

**How to cite this article:**

Latifi, S. M. J., Abdollahi, E., & Safaei, M. (2026). Grounds for the Implementation of Extra-Penal and Differential Sanctions from the Perspective of Law and Economics: A Comparative Study of United States Law, *Law and Policy*, 4(5), 1-23. <https://doi.org/10.61838/jhrp.274>



Article history:
Original Research

Dates:

Submission Date: 05 November 2025

Revision Date: 17 February 2026

Acceptance Date: 24 February 2026

First Publication Date: 12 July 2026

Final Publication Date: 01 September 2026

Grounds for the Implementation of Extra-Penal and Differential Sanctions from the Perspective of Law and Economics: A Comparative Study of United States Law

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ABSTRACT

According to criminological studies and human rights doctrines, children and adolescents possess specific developmental and psychological characteristics that justify the adoption of a differential approach within criminal policy toward juvenile delinquency. The establishment of specialized judicial institutions, including juvenile courts, and the adoption of differentiated procedural rules—such as extending certain procedural leniencies applicable to juvenile proceedings to individuals under the age of 18—constitute mechanisms designed to safeguard defendants' rights within juvenile criminal procedure. The provision of special criminal safeguards represents one of the principal methods for ensuring procedural fairness and protecting the legal status of juvenile suspects. Nevertheless, the limited accessibility of specialized restorative programs for children and adolescents, together with the absence of full institutional separation between juvenile judicial authorities and ordinary courts from the trial stage through appellate review, has created structural deficiencies. These shortcomings have prevented Iranian criminal policy from following a unified and coherent framework in organizing the juvenile justice system and responding effectively to juvenile delinquency. By addressing these deficiencies, it may become possible to achieve, in the future, an efficient, comprehensive, and utilitarian system of juvenile criminal justice grounded in effectiveness and social benefit. Despite considerable similarities between the two legal systems, and notwithstanding the increased attention paid within Iranian criminal law—particularly following the enactment of the Islamic Penal Code of 2013—to extra-penal sanctions, significant differences remain between United States law and Iranian law regarding the implementation of such sanctions for juvenile offenders. The findings of this study indicate that in the United States, extra-penal sanctions constitute the primary response to crimes committed by children and adolescents, while decarceration serves as the dominant guiding principle for juvenile court judges. In contrast, this orientation has not been embraced to the same extent within the Iranian judicial practice.

Keywords: *Extra-penal sanctions; Differential criminal procedure; Juvenile offenders; Iranian legal system; United States legal system.*

Introduction

The extensive use of imprisonment as a criminal sanction dates back to the last two centuries. As the application of this form of punishment increased, prisons around the world gradually became overcrowded, to the point that inmate populations exceeded institutional capacity. On the one hand, the rise in the prison population, and on the



other, the growing awareness of the harmful consequences of imprisonment, led scholars and criminologists to shift their focus from pure penal severity toward the reform and rehabilitation of offenders through non-custodial sanctions. In this way, alternatives to imprisonment gradually gained a stable place within the punitive arsenal of various legal systems. By “traditional alternatives,” what is meant are measures that, since the earliest stages of modern legislation in criminal justice systems, have been implemented to avoid the destructive effects of prison and detention environments, while also serving the principal objective of reducing prison and detention populations. (1)

One of the important issues that should be examined within the field of criminal law is the analysis of criminal phenomena inspired by the law-and-economics approach. Although economic analysis of law has generally received greater attention in the domain of private law, and legal scholars have evaluated various aspects of private law through this lens, once punishments themselves are studied from this perspective, numerous questions arise that require foundational analysis—particularly regarding alternatives to imprisonment. Questions such as the extent to which the economic dimensions of imprisonment substitutes align with the premises of the economic analysis school, the effects of such sanctions on social welfare and job creation, and whether the core of economic analysis of law is ultimately grounded in greater efficiency and economic advantage, are among the central issues addressed in this thesis.

In the present study, written using an analytical method, the research first seeks—so far as necessary for examining the proposed issues—to clarify the substance of key concepts such as economic analysis of law, economic analysis of imprisonment substitutes, the notion of the “market,” and the core variables that shape criminal-law problems. It then examines, under the heading of economic analysis of criminal law, matters such as factors influencing the demand for crime, the analysis of crime supply and demand and their determinants, the economic analysis of the death penalty, and an evaluation of traditional prison-adjustment substitutes and related issues. Thereafter, through an economic and penal assessment of alternatives to imprisonment, it addresses topics such as the costs of crime, categories of crime costs, alternative penal sanctions, the economic analysis of crime prevention through substitutes, and other related issues.

The outcome of this analysis is that, from an economic standpoint, the scarcity of resources within society compels policymakers to choose among competing policy instruments—choices that are made with due attention to how actors within a “market” respond. Accordingly, the policymaker must assess these reactions so as to anticipate necessary measures for preventing subsequent consequences. To achieve this purpose, the policymaker must draw on positive analysis, normative analysis, and cost–benefit analysis. Such a criterion, by examining the costs and benefits of different policies, prescribes the option that—given limited resources—yields the greatest social effectiveness. From an economic viewpoint, evaluating the costs of crime and designing criminal-justice programs can substantially assist policymakers and implementing authorities, because such evaluations provide comprehensive information about the financial costs of programs and enable criminal policies to be structured in line with allocated budgets. (2)

Among the reasons criminal justice systems have tended toward recognizing and implementing extra-penal sanctions has been precisely the aim of economizing on these costs and expenditures. In this regard, it has been argued that early-intervention criminal justice, in light of the achievements of crime-risk management, has—despite providing exclusionary and incapacitative responses for high-risk offenders, such as long-term imprisonment—envisioned community-based prison alternatives with supervisory content for offenders who have exhibited lower levels of dangerousness. With the implementation of such sanctions, on the one hand, the costs of maintaining low-

risk offenders no longer weigh as heavily on the criminal justice system, and on the other hand, the system's capacity to confront high-risk offenders remains preserved. (3)

It appears that the theoretical bases for applying extra-penal sanctions to children can be summarized as moral–philosophical foundations, social foundations, economic foundations, and legal–judicial foundations. These foundations are examined below. Accordingly, the recommendation of the present research is that, at all stages of criminal policy planning, the participation of a number of law-and-economics analysts is highly necessary.

Conceptualization and the Economic and Penal Assessment of Crimes and Alternatives to Imprisonment

Those who firmly advocate the recognition and implementation of substitutes for imprisonment tend to pursue their application with greater seriousness in relation to children and adolescents in conflict with the law. From a theoretical standpoint, several foundations may be noted in this regard: moral foundations, social foundations, economic foundations, and legal–judicial foundations. Proponents of recognizing and implementing extra-penal sanctions typically refer to one or more of these foundations, as specified and defined below.

Before discussing these foundations, one important point must be emphasized: the result of analyzing these foundations is that children and adolescents are human beings who are simultaneously similar to and different from adults. Because they are similar to adults, like all persons they possess full human rights; yet because they are different, they merit special, specific, and differential protections. (4) It appears that these foundations—especially in light of what is set forth in international instruments—seek to justify and explain the sameness of children with adults while also accounting for children's distinctiveness from the adult population. These foundations are discussed in what follows.

Moral–Philosophical Foundations

Fundamentally, “age” is a transitional personal attribute and a marker of movement from one stage to another; accordingly, the manner in which a person behaves and responds to the environment and to others changes from one age period to another. (5) Therefore, individuals' rights and duties, as well as society's expectations of them, vary in accordance with the physical and psychological characteristics that manifest across different stages of life. For a long time, the “childhood and adolescence” period was viewed as an adult's view of a smaller human being—meaning that the child was treated as a potential adult and, on that basis, considered worthy of attention. This perspective gradually changed in light of evolving moral, philosophical, and legal understandings. Today, the child or minor, by virtue of being human, is recognized as possessing inherent dignity and human worth, and therefore must enjoy certain rights and bear certain duties.

At the international level, from the second half of the twentieth century onward, these rights were articulated and enumerated in both general and specialized human rights instruments. For example, Article 25(1) of the Universal Declaration of Human Rights recognizes the child's entitlement to special care and assistance and emphasizes social protection for children. A similar entitlement appears in Article 24 of the International Covenant on Civil and Political Rights, framed as a “right to protective measures” by the family, society, and the state. (6) (7)

In specialized human rights instruments as well—such as the Convention on the Rights of the Child—persons under 18 years of age, on the one hand, are recognized as holders of enforceable rights vis-à-vis society and the state, and on the other hand, society and the state are placed under obligations to adopt protective measures and provide special assistance to them. Among these fundamental rights is the right to preserve identity and family relations (Articles 1–8 and 3–9). Alongside these rights, the Convention, similar to certain provisions of the

International Bill of Human Rights, imposes duties directly on society and predominantly on states with respect to persons under 18. Examples include the obligation to protect children from the illicit use of narcotic drugs and psychotropic substances and from being used in the production and trafficking of such substances (Article 33), to protect children against all forms of sexual exploitation and violence (Article 34), and to support the recovery and social reintegration of child victims of neglect, exploitation, abuse, torture, or any other form of cruel, inhuman, or degrading treatment (Article 39). Likewise, within this same framework, Article 19(1) places obligations on States Parties to protect children from physical, psychological, and sexual violence and from all forms of abuse and maltreatment.

Social Foundations

Children are considered part of the vulnerable segments of society, and precisely this vulnerability requires society to provide them with broader and more effective protection. In theoretical discussions concerning extra-penal sanctions, the necessity of comprehensive and constructive social support for children has been emphasized as a central axis and dominant discourse. Undoubtedly, social factors can exert an undeniable influence both in accelerating delinquency and, conversely, in significantly restraining the processes of criminal behavior and recidivism. In reality, the offender—inasmuch as he or she perceives himself or herself as belonging to a social environment—expects society to understand personal needs, expectations, and emotions, and not to regard the individual as a surplus or destructive element within the community. (8)

With regard to social support for offenders, it may be stated that when the state, together with society and all its capacities, advances within the framework of a participatory criminal policy to support offenders, a comprehensive and desirable model known as “social support” emerges. The roots of this approach should be sought in the human-rights transformations of the second half of the twentieth century. (9) The Universal Declaration of Human Rights—whose principles are reinforced through the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights—recognizes social security as a right of every individual as a member of society and emphasizes, in Article 23, access to an adequate standard of living, particularly through social services. Article 25 likewise affirms the right to social security, implying that society must protect the fundamental rights of its vulnerable members, including victims and socially at-risk individuals.

Enjoyment of an adequate standard of living, together with the right to social security, forms the foundation of an offender-oriented social protection system. Theories advocating the application of extra-penal sanctions to children and adolescents treat this principle as a fundamental presupposition. Within such perspectives, protection becomes particularly essential in cases involving abuse or exploitation—including sexual abuse—especially when a child is under the care of parents, legal guardians, or other responsible individuals.

A widely accepted principle maintains that a dynamic society is not one that merely suppresses offenders or seeks revenge against them; rather, except where no alternative exists, it resorts cautiously to punitive responses and prioritizes corrective and constructive measures. (10) These theoretical perspectives pursue, with even greater emphasis, the notion of social support when dealing with juvenile offenders. It has been argued that genuine social protection of delinquent children and adolescents is realized when society, instead of pursuing repression and punishment, creates conditions conducive to rehabilitation and reform. A purely punitive approach toward children—who are among the social groups most in need of assistance—reflects not social progress but cultural regression. (11)

Other theories within criminology, penology, and criminal sociology similarly justify the application of extra-penal sanctions to juvenile offenders. These perspectives are largely framed within the concept of differential criminal justice for children and adolescents and logically support the adoption of responses distinct from adult criminal proceedings. In particular, they emphasize depenalization and the replacement of imprisonment with alternative sanctions. (12) With the emergence of social-reaction criminology, especially during the 1970s, a significant movement opposing imprisonment developed, grounded in the belief that the disadvantages of incarceration outweigh its benefits and therefore necessitate alternative solutions. (13)

Theories supporting decarceration and the application of extra-penal sanctions toward juvenile offenders share a common premise: within juvenile justice, given the incomplete development of volitional capacity among young offenders, non-custodial and lenient responses should take precedence over punitive sanctions, particularly imprisonment substitutes. (14) (15) These theories generally regard juvenile offenders as individuals at risk of progressing toward more serious criminality and argue that coercive responses—especially incarceration—not only fail to produce rehabilitative or therapeutic outcomes but may instead intensify tendencies toward more severe delinquent behavior in the future. Accordingly, rather than imposing imprisonment, it is more rational to seek alternative responses. (16) (17)

For example, John Braithwaite's theory of "reintegrative shaming" maintains that developmental approaches to juvenile justice—whose primary aim is preventing recidivism among children and adolescents—must adopt a forward-looking orientation focused on education, rehabilitation, and social reintegration. Consequently, the use of depenalizing measures, particularly decarceration strategies, becomes essential. The worst response to juvenile misconduct is total inaction; yet excessive punitive intervention is equally harmful. Punitive reactions, including imprisonment, should therefore be used only when alternative measures prove ineffective, since a genuinely protective judicial approach cannot be realized through the indiscriminate application of punishment. (18) (19)

Recourse to alternative measures such as extra-penal sanctions signifies that the juvenile justice system does not merely aim to punish children and adolescents but instead employs broader legal and judicial capacities to respond to juvenile offending in pursuit of rehabilitative objectives. Social responses to juvenile delinquency must therefore possess a protective and educational character, fostering responsibility and balanced personality development. It is difficult to conclude that imprisonment can definitively serve protective, educational, or therapeutic purposes for juvenile offenders.

Clearly, social interventions and penal alternatives—particularly alternatives to imprisonment—are better suited to achieving rehabilitative and reform-oriented goals. When a child or adolescent commits an offense, the judge's duty is to respond in a manner that prevents reoffending. In most cases, the most appropriate judicial response lies in identifying a suitable alternative to punishment. (18) (19)

Legal–Economic Foundations

The maintenance and supervision of offenders inherently impose heavy—and sometimes unsustainable—financial burdens. Available statistics indicate that the construction, equipment, and administration of prisons and detention centers consume a substantial portion of public expenditures each year. (20) These costs become even more significant with respect to juvenile offenders, because children and adolescents possess particular needs, preferences, expectations, and developmental requirements that demand specialized responses. Consequently,

budgets allocated for their detention cannot simply mirror those applied to adult offenders; rather, greater financial resources must be devoted to ensuring appropriate custodial conditions.

Under such circumstances, the costs of prisons and detention facilities inevitably increase. Therefore, by anticipating alternatives to imprisonment or detention, policymakers can avoid imposing excessive financial burdens on the state and instead implement less costly and more efficient responses for children and adolescents. (21)

The Necessity of Applying Extra-Penal Sanctions to Children and Adolescents

Punishment, according to historical evidence, represents the oldest instrument employed by criminal justice systems to confront criminality. Certain historical sources, such as the Code of Hammurabi, trace the origins of punitive mechanisms in criminal justice to nearly four thousand years ago. During a significant historical period—prior to the emergence of the positivist school—a crime-centered approach dominated criminal justice systems, whereby criminal justice actors focused primarily on the gravity and nature of the criminal act itself when responding to offenders. Within this framework, the principle of proportionality between punishment and criminal conduct prevailed. However, with the rise of the positivist school, this orientation gradually shifted toward an offender-centered approach, emphasizing the personal and social characteristics of offenders and requiring criminal justice authorities to determine and implement responses tailored to individual circumstances. (22)

This intellectual transformation produced substantial changes in penal systems, most notably the development of individualized punishment as a central achievement of criminological thought. Throughout the historical evolution of punishment, diverse penal forms have been employed to achieve criminal justice objectives. At certain stages, corporal punishments—particularly execution and flogging—were predominant, while in later periods liberty-depriving sanctions centered on imprisonment became the dominant response within criminal policy. (23)

Each type of punishment has possessed both advantages and shortcomings, prompting criminal policymakers to seek alternative penal responses over time. Imprisonment, which during the 1950s and 1960s was embraced with an idealistic rehabilitative vision aimed at reforming and treating offenders, has in recent decades encountered serious criminological, human-rights, and economic criticisms. Criminologists and policymakers alike have increasingly compared the rehabilitative aspirations of imprisonment to an unrealized ideal. (24) These challenges encouraged penal scholars to identify more effective mechanisms for offender rehabilitation within criminal justice systems. Consequently, a new generation of sanctions—commonly referred to as alternative punishments—entered the field of criminal policy. These sanctions rely on social capacities and community structures to impose penal responses within society itself. (25)

Such community-based sanctions pursue a dual objective: preventing the excessive use of severe punishments such as corporal penalties and custodial sanctions like imprisonment, while simultaneously ensuring that punishment is implemented within the social environment rather than through the exclusion of offenders. In other words, community-oriented sanctions attempt to punish offenders without separating them from society through various supervisory and corrective mechanisms. (26)

The first domain in which social sanctions gained formal recognition was juvenile criminal law. This development occurred because juvenile justice has traditionally been governed by a rehabilitative and treatment-oriented approach, requiring responses that both hold young offenders accountable and simultaneously promote their reform and rehabilitation. (27) For this reason, drafters of certain international instruments—most notably the 1989 Convention on the Rights of the Child—encouraged states to transform their systems of juvenile punishment and

incorporate alternative sanctions into their penal frameworks. Other international instruments, even when advisory rather than legally binding, have reinforced the same orientation.

Within Iranian criminal policy as well, judicial and penal tendencies toward employing alternative sanctions in dealing with juvenile offenders can be observed. Growing criminological attention to alternative punishments, particularly in the context of responding to juvenile delinquency, has led international child-related instruments and, subsequently, national legal provisions to recognize the legitimacy of such sanctions for this category of offenders. (28)

The necessity of employing alternatives to imprisonment for children and adolescents may also be examined through the requirements of differential criminal procedure specific to juveniles. From this perspective, discussion may proceed in two directions: first, the principles governing differential criminal procedure in relation to extra-penal sanctions, and second, the guarantees governing the establishment and implementation of such sanctions for minors.

Before addressing these issues, it must be emphasized that the importance of childhood as the formative stage of human personality fundamentally distinguishes juvenile proceedings from other forms of criminal adjudication. Children in conflict with the law, due to their developmental characteristics, require a differentiated judicial system. (29) Contemporary human rights discourse, as a dynamic and comprehensive global movement, has therefore provided guidance—and at times binding obligations—for states regarding appropriate responses to juvenile offenders. (30)

Although not uniformly, countries around the world have sought to harmonize their domestic regulations with these principles, to the extent that one may speak of the globalization of procedural criminal law concerning juvenile offenders. Since the adoption of the 1959 Declaration of the Rights of the Child—one of the earliest international instruments dedicated to child protection—numerous documents have been developed to clarify children's rights and methods of protection across various domains.

All of these instruments emphasize international standards concerning child protection, including juvenile offenders, and stress the necessity of adopting a differential criminal policy toward them. (31) The principles governing specialized juvenile proceedings have gradually expanded to influence the design and application of extra-penal sanctions themselves. Today, the use of such alternatives constitutes one of the principal manifestations of differential juvenile justice. (32)

The necessity of implementing alternatives to imprisonment can also be examined from another perspective—that of differential criminal policy. However, due to the importance and independent theoretical status of this discussion, it will be addressed separately in a dedicated section.

Requirements of Differential Criminal Procedure in Relation to Extra-Penal Sanctions

In essence, differential criminal policy denotes a method and strategy for addressing juvenile offending in a manner distinct from the model applied to adult criminality. One of the foundations of differential criminal policy is the implementation of developmental (or reform-oriented and educational) programs—rather than punishment-centered (or repressive and strict) measures—toward children and adolescents who violate criminal law. Programs of the first type, more than prioritizing the imposition of the various punishments enumerated in criminal statutes on juvenile offenders, focus on deploying non-penal mechanisms. By contrast, measures of the second type primarily emphasize punishments prescribed by criminal laws for such minors and generally do not draw a meaningful

distinction between minors and adults in the mode of response. Accordingly, punishments are implemented against children with the same severity and intensity as in adult cases.

Differential criminal policy, which is built on several assumptions—such as the “absence or impairment of criminal intent (*mens rea*) in minors,” the “difference between minors’ personality, needs, emotions, and feelings and those of adults,” the “necessity of future-oriented rather than past-oriented responses to criminal phenomena,” the “preference for preventing future crime (recidivism) over punishing the present offense,” and the “priority of reform, treatment, and deterrence through penal alternatives rather than punishment and suppression through sanctions”—does not endorse mere retribution for juvenile offenses. Instead, it seeks to implement penal alternatives that, in principle, should be detached from the punitive attributes and functions of punishment such as retaliation, repression, and harshness. (33)

From the perspective of differential criminal policy, implementing punishments for juvenile offenders with the same level of severity customary in adult criminal justice cannot operationalize these assumptions. In this view, a child or adolescent who commits an offense today may be regarded as an individual at risk of committing more serious and severe offenses in the future. If the criminal justice system, when responding to the present offense, is steered away from reformatory and therapeutic measures and toward punitive, retributive strategies, the likely outcome is the production of a more dangerous offender in the future. Therefore, a developmental approach requires that the idea of “depenalization and substitution” be implemented in place of “penal severity.” This logic becomes even more important and more explicit with respect to imprisonment and its alternatives. Under the differential criminal policy strategy, imprisonment of children and adolescents—together with disregard for alternatives—has no rehabilitative or therapeutic dimension for the child, yields no meaningful deterrent effect, and produces no growth or developmental progress. For these reasons, it cannot be endorsed as an appropriate response to juvenile offending. (34)

Adherence to a differential criminal policy toward juvenile offenders requires that only specialized authorities and institutions have jurisdiction over juvenile cases. At the same time, these authorities should be oriented exclusively toward the rehabilitation, reform, and treatment of juvenile offenders and should adopt extra-penal sanctions as judicial measures and enforcement guarantees in response to juvenile offending. In practice, such specialized bodies include a specialized police unit at the crime-detection stage, a specialized prosecution office at the investigation and prosecution stage, and a specialized juvenile court at the adjudication stage. A principal basis here is the acceptance of gradual criminal responsibility for children and adolescents. Accepting gradual responsibility—rather than an abrupt transition—during the movement from absolute non-responsibility (childhood) to full criminal responsibility (adulthood) supports the adoption of a rational differential criminal policy. Accordingly, it becomes necessary to distinguish between the age of criminal puberty and the age of criminal responsibility. The age of criminal responsibility in the narrow sense (or relative criminal responsibility) refers to the age after which children may become subject to specialized juvenile criminal law, whereas the age of criminal puberty—or full (absolute) criminal responsibility—refers to the age after which the individual is treated as an adult and fully subject to criminal law. (25)

International instruments have also consistently emphasized that the imposition of criminal responsibility should not occur all at once, but rather should be assigned gradually in accordance with the developmental process of maturity. For this reason, some international instruments use the concepts of “adolescence” and “adolescents,” reflecting recognition of gradual criminal responsibility. For example, the Beijing Rules (the United Nations Standard

Minimum Rules for the Administration of Juvenile Justice) refer to the juvenile as a child or young person who should be treated differently from adults in response to offending. These rules also emphasize that the minimum age of criminal responsibility should not be set at an excessively low level. The gradual nature of criminal responsibility is likewise reflected in Article 40(1) of the Convention on the Rights of the Child, which emphasizes that States Parties must take account of the child's age and promote the child's constructive reintegration. Article 40(3) further requires States to establish a minimum age below which children are presumed not to have the capacity to infringe penal law.

Accordingly, while the Convention defines all persons under 18 as "children," it still reflects attention to distinguishing between the age of criminal responsibility and the age of full criminal maturity, and it conceptualizes entry into adulthood as occurring at 18, without gender distinction—a standard that is also broadly reflected in European systems with respect to the end-point of childhood. At the same time, the minimum age of criminal responsibility varies among European countries and is commonly set between 7 and 16 years. (35)

Theories that endorse alternatives to imprisonment for children and adolescents also emphasize the full, unconditional implementation of all guarantees and requirements of differential juvenile criminal procedure, and they appear to analyze these two domains as closely and structurally interconnected. Thus, within the body of juvenile procedural law, extra-penal sanctions are treated as highly significant, to the extent that, according to some accounts, specialized juvenile criminal procedure would remain incomplete and ineffective without implementing alternatives to imprisonment. (36)

Today, juvenile delinquency is an undeniable reality in human societies. Statistics suggest that, on a daily basis, some children violate fundamental social norms and engage in criminal conduct. It is therefore necessary to identify effective solutions to control juvenile delinquency and reduce the likelihood that children remain trapped in persistent offending. Historically, responses to juvenile offenders often relied on repressive—and sometimes severe—measures, and treating juveniles differently in adjudication and punishment was even viewed as a form of injustice. Under that perspective, the distinctive characteristics of juvenile offenders—who naturally lack a fully developed capacity to distinguish right from wrong—were ignored. This orientation prevailed until, over the past two centuries, the founders of the positivist school emphasized classifying offenders and attending to their personality within criminal processes, gradually creating the groundwork for a distinct juvenile criminal justice system. (37) (38)

At this point, it may also be noted that historical accounts of ancient Iranian civilization suggest that even at times when other criminal justice systems insisted on treating juvenile and adult justice identically, Iran maintained a differentiated outlook toward juvenile offenders. Under the influence of positivist achievements and the efforts of civil movements—particularly legal advocacy activities in Chicago—juvenile justice was separated from adult criminal justice, leading to the establishment of a specialized juvenile court. In any event, as a result of these developments, the first specialized juvenile court was established in 1899 under the name "Cook County Court." (39)

These efforts, along with the resolutions of the Sixth Congress of Criminal Anthropology in 1906, are often regarded as early pillars of juvenile criminal law. Juvenile criminal law, which has experienced a complex evolution internationally and domestically up to the present, laid stronger foundations with the adoption of the Declaration of the Rights of the Child and, more importantly, with the 1989 Convention on the Rights of the Child, which helped establish a new domain in criminal law. One of the main components of contemporary juvenile criminal law is the prediction and implementation of extra-penal sanctions for juveniles. However, these substitute measures can be

effective and efficient only when all principles and standards of differential juvenile criminal procedure are observed and implemented.

In this regard, juvenile criminal law in many legal systems has increasingly moved away from purely formal and punitive reactions and has come under the scope of differentiated procedural standards and reform-oriented responses. (40) Consequently, the operational basis of criminal justice systems with respect to juvenile offenders is to keep them, to the greatest extent possible, away from the punitive machinery and retributive reactions of criminal justice. This approach also constitutes a central strategy endorsed by international instruments on children's rights. (41)

Thus, in contemporary systems, the manner in which criminal justice responds to children in conflict with the law differs from its response to adult offenders; in other words, the juvenile process has acquired a differential character relative to adult criminal procedure. Naturally, this differential character entails requirements. Children's physical, psychological, and emotional characteristics differ from those of adults, and this difference justifies and necessitates distinct responses. In all such requirements, prioritizing children's physical, psychological, and emotional condition must remain paramount. (9)

Following a differential criminal policy toward juvenile offenders requires that only specialized authorities have competence to hear juvenile cases. At the same time, a fair trial requires the adjudicatory process to comply with a set of overarching and non-derogable principles. Some of these principles are general and shared between adult and juvenile proceedings, but others govern only juvenile justice and reflect its differential nature. The prediction and implementation of alternatives to imprisonment for juvenile offenders is among the most central components of differential juvenile criminal procedure.

At the same time, in the legal systems of Iran and the United States, certain guarantees governing the adoption and implementation of extra-penal sanctions have been enacted; these will be addressed below. It should be noted that reference to United States law here is made because that country has implemented modern and relatively advanced models for applying differential juvenile criminal procedure.

Requirements of Differential Criminal Procedure in Relation to Extra-Penal Sanctions

In essence, differential criminal policy reflects a method and strategy for responding to juvenile offending in a manner different from the model applied to adult criminality. One of the foundations of differential criminal policy is the implementation of developmental programs (i.e., reform-oriented and education-centered measures) instead of punishment-centered (i.e., repressive and strict) measures for children and adolescents who have violated criminal law. Programs of the first type, rather than placing the implementation of the diverse punishments enumerated in criminal statutes at the forefront of their approach toward juvenile offenders, focus on deploying non-penal mechanisms. By contrast, measures of the second type emphasize the punishments prescribed by criminal laws for such minors and generally do not distinguish between minors and adults in their mode of response. As a result, punishments are imposed on children with the same severity and intensity that is commonly applied to adult offenders.

Differential criminal policy is grounded in several assumptions, including the "absence or impairment of criminal intent (*mens rea*) in minors," the "difference between minors' personality, needs, emotions, and affective capacities and those of adults," the "necessity of future-oriented rather than past-oriented responses in determining and implementing reactions to criminal phenomena," the "preference for preventing future crime (recidivism) over

punishing the present offense,” and the “priority of reform, treatment, and deterrence of juvenile offenders through substitutes for punishment rather than punishment and suppression through sanctions.” Accordingly, it does not endorse mere retribution for offenses committed by children and adolescents. Instead, it seeks to implement alternative programs and measures that should, in principle, remain distant from the attributes and functions of punishment—such as retaliation, repression, and harshness of response. (33)

Differential criminal policy maintains that applying punishments to juvenile offenders with the same degree of severity customary in adult criminal justice cannot operationalize these assumptions. From this perspective, a child or adolescent who commits an offense today may be considered an individual at risk of engaging in more serious and severe criminality in the future. If, in responding to the current offense, the system shifts away from reformatory and therapeutic measures and instead adopts punitive, retributive strategies, it may transform the juvenile offender of today into a more dangerous offender tomorrow. Therefore, it is preferable—through a developmental approach—to implement the idea of “depenalization and substitution” in place of “penal severity.” Notably, what has been stated above about differential criminal policy’s preference for penal substitutes is especially significant with respect to imprisonment and its alternatives. Within this strategy, imposing imprisonment on children and adolescents while disregarding its substitutes has no rehabilitative or therapeutic dimension for the child and produces no meaningful deterrent effect. For that reason, it does not generate growth or developmental progress and therefore cannot be regarded as an acceptable response to juvenile offending. (34)

Adopting a differential criminal policy toward juvenile offenders requires that only specialized institutions and authorities have competence to adjudicate juvenile crimes. At the same time, such institutions and authorities must focus exclusively on rehabilitation, reform, and treatment, and must select and implement extra-penal sanctions as judicial measures and enforcement guarantees in response to juvenile offending. These specialized bodies include, at the crime-detection stage, a juvenile police unit; at the investigation and prosecution stage, a specialized prosecutor’s office; and at the adjudication stage, a specialized juvenile court. A key foundation in this context is the acceptance of gradual criminal responsibility for children and adolescents. Acceptance of gradual responsibility, rather than an abrupt transition, in the process by which the individual moves from absolute non-responsibility (childhood) to full criminal responsibility (adulthood), supports the adoption of a rational differential criminal policy toward this category of offenders. Accordingly, it is necessary to distinguish between the age of criminal puberty and the age of criminal responsibility. The age of criminal responsibility in the narrow sense—also referred to as relative criminal responsibility—refers to the age after which children may become subject to specialized juvenile criminal law, whereas the age of criminal puberty or full (absolute) criminal responsibility refers to the age after which the individual is deemed an adult and fully subject to criminal law. (25)

International instruments have likewise consistently emphasized that the attribution of criminal responsibility must not occur abruptly, but rather must be imposed gradually, taking account of the developmental process of maturity. For this reason, some international instruments use the terms “adolescent” and “adolescence,” which reflect recognition of gradual criminal responsibility. For example, the Beijing Rules (the United Nations Standard Minimum Rules for the Administration of Juvenile Justice) describe the juvenile as a child or young person who should be treated differently from adults in response to offending. These rules further emphasize that the minimum age of criminal responsibility should not be set at an excessively low level. The gradual nature of criminal responsibility is also reflected in Article 40(1) of the Convention on the Rights of the Child, which stresses that States Parties must

take account of the child's age and promote the child's constructive role within society. Article 40(3) further requires States to establish a minimum age below which children are presumed incapable of infringing penal law.

Accordingly, although the Convention defines all persons under 18 as "children," it nonetheless reflects attention to distinguishing between the age of criminal responsibility and the age of full criminal maturity. It sets the point of entry into adulthood at 18, without differentiation between girls and boys—a standard that is broadly shared across many European countries. At the same time, the age of criminal responsibility varies across European systems and is commonly set between 7 and 16 years. (35)

Theories that advocate the implementation of alternatives to imprisonment for children and adolescents also emphasize full and unconditional adherence to all guarantees and requirements of differential juvenile criminal procedure, analyzing these two domains as structurally interconnected. Consequently, within discussions of differential juvenile procedure, extra-penal sanctions are treated as highly significant, to the extent that, according to some accounts, specialized juvenile criminal procedure would be incomplete without implementing alternatives to imprisonment. (36)

Today, juvenile delinquency is an undeniable reality in human societies. Statistics indicate that each day some children violate fundamental social norms and engage in criminal conduct. It is therefore necessary to identify effective solutions to control juvenile delinquency and reduce the likelihood that children remain trapped in persistent offending. Historically, responses to juvenile offenders were largely repressive and sometimes severe, and differential adjudication and punishment of juveniles relative to adults was even perceived as unjust. Under such an approach, the characteristics of juvenile offenders—who naturally do not possess a fully developed capacity to distinguish right from wrong—were disregarded. This orientation remained dominant until, over the past two centuries, the founders of the positivist school emphasized the classification of offenders and the necessity of attending to offender personality within criminal processes, gradually paving the way for a specialized juvenile criminal justice system. (37) (38)

It may also be noted that accounts of ancient Iranian civilization suggest that, even at times when other criminal justice systems insisted on identical treatment of juvenile and adult justice, a differentiated outlook toward juvenile offenders existed in Iran. Under the influence of positivist achievements and civil movement efforts—particularly legal advocacy activities in Chicago—juvenile justice was separated from adult criminal justice, leading to the establishment of a specialized juvenile court. Ultimately, the first specialized juvenile court was established in 1899 under the name "Cook County Court." (39)

These developments, together with the resolutions of the Sixth Congress of Criminal Anthropology in 1906, are often regarded as early pillars of juvenile criminal law. Juvenile criminal law, which has since experienced a complex evolution both internationally and nationally, gained a more solid foundation with the adoption of the Declaration of the Rights of the Child and, more importantly, with the 1989 Convention on the Rights of the Child. One of the principal components of contemporary juvenile criminal law is the design and implementation of extra-penal sanctions for juveniles. However, these substitute measures can be effective and efficient only when all principles and standards of differential juvenile criminal procedure are observed and implemented.

In this regard, juvenile criminal law in many legal systems has increasingly moved beyond purely formal and punitive reactions and has come within the scope of differential procedural standards and reform-oriented responses. (40) Consequently, the operational foundation of criminal justice systems with respect to juvenile offenders is to keep them, to the greatest extent possible, away from the punitive machinery and retributive reactions

of criminal justice. This approach also constitutes a central strategy emphasized by international instruments on children's rights. (41)

Thus, in contemporary practice, the criminal justice system's approach to children in conflict with the law differs from its response to adult offenders; in other words, specialized juvenile criminal procedure has acquired a differential character relative to adult criminal procedure. Naturally, this differential character entails requirements. Children's physical, psychological, and emotional characteristics differ from those of adults, and this difference justifies and necessitates distinct responses. In all such requirements, prioritizing children's physical, psychological, and emotional condition must remain paramount. (9)

Following a differential criminal policy toward juvenile offenders requires that only specialized authorities be competent to hear juvenile cases. At the same time, a fair trial requires the adjudicatory process to comply with a set of overarching and non-derogable principles. Some of these principles are general and shared across adult and juvenile proceedings, while others govern only juvenile justice and reflect its differential nature. The prediction and implementation of alternatives to imprisonment for juvenile offenders is among the most fundamental components of differential juvenile criminal procedure.

At the same time, in the legal systems of Iran and the United States, certain guarantees concerning the adoption and implementation of extra-penal sanctions have been enacted; these will be discussed below. It should be noted that reference to United States law here is made because that country has implemented modern and relatively advanced models for applying differential juvenile criminal procedure to juvenile offenders.

A Comparative Examination of the Approaches of Iran's Domestic Law and United States Law Toward Extra-Penal Sanctions for Juveniles

In this section, the approach of Iran's legal system will first be examined, followed by the approach of the United States legal system, with respect to the implementation of extra-penal sanctions for children and adolescents who commit crimes.

The Approach of Iran's Legal System to Extra-Penal Sanctions for Children and Adolescents

With regard to Iran's domestic legal approach, it appears that what is provided in paragraphs (p) and (t), as well as Note 2 of Article 89 of the Islamic Penal Code enacted in 2013, constitutes clear instances of penal substitutes for juvenile offenders. Under Article 89, "with respect to adolescents who commit ta'zir offenses and whose age at the time of the offense is between fifteen and eighteen full solar years, the following punishments shall be applied: ... (p) ... or performance of one hundred and eighty to seven hundred and twenty hours of unpaid public services in crimes whose statutory punishment is a grade-five ta'zir; (t) ... or performance of sixty to one hundred and eighty hours of unpaid public services in crimes whose statutory punishment is a grade-six ta'zir" Note 2 provides that the court may, in light of the defendant's circumstances and the committed offense, "in lieu of issuing a judgment to the punishment of custody or fine under paragraphs (a) to (p) of this Article, sentence the accused to home confinement during the hours determined by the court"

It appears, first, that certain other measures anticipated in these paragraphs and in the referenced note are not properly classified as substitutes for punishment; rather, depending on the case, they may constitute security measures or non-retributive enforcement mechanisms—an issue addressed earlier in detail. Second, as noted, the characterization of these measures as "punishment" in a strict sense is not necessarily unproblematic. Third, the

more appropriate approach seems to be the one reflected in Note 2 of Article 89: namely, acceptance of the possibility that, instead of imposing the monetary fine referenced in the relevant subparagraphs of Article 89, the court may order home confinement during specified hours.

In practical terms, it may be argued that the corrective and educational effects of custody in a juvenile correction and rehabilitation center, as well as home confinement during designated hours, may be considerably greater than the effects of a monetary fine. Fourth, Note 1 of Article 89 specifies that “the hours of public service shall not exceed four hours per day,” and thus the legislator appears to have taken account of juveniles’ physical and psychological capacity in performing public service. It should be added that, in principle, public service or work with public benefit constitutes another response of criminal policy and criminal justice to juvenile delinquency. Under this response, juvenile offenders are sentenced to perform unpaid work of public benefit for a specified period. (13)

Criminal policymakers, seeking to spare juvenile offenders from liberty-depriving responses, have recognized this measure both internationally and domestically. At the international level, the 1989 Convention on the Rights of the Child is the most prominent binding instrument in this field. Under Article 37(b), States Parties are obliged to pursue the minimal use of liberty-depriving measures, because the detention of a child should be used only as a measure of last resort. Among non-binding guidance instruments, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985) likewise recommend minimizing custodial sanctions and, in Article 18(1)(c), identify sentencing juvenile offenders to community service as one of the most important substitutes.

In Iranian criminal law, prior to the enactment of the Islamic Penal Code of 2013, this response was not recognized in a fully structured manner. Nevertheless, some innovative judges relied on available legislative and judicial capacities and issued various decisions in this area. In one case, a court sentenced a 12-year-old boy named “Alireza,” who had damaged a neighbor’s wall, to assist for five hours daily in repairing that wall and to read a religious text and submit a summary to the court within two months, alongside paying the repair costs. (42) It is noteworthy that Alireza later stated in an interview with a local newspaper that he had expected harsh punishment because he had heard judges were strict, but instead the judge spoke with him and warned him not to engage in wrongdoing again and to live as a healthy member of society; he concluded that the sanction imposed taught him an important lesson and was not designed as revenge.

The Islamic Penal Code enacted in 2013 appears to have explicitly accepted and recognized penal substitutes for juvenile offenders. At the same time, Chapter Ten of this law includes other provisions that are also relevant and should be noted at the conclusion of this chapter.

Article 90 provides that the court may, based on reports regarding the child or adolescent’s circumstances and conduct in the correction and rehabilitation center, reconsider its judgment once and reduce the custody period by up to one third, or convert custody into delivery of the child or adolescent to the legal guardian or custodian. The court’s reconsideration is contingent upon the child or adolescent having served at least one fifth of the custody period. The court’s decision in this respect is final, and this does not preclude the use of conditional release and other legal mitigations when their requirements are met.

Article 93 provides that the court may, where mitigating grounds exist, reduce punishments down to half of the minimum and convert security and educational measures for children and adolescents into another measure.

Article 94 provides that, in all ta’zir crimes committed by adolescents, the court may defer sentencing or suspend the execution of punishment.

Article 95 provides that criminal convictions of children and adolescents do not entail criminal consequences.

The Approach of the United States Legal System to Extra-Penal Sanctions for Children and Adolescents

The approach of the United States legal system to extra-penal sanctions for children and adolescents differs in several respects from Iran's domestic approach, and these differences will be addressed here. At the outset, it is essential to note that the dominant approach (model) in the United States toward juvenile offenders is the "risk management" model. (9)

Although the risk-management model retains certain features of traditional criminal justice, it also departs from it in important ways. The criminal-justice model—grounded in the recognition that offenders possess a range of rights—functions as a safeguard against the unlawful or disproportionate use of official power in the name of punishment. By contrast, the risk-management model emphasizes the duties and responsibilities of juvenile offenders—and even their parents—toward others, including the victim, society, and the state. (43) Moreover, whereas the traditional criminal-justice model tends to concentrate on proportionality and the appropriateness of punishment rather than explicitly prioritizing crime reduction, the risk-management model, aiming to increase the efficiency of the criminal justice system, focuses on crime control and controlling offenders. (44)

Accordingly, under risk management, "incapacitative" prevention of juvenile crime is prioritized over other objectives of the criminal justice system. In this framework, compensation of the victim's losses and other obligations imposed on the offender matter chiefly insofar as they contribute to reducing offending and recidivism. Another objective is to increase the efficiency of the juvenile justice system through developing and strengthening coordination among criminal justice institutions, including reliance on methods such as accelerating proceedings. (45)

The risk-management model, seeking to manage preventive criminal policy regarding juvenile offending, stresses early and proactive intervention to prevent juvenile delinquency from developing and consolidating. For this reason, the scope of intervention extends beyond formally criminal behaviors to include undesirable and antisocial behaviors by juveniles as well. (46) This model has also facilitated lowering the age of criminal responsibility and intensifying punitive responses to children and adolescents, sometimes undermining absolute presumptions of non-responsibility and emphasizing the need for formal punitive reactions to a wide range of juvenile conduct. (47)

Among the factors contributing to the emergence and reinforcement of this approach in the United States—even in relation to juvenile delinquency—are terrorist incidents, particularly the attacks of September 11, 2001, which shifted criminal justice practice toward "zero tolerance" even toward juvenile offending. (48) Nevertheless, a diverse set of alternatives to imprisonment has been *предусмотр* (legally anticipated) for juveniles in the United States. Although these measures are, in their internal logic, management-oriented, their purpose has not been and is not repression or retributivism toward juveniles; rather, the aim is more continuous supervision and control, alongside prevention and deterrence of reoffending. (49)

Within U.S. law, it has become increasingly accepted that criminological research indicates severe sanctions such as imprisonment and corporal punishment are inconsistent with the logic of reform and rehabilitation. The rationale is that the primary drivers of criminal behavior lie in internal impulses and criminal thinking patterns that vary with individual personality; thus, corporal punishment, instead of identifying and addressing the roots of criminal tendencies and supporting moral and psychological reform, ultimately concentrates on inflicting physical pain and suffering on the offender. (50) Corporal punishment may merely discharge the offender through suffering, while

simultaneously obstructing the success of corrective interventions, because constructive responses depend heavily on establishing a cooperative relationship between the offender and the implementing authority—something that is unlikely to develop if “reform” begins with violence. (51)

Relatedly, the idea of reconstruction, reform, and therapeutic intervention has gained strength: under this view, punishment can reduce crime by improving offenders’ behavior or personality through taking account of offender characteristics in the criminal process and tailoring responses to psychological, physical, and social needs. In this framework, punishment’s general orientation shifts from purely punitive to therapeutic, reformatory, and rehabilitative, and the type of personality-related harm becomes a key criterion for determining and implementing the criminal justice response. (52)

For some proponents of reform, optimism about rehabilitation has also extended to imprisonment—on the condition that incarceration is not treated as retribution or deterrence but as an opportunity to provide treatment, effective education, and correction. (40) However, from contemporary penological perspectives, the rehabilitative function of imprisonment has been fundamentally questioned, and extensive criminological and penological critiques have highlighted prisons’ limited capacity for rehabilitation and their potential negative function as “schools of crime.” In this context, the early-1970s discrediting of classic rehabilitative optimism is often linked to the spread of the “nothing works” sentiment and to disappointment produced by inflated expectations of rehabilitation, which in turn triggered harsh reactions against reform-oriented thinking. (53)

For this reason, recent years have witnessed a partial revival of reform-oriented approaches in the United States. The newer view tends to be more qualified: it argues that “some interventions work,” but usually advances a more moderated claim about effectiveness than during the earlier period of rehabilitative dominance. In the American context of differential criminal policy for juveniles, reform and rehabilitation do not operate independently of the offender’s agency through purely directive and coercive mechanisms. Rather, they are framed as interventions that, given the conditions in which the juvenile committed the offense, help the juvenile to change behavior—more than forcing the juvenile to “improve.” This is sometimes described as “facilitated change” rather than “compulsory cure,” meaning that the approach does not disregard conscious, voluntary choice but instead relies on it as a pathway to reform. The implication is that rehabilitation can never be guaranteed, yet it remains worth attempting. (42)

The practical expression of these efforts is most clearly visible in community-based responses, because reintegrating the offender into society, reforming disruptive behavior, and treating psychological and behavioral disorders are among the aims of such responses. These responses, due to their diversity, can include a wide array of rehabilitative and therapeutic programs. Separating low-risk offenders from persistent or high-risk offenders can also entail implementing targeted programs designed for rehabilitation, reform, and treatment. (54)

Accordingly, although community-based responses initially gained legitimacy through the philosophy of replacing imprisonment, in recent years—given their coexistence with liberty restrictions and their explicit emphasis on reform, treatment, and rehabilitation—they have played an even more prominent role in justifying extra-penal reactions. Community-based responses can also be conceptualized as a transitional point from traditional criminal justice toward restorative justice, since the community is a core component of restorative justice, and strengthening the community is among its primary aims. (55) Attention to this goal leads toward responses in which the effects of community participation and civil institutions are more visible than in other reactions, whereas traditional responses, by their mode of implementation, typically do not permit meaningful involvement by civil society and community institutions. (56)

Extra-penal reactions have the advantage of placing victims' needs and the compensation and repair of their material and moral harms at the center of attention. In other words, compensating the victim and providing services designed to remedy or reduce the adverse consequences of crime may serve as a condition for applying extra-penal reactions or as an integral component of their content.

Therefore, community-based responses should be understood as responses implemented with civil-society participation and aimed at the social education of juvenile offenders. (57) (58) By virtue of their nature, they can facilitate compensation and repair for the offender, the victim, and the community. These responses initially acquired legitimacy through the philosophy of replacing imprisonment. Early substitution movements proposed alternatives intended to reduce the criminogenic effects of institutionalization in residential settings. At later stages, they introduced responses that operate independently of deprivation of liberty and, as criminal responses, can prevent the issuance of custodial decisions. (59)

Comparing the Approaches of U.S. and Iranian Criminal Law to Implementing Extra-Penal Sanctions for Children and Adolescents

It appears that the approaches of Iranian and U.S. criminal law to determining and implementing extra-penal sanctions for children and adolescents share more similarities and common ground than differences, although certain points of divergence can be identified. While extra-penal sanctions did not receive substantial attention in Iran's pre-2013 criminal legislation and were largely reflected in purely doctrinal legal analyses and, at most, in a limited number of judicial decisions, the legislator of the Islamic Penal Code enacted in 2013—taking account of the transformations experienced in modern criminal law regarding the determination and implementation of responses to juvenile offending, and drawing on criminological and penological foundations, particularly with a focus on the standards of differential criminal policy—sought to replace resistance to penal substitutes with their endorsement. In Chapter Ten of that law (Articles 88 to 91), multiple forms of alternatives to imprisonment for children and adolescents are clearly observable.

The legislator attempted, through a policy of minimal resort to imprisonment, to implement imprisonment substitutes such as monetary fines, community service, and similar measures. Nevertheless, the inclusion of monetary fines for juvenile offenders does not appear fully justifiable, given that many minors in Iran lack financial independence and remain under the support of parents or guardians; therefore, sentencing them to a fine in practice imposes a financial penalty on their parents or guardians rather than on the minors themselves. Furthermore, because minors often do not possess a sufficiently developed understanding of the nature and penal purposes of the sanction imposed on them, it is difficult to assume that they can meaningfully comprehend the basis for a fine. Some may even struggle with understanding basic matters in their surrounding environment, let alone a complex concept such as criminal responsibility and punishment.

Precisely because of this limited capacity for discernment, one cannot realistically expect minors to grasp why they have been sentenced to pay a fine, even though one of the purposes of criminal policymakers in punishing an offender is for the offender to understand why punishment is imposed. Such understanding itself can have considerable deterrent effects and can discourage reoffending. Yet this function appears, in the case of children and adolescents, to be largely absent. Although monetary fines are listed as one of the extra-penal sanctions in the 2013 Islamic Penal Code, in the United States—largely for the same two reasons outlined above—fines are not

widely favored by judges as the primary response to juvenile offending. Instead, the enforcement mechanism that has received more attention than other reactions as an alternative to imprisonment is community service.

In this context, it has been argued that there is no practical need to sentence a minor to a monetary fine, because a fine essentially punishes parents or legal guardians rather than the child. By contrast, sentencing a minor to community service is seen as more appropriate because the child is a member of the community and benefits from public services; moreover, community service conveys to the juvenile that their presence can be socially valuable, and that society is not seeking revenge but rather aims to guide the juvenile toward a healthy life. The experience of U.S. courts with fines as an alternative to incarcerating juveniles is viewed as less defensible than their experience with community service. (16) On this basis, fines should not be viewed merely as a mechanism for generating revenue for the state and should not be imposed simply for that reason.

At the same time, it seems that, among some judges, extra-penal sanctions are still not embraced as a strategy of penal retreat and depenalization to the extent that might be expected. One possible explanation is the persistence of a custodial orientation among certain judges. This situation can be compared to what has occurred in the United States, where, for nearly a decade, policymakers have concentrated on reducing imprisonment-oriented practices, especially in courts with jurisdiction over juvenile offenses. This has reportedly been pursued through mechanisms such as reducing prison capacity, narrowing judicial discretion to issue custodial sentences, and legally requiring juvenile court judges to determine and implement non-custodial sanctions.

In Iran, however, imprisonment reduction in juvenile judicial practice has not occurred as fully as it should have, even though Iranian criminal laws—particularly the 2013 Islamic Penal Code—have provided a diverse set of alternatives to imprisonment. A further important difference between U.S. courts and Iranian courts in implementing extra-penal sanctions for juveniles concerns the degree of specialization of the judicial forum. In the United States, juvenile court judges typically undergo extensive training prior to assuming their role, including training in social work, psychology, interaction and communication tools, and crisis management. Reportedly, entry into this specialized professional track requires completion of a program of at least five years. (58)

In Iran, by contrast, the system has not yet fully achieved a comparable level of specialization in juvenile courts. The approach of the Criminal Procedure Code enacted in 2013 is, however, relatively clear on the matter. Article 409 provides that judges of juvenile courts and juvenile prosecutor's offices are selected by the Head of the Judiciary from among judges who have at least five years of judicial service and whose suitability is established for this role, taking into account age and other considerations such as marital status, completion of training courses, and preferably having children.

Even so, certain other provisions of this law may be criticized for insufficient compliance with differential juvenile criminal procedure standards. For instance, Article 286 requires the formation of a "personality file" alongside the judicial file for the child or adolescent offender in ta'zir offenses only for grade-five and grade-six ta'zir crimes; the rationale for distinguishing grade-five and grade-six ta'zir offenses from other ta'zir categories is not clear. Likewise, Article 298 treats the opinion of the juvenile court advisor as merely consultative and therefore non-binding on the juvenile judge. This, however, may undermine the very rationale for requiring an advisor: if the advisor, based on knowledge, experience, and expertise and grounded in a careful assessment of the criminal file and the personality file, determines that a measure such as an alternative to imprisonment is necessary, but the judge disagrees, it is difficult to justify treating the advisor's opinion as merely consultative. If the advisor's opinion is always non-binding, the need for the advisor's institutional role becomes questionable.

In conclusion, legislative developments in Iran concerning the determination and implementation of extra-penal sanctions have provided a foundation for improving the situation in juvenile courts compared with the prior legal framework. Nonetheless, practical judicial practice still falls short of the ideal. Under these conditions, drawing upon the experiences of other criminal justice systems—particularly the U.S. system, which has reportedly achieved defensible and positive developments in attending to and leaning toward extra-penal sanctions for juvenile offenders—may assist Iranian criminal policy actors in addressing gaps and deficiencies in the domestic legal system regarding the implementation of extra-penal sanctions for juveniles.

Conclusion

Alternatives to imprisonment constitute one of the most significant achievements of the new Islamic Penal Code enacted in 2013. Following the adoption of the executive regulations in September 2014, these alternatives assumed a more practical and operational character. Under Article 17 of the former Islamic Penal Code of 1991, judges were permitted, as deterrent punishments, to impose monetary fines, closure of business premises, revocation of licenses, deprivation of social rights, compulsory residence in specified locations, prohibition from residing in certain areas, and similar measures. However, that provision never succeeded in producing a unified judicial practice. By contrast, the more systematic implementation of the 2013 Islamic Penal Code has opened a new space for issuing non-custodial sentences and reducing the prison population.

One of the major issues that has attracted the attention of researchers, sociologists, and criminologists is juvenile delinquency, a phenomenon that continues to expand. Considering the increasing rate of youth offending and the primary objective of sanctions imposed on young offenders—namely rehabilitation and social reintegration—the limitations of imprisonment in achieving these objectives have become evident. Juvenile offenders differ from adult offenders in terms of age, intellectual development, motives for offending, and vulnerability to various criminogenic factors, including physical, environmental, economic, and psychological pressures as well as the crises associated with adolescence. Many juveniles may themselves be regarded as victims of unfavorable social conditions. The negative consequences of imprisonment for young offenders—including exposure to experienced offenders, disruption of family structures, deprivation of parental supervision, and the imposition of a criminal label leading to social exclusion and further criminalization—demonstrate the inadequacy of custodial responses for this group.

The penological analysis of alternatives to imprisonment in relation to juvenile offending, after examining the conceptual foundations of the subject and the typology of alternative sanctions—particularly within the Iranian legal system and under the new orientation of the Islamic Penal Code—has sought to clarify the necessity of avoiding the imposition of prison sentences on juvenile offenders due to their harmful consequences. Instead, it emphasizes the adoption of responses proportionate to juveniles' psychological and physical conditions, responses capable of achieving the fundamental goals of punishment—rehabilitation, education, and alignment with social norms—without producing the adverse effects associated with incarceration and while respecting human dignity.

In addition to the theoretical foundations discussed, this study also examined the specific requirements governing differential juvenile criminal procedure. Within this framework, particular attention was devoted to extra-penal sanctions and the necessity of applying them to children who commit offenses. Based on the principles analyzed, alternatives to imprisonment represent one of the clearest manifestations of the leniency-oriented approach of modern juvenile justice systems. Their purpose is to distance young offenders from the criminogenic environment of prisons, while simultaneously providing economic advantages by significantly reducing governmental

expenditures associated with prison administration. Moreover, such measures are more compatible with the objectives of reform, treatment, and rehabilitation. Accordingly, extra-penal sanctions may be regarded as a tangible expression of differential criminal justice in relation to juvenile offenders.

The study further compared the approaches adopted by the Iranian and United States legal systems in determining and implementing alternatives to imprisonment. The U.S. legal system was selected for comparison because of its notable innovations in applying differential juvenile justice and expanding the use of extra-penal responses. The examined experiences demonstrate that the American system may be viewed as an advanced model characterized by a clinical and rehabilitative perspective toward juvenile delinquency rather than a purely punitive one. In that system, extra-penal sanctions reflect a commitment to reform, treatment, and reintegration as central objectives of criminal justice policy.

In Iran, after extensive legislative, judicial, and executive developments, alternatives to imprisonment for children and adolescents have finally secured a recognized position within the legal system and were formally incorporated into Chapter Ten of the Islamic Penal Code of 2013. The central orientation of this legislation can be understood as emphasizing rehabilitative and educational perspectives while seeking to reduce reliance on punitive reactions. The response system designed under this framework rests on three principal pillars: diverting juveniles from the formal criminal justice cycle whenever possible, extensive reliance on educational and corrective measures, and limiting criminal sanctions to minimal and necessary cases.

It appears that through the adoption of the 2013 Islamic Penal Code, the Iranian legal system has moved closer to internationally accepted standards governing the application of extra-penal sanctions for children and adolescents. These standards, which similarly inform advanced juvenile justice systems, emphasize reform-oriented and therapeutic responses to juvenile delinquency. Although the American and Iranian legal systems cannot be considered fully identical in their approaches, the degree of similarity between them is considerable. In both systems, the primary guiding principle is the rehabilitative and treatment-oriented nature of criminal justice responses to juvenile offending. Consequently, both legal systems demonstrate an emerging tendency to reduce harsh and coercive reactions while strengthening restorative, educational, and socially integrative dimensions of criminal justice responses.

Acknowledgments

We would like to express our appreciation and gratitude to all those who helped us carrying out this study.

Authors' Contributions

All authors equally contributed to this study.

Declaration of Interest

The authors of this article declared no conflict of interest.

Ethical Considerations

All ethical principles were adhered in conducting and writing this article.

Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

Funding

This research was carried out independently with personal funding and without the financial support of any governmental or private institution or organization.

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