

Youth Development and the Juvenile Justice System¹

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Introduction

In the 2009 General Assembly, the State of Georgia will consider revisions to Georgia's Juvenile Code. One area of ongoing debate amongst policy makers is when does childhood end and adulthood begin. While this question may be addressed by various developmental markers such as age or cognitive abilities, the issue can be particularly contentious in the area of juvenile justice reform. In the midst of such policy debates, providing accountability and appropriate consequences to young offenders sometimes becomes synonymous with their cases being handled by the adult criminal justice system, often without due consideration of what the science of child development can teach us about the effectiveness of the juvenile justice system versus the adult criminal justice system for youths and adolescents. This paper was written to assist Georgia's lawmakers as they wrestle with this important issue. This paper summarizes current research on youth and adolescent development and the implications of that research for consideration of juveniles in the justice system. In support of this summary, the paper includes brief historical overviews of the treatment of juvenile offenders in US courts, relevant state and federal court decisions and legislation, international comparisons, and considerations for application of these findings in Georgia.

Historical Context

The first juvenile courts in the world were created in Chicago, Illinois in 1899. Originally, the intention of their creation was based on the “*parens patriae*” idea, which means “*parent of the country.*” This refers to the state’s authority to act as guardian of those with legal disabilities, which includes children, infants, and those with mental disabilities. The juvenile court is judicially mandated to serve *in loco parentis* to the child (Oberlander, Goldstein, & Ho, 2001, p. 546). *In loco parentis* means in the place of a parent (Merriam-Webster, 2008). Zimring presents *parens patriae* as a dominant twentieth-century theory that had three claims: “Childhood is a period of dependency and risk in which supervision is essential for survival; the family is of primary importance in the supervision of children, but the state should play a primary role in the education of children and intervene forcefully whenever the family setting fails to provide adequate nurture, moral training, or supervision; and when a child is at risk, the appropriate authority to decide what is in the child’s best interest is a public official” (Zimring, 2005, p. 6).

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Juvenile courts originally operated under a rehabilitation assumption that the juvenile is young enough to be rehabilitated (Steinberg & Cauffman, 2001). “The presumption behind the juvenile justice system is that, while teenagers are certainly more mature than five-year-olds, the same factors that make them ineligible to vote or to serve on a jury require us to treat them differently than adults when they misbehave” (Steinberg & Cauffman, 2001, p. 3). Zimring presents two theories of change which justified the initial creation of the juvenile courts. The first is the diversionary theory, which rests on doing less harm or avoiding harm to children through the juvenile court rather than harming them through the criminal court process. The second theory, the interventionist theory, is the idea that the child-centered court provides the opportunity for programs to be administered that would have a positive impact on the child and protect the community at the same time. The interventionist perspective is based on saving and having a “positive impact” on the child, rather than the presumed negative impact that early criminalization would have (Zimring, 2005, pp. 35-36).

Child Development: Brain Function

According to the standard set by *Dusky* (1960), “A competent defendant must have ‘sufficient present ability to consult with a lawyer with a reasonable degree of rational understanding’ and a ‘rational as well as factual understanding of the proceedings.’ However, adjudicative competence in juvenile proceedings is recognized by the statute in only half the states” (Oberlander et al., 2001, p. 546). When juvenile courts originated, a major underlying principle for the creation of the juvenile justice system was built upon the concept that juveniles were more vulnerable than adults, requiring extra protection from the state. During the first sixty years of the juvenile justice system’s existence, juvenile adjudicative competence received little attention (Oberlander, et al., 2001).

It was not until late 1960s and 1970s that research revealed that human brains continue to develop much beyond early childhood. Studies have shown that two major changes that take place in brain structure that improve brain efficiency are myelination and synaptic pruning, changes which are believed to undergird improvements in various aspects of executive functioning, including long-term planning, metacognition, self-evaluation, self-regulation and the coordination of affect and cognition” (Steinberg, 2005, p. 70). Behavioral studies show that performance of inhibitory control, processing speed, working memory, and decision-making tasks continue to develop throughout adolescence (Blakemore & Choudhury, 2006, p. 301). Because of the different rates of maturity that the brain, behavioral, and cognitive systems are undergoing, the adolescent period is “one of increased vulnerability and adjustment” (Steinberg, 2005).

Recent MRI studies suggest that the time at which the brain reaches maturity may be much later than the end of adolescence. Blakemore, et al. found one study of participants between the ages of 7 and 30 that revealed an acceleration of loss of gray matter in the frontal cortex between the early 20s until age 30 (Blakemore & Choudhury, 2006). During adolescence, much of the brain development that takes place “...is in the particular brain regions and systems that are key to the regulation of behavior and emotion and to the perception and evaluation of risk and reward...it appears that changes

in arousal and motivation brought on by pubertal maturation precede the development of regulatory competence in a manner that creates a disjunction between the adolescent's affective experience and his or her ability to regulate arousal and motivation" (Steinberg, 2005, pp. 69-70). Again, it is important to realize that "children develop at different rates, and they typically exhibit developmental spurts, delays, and transient regressions. They may have difficulty transferring abilities from one social context to another. They may 'enact' or 'try out' some abilities without retaining them, or they may retain only fragments of these abilities until full development occurs later. Stress and emotional limitations also may interfere with their capacity to apply recently acquired abilities at relevant times" (Oberlander et al., 2001, p. 557). Speed, capacity, and inhibition change in the ability to process information. Adolescents gradually develop the ability to resist interfering stimuli and control their own response to stimuli. In managing their learning, they develop an ability to "allocate, monitor, and otherwise manage the mental resources" which requires "cognitive engagement on the part of the learner" (Kuhn, 2006, p. 62). Adolescents also begin developing skills that give them the ability to manage and control their thoughts (Kuhn, 2006).

Maturity of judgment is an important distinction between adolescents and adults, differences that "are not only cognitive, but also involve aspects of psychosocial maturation that include process toward greater future orientation, better risk perception, and less susceptibility to peer influence" (Grisso, et al., 2003, p. 335). Grisso, et al. conducted research on 927 adolescents ages 11-17 and compared them to 466 young adults ages 18-24. The study found that "juveniles aged 15 and younger are significantly more likely than older adolescents and young adults to be impaired in ways that compromise their ability to serve as competent defendants in a criminal proceeding" (Grisso, et al., 2003, p. 356). Because of psychosocial immaturity, youth on trial as defendants in criminal court may not have the necessary ability of understanding and reasoning that are needed to be considered competent to stand trial. "Adolescents are more likely than young adults to make choices that reflect a propensity to comply with authority figures, such as confessing to the police rather than remaining silent or accepting a prosecutor's offer of a plea agreement. In addition, when being interrogated by the police, consulting with an attorney, or evaluating a plea agreement, younger adolescents are less likely, or perhaps less able, than others to recognize the risks inherent in the various choices they face or to consider the long-term, and merely the immediate, consequences of their legal decisions" (Grisso, et al., 2003, p. 357).

Three different types of attributes impact an adolescent's decision to commit a crime:

- Lack of fully developed cognitive abilities to understand the moral portion and lack of ability to apply legal and moral rules to the situation.
- Lack of impulse control ability (unable to resist temptation)—particularly when angry. This is probably not developed until very late adolescence.
- Underdeveloped ability to resist peer pressure. "A necessary condition for an adolescent to stay law-abiding is the ability to deflect or resist peer pressure" (Zimring, 2005, pp. 58-60).

“With other factors controlled, behavioral data show that late adolescents or young adults are better able to monitor and manage their own processes of learning and knowledge acquisition, compared with children just entering adolescence” (Kuhn, 2006, p. 60). According to Zimring, “Diminished culpability logic argues that even after a youth passes the minimum threshold of competence that leads to a finding of capacity to commit crime, the barely competent youth is not as culpable and therefore not as deserving of a full measure of punishment as a fully qualified adult offender” (Zimring, 2005, p. 57).

The following changes related to adjudicative competence take place during adolescence:

- ability to engage in hypothetical and logical decision making, such as weighing costs/benefits;
- demonstrating reliable episodic memory;
- thinking futuristically, meaning understand the long-term consequences for different pleas;
- engaging in advanced social-perspective taking, such as understanding roles and motives of self and others in the court process;
- the ability to articulate their own motives and psychological state (Steinberg & Cauffman, 2001, p. 6).

The Supreme Court and Juvenile Justice

The idea that rehabilitation is the better option for juveniles than severe punishment for crime has been present in many US Supreme Court rulings. As well, developmental research has been the basis for several landmark decisions involving juveniles. The Court has even recognized in some of its rulings that crimes committed by juveniles may have been done while the juvenile was experiencing peer pressure and before he or she was cognitively mature.

In *Kent v. United States* (1966), Justice Fortas wrote that minors deserved the same protections as adults, such as the right to a waiver hearing before the juvenile court can transfer the case to adult criminal court. “Fortas wrote of the abysmal state of the juvenile court system on the whole, and maintained that trade-off had not worked, and in effect, youthful offenders received neither constitutional protection nor the rehabilitative, lenient treatment that prevented them from growing into adult offenders” (Great American Court Cases, 2007). In spelling out the determinative factors that should be considered by the judge in deciding whether to transfer the juvenile’s case to the adult criminal court system, the court recognized the sophistication and maturity of the juvenile as determined by “consideration of his home, environmental situation, emotional attitude and pattern of living” must be one of the factors of consideration. In doing so, the court realized that juveniles are less mature than adults, and that their maturation takes place at different rates. As well, the court recognized that juveniles are young enough that rehabilitation may be a better option. Another factor for the court to weigh before the transfer of a juvenile case is “the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court” (*Kent v. United States*, 1966).

In re Gault (1967) was an important case that ruled that juveniles have the same due process rights as adults. The court stated, "It would indeed be surprising if the privilege against self-incrimination were available to hardened criminals but not to children... In view of this, it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase 'due process.'" These due process rights that Gault was denied are: the right to receive notice of charges; the right to counsel; the right to confrontation and cross examination; the privilege against self-incrimination; the right to a transcript of the proceedings; and, the right to an appellate review. The court went on to declare that

...under our Constitution, the condition of being a boy does not justify a kangaroo court. The traditional ideas of Juvenile Court procedure, indeed, contemplated that time would be available and care would be used to establish precisely what the juvenile did and why he did it--was it a prank of adolescence or a brutal act threatening serious consequences to himself or society unless corrected? Under traditional notions, one would assume that in a case like that of Gerald Gault, where the juvenile appears to have a home, a working mother and father, and an older brother, the Juvenile Judge would have made a careful inquiry and judgment as to the possibility that the boy could be disciplined and dealt with at home, despite his previous transgressions. Indeed, so far as appears in the record before us...the points to which the judge directed his attention were little different from those that would be involved in determining any charge of violation of a penal statute. The essential difference between Gerald's case and a normal criminal case is that safeguards available to adults were discarded in Gerald's case. The summary procedure as well as the long commitment was possible because Gerald was 15 years of age instead of over 18...(In re Gault, 1967).

According to Steinberg and Cauffman, "Because of the relative immaturity of minors, it may be justified to view them as being less blameworthy than adults for the very same infractions—that is, whether developmental immaturity should be viewed as a relevant mitigating factor, in the way that we view mental illness or self-defense" (2001, p. 7). The Supreme Court seems to agree. Most recently, in *Roper v. Simmons*, decided March 1, 2005, the Court ruled that the death penalty cannot be given to someone who committed the crime before the age of eighteen. Justice Kennedy backed this ruling by claiming that adolescents under the age of eighteen are different from adults and therefore should not receive the same punishments. Kennedy argued that juveniles are more susceptible to immature, irresponsible behavior and that because of this susceptibility, they are not as morally responsible for their actions as adults. As well, he argued that juveniles are more vulnerable and have a lack of control over the environment that surrounds them, meaning "juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment" (*Roper v. Simmons*, 2005). Also, Justice Kennedy referenced the juvenile period as one where adolescents are still figuring out their identity, stating, "It is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character" and that they have a diminished culpability from that of adults (*Roper v. Simmons*, 2005).

State Treatment of Juveniles

Conventionally, transfer from juvenile to adult court has required that a determination be made that treatment was not likely to be a successful option for the juvenile. Recently, however, changes to the juvenile court's mission have taken into account protection of the community as well as the child's interests. "Following the increases in violent juvenile crime in the late 1980s and early 1990s, during 1992-1999, all states except Nebraska expanded their transfer provisions to facilitate prosecuting juveniles in the adult justice system" (Centers for Disease Control and Prevention, 2007, p. 2). Yet, "Little evidence supports the idea that transfer laws deter juveniles in the general population from violent crime. These policies might be favored by policymakers or the public for other reasons...However, the review [published by the Centers for Disease Control and Prevention Task Force on Community Preventive Services] indicates that use of transfer laws and strengthened transfer policies is counterproductive to reducing juvenile violence and enhancing public safety" (Centers for Disease Control and Prevention, 2007, p. 10).

There are six possible routes of transfer of a juvenile's case to adult criminal court:

1. When a juvenile court judge waives a juvenile to the adult system (usually the judge determines that the youth will not benefit from treatment, based on his or her age, seriousness of offense, and previous delinquent acts.
2. "Prosecutorial waivers" give the prosecutor the right to file a case in the juvenile or adult system.
3. "Statutory exclusion" means a statute requires that youth charged with certain crimes be tried in adult court.
4. The "once an adult, always an adult" policy, which says that youth who are transferred to the adult court are automatically transferred there for any further offenses.
5. Certain states have laws that declare that juveniles who are married or released from parental authority in some other way are excluded from being tried in juvenile court.
6. "Reverse waiver" allows juveniles whose cases are in adult court when the juvenile is still under the age of majority to be transferred back to the juvenile court if the case is determined unsuitable for the adult system. (Centers for Disease Control and Prevention, 2007)

State Laws: Evolving Definitions

Across all 50 states, each legislature passes its own legislation determining who is eligible for adult or juvenile courts. Thirty-nine states now put youth under the age of eighteen under the jurisdiction of the state's juvenile court (Hammond, 2008). Until June 2007, Connecticut, New York, and North Carolina were the only three states that set the upper age for the juvenile court's jurisdiction at fifteen. Connecticut changed its jurisdiction to include sixteen- and seventeen-year-olds in June of 2007. Nine states set the age at sixteen: Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas, and Wisconsin. Missouri changed its upper age of jurisdiction from sixteen to seventeen in August of 2007.

Some states have an “immaturity prong” that allows children/adolescents to be adjudicated as incompetent based on developmental limitations. In states that do not have this prong, “Age norms concerning competence abilities (and normative developmental data) are moot...jurisdictions with no immaturity prong might be particularly disadvantageous for young defendants because empirical research suggests the predominant variables that discriminate between competent and incompetent juvenile defendants are age, intelligence, and history of prior juvenile arrest, NOT mental disease or defect” (Oberlander, et al., 2001, p. 548). Ten states manage their juvenile correctional services out of the state’s adult corrections agency (King, 2006).

The Centers for Disease Control and Prevention Task Force on Community Preventive Services reviewed six studies that looked at rates of juvenile violence before and after transfer policies were strengthened and implemented in Washington, Pennsylvania, regions of New York, Minnesota, and Florida. The studies reviewed by the Task Force tracked juveniles for recidivism from a range of 18 months to 6 years. “Among the six studies reviewed, only one indicated that transfer of juveniles to the adult justice system deterred commission of subsequent violent or general crimes among subset of those transferred; one study found no effect. The remaining four studies all found an undesirable effect in which transferred juveniles committed more subsequent violent or general crime than retained juveniles” (Centers for Disease Control and Prevention, 2007, p. 7). Based on these results, the task force determined that transferring juveniles to the adult system “...typically results in greater subsequent crime, including violent crime, among transferred youth; therefore, transferring juveniles to the adult system is counterproductive as a strategy for preventing or reducing violence” (Centers for Disease Control and Prevention, 2007, p. 8).

Several states passed legislation in 2007 that raised the jurisdiction of the juvenile courts to age eighteen. Arkansas House Bill 1475 - Chapter 257 amended the juvenile court jurisdiction “to ensure that a felony or misdemeanor that is committed by a juvenile before the juvenile is eighteen years of age may be prosecuted in the Juvenile Division of Circuit Court when the juvenile is eighteen years of age or older” (Arkansas House Bill 1475 - Chapter 257, Regular Session, 2007).

In Rhode Island, the general assembly amended legislation known as “Proceedings in Family Court” from seventeen to eighteen for filing a petition “alleging that the child is wayward or delinquent,” and unless the case is discharged prior to his or her nineteenth birthday, the court continues with jurisdiction over the case until the juvenile becomes nineteen. As well, the act requires that when the court obtains jurisdiction of a juvenile even after he or she reaches the age of seventeen, the juvenile’s records are to be sealed. It also allows the court to put a juvenile offender in “the least restrictive, appropriate facility for sentencing” (S 1141 Substitute B, Rhode Island, 2007).

Most states, except for Nebraska, New Mexico, and New York, use a judicial waiver allowing the juvenile court to send the case to adult criminal court if the crime is especially serious, taking into account the circumstances of the juvenile (Hammond, 2008). Yet 29 states have what is known as “statutory exclusion” which, based on the

juvenile's age and offenses, keeps certain juvenile offenders from being tried in the juvenile court (Hammond, 2008).

International Law and Juvenile Justice

In most other developed countries, the age definition of a juvenile is determined at the national level.

Australia

Australia's Children and Young People Act was originally passed in 1999 but amended in April 2008. The Act applies to children and young people. It defines a child as anyone under the age of twelve and a young person as "a person who is 12 years old or older, but not yet an adult" (Children and Young People Act, Part 1.3, 1999, effective April 16, 2008). The Children's Court has jurisdiction over children and young people, and in Chapter 6, a young offender is defined as someone who has committed an offense and is under eighteen, or under twenty-one and was under eighteen when the offense took place.

Part 6.2 of the Act sets forth five principles when deciding the case of a young offender: encouraging a young offender to accept the responsibility of his or her actions and be held accountable; taking into account the offender's best interests; acknowledging the young person's needs and providing him or her the opportunity to "develop in socially responsible ways"; detaining a young person in custody should always be a last resort; and finally, "young offenders should be dealt with in the criminal law system in a manner consistent with their age and maturity and have the same rights and protection before the law as would adults in similar circumstances" (Children and Young People Act, 1999, effective April 16, 2008, Part 6.2).

Canada

The Canadian Youth Criminal Justice Act (YCJA) went into effect on April 1, 2003, in replacement of the Young Offenders Act. The YCJA defines a young person as "a person who is or, in the absence of evidence to the contrary, appears to be twelve years old or older, but less than eighteen years old and, if the context requires, includes any person who is charged under this Act with having committed an offence while he or she was a young person or who is found guilty of an offence under this Act" (Youth Criminal Justice Act, 2003). Under the Declaration of Principle, the Act states that the youth criminal justice system's purpose is to prevent crime by addressing whatever circumstances are the underlying reasons for a young person's offense, rehabilitate and reintegrate young people who offend into society, and ensure that the consequences for the crime are meaningful so as to better protect the public.

The Act separates the criminal justice system of young people from that of adults. It emphasizes: rehabilitation and reintegration, fair and proportionate accountability consistent with the greater need of young people and their immaturity, enhanced procedural protection to make certain that young people receive fair treatment and protection of their rights, including their right to privacy, and that intervention takes place

in a timely manner which further reinforces the connection of consequences to behaviors. As well, in deciding the penalty for a young person's criminal action, the measures should: "reinforce respect for societal values, encourage the repair of harm done to victims and the community, be meaningful for the individual young person given his or her needs and level of development and, where appropriate, involve the parents, the extended family, the community and social or other agencies in the young person's rehabilitation and reintegration, and respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements," and, "young persons have rights and freedoms in their own right, such as a right to be heard in the course of and to participate in the processes, other than the decision to prosecute, that lead to decisions that affect them, and young persons have special guarantees of their rights and freedoms" (Youth Criminal Justice Act, 2003).

The United Kingdom

If a young person is arrested in the United Kingdom and is under the age of eighteen, the case goes to the Youth Justice System. If he or she is younger than ten years old, he or she cannot be taken to court or charged with a criminal offense. Forensic interviews cannot be done for a child when he or she does not have his parent or guardian present unless delaying would cause serious risk to another person or serious harm to someone's property (Directgov, 2008). Generally, magistrates who have had training in dealing with youth hear cases involving defendants under eighteen. If the case is serious, however, it will be heard by the Crown Court—no matter the age (Directgov, 2008).

According to the Criminal Justice Act of 2003, Chapter 5, Part 12, when a person under the age of eighteen is convicted of a serious crime and the court deems that that person is a threat to the safety of the community, the court can detain the youth for life in prison. The Court makes that determination based on the seriousness of the offense and the risk that person poses if allowed to return to society.

Research Implications for Legislation

The John D. and Catherine T. MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice compared adolescents in New York adult courts, where they enter at sixteen, with adolescents in New Jersey, where they enter at age eighteen. They found that the adolescents in New York "were more likely to be re-arrested more often and more quickly for serious offenses than those in New Jersey" (Hammond, 2008, p. 3). In the words of Steinberg and Cauffman, "The juvenile on trial in adult court for a serious offense faces the very real possibility of a long period of incarceration in prison, with potential iatrogenic consequences and increased risk of recidivism after release. Although this argument may not carry weight with those who favor harsh consequences for young offenders for purposes of retribution, from a utilitarian perspective, a punishment that ultimately results in increased offending does not make very much sense." (2001, p. 4)

Summary and Recommendations

US courts supported a rehabilitative approach to juvenile offenders for more than a century, based on the recognition of youth's less-mature developmental status. In the

1980's, however, elected officials at the state and federal levels responded to serious cases of delinquency by reversing this tradition, passing laws designed to "...guarantee that a larger number of youths, at younger and younger ages, charged with a wider range of major and minor offenses, would be tried in criminal court as adults" (Grisso, 2007). Between 1987 and 1994, the number of youths transferred by juvenile courts to criminal court nearly doubled (Snyder & Sickmund, 1999).

In more recent years, our enhanced understanding of normal and abnormal youth development, including new insights into serious mental illness among youth, is persuading judges and elected officials to reconsider punishment-based treatment of juveniles. Recent meta-analyses of research by public and private organizations are demonstrating that a punitive-based approach often has negative unintended consequences. Among these consequences is a growing, long-term taxpayer burden for incarceration and high rates of recidivism (Annie E. Casey Foundation, 2008).

The US is among a small number of countries that do not establish the age of juvenile court jurisdiction at the national level. There is considerable variation among state definitions of juvenile status, but the trend is clearly moving toward a standard of age 18, with varying mitigating circumstances. This standard is consistent with increasing neurobiological and psychological evidence that concludes that, on most developmental indices, persons younger than 18 tend to have diminished decision-making capacity. Indeed, maturing of normal brain function typically continues well into the mid-20's.

There is no magical change from child to adult at one's 18th birthday, of course. Because we lack the precise means of determining adult-level maturity on the numerous qualities that may contribute to criminal behavior, however, we are left with cruder measures such as chronological age. We also lack the ability to reliably predict which juvenile offenders will "mature out" of their offending tendencies versus those who are budding career criminals.

Steinberg and Scott provide a cogent summary to inform our ongoing public policy deliberations regarding juvenile justice: "...there is sufficient indirect and suggestive evidence of age differences in capacities that are relevant to criminal blameworthiness to support the position that youths who commit crimes should be punished more leniently than their adult counterparts" (2003, p. 1017). To do otherwise is to ignore the human potential for growth and to waste staggering amounts of financial and human capital for our state.

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