally and privately in their chambers in the first juvenile courts. (© CORBIS)

- The Collapse of the Rehabilitative Model
  - **By 1925 -**
    - Every state had established a separate juvenile justice system
  - **For ~ 70 years -**
    - The juvenile court operated with its informal procedures
    - The proclaimed purpose of offering rehabilitation to children involved in crime
  - **1960s -**
    - The rehabilitative model began to crumble
  - **1970s -**
    - The rehabilitative model was in disrepute & had pretty much collapsed, creating a conceptual vacuum
  - **Criticisms of the juvenile court -**
    - Launched by youth advocates
    - Claimed that adolescents charged with crimes were getting a bad deal in the system that was designed to serve their needs
    - Claimed the juvenile system failed to provide treatment
    - BUT, maintained the myth that rehabilitation was its purpose as the justification for denying juveniles the procedural rights given to adult criminal defendants

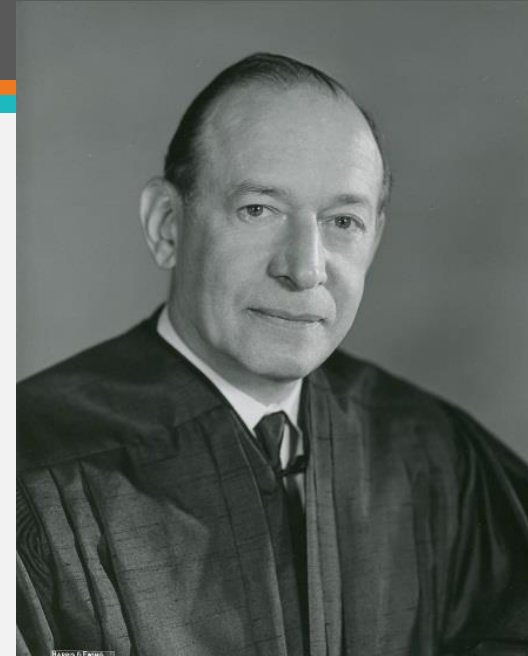


<https://www.shutterstock.com/editorial/image-editorial/juvenile-delinquency-pikeville-usa-6635437a>



## 1967 – In re Gault

- Extended due process protections to youths in delinquency proceedings
- The Court concluded ...
  - that youths facing adjudication in the delinquency proceedings
  - like adult criminal defendants
  - faced a loss of liberty
  - & thus were entitled to certain due process protections
  - as mandated by the 14th Amendment of the U.S. Constitution
- Juvenile, like adults, had ...
  - a right to notice of the charges
  - a right to confront witnesses against them
  - a privilege against self-incrimination
  - a right to counsel



Justice Fortas  
In re Gault, 387 U.S. 1  
(1967)

<http://juvenilecompetency.virginia.edu/legal-precedents/re-gault>

Juveniles had “the worst of both worlds.” They had no right to legal counsel, and delinquency proceedings lacked the careful factfinding of an adversarial criminal trial; yet, dispositions, at least for some youths, meant confinement in correctional facilities that, from the incarcerated youth’s perspective, may have been hard to distinguish from prison.

- What went wrong with the rehabilitative model?
  - The model failed to recognize, & accommodate explicitly, the inherent tension between ...
  - The state's professed purpose of acting in the interest of young offenders

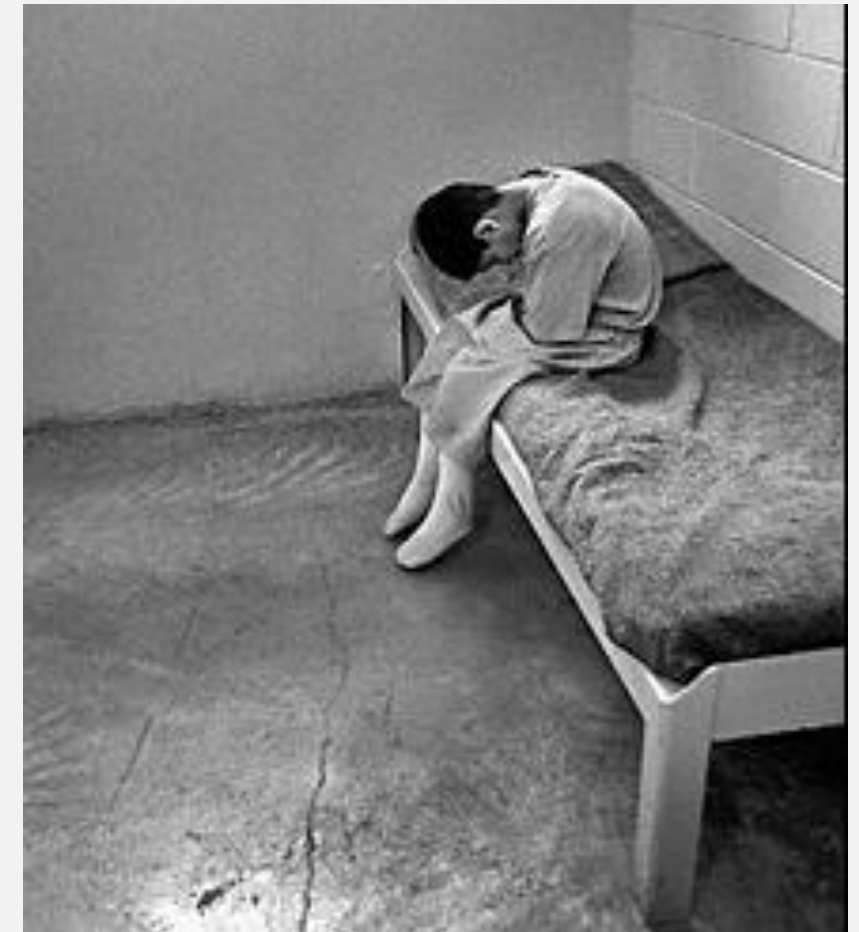
AND

- Its interest in retribution & protecting society against those who engage in criminal conduct



<https://reinventingtherules.com/2013/06/09/juvenile-justice-systems-contribute-to-cycle-of-poverty-in-the-us/>

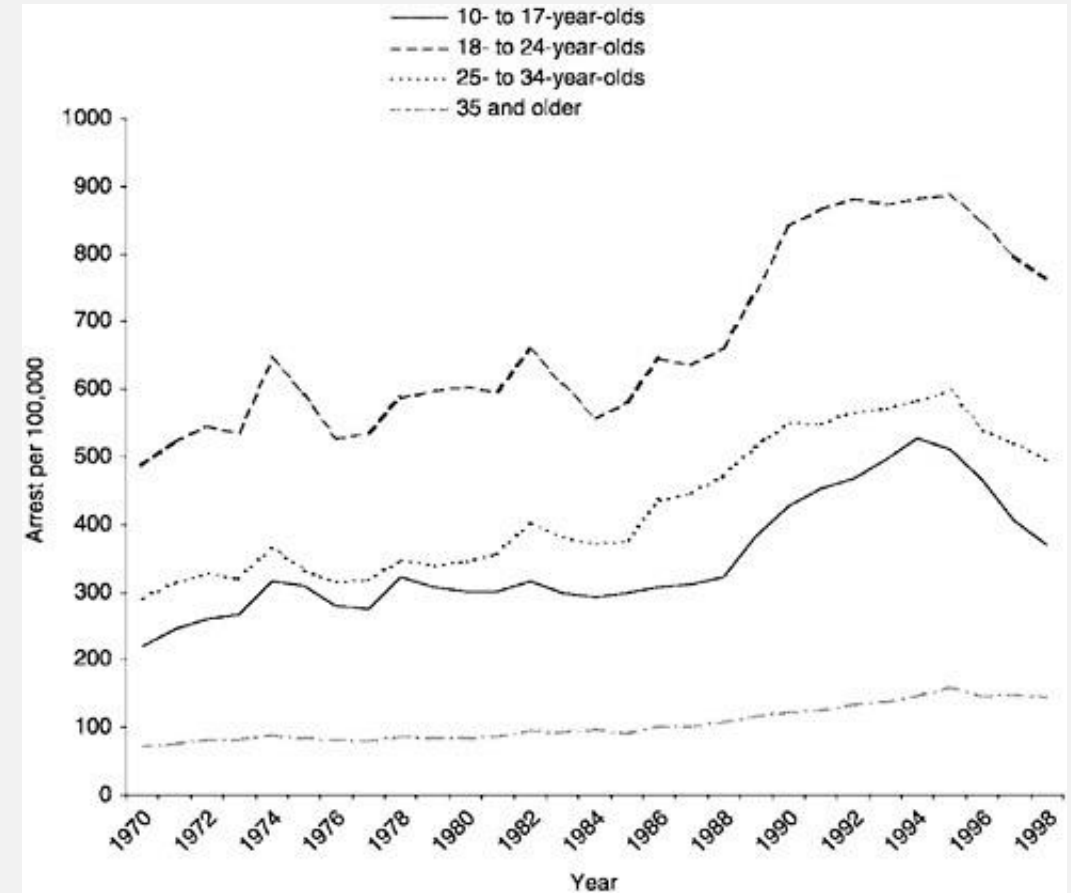
- Range of Punitive Reforms
  - 1980s & 1990s –
    - lawmakers, with the primary goals of protecting the public & punishing the offender
    - shifted the conventional boundary of childhood downward
- Legislative Reforms
  - lowered the age of judicial transfer
  - giving criminal courts automatic jurisdiction over certain youths
  - legislative waiver statutes
  - direct file statutes
  - a long laundry list of transferable offenses or crimes subject to automatic waiver (not just the most violent crimes)
  - harsher, longer juvenile sanctions with greater use of incarceration
  - extension of juvenile court jurisdiction into adulthood w/ blended sentencing statutes



<https://reinventingtherules.com/2013/06/09/juvenile-justice-systems-contribute-to-cycle-of-poverty-in-the-us/>

- Getting Tough on Kids

- Mid to late 1980's - 1993 - violent crime wave
- 1990s - previously violent crime rates rose, attacks on the juvenile justice court intensified
- Media images of teenage street gangs spreading fear in neighborhoods
  - Young offenders depicted as "super-predators"
- The public thought the juvenile court's lenient treatment of young offenders contributed to the crime problem
  - Failure to hold young offenders accountable for their crimes encouraged them to engage in criminal activity
- Reality Check
  - By the 1980's the juvenile court had evolved
  - Delinquency procedures more formalized
  - Accountability & public protection were emphasized increasingly in the disposition of young offenders



<https://www.nap.edu/read/9747/chapter/4#34>

FIGURE 2-2 Arrest rates for violent index crimes. Source: Arrest data from Federal Bureau of Investigation (1971-1999). Population data from Bureau of the Census (1982) and online at <http://www.census.gov/population/estimates>.

# Purpose Statements from the Model Tribal Juvenile Code

Model Indian Juvenile Code (2016 Revision)

1.01 PURPOSES

1.01.110 Purposes



## 1.01 PURPOSES

### 1.01.110 Purposes

This title shall be construed and interpreted to fulfill the following purposes:

(a) to secure the care, protection, and mental and physical welfare of children coming within the provisions of this title;

(b) to preserve and retain the unity of the family and to carry out the other purposes of this title in a family environment whenever possible, separating the child from the child's parents only when necessary for the child's welfare or the safety and protection of the community;

(c) to distinguish, in judicial and other processes affecting children coming within the provisions of this title, between the child who has committed a delinquent act and the child in need of services, and to provide appropriate and distinct dispositional options for these children and their families;



<https://www.indianz.com/News/2015/018622.asp>

## 1.01 PURPOSES

### 1.01.110 Purposes

This title shall be construed and interpreted to fulfill the following purposes:

(d) to remove from children committing delinquent acts the legal consequences of criminal behavior, and to substitute therefore programs of supervision, treatment, and rehabilitation which:

- (1) hold them accountable for their actions;
- (2) provide for the safety and protection of the community; and
- (3) promote the development of competencies which will enable them to become responsible and productive members of the community;

(e) to set forth procedures through which the provisions of this title are to be executed and enforced, while ensuring the rights of the parties are recognized and protected; and

(f) to coordinate services for children and their families, with an emphasis on prevention, early intervention, diversion and community-based alternatives.



<https://www.csmonitor.com/USA/Justice/2019/0327/Native-justice-How-tribal-values-shape-Judge-Abby-s-court>

# Relevance of Adolescent Brain Development to Tribal Law

- Big Points/Questions\*

1. Age Boundaries
2. Judicial Discretion
3. Sentencing
4. Education in Corrections



<https://clbb.mgh.harvard.edu/steinberg/>

*\*Attribution to the work of Laurence Steinberg, Ph.D., Distinguished University Professor and Laura H. Carnell Professor of Psychology at Temple University*

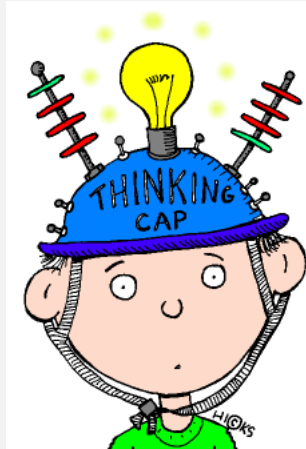


# Adolescence is a time of important changes in how the brain functions (not just in its structure)

- Self-regulation
- Responding to rewards
- Response to stimuli



[https://www.123rf.com/photo\\_34171406\\_rewards-word-in-colorful-stars-illustrating-a-reward-bonus-prize-enticement-or-incentive-for-good-pe.html](https://www.123rf.com/photo_34171406_rewards-word-in-colorful-stars-illustrating-a-reward-bonus-prize-enticement-or-incentive-for-good-pe.html)



[https://nrcgt.uconn.edu/underachievement\\_study/self-regulation/sr\\_section7/](https://nrcgt.uconn.edu/underachievement_study/self-regulation/sr_section7/)

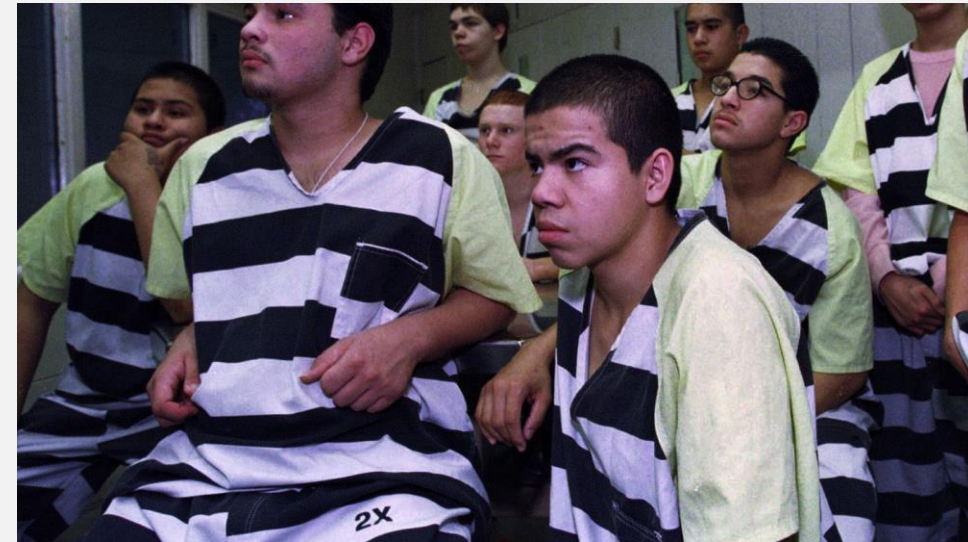


<https://abcnews.go.com/Lifestyle/scaredy-cats-absolutely-terrified-cucumbers/story?id=35953032>

# Take-aways Re the Implications of the Adolescent Brain Development for Tribal Juvenile Policy & Code Development

## 1. Age Boundaries

- **Laws must establish age boundaries**
  - E.g., under the Model Indian Juvenile Code (2016 Revision), ...
    - the tribal juvenile court has jurisdiction over a “child,”
    - defined to include
    - “a person who ... is under eighteen (18) years of age”
- **The science makes a strong argument for treating adolescents & young adults differently than children and adults**
  - E.g., under the Model Indian Juvenile Code (2016 Revision), ...
    - the tribal juvenile court also has jurisdiction over a “child,”
    - defined to include “a person who is eighteen (18) years of age or older and ...
    - is alleged, or found by the Juvenile Court to
    - have committed a delinquent act ...”



<https://www.vox.com/2014/5/22/5740168/charging-teenagers-as-adults-direct-file-safety-recidivism-juvenile-justice>

# Take-aways Re the Implications of the Adolescent Brain Development for Tribal Juvenile Policy & Code Development (cont.)

## 2. Judicial Discretion

- **Example of greater judicial discretion**
  - E.g., under the Model Indian Juvenile Code (2016 Revision), ...
    - The judge has the “discretion” to to determine whether a child is in need of “supervision, treatment, or rehabilitation”
    - AND to make the appropriate “disposition”
- **Examples of less judicial discretion**
  - However, the Model Code does require the judge to enter an order deferring disposition,
    - UNLESS the judge determines that the best interests of the child or the community cannot be adequately addressed through diversion options



<https://www.latimes.com/local/la-me-yurok-tribal-judge-20140305-dto-htmlstory.html>

# Take-aways Re the Implications of the Adolescent Brain Development for Tribal Juvenile Policy & Code Development (cont.)

## 3. Sentencing

- Differential sentencing should turn, not simply on the state of adolescence (the adolescent's underdeveloped brain), BUT also on his/her ability to change (mature)
- E.g., in the Model Indian Juvenile Code (2016 Revision), ...
  - The judge is required to “enter the least restrictive orders” & to consider ...
    - the nature & seriousness of the delinquent act
    - the circumstances, age, mental & physical condition of the child
    - the child's culpability, as indicated by the circumstances of the particular case, &
    - the child's past record of delinquency

# Take-aways Re the Implications of the Adolescent Brain Development for Tribal Juvenile Policy & Code Development (cont.)

## 4. Education in Corrections

- Most corrections systems are not set up to provide “positive & effective educational experiences” which are critical during adolescence
- The Model Indian Juvenile Code (2016 Revision), ...
  - Provides for, but does not favor, “secure juvenile detention”
  - It defines a “secure juvenile detention facility” as ...
    - any public or private facility
    - which includes construction fixtures
    - designed to physically restrict the movements & activities
    - of children detained therein



<https://www.npr.org/2015/07/31/428016692/juvenile-justice-system-failing-native-americans-studies-show>

# Take-aways Re the Implications of the Adolescent Brain Development for Tribal Juvenile Policy & Code Development (cont.)

- The Model Code limits "detention" by requiring that the judge "shall not" enter a disposition order providing for detention unless ...
  - No less restrictive alternative
  - There is clear & convincing evidence that the child should be detained ...
    - 1) substantial risk to health, welfare, person or property
    - 2) substantial risk that the child may leave or be removed from the jurisdiction AND
    - 3) three conditions are met:
      - Repeatedly failed to comply with orders
      - Less restrictive alternatives repeatedly failed
      - Detention is reasonably calculated to bring child into compliance
  - In no event shall a child be detained in a secure juvenile detention facility for "a total period exceeding that for which an adult could be incarcerated for the same act"



<https://www.npr.org/2015/07/31/428016692/juvenile-justice-system-failing-native-americans-studies-show>

# Lessons Learned

(for law changes & law implementation)

1. The philosophical approaches of many tribal juvenile laws & juvenile justice systems have likely been inherited from a bygone era of the western system ...
  - review the approach in your juvenile laws
  - to ensure that you agree with it & that it is a cultural match
2. The tribal juvenile justice system should ...
  - be fair to youth & their families
  - balance the therapeutic & cultural goals
  - with the goals of accountability & public safety

# Lessons Learned (cont.)

(for law changes & law implementation)

3. The Model Indian Juvenile Code (Section 1.01.110 Purposes) includes a hybrid philosophical approach, including ...
  - the care, protection, & mental & physical welfare of children
  - the preservation & retention of the unity of the family
  - the removal of the legal consequences of criminal behavior
    - for children committing delinquent acts
  - programs of supervision, treatment, & rehabilitation
    - which hold children accountable for their actions
    - provide for the safety & protection of the community
    - & promote the development of competencies
  - ensuring that the rights of the parties are recognized & protected
  - the coordination of services for children & their families with an emphasis on ...
    - prevention
    - early intervention
    - diversion
    - & community-based alternatives



# Lessons Learned (cont.)

(for law changes & law implementation)

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4. We know from the latest science that the adolescent brain is a developing brain which has the following implications in the tribal juvenile justice system ...
  - adolescents should be treated differently than adults
  - young adults should also be treated differently than adults
  - judges should be given flexibility by the tribal legislature to treat adolescents differently based on their individual circumstances
  - differential sentencing should take into account the developmental stage of the adolescent
  - if adolescents & young adults are detained, they should be provided with educational experiences in detention

# Resources

- Tribal Youth Resource Center,  
[www.TribalYouth.org](http://www.TribalYouth.org)
- Tribal Law and Policy Institute,  
[www.home.TLPI.org](http://www.home.TLPI.org)



Thank you

Thank you for your presence  
today.

