

Massachusetts Department of Correction
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**The Influence of Brain Development Research on the Response to Young Adult Males
18 – 24 Years of Age in the Criminal Justice System**

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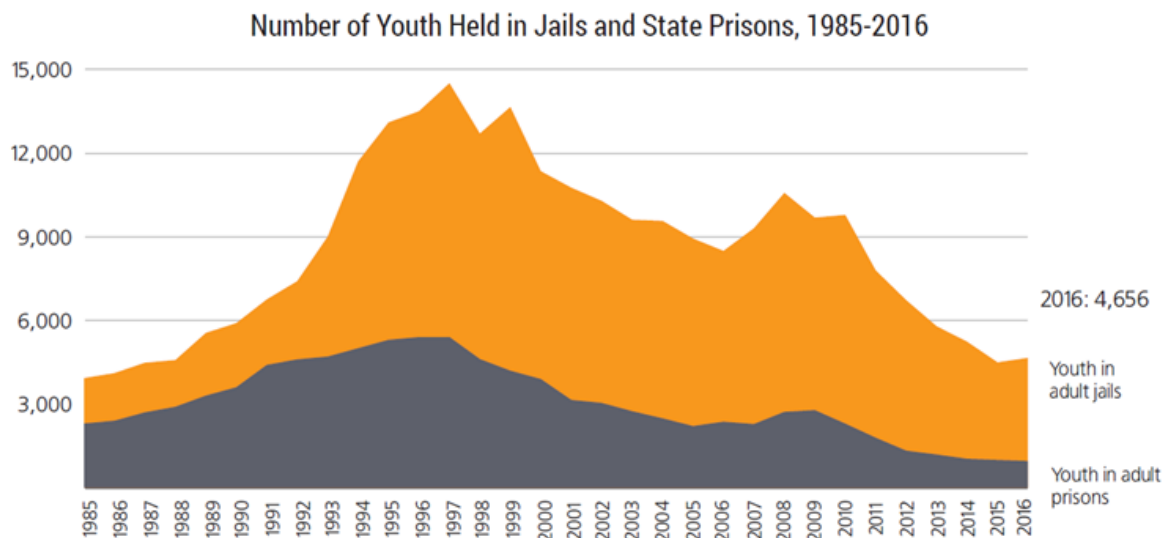
Introduction

Perspectives on juveniles and crime have varied throughout history. Prior to the 1900s there was little legal difference between children and adults, with children as young as seven treated as adults in court including the possibility of receiving a prison sentence or the death penalty. (Fox, 1996; Snyder, Howard & Sickmund) The dawn of industrialization in the 19th century brought about the concept of childhood as a separate period in life with young people being more dependent and exclusive from the adult world. (Coupet, 2000) Juveniles were seen as different from adults and “reformers uniformly favored rehabilitation and treatment over punishment as the most effective means of dealing with juvenile delinquents.” (Guarino-Ghezzi & Laughran, 1996) “The underlying assumption of the original juvenile system, and the one that continues to prevail, was that juveniles were generally more amenable to rehabilitation than adult criminals.” (Coupet, 2000)

During this period, institutions for the rehabilitation of juveniles spread across the United States beginning with the New York House of Refuge in 1825. The first juvenile court was established in Cook County Illinois in 1899 authorized by the Illinois Juvenile Court Act of 1899. “The act gave the court jurisdiction over neglected, dependent, and delinquent children under age 16.” (Institute of Medicine and national Research Council. 2001) “The act required separation of juveniles from adults when incarcerated and barred the detention of children under age 12 in jails.” (Institute of Medicine and national Research Council. 2001) “The early juvenile court recognized that childhood was a distinct stage of life for which different procedures and solutions were needed. The objective of the court was unapologetically progressive: to help build citizenship and social membership, and promote opportunity for a disadvantaged population still at the starting gate of the life course.” (Shiraldi, Western, and Bradner, September 2015) “By 1925, a functioning juvenile court existed in every state except Maine and Wyoming.” (Schlossman, 1983)

Beginning in the 1960s, juvenile delinquency garnered more attention and punishments for youth became more punitive. Public concern increased and juvenile offenders were perceived as “the biggest threat to public safety.”(Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999) Perhaps as a result of this trend, it was during this time that juveniles were afforded more due process protections such as legal representation and protection against double jeopardy. By the late 1990s, due to a perceived increase in gang violence and violent crimes committed by juvenile offenders in

general, and encouraged by media accounts of incidents, young offenders were demonized. These “super predators”, a term coined by the criminologist John Dilulio in 1995, were punished with “increasingly harsh punishments administered by adult criminal courts and correctional facilities previously reserved for offenders over eighteen.” (Steinberg, 2017) During this timeframe, a number of juveniles were sentenced to life with or without the possibility of parole and other lengthy sentences. Graph 1 below shows youth prison trends from 1985 – 2016.



Sources: Austin, J., Johnson, K. D., & Gregoriou, M. (2000). *Juveniles in Adult Prisons and Jails: A National Assessment*. Washington, DC: Bureau of Justice Assistance; Bureau of Justice Statistics *Prison and Jail Inmates at Midyear Series*; Bureau of Justice Statistics *Prisoner Series*; Strom, K. J. (2000). *Profile of State Prisoners under Age 18, 1985-1997*. Washington, DC: Bureau of Justice Statistics.

In recent years this trend has started to reverse with the return to a separate, more rehabilitative system that recognizes the special needs and immature status of young people. During the last twelve years “several landmark cases decided by the United States Supreme Court (Supreme Court) have ensured that numerous aspects of this shift will be more than fleeting changes of opinion.” (Steinberg, 2017) This shift is due in part to the evolution of scientific theory surrounding the timeframes of brain development confirming anecdotal evidence about immaturity and crime, and a multi-disciplinary consensus regarding the viability of this evidence. (Steinberg, 2017) The introduction of developmental research into U.S. Supreme Court deliberations concerning appropriate sentencing of adolescence for the most serious crimes propelled this change forward. This research has important implications for the criminal justice community.

On February 5, 2018, the American Bar Association House of Delegates passed Resolution 111 revising their position with regards to young adults and the death penalty. “This resolution urges each death penalty jurisdiction to not execute or sentence to death anyone who was 21 years old or younger at the time of the offense.” (American Bar Association, 2018) The decision to revise their position is based on “a growing medical consensus that key areas of the brain relevant to decision-making and judgment continue to develop into the early twenties. With this has come a corresponding public understanding that our criminal justice system should also evolve in how it treats late adolescents (individuals age

18 to 21 years old), ranging from their access to juvenile court alternatives to eligibility for the death penalty.” (American Bar Association, 2018)

The acknowledgement of the period of late adolescence/young adulthood as a time of continued brain growth and maturation and that this age group is resilient to change speaks to the need for different tactics to deal with this population in the criminal justice system. In addition, the research shows that brain maturity continues through the mid-twenties. (National Offender Management Service, 2015, August) Specialized courts, parole programs, correctional housing units and facilities have begun to appear throughout the United States with a focus on young adults between 18 and about 23 or 25.

This report will provide an overview of the court cases that led to the evolution of juvenile law as it is today, the scientific theories presented in a number of these cases, cautionary viewpoints, and some of the actions that have come about as a result of these theories.

Court Cases

The Supreme Court has rendered numerous decisions over the past forty years that have shaped the way juvenile justice is practiced today including decisions regarding the death penalty and life sentences for increasingly older juveniles. Although a decision has not yet been put forth affording the same rights to offenders over the age of eighteen that are provided to juveniles under the age of eighteen in regards to Capital and Life sentences, the subject has been breached and lower courts are beginning to rule in favor of extending protections to young adults over the age of eighteen. Continued advances in science and additional evidence regarding the development of young adult brains may influence future decisions.

Supreme Court Decisions

The following is a brief synopsis of some of the cases that have influenced current practices in juvenile justice.

Court Case	Ruling	Rationale
Gregg v. Georgia 428 U.S. 153 (1976)	Capital Punishment is constitutional as long as the procedure involved in its execution does not violate the Eighth Amendment. (Gregg v. Georgia, 1976)	A death sentence must serve the “two principle social purposes’ of retribution and deterrence. Rehabilitation is not an aim of capital punishment. (Kennedy v. Louisiana, 2008; Gregg v. Georgia, 1976)
Lockett v. Ohio, 438 U.S. 586 (1978)	The Ohio statute violated the Eighth and Fourteenth Amendments in failing to require consideration of all mitigating factors surrounding the accused murderer before coming to the decision to apply the death penalty. (Lockett v. Ohio, 1978)	These mitigating factors include, "a defendant's character or record and any circumstances of the offense proffered as a reason for a sentence less than death." (Lockett v. Ohio, 1978)

Supreme Court Decisions –Continued

Court Case	Ruling	Rationale
Eddings v. Oklahoma 455 U.S. 104, 115 (1982)	Juveniles should be given the opportunity to present evidence regarding the mitigating circumstances attending the commission of a crime to show they are not culpable as imposed by Lockett v. Ohio, 1978. (Eddings v. Oklahoma, 1982)	Youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. (Eddings v. Oklahoma, 1982 (Petition for a Writ of Certiorari in Branch v. Florida, 2017))
Thompson v. Oklahoma 487 U.S. 815 (1988)	Capital punishment was found unconstitutional for individuals under the age of sixteen (16). (Thompson v. Oklahoma, 1988)	Those under sixteen have less culpability, more capacity for growth and the death penalty would not act as a deterrent due to the small numbers of youth under sixteen who receive this sentence. (Thompson v. Oklahoma, 1988)
Roper v. Simmons 543 U.S. 551 (2005)	Capital punishment is found unconstitutional for individuals under the age of eighteen (18). (Roper v. Simmons, 2005)	The first case to recognize brain development theories and their relevance to criminal sentencing including “(1) immaturity and a lack of responsibility leading to greater impetuosity and ill-considered decisions; (2) increased susceptibility to negative influences and peer pressure and a lesser ability to control their environment; and (3) transitory personality traits making the character of a juvenile less fixed.” (Roper v. Simmons, 2005; see also Miller v. Alabama, 2012) “Qualities that distinguish juveniles from adults do not disappear when an individual turns 18.” (Roper v. Simmons, 2005)
Graham v. Florida 560 U.S. 48, 79 (2010)	The Court found life without the possibility of parole to be unconstitutional for individuals under the age of 18 convicted of crimes other than homicide. (Graham v. Florida, 2010)	With no contrary data presented, the Court continued to recognize the brain development research presented in Roper. Proportionality was also prominent, with acknowledgement that the harshest punishments should be for the most serious crimes and a life sentence without the possibility of parole is very different for younger people than older ones. i.e. perceptively more extreme at 16 than at 75 years old. (Graham v. Florida, 2010)

Supreme Court Decisions –Continued

Court Case	Ruling	Rationale
Miller v. Alabama and Jackson v. Hobbs, 132 S. CT. 2455 (2012) (Decided Jointly)	Expanding the findings in Graham v. Florida, the Court found that it was unconstitutional for states to mandate life without parole for individuals under the age of 18, <u>including</u> cases of homicide. (Miller v. Alabama, 2012)	Neuroscience warranted an entire paragraph in the majority opinion; “specifically mentioning adolescent immaturity in higher-order executive functions such as impulse control, planning ahead, and risk avoidance.” (Miller v. Alabama, 2012 in Steinberg, 2017)
Atkins v. Virginia, 536 U.S. 304 (2002)	The use of outdated medical standards regarding intellectual disability to determine whether a person is exempt from execution violates the Eighth Amendment. (Atkins v. Virginia, 2002)	
Hall v. Florida 134 S. Ct. 1986 (2014)	The Court held that executing an intellectually disabled person violates the Eighth Amendment’s protection against cruel and unusual punishment. (Hall v. Florida, 2014)	If a person is unable to make the calculated judgements that are the premise for the rationale that the death penalty functions as a deterrent and as retribution, then the death penalty serves no legitimate purpose. (Hall v. Florida, 2014)
Montgomery v. Louisiana 577 U.S. __ (2016)	The Court ruled that Miller v. Alabama, 2012 applied retroactively. (Montgomery v. Louisiana, 2016)	Individuals sentenced to life without parole as juveniles prior to the Miller v. Alabama decision in 2012 are entitled to resentencing or a parole hearing. (Montgomery v. Louisiana, 2016)
Moore v. Texas, 137 S. Ct. 1039 (2017)	The use of outdated medical standards regarding intellectual disability to determine whether a person is exempt from execution violates the Eighth Amendment. (Moore v. Texas, 2017)	Recognized that accepted scientific standards should prevail over bright-line tests when applying the Eighth Amendment.” (Moore v. Texas, 2017 (Petition for a Writ of Certiorari in Branch v. Florida, 2017))
Branch v. Florida No. 17 U.S. 7825 (2017)	“Given the advancements in the scientific understanding of late adolescent brain development since Roper, should Florida have allowed Petitioner the opportunity to present proof that his execution for a crime he committed during late adolescence would violate the Eighth and Fourteenth Amendments because his age and particular lack of mental development reduced his culpability and rendered him ineligible for a death sentence?” (Petition for a Writ of Certiorari in Branch v. Florida, 2017)	Although the petition was denied in this particular case, it is important to note as one of the first cases to be brought to the attention of the Supreme Court expanding the theories of adolescent brain development to late adolescents over the age of 18. Branch was 21 at the time of his offense. (Branch v. Florida, 2017)

Lower Court Decisions

Although not binding as a ruling by the Supreme Court would be, decisions such as those noted below are an important step in how young offenders are viewed and treated in the criminal justice system. They have the potential to bring future change and highlight the influence brain development theories impact court decisions.

Court Case	Description	Rationale
State v. O'Dell 358 P.3d 359 (Wash. 2015)	The Supreme Court of Washington remanded a case for resentencing after the trial court declined to consider late adolescence as a factor in a non-capital sentencing (State v. O'Dell, 2015)	"Studies reveal fundamental differences between adolescent and mature brains in the areas of risk and consequence assessment, impulse control, tendency toward antisocial behaviors, and susceptibility to peer pressure." (State v. O'Dell, 2015 (Petition for a Writ of Certiorari in Branch v. Florida, 2017))
People v. Harris, 70 N.E. 3d 718 (Ill. App. Ct. 2016) and People v. House, 72 N.E. 3d 357, 388 (Ill. App. Ct. 2015)	Two Illinois Court of Appeals cases applied the protections of Roper v. Simmons, 2005 and Miller v. Alabama, 2012 (finding capital punishment and life without parole respectively to be unconstitutional) to nineteen-year-old defendants (People v. Harris, 2016; People v. House, 2015)	
Cruz v. United States, 2017 WL 3638176 (D. Conn. Apr. 3, 2017)	The U.S. District Court of Connecticut granted a hearing to a defendant who was eighteen at the time of his crime to "present evidence, both scientific and societal" to show whether his sentence of life without parole was unconstitutional, extending juvenile protections to an eighteen year old. (Cruz v. U.S., 2017)	Justice Hall wrote in her March 29 decision that previous courts drawing the line at age 18 did not have before them the scientific evidence about late adolescence that now available. She noted Laurence Steinberg testimony that, "adolescence lasts until the 20s and that adolescents 'show problems with impulse control and self-regulation and heightened sensation-seeking, which would make them in those respects more similar to somewhat younger people than to older people." (Florin, K. April 2, 2018) Hallmark characteristics of juveniles that make them less culpable also apply to 18 year olds. There is scientific evidence and national consensus. (Cruz v. U.S., 2017)
Commonwealth v. Bredhold, No. 14-CR-161 (August 1, 2017) and Commonwealth v. Diaz, No. 15-CR-584-001 (September 6, 2017)	Circuit Courts in Kentucky ruled that the death penalty is unconstitutional for defendants under twenty-one years of age. (Commonwealth v. Bredhold, 2017; Commonwealth v. Diaz, 2017)	Based on scientific evidence in the form of expert testimony regarding brain development in late adolescence resulting in similar effects on juveniles under the age of eighteen. (Commonwealth v. Bredhold, 2017; Commonwealth v. Diaz, 2017)
State v. Norris NO. A-3008-15T4 (N.J. Super. App. Div. May. 15, 2017)	A New Jersey court ordered resentencing for a defendant who was twenty-one at the time of his offense and received a 75-year sentence for murder and attempted murder. (State v. Norris, 2017)	Based on scientific evidence regarding brain development of late adolescence. (State v. Norris, 2017)

The Science

Courts throughout the United States, including the Supreme Court, have been open to brain development theories and the science that backs them up as indicated by the evolution of decisions made in the past few decades. This is also true throughout the criminal justice system with many areas adjusting age guidelines and programming as the science evolves and interdisciplinary consensus is reached. The Court decisions above show the progress of juvenile sentencing in regards to the most serious crimes and severe sentences. In these cases “the Court acknowledged that adolescents and adults are different in legally relevant ways” relying on “developmental science for confirmation of what ‘any parent knows’, as justice Kennedy put it in his majority opinion in Roper.” (Steinberg, 2017) As this science continues to advance, more information will be forthcoming regarding the continuation of brain maturation into the early to mid-twenties and this will likely add to the evolution of juvenile sentencing in the future.

Research has shown that human brain development is a gradual process with different regions of the brain developing at different rates. This is important in the realm of criminal justice as the regions of the brain that are the last to develop are the ones that are affiliated with making good decisions and controlling impulses (Winters, 2008) and have implications regarding blameworthiness. Neuroscientific studies have found, “A maturational imbalance during adolescence that is characterized by relative immaturity in brain systems involving self-regulation during a time of relatively heightened neural responsiveness to appetitive, emotional, and social stimuli.” (Casey, Getz, & Galvin, 2008 in Steinberg, 2017)

Structural Imaging

Structural imaging studies using diffusion tensor imaging and functional MRI (fMRI) are two types of research used in neuroscience. Findings using the former indicate that immaturity in connections within the region of the brain supporting executive functioning strengthen throughout adolescence due to a combination of maturation and experience positively correlating with impulse control. (Oleson, Nagy, Westerberg, & Klingberg, 2003; Schmithorst & Yuan, 2010; Vincent, Kahn, Snyder, Raichle, & Buckner, 2008; Liston et al., 2006 in Steinberg 2017) Contrasting fMRI studies show “relatively greater neural activity during adolescence” than in other periods of life in the brain system “known to play an important role in the processing of emotional and social information and in the valuation and prediction of reward and punishment.” (Galván et al., 2006; Hare et al., 2008; Luciana & Collins, 2012 in Steinberg, 2017)

Theories Regarding Brain Development

Several models have been developed over the last decade with “insight into how patterns of brain development might explain aspects of adolescent decision-making.” (Dahl, 2004 in Shulman et al., 2016) The two models in the forefront of neuroscientific theory, Steinberg’s Dual Systems Model and Casey et al.’s Maturational Imbalance Model, proposed simultaneously in 2008 were variations on a ‘dual systems’ explanation of adolescent decision-making. “This perspective attributes adolescents’ vulnerability to risky, often reckless behavior in part to the divergent developmental courses of two brain systems: one (localized in the striatum, as well as the medial and orbital prefrontal cortices) that increases motivation to pursue rewards and one (encompassing the lateral prefrontal, lateral parietal, and anterior cingulate cortices) that restrains imprudent impulses.” (Casey et al., 2008; Duckworth and Steinberg, 2015; Evans and Stanovich, 2013; Luna and Wright, 2016, Metcalfe and Mischel, 1999; Steinberg, 2008 in Shulman et al., 2016)

Both variations of the model “conceive of a slowly developing cognitive control system, which continues to mature through late adolescence.” (Shulman, et. al.) In Steinberg’s model the response to reward increases in early adolescence, decreasing in early adulthood with this socioemotional arousability occurring independently of control system development. The Maturational Imbalance Model on the other hand shows a plateau into adulthood with the strengthening of the cognitive control system causing the socioemotional system to become less arousable. (Shulman et al., 2016)

A third model, Ernst’s Triadic model adds a third brain system responsible for emotional intensity and avoidance, anchored in the amygdala. “Ernst (2014) speculates that this emotion/avoidance system may serve to boost impulsive decisions in adolescence by amplifying the perceived cost of delay.” (Shulman et al., 2016)

Two additional concepts found in brain development literature which shed light on young adult offenders are the “social brain” and the “maturity gap”. The idea of the “social brain” (Burnett, Sebastian, Cohen, Kadosh, & Blakemore, 2011 in Steinberg, 2017), “which was presented to the Court in Miller, provides evidence of functional changes that are consistent with heightened attention to the thought of others, which may be linked to adolescents’ greater susceptibility to peer influence. (Steinberg, 2017) The “maturity gap” stems from the finding of a “maturational imbalance during adolescence that is characterized by relative immaturity in brain systems involving self-regulation during a time of relatively heightened neural responsiveness to appetitive, emotional, and social stimuli.” (Casey, Getz, & Galvan, 2008 in Steinberg, 2017) “Moffitt characterized this gap between cognitive and psychosocial capacities as the “maturity gap”, where cognitive function develops in advance of the executive function. (Moffitt, 1993; Galambos, Barker and Tilton-Weaver, 2003 in Shiraldi, Western and Bradner, 2015) Because of this, young

adults are more likely to engage in risk-seeking behavior, have difficulty moderating their responses in emotionally charged situations, or have not fully developed a future-oriented method of decision making.” (Monahan, Steinberg, Cauggman, & Mulvey, 2009; Mulvey et al., 2004 in Schiraldi, Western, and Bradner, 2015) As maturation continues and the connections within the brain region supporting executive function strengthen, impulse control improves. (Olesen, et. al., 2003; Schmithorst & Yuan, 2010; Vincent, Kahn, Snyder, Raichle, & Buckner, 2008; Liston et al., 2006 in Steinberg, 2017)

Effect of Trauma

Research also shows “that brain development is disrupted and slowed for those exposed to trauma in childhood.” (Schiraldi, Western, and Bradner, 2015) Individuals involved in the criminal justice system “are more likely to have experienced a traumatic incident, including sustaining a traumatic brain injury (TBI) – more than twice as likely as the general population, by some measures. (Wolff et al., 2013; prevalence of TBI among prisoners measured as high as 60 percent Bridwell and MacDonald, 2014” in Schiraldi, Western, and Bradner, 2015) “In addition, justice-involved youth and young adults have a higher likelihood of parental incarceration, poverty, foster care, substance abuse, mental health needs and learning disabilities, all of which have been linked to impeding psychosocial maturity.” (Moffitt, 2006 in Schiraldi, Western, and Bradner, 2015) Other links to lifetime offending include: “Harsh parenting practices, low IQ, hyperactivity, rejection at school and reinforcement of poor behavior.” (Schiraldi, Western, and Bradner, 2015)

Brain Development and Young Adults

Backed by structural imaging research and other developmental studies, there seems to be a paradigm shift in the scientific community regarding the developmental theories noted above and the continuation of brain maturation into the mid-twenties. Emerging research has shown that the brain and its capacity for mature decision-making continue to evolve well past the teenage years. (Shiraldi, Western and Bradner, 2015) “Recent scientific work suggests that the human brain continues to develop well into the 20s, particularly in the prefrontal cortex region, which regulates impulse control and reasoning.” (Giedd et al., 1999; Paus et al., 1999; Sowell et al., 1999, 2011; Gruber and Yurgelun-Todd, 2006; Johnson, Blum and Giedd, 2009; Konrad, Firk and Uhlhaas, 2013; Howell et al., 2013 in Schiraldi, Western, and Bradner, 2015) “We can’t point to a specific chronological age at which the adolescent brain becomes an adult brain, because different brain regions mature along different timetables, but important developments, some of which are relevant to sentencing decisions, are still ongoing during the early 20s.” (Steinberg, March 30, 2015) “Research supports a regime that recognizes young adults as a transitional category between juveniles and older adult offenders.” (Scott, Bonnie, & Steinberg, 2016)

More specifically, research shows that the “desire to seek risk actually increases between the ages of eighteen and twenty-one before starting to taper off later.” (Rudolph, 2017) Adolescents are still driven by peer views of them through age twenty-two. They take “more risks, focus more on the benefits than the costs of risky behavior, and make riskier decisions when in peer groups than alone.” (Gardner & Steinberg, 2005)

“When young adults commit crimes, their crimes are often less sophisticated and more impulsive than the crimes of older adults. (National Offender Management Service, 2015) Incarcerated young adults are over represented in regards to prison assaults and self-harm incidents.” (National Offender Management Service, 2015) This is due in part to the likelihood of this age group acting in the moment without considering long term consequences of their actions. (Van Gelder, Hershfield & Nordgren, 2013 in National Offender Management Services, 2015)

Notwithstanding the above, “Young adults are malleable, and systematic changes that positively affect their lives can have long-lasting, perhaps permanent impacts on them and, subsequently, on their communities.” (Schiraldi, Western, and Bradner, 2015) When given the opportunity, young adults have the ability to change but typically have fewer opportunities for rehabilitation in a correctional setting than other prisoners. (Boone, 2015 in Rovner, 2017) As important as public safety is, promoting opportunity for adolescents and young adults should also be a priority. “Historic shifts in the structure of daily life have left young adults more disconnected from the institutions of family and the labor market. These levels of demographic disconnectedness and the increasing need for higher education to compete meaningfully in the labor market add to the neurobiological findings, compounding the challenges for this age cohort.” (Schiraldi, Western, and Bradner, 2015) In the future the criminal justice system should “recognize the diminished opportunities and greater demands that now face young adults, particularly in the disadvantaged communities that supply the adult correctional system.” (Schiraldi, Western, and Bradner, 2015)

Suggested Approached for Young Adults Based on Recent Research

Taking into account the information provided above, opinions regarding young adults are shifting based on scientific evidence and as such the approaches in the criminal justice system (i.e. courts, probation, corrections, and parole) should adjust accordingly to improve outcomes for young adults. “Criminal justice policies rarely have distinct responses to young adults, and targeted interventions for people in their transition from adolescence to adulthood are still scarce”. (Zeira & Baldwin, 2016) In recent years steps have been taken by policymakers “to translate the new science to policy innovations, and new programs for young adults have been established across the country.” (Zeira & Baldwin, 2016)

The National Offender Management Service (2015) proposed the following six (6) priority issues for intervention with young adults to assist maturity development.

1. Develop a stable, pro-social, noncriminal identity.
2. Build resistance to peer influence by cultivating a stronger sense of self and personal values.”
3. Develop self-sufficiency and independence in both prison and community settings with opportunities to take on responsibility.
4. Build skills to manage emotions and impulses with evidence based cognitive skills programming.
5. Increase future orientation: who they would like to be, how they might get there, what their lives could be in years to come. “Research shows that people from disadvantaged backgrounds, and younger people who engage in criminal or risky behavior, have weaker future orientation than their more advantaged (Nurmi, 1987; Nurmi, 1992) or law abiding peers. (Caufmann, Steinberg, & Piquero, 2005)
6. Strengthen bonds with family and other close relationships as these bonds “have been linked to lower rates of reoffending, acting as a protective factor for those in emerging adulthood.” (Salvatore & Taniguchi, 2012 in National Offender Management Service, 2015)
(National Offender Management Service, 2015)

Actions to be taken within the criminal justice system to achieve these goals may include the following:

- Provide opportunities to increase education and employment skills
- Assist with identifying job opportunities
- Substance abuse treatment
- Put in place re-entry plans with adequate support and structure including links to needed services and housing. (McGuire, 2014)
- Stress management- mindfulness informed activities to help improve self-control. (Bassam, et. al., 2013; Grossman, Niemann, Schmidt, & Walach, 2004; Leonard, et. al., 2013)
- Encourage activities with prosocial peers, volunteer work and community engagement.
- Provide family support services
- Train staff to coach young adults and make every contact count.
- Staff should encourage responsibility and self-sufficiency

(National Offender Management Service, 2015)

A Council of State Governments Justice Center report published in 2015 voiced similar priorities as those above. They note, however, that there are few evaluations available regarding how interventions that have been proven to work for youths and adults effect young adults, especially the criminal justice-involved. Therefore, interventions may need to be tailored to fit the specific needs of young adults in areas such as cognitive behavioral therapy, educational programming that improves outcomes, vocational programs that engage and prepare for success, mental health and substance abuse treatment, and strategies to assist in the transition of young adults to independence and adulthood.

This report also mentions “State policies often present additional barriers to improving outcomes for young adults.” (Council of State Governments Justice Center, 2015) This includes educational systems that allow youths over the age of 18 to leave the school system, Medicaid coverage ending at age of 19 or not covering some childhood diagnoses that continue into the adult system, foster care ending between 18 and 20, and a general lack of coordination throughout all systems with services ending at the same time in some circumstances. There are also collateral consequences such as an individual’s criminal record used against them in regards to post-secondary education, employment and public housing. (Council of State Governments Justice Center, 2015)

Important points:

- Train staff regarding the distinct needs of young adults.
- Tailor supervision and services to address young adults; distinct needs
- Reduce barriers across service systems to meeting the distinct needs of young adults
- Improve data collection and reporting on young adult recidivism and other outcomes
- Build the knowledge base of ‘What Works’ by testing promising and innovative supervision and service delivery approaches, and direct funding to programs proven to be effective.

(Council of State Governments Justice Center, 2015)

A 2016 report by Zeira & Baldwin presented ten key ideas drawn from national and international pioneers who have created “policies and programs that identify the unique risks and needs of justice-involved young adults and work to address them.” (Appendix 1) There are common elements in the majority of the ideas including: a target population up to at least 21 years of age; interagency collaboration between courts, defense and prosecuting attorneys, community service providers, and other criminal justice agencies; accessibility to a wide range of services; sentencing incentives; and staff trained in the techniques that work best with this population. Differences include age range, capacity, risk levels targeted, felony or misdemeanors included, and techniques used.

A few selected examples of young adult programs that stand out are the following:

California Young Adult Court for 18-25 year olds established in 2015 in San Francisco. This court handles both violent and nonviolent misdemeanors and felonies. For severe offenses the individual must be on probation or have a deferred entry of judgement. Offenders are not eligible without a waiver from the DA if they have over two open felony cases, are actively involved in a gang, or are charged with causing serious bodily harm. Incentives for successful completion of the court process include “case dismissal, sealing of arrests, reduction from felony plea to misdemeanor conviction, shortened probation terms and dismissal of fees and fines.” (Zeira & Baldwin, 2016)

The New York City Department of Probation Young Adult Supervision Model targets moderate-to-high risk offenders ages 16 – 24 years of age. “The program’s staff undergo extensive training in Positive Youth Development, adolescent brain development, motivational interviewing, *Stages of Change*, and implementation of individual and group cognitive-behavior interventions.” (Zeira & Baldwin, 2016) A team approach is used matching a probation officer newly hired for this program with a self-selected veteran probation officer. This is a three phase model beginning with the development of an individualized case plan based on the results of an age-appropriate, validated risk assessment (YLS or LSI-R) and built with the probation team, the probationer and members of their “circle of care”. In the second phase, “probation officers use cognitive-behavior techniques aimed at each individual’s areas of highest risk, and according to their Stage of Change with respect to each area.” In phase three, the probationer participates “in programming aimed at promoting community connections that sustain long-lasting change and growth. Probationers are also connected to individual mentors or group mentoring programs, and to anti-violence initiatives. (L. Shapiro personal communication, Feb. 2, 2016 to Zeira & Baldwin)

Young Adult Correctional Facilities

Pennsylvania’s Pine Grove correctional facility was opened in 2001 as a therapeutic community for 15 to 20 year olds emphasizing rehabilitation. It is classified as a medium security juvenile detention center. (Zeira & Baldwin, 2016)

The Maine Department of Corrections expanded services to include 18 – 25 year olds in April of 2014. The Mountain View Development Center originally a juvenile facility opened the Young Adult Offender Program (YAOP) in a specially designated unit for 18-25 year olds after a decrease in the juvenile population. “The goal of the YAOP is to promote life-long skills that are focused on reducing the likelihood of reoffending, while encouraging pro-social thinking and behaviors, in a safe and secure environment. “ (Maine Department of Correction, retrieved November 8, 2018)

In March of 2017 the Connecticut Department of Correction working with assistance from the Vera Institute opened the Truthfulness, Respectfulness, Understanding, and Elevating (T.R.U.E.) program for 18 – 25 year old offenders in a separate unit at the Cheshire prison. The program was modelled after a program in the German prison system. The goal of the

unit is to prevent a return to prison for young adult offenders incarcerated for non-violent offenses. “The unit will provide young offenders with access to developmentally appropriate programming that seeks to engage them as productive members of society.” (The Office of Governor Dannel P. Malloy, 2017) This program focuses on a change of culture for the 18 – 25 year using specially chosen older mentors seen as big brother or father figures for support and guidance, the inclusion of family in the rehabilitation process including extended contact visits with children when appropriate, and classes/programs that address the unique needs of this population including conflict resolution, fatherhood classes, business, education, and vocational classes that teach a marketable skill. (Munson, May 31, 2018; Turmelle, March 13, 2017) One year after the program began there were no fights reported. Connecticut is planning to open two more facilities for young adult men and one for young adult woman in the near future. (Jacobs, July 15, 2017)

In February 2018 the People Achieving Change Together (P.A.C.T.) unit for 18 – 24 year olds opened in the Billerica House of Correction in Middlesex County. Instigated by Sheriff Peter Koutoujian in partnership with the Vera Institute this program focuses on rehabilitation, resocialization, and attempts to replicate what life is like outside of prison. (Quinn, April 29, 2018) “Everything about this unit is designed in a way to prepare them for re-entry by giving them some of the skill sets that they didn’t have and some of the introspection they never had.” Koutoujian said. (Quinn, April 29, 2018) Prior to the opening of the unit an immersive 3-week training for staff was held to not only prepare them for dealing with the distinct needs of this difficult population, but also to ready them for the necessary cultural shift that comes with working in this novel unit. (Hayes, February 6, 2018) The atmosphere is more relaxed than general population with cells open all day and staff being more approachable and supportive. Young adults in this unit are expected to participate in mandatory anger management programs, therapy, and daily educational programs or work assignments. (Quinn, April 29, 2018) Lowell-based UTEC provides reentry support for the P.A.C.T. unit. Family involvement is an important part of this program and extra phone privileges are provided along with contact visits allowing them to hold their children. (Hayes, February 6, 2018)

The United Kingdom’s criminal justice system administers several “through the gate” programs which match mentors and releasing young adults with similar backgrounds to work together “before, during and after discharge.” (Zeira & Baldwin, 2016) Young adults tend to return to the same environment from which they left limiting their options and increasing their risk to return. Mentors provide support through the process, including waiting for the inmate at the gate upon their release and staying with them until they are more established in the community and in services. (Zeira & Baldwin, 2016) Some of these programs include family in the mentorship. Others include ex-offenders in pre-release programming, and still others include restorative practices such as mediation and family conferencing. (Zeira & Baldwin, 2016)(29-33)

Young adults experience collateral consequences as a result of their incarceration including barriers to schooling, employment, and housing. “Second Chance” laws can limit these collateral consequences by avoiding convictions that will damage young people’s records, shortening record sealing periods, and allowing case expungement for young adults.” New

York's Youthful Offender Act for 16 - 18 year olds allows a judge to use discretion at sentencing to find the defendant to be a youthful offender which is not considered a criminal offense and therefore does not show on their record. Hearings are closed and confidentiality exists for all cases. (Zeira & Baldwin, 2016)

"Recent research on criminal desistance shows that after five to seven years without a subsequent arrest, first-time arrestees are statistically indistinguishable from the general population in their risk of arrest" (Blumstein and Nakamura, 2009 in *Schiraldi, Western, & Bradner, 2015*) "for justice-involved young adults, a similar time period without incident should warrant their ability to earn a clean record." (*Schiraldi, Western, & Bradner, 2015*) This being the case, expungement after five years, or as an alternative, a "certificate of relief from disabilities" that could be granted immediately upon conviction or, similarly, a "certificate of good conduct" that could be granted after a period of good behavior could reduce the damage caused by involvement in the justice system by allowing for special consideration due to their youth and work towards rehabilitation. (*Schiraldi, Western, & Bradner, 2015*)

Other suggestions in the literature include:

- expanding Juvenile Court jurisdiction to Age 21 with additional protections for young adults up to age 24 or 25 ((Loeber, Farrington and Petechuk, 2013; Velazquez, 2013 in *Schiraldi, Western, & Bradner, 2015*)
- using diversions and sentencing that keep young adults in the community as much as possible with shorter periods of supervision
- adding enhanced mental health and trauma assessments and separate housing from older inmates if possible when pretrial detention is required. (*Schiraldi, Western, & Bradner, 2015*)
- Building case plans to withstand relapse into previous destructive behaviors recognizing that relapses are a natural occurrence in the process of maturation and behavioral change for justice-involved young adults. Use relapses for understanding needs, not as an excuse to automatically violate.
- "Positive growth and behavior should also be anticipated, and incentivized." Frequent and tangible reward should be built in.
- All staff involved should be trained to understand the psychosocial development and social contexts of young adults and in facilitating evidence-based cognitive behavioral programs for this age group. (Barrow Cadbury Trust, 2013 in *Schiraldi, Western, & Bradner, 2015*)
- Shorter and more intensely rehabilitative sentences. "Youth discounts" that reduce sentence lengths for young adults should be considered. (Barrow Cadbury Trust, 2013 in *Schiraldi, Western, & Bradner, 2015*)
- Brief by robust, specialized aftercare services pairing specially trained parole agents with community-based supports for young parolees. Incentivized with "merit time" to reduce terms of sentence.

Potential Issues

The science of brain development is seemingly uncontested. As such, there are those who believe we should proceed with caution. Skeptics warn that the brain development research relied on by the Supreme Court and other areas of criminal justice “hasn’t been subjected to rigorous challenge, or its limits defined or tested. Instead, through an avalanche of media and advocacy campaigns, it has simply been accepted as fact. (Johnson, Blum & Giedd, 2009 in Harp, 2017)

“Researchers point out that maturity is a complicated process that cannot be determined with a brain scan alone, nor can the scan of one adolescent, or even a cohort of adolescents, be extrapolated and applied to the whole population of adolescents.” (Johnson, Blum, Giedd, 2009 in Harp, 2017) There are many factors that influence maturity other than brain development “such as experience, parenting, socioeconomic status, environment and self-efficacy, among other things.” (Johnson, Blum, Giedd, 2009 in Harp, 2017)

“Processing and sanctioning young adults in the juvenile justice system may threaten the viability of an institution designed to meet the needs of teenagers.” (Steinberg, Grisso, Scott, & Bonnie, 2016) “Because people between 18 and 21 commit a disproportionate number of serious crimes, transferring young adults to the juvenile justice system could easily overwhelm it.” (Steinberg, 2017) To avoid capacity issues in the juvenile justice system, an alternative may be switching from a two part system, juvenile and adult, to a system that has a third option for late adolescents and/or young adults.” (Scott et al., 2016)

Also, “although it is often assumed that adolescents are more amenable to rehabilitation than are adults (in part because adolescence is thought to be a time of heightened neuroplasticity; Galvan, 2014; Kays, Hurley, & Taber, 2012; Selemon, 2013; Steinberg, 2014 in Steinberg, 2017), there is very little neurobiological research that has examined this proposition directly (cf. Fuhrmann, Koll, & Blakemore, 2015 in Steinberg, 2017)

Looking at the situation a different way, “(t)he young adult prison movement’s emphasis on creating ‘better’ conditions for some can relieve decision-makers of the moral urgency needed to improve the system in a way that benefits all.” (Washburn, April 17, 2017) Focusing on this one group leaves many others behind. (Washburn, April 17, 2017)

“Investing in new facilities draws scarce resources and attention away from reforms that work, including local, small-scale and community-driven alternatives to incarceration. Advocates must ensure that these new facilities do not result in increased incarceration or a growing tolerance for inadequate conditions in traditional prisons.” (Washburn, April 17, 2017) This argument can also be applied to designated units requiring additional, specially

trained staff. Specialized staff training, expanded training specifically focused on the needs of young adults, a mentorship component, etc. might be cost prohibitive.

Be aware that despite the evidence, it may only take one high-profile crime or sudden increase in crime rate for young adults to overturn all that has been achieved. There is a “need to shore up empirical support for the view that young people’s developmental immaturity demands that they be treated differently under the law, drawing on both behavioral and brain science, show how the way we respond to juvenile offending affects not only the crime rate, but the mental health, schooling, and long-term prospects of our most vulnerable young people; and demonstrate to policymakers that the most sensible juvenile justice policy is often the most cost-effective.” (Steinberg, 2017)

Challenge ideas and don’t take on face value especially the courts. Be vigilant of issues that can arise when for instance creating special facilities, etc. Be aware that raising the age considered to be a juvenile could open doors for other aged social constructs such as drivers licenses, legal drinking age, etc. (Harp, 2017)

A final issue that could be of concern is the unintentional consequence of creating an environment that is supportive and more focused on the needs of young adults that is so different and welcome from their previous life that they see an incentive in trying to return. This could be a positive as it also provides incentive to remain and work hard to do the right thing, but could be problematic if seen as a better alternative than life in the community. (Brian Chaput, Personal Communication, September 24, 2018)

Conclusion

Throughout the nation the trend in recent years has been to change the way young adults are treated in the criminal justice system. This is based on brain development research that not only applies to the juveniles the research was originally based on, but also to late adolescents/young adults aged into their mid-twenties. This research continues to evolve and the consensus amongst multiple genres of science and social science provides confidence in these findings. Although there has been limited research opposing these viewpoints, the findings are relied on throughout the criminal justice system up to and including Supreme Court decisions.

The heightened neuroplasticity of people aged approximately 18 to 24 and perhaps beyond merits a closer look at systems currently in place for arrest, pre-trial, trial, incarceration, and post-release. The research to date suggest that the benefits of tailoring interventions to this population will outweigh the costs and it is worth surmounting the issues that will inevitably pop up along the way. It is a significant investment that has the capacity to provide returns in the form of safer prisons, positive transitions to the community, decreases in crime rates, and lower cost interventions that have better results.

Key Ideas at a Glance

Idea	Description	Examples
1. Young Adult Court	Specialty court handles exclusively cases of 18-25 year olds in various risk levels.	California Young Adult Court – San Francisco
2. Specialized Court Sessions for Lower-Risk Young Offenders	Judicial and probation-led intensive supervision program for nonviolent young offenders.	<ul style="list-style-type: none"> ◦Douglas County Young Adult Court, Nebraska ◦U.S. D.C. Eastern District of NY ◦Roxbury CHOICE Program, Boston, MA ◦Dallas Attorney General Initiative
3. Prosecutorial/Judicial Choice between Criminal and Juvenile Law	Judges or prosecutors ascertain early in the process whether juvenile or adult law should apply.	Criminal Justice Reform – The Netherlands
4. Immaturity as a Factor in Sentencing	Including offender maturity level in sentencing guidelines and legislation.	Juvenile Justice Act, Germany Criminal Code, Austria
5. Specialized Young Adult Probation Caseload	Assigned probation officers specialize in young adults and provide age-responsive services.	<ul style="list-style-type: none"> ◦Transitional Age Youth (TAY) Unit, Adult Probation, San Francisco ◦New York City Department of Probation Young Adult Supervision Model
6. Young Adult Correctional Facility	Separate prisons for young adults with emphasis on rehabilitation and future employment.	<ul style="list-style-type: none"> ◦Young Adult Offender Program, Pine Grove State Correctional Institute, Pennsylvania ◦Young Adult Offender Program, Mountain View Youth Development Center, Maine
7. “Through the Gate” Young Adult Mentoring	Mentoring for young adults prior to during and after release.	London T2A Project, St Giles Trust, U.K.
8. Confidentiality of Young Adult Offenses	“Second chance” legislation that avoids conviction, expunges or seals criminal records.	<ul style="list-style-type: none"> ◦Homes Youthful Trainee Act, Michigan ◦Youthful Offender Act, New York
9. Improved Transition Protocols between Systems and Services	Hand-over protocols between systems handling young adults that improve communication.	<ul style="list-style-type: none"> ◦Transfer Protocol, Birmingham, U.K. ◦Cardiff Integrated Offender Management Y2A Service, U.K.
10. Data-Driven Young Adult Programs and State Reports	Rigorous evaluation of young adult programs, outcome-based funding (Pay for Success) and accessible data on the criminal Justice System.	<ul style="list-style-type: none"> ◦Massachusetts Juvenile Justice Pay for Success Project ◦Center for Employment Opportunities (CEO), New York ◦MassINC Report: New approaches to reducing young adult recidivism in MA

(Zeira and Baldwin, 2016)

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