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Series: Study Group on the Transitions Between Juvenile Delinquency and Adult
Crime

BULLETIN 5: YOUNG OFFENDERS AND AN EFFECTIVE RESPONSE IN THE
JUVENILE AND ADULT JUSTICE SYSTEMS:
WHAT HAPPENS, WHAT SHOULD HAPPEN, AND WHAT WE NEED TO KNOW

James C. Howell, Barry C. Feld, Daniel P. Mears, David P. Farrington, Rolf Loeber and
David Petechuk

This bulletin examines juvenile and criminal justice policies and practices with respect to young offenders who cross over from the juvenile to the criminal justice system. It focuses on the age period between mid adolescence and early adulthood (roughly ages 15 to 29), with a particular focus on (1) older juvenile delinquents ages 15-17 who are candidates for transitioning into the criminal justice system and (2) young adult offenders ages 18-24.

The juvenile and criminal justice systems in the United States have experienced a tumultuous period over the past half century. Beginning in the 1960s, the national crime rate sharply increased, prompting some criminologists to join with political forces to reject the rehabilitative ideal in favor of a “justice model” that limited correctional officials’ discretion with offenders and instituted determinate sentencing. A pessimistic 1974 review of program evaluations in juvenile and criminal justice systems buttressed the pendulum swing from treatment to punishment. Some analysts warned of a coming generation of juvenile “superpredators.”

Although this dire prediction never materialized, the more punitive philosophy of the criminal justice system filtered down to the juvenile justice system and ushered in significant changes in policies and procedures for handling juvenile offenders. Large numbers of juvenile offenders were removed from the juvenile justice system and placed in the criminal justice system. Blended sentence provisions were enacted into law along with offense-based criteria and mandatory minimum sentences. Punitive measures were used more widely. New laws designated more juveniles as serious offenders, brought more minor offenders into the system, and extended periods of confinement in juvenile correctional facilities.

The period of overreaction to juvenile crime appears to be ending. Both the juvenile and criminal justice systems are returning to an emphasis on rehabilitation and evidence-based practices. Moreover, there is considerable optimism that juveniles can be held accountable, while managing with services and sanctions the risks they pose to others, and provide them with “room to reform” without extinguishing their lives. The sense of urgency surrounding the need to reform juvenile and criminal justice policies and practices with respect to the transitioning young offender group cannot be overstated. In some instances, this transition can have life or death implications.

JUSTICE SYSTEM RESPONSES

The Shift from Rehabilitative to Punitive Justice Policies

During most of the 20th century, state sentencing policies were primarily offender-oriented and based on a rehabilitative model of individualized sentencing (Tonry, 2009; Warren, 2007). Beginning in the 1960s, the national crime rate sharply increased. At the same time, evaluations of correctional interventions during the rehabilitative period claimed that “nothing

works” (Lipton, Martinson, & Wilks, 1975; Martinson, 1974) and cast a negative shadow over therapeutic criminal and juvenile justice policy and practice (Tonry, 2004; Garland, 2001) and a new “just deserts” philosophy emerged. These developments led the federal government and many states to turn to offense-based sentencing policies and to embrace more punitive measures.

The pendulum swing from treatment to punishment also filtered down to the juvenile justice system (Feld, 1988; Howell, 2003b). Two compelling images in the 1990s helped foster policies to enhance punishment of juvenile offenders. First, a political scientist warned of a coming generation of juvenile “superpredators” (DiIulio, 1995a) who would become a “new breed” of cold-blooded murderers (DiIulio, 1995b). Second, DiIulio and Wilson predicted that a new “wave” of juvenile violence would occur approximately between 1995 and 2010 based on a projected increase in the under-18 population (DiIulio, 1996; Wilson, 1995).

The sharp increase in adolescent and young adult homicides in the late 1980s and early 1990s (Cook & Laub, 1998) was tied to the presumed new wave of juvenile “superpredators” (Blumstein, 1995; DiIulio, 1995a; Fox, 1996). The subsequent promotion of punitive policies rested on three assumptions: that the relative proportion of serious and violent offenders among all juvenile delinquents was growing; that juvenile offenders were becoming younger and younger; and that juveniles were committing more and more violent crimes. With hindsight, none of these assumptions has proved correct.

Several researchers have debunked the superpredator myth and doomsday projections (Howell, 2003b; Males, 1996; Snyder & Sickmund, 2000; Zimring, 1998). A new wave of minority superpredators did not develop, nor did a general wave of juvenile violence occur. To be sure, rates of violent juvenile behavior increased in some cities in the 1980s and early 1990s, including Pittsburgh (Loeber, Farrington, Stouthamer-Loeber et al., 2008) and Denver (Huizinga,

Weiher, Espiritu, & Esbensen, 2003). However, analyses of national self-report and victimization data showed that the claimed increase in juvenile violence was exaggerated (Howell, 2003b; Snyder & Sickmund, 2000). Even at the height of the juvenile crime increase (1993), “only about 6% of all juvenile arrests were for violent crimes and less than one-tenth of one percent of their arrests were for homicides” (McCord, Widom, & Crowell, 2001, p. 33).

By the end of the 1990s, all states had enacted laws to make their juvenile justice systems more punitive or to ease transfer of more juveniles to the criminal justice system and adult prisons. Juvenile legal codes designated larger proportions of juveniles as serious and violent offenders and courts incarcerated more juveniles in detention centers and juvenile reformatories (Roush & McMillen, 2000). States abandoned rehabilitative programs and used “Scared Straight” programs and boot camps that featured military-style regimented discipline. *Accountability* became a euphemism for deserved punishment (i.e., just deserts). But much of this posturing was part of an effort by prosecutors and other politicians to shift public policy toward harsher, more repressive solutions to youth crime (Beckett & Sasson, 2004).

The absence of a clear or consistent emphasis on rehabilitation or on evidence-based practices has led some scholars to observe that “what is done in corrections would be grounds for malpractice in medicine” (Latessa, Cullen, & Gendreau, 2002). Since 2000, 20 investigations associated with the Civil Rights of Institutionalized Persons Act (42 U.S.C. § 1997a et seq.) have been conducted involving 23 juvenile justice facilities in more than a dozen states (U.S. Department of Justice, 2007). Research consistently shows lower recidivism rates in the juvenile justice system than in the criminal justice system, but the likelihood of released youth or adults going on to lead crime-free lives is not high. Although it is very scant, data on recidivism rates among offenders released from state juvenile correctional facilities, gathered by the Virginia

Department of Juvenile Justice (2005) from 33 states, revealed average recidivism rates as follows: rearrests (57%), reconvictions (33%), and reincarceration (20%).

Nevertheless, some observers (Scott & Steinberg, 2008) erroneously declared that the rehabilitative mission of juvenile courts had “collapsed.” Although many state legislatures rewrote their juvenile codes to endorse punitive objectives in the 1990s, virtually all of the codes maintained some allegiance to the juvenile courts’ traditional rehabilitative mission (Bishop, 2006; Tanenhaus, 2002, 2004). Bishop’s review of laws enacted during 2003–05 observed that “efforts are underway to mitigate or even abandon punitive features [of juvenile laws enacted in the past decade] and to address the treatment needs of most juvenile offenders” (p. 660; see also Butts & Mears, 2001). Indeed, scholars who used advanced analytical tools to examine the evidence to date found that well-implemented rehabilitative programs could substantially reduce recidivism (Cullen, 2005; Lipsey, 2009; Lipsey & Cullen, 2007), even for serious and violent offenders (Lipsey & Wilson, 1998).

A recent study (Mulvey, Steinberg, Piquero et al., 2010) of more than one thousand adolescents adjudicated for serious offenses in Philadelphia (Philadelphia County) and in Phoenix (Maricopa County) found that juvenile justice system services and supervision reduced their level of involvement in antisocial activities. Almost 6 out of 10 members of this of this sample evidenced very low levels of involvement in antisocial activities during the *entire* 3-year follow-up period, and less than 9% of the sample consistently reported high levels of offending. Juvenile court-based services were more effective than confinement (Loughran, Mulvey, Schubert et al., 2009).

Ideal versus Actual Responses to Young Offenders

As a result of changes over the past 30 years, young people today face a bewildering and inconsistent array of juvenile and adult justice system responses. There are many inconsistencies in juvenile and criminal justice processing: whether or not youths receive treatment depends on which system handles them, which create a substantial disjuncture between ideal and actual responses to young offenders in terms of processing and sentencing decisions and policies.

Arrests. Criminologists have long assumed that arrests contribute to desistance during and after the juvenile years (Blumstein, Cohen, Roth et al., 1986). The arrest decision point precedes any sentencing decision, but nonetheless is critical for young people. Ideally, arrest alone should have a deterrent value for juveniles. However, at least in some areas of the country, arrest may exacerbate a youth's future justice system involvement and inadvertently contribute to recidivism (Bernburg & Krohn, 2003; Bernburg, Krohn, & Rivera, 2006; Huizinga & Henry, 2008). However, if a juvenile justice system were doing its job in protecting public safety, higher-risk offenders would penetrate the system more deeply and evidence higher recidivism rates in the absence of effective programs.

Effects of Prosecution Practices on Different Ethnic Minorities. A voluminous amount of literature exists about impacts on racial and ethnic minorities of court and correctional decision-making (Hawkins & Kempf-Leonard, 2005; Howell, 2006, 2009). The literature on front-end decision-making finds that "minority youths are more likely than whites to be arrested, referred to court, and detained by police" (Bishop, 2005, p. 45). Bishop's (2005) review found that "relatively few studies have explored the influence of race/ethnicity on prosecutorial decisions to file formal charges" (p. 52). By and large, however, except for the discrepant outcomes, we know little about how race and ethnicity affect formal charging practices and plea negotiations.

The Impact of Targeted Prosecution on Conviction of Offenders Ages 15-29. Targeted prosecution involves selective identification and prosecution of serious, chronic, or violent offenders, sometimes coupled with efforts to enhance treatment or intervention. Little research has directly examined prosecutorial practices and their impact on juveniles' transition into early adulthood. One study suggests that selective prosecution—for example, assigning an experienced prosecutor to handle juveniles' cases from charging through disposition (Backstrom & Walker, 2006)—can achieve improved outcomes, including more rapid court processing, more convictions, more placements in secure confinement, and less plea bargaining. However, it has not been demonstrated that these process outcomes lead to lower recidivism rates. To be sure, we know little about the gap between ideal and actual practice, much less how the quality of implementation of prosecution policies impacts recidivism.

Transfer Methods. Every U.S. state uses one or more statutory approaches to prosecute some juveniles as adults (Snyder & Sickmund, 2006; Griffin, 2012). Although the details of states' transfer laws differ, all rely on variations of three general strategies—judicial waiver, legislative offense exclusion, and prosecutorial direct-file—to prosecute children in criminal courts (Snyder & Sickmund, 2006; Griffin, 2012). Transfer has served as a central focus of juvenile justice reforms in recent decades and vividly illustrates the “get tough” trend in juvenile justice.

Judicial waiver statutes represent the most prevalent transfer mechanism used in 45 states (Griffin, 2012), although these statutes account for the fewest number of youths tried in adult criminal courts. Judicial waiver laws allow a juvenile court judge to waive jurisdiction after a hearing to determine whether a youth is “amenable to treatment” or poses a danger to public safety. Reflecting the individualized sentencing discretion characteristic of juvenile courts, these

assessments consider clinical evidence and a youth's social background, as well as the offense and criminal history (Feld, 1999, 2000). Although 14 is the minimum age for transfer in most jurisdictions, some states permit waiver of youths as young as 10 years or specify no minimum age and others require adult prosecution of children as young as 13 for certain offenses (Snyder & Sickmund, 2006; Griffin, 2012).

The number of delinquency cases judicially waived to criminal court peaked at 13,200 in 1994 (Snyder & Sickmund, 2006). By 2001, waived cases were down to 6,300 and were below the 1985 level. We attribute the overall decline in judicially waived youths since the mid-1990s to states' adoption of offense exclusion and prosecutorial direct filing laws. These laws shifted discretion from the judicial branch to the executive branch in which prosecutors were making offense charging decisions that determined jurisdiction. These changes eliminated the need for judicial hearings and increased the number of youths transferred to criminal courts by other methods (Feld, 2008; Griffin, 2012).

Although 45 states have judicial waiver statutes, statutory exclusion and prosecutorial direct-file laws account for most of the juveniles tried as adults (Feld, 2008; Griffin, 2012). Analysts estimate that states annually try more than 200,000 juveniles as adults simply because juvenile court jurisdiction ends at 15 or 16 years of age rather than at 17 (Butts & Mitchell, 2000; Snyder & Sickmund, 2006). "If only half of these cases actually went forward for criminal court processing, they would still far exceed the number of juveniles ending up in adult court by all other methods combined" (Butts & Mitchell, 2000, p. 186). Analysts also estimate that states use transfer mechanisms to try an additional 55,000 youths a year in criminal courts who were within the age jurisdiction of juvenile courts (Human Rights Watch, 2005; Snyder & Sickmund, 2006).

Legislative offense exclusion frequently supplements judicial waiver provisions (Griffin, 2012). This approach emphasizes the seriousness of the offense, rather than characteristics of the offender, and reflects the retributive values of the criminal law. Because legislatures create juvenile courts, they may define their jurisdiction simply to exclude youths charged with serious offenses from their jurisdiction without any hearing. For example, several states exclude from juvenile court jurisdiction youths 16 or older who are charged with first-degree murder (Griffin, 2012).

In 15 states, juvenile and criminal courts share concurrent jurisdiction over certain ages and offenses, typically older youths and serious crimes (Griffin, 2012). Prosecutors can direct-file or charge youths in either the juvenile or criminal justice systems without any judicial review of their charging or court decisions (Snyder & Sickmund, 2006; Griffin, 2008). Analysts estimate that prosecutors determine the adult status of 85% of all youths tried as adults (Juszkiewicz, 2000).

Sentencing of the Most Serious Juvenile Offenders. No standard sentencing approach governs states' criminal justice systems (Mears, 2003; Tonry, 1999). Thirty years ago, indeterminate sentencing was the prevailing model, but this has given way to a wide variety of sentencing options, including determinate and mandatory minimum sentences, three-strikes laws (designed to increase prison terms for repeat offenders), and "truth in sentencing" laws (which require offenders to serve some specified proportion of their sentences). The result is "a national crazy quilt made up of piecemeal sentencing reforms—without a public rationale that would explain the relationship between imprisonment and release" (Travis & Petersilia, 2001, p. 296).

New state laws generally increased eligibility for criminal court processing and adult correctional sanctioning and reduced confidentiality protections for some juvenile offenders.

Various laws increased sentences for a broader range of juvenile offenses and transferred more juveniles to criminal courts for sentencing as adults, especially those charged with violent and drug offenses (Torbet & Szymanski, 1998). In essence, prosecutors were given far more charging authority and gained an additional tool for seeking tougher sentences that would extend beyond the age limits of the juvenile justice system. Loughran, Mulvey, Schubert et al. (2009) found that longer sentences in juvenile correctional facilities did not produce lower recidivism rates. However, the evidence-based quality of services was not examined in this study.

In sum, the disjuncture between intended and actual system responses—arrest, prosecution, transfer, and sentencing—and our limited knowledge about the nature or magnitude of the gap poses enormous problems for policymakers. Responses to juvenile offenders, governed by juvenile and criminal codes, are highly variable and inconsistently applied.

The Effectiveness of Transfer and New Approaches to Sanctioning Young Offenders

Transfer Laws and their Effectiveness. Earlier reviews of transfer studies reported that transferred youths were more likely to reoffend, reoffended more quickly and at higher rates, and committed more serious offenses following release from prison than did juveniles retained in the juvenile justice system (Bishop & Frazer, 2000; Howell, 1996; Howell & Howell, 2007). A more recent and systematic review of transfer studies conducted by the Task Force on Community Preventive Services (2007) of the Centers for Disease Control and Prevention (CDC) (Hahn, McGowan, Liberman et al., 2007; McGowan, Hahn, Liberman et al., 2007) found that transferring juveniles to the adult justice system generally increased, rather than decreased, rates of violence (Tonry, 2007). This systematic review found that transferred juveniles were 34%

more likely to be rearrested for violent or other crimes than were juveniles retained in the juvenile justice system (McGowan et al., 2007, p. S14).

Other studies buttress the CDC's findings. Prior research indicates that changes in transfer laws or practices do not produce a specific or a general deterrent effect (Bishop & Frazier, 2000; Steiner & Wright, 2006). Collateral consequences of criminal convictions (Mauer & Meda, 2003) appear to include an elevated risk of violent victimization in adult jails and prisons (Bishop & Frazier, 2000; Forst, Fagan, & Vivona, 1989). In addition, transfer of youth may be developmentally disruptive because it interferes with acquisition of crucial educational, vocational, and social skills (Scott & Steinberg, 2008). All transfer studies are not in agreement on this important matter of deterrence. The majority show that recidivism rates are higher for transferred youth, particularly for violent offenses, in the most comprehensive and systematic CDC review.

SIDE BAR

SCHOOLS FOR CRIME

Transfer laws, if implemented as intended, should result in youth being processed in adult court and sentenced to adult prisons. Prior theory and research suggests that such exposure is likely to increase offending. Prison environments can serve as “schools for crime” (Irwin, 1980; Nagin, Cullen, & Jonson, 2009). Indeed, Bishop and Frazier (2000) found that “youths were more likely to learn social rules and norms that legitimated domination, exploitation, and retaliation. They routinely observed both staff and inmate models who exhibited these behaviors, and they observed these illegitimated norms being reinforced” (pp. 263-4.). Once in adult prison, Florida facilities provided fewer than 10% with any type of counseling or treatment program.

Furthermore, youths reflecting on their experiences reported “feeling threatened by correctional staff, both physically and emotionally” (p. 266). Nationwide, two-thirds (67%) of released prisoners are rearrested within 3 years, and more than half of released inmates are returned to prison (Langan & Levin, 2002).

The Efficacy of Criminal, Juvenile, and Blended Sentencing on Future Offending. Many new sentencing laws have “criminalized” juvenile courts and changed their procedures to operate more like adult criminal courts. Changes have included expanding adversarial procedures, increasing the role of prosecutors, formalizing due process, eliminating confidentiality, routinely gathering fingerprints, using “blended sentencing,” and emphasizing offense-based sanctions rather than rehabilitative dispositions in juvenile courts (Fagan & Zimring, 2000; Redding & Howell, 2000). The increased criminalization of juvenile courts has proceeded without any evidence that it effectively reduces crime or recidivism, and the policy runs counter to the traditional mission of these courts (Butts & Mitchell, 2000; Mears, 2000, 2001). To illustrate, 15 states, including Texas (Mears, 2000; Mears & Field, 2000), Florida (Bishop & Frazier, 1996), and Minnesota (Podkopacz & Feld, 1995, 1996, 2001), have introduced blended sentencing laws without any obvious improvement in offending outcomes or enhanced ability of either the juvenile or adult justice systems to better manage youth.

In blended sentencing systems, youths are entitled to receive all adult criminal procedural safeguards including the right to a jury trial. Following conviction, judges may combine a sentence in the juvenile system with an adult criminal sentence which is stayed pending

successful completion of the juvenile disposition. If a youth violates conditions of probation or reoffends, then a judge may revoke the juvenile's probation and execute the criminal sentence.

Zimring (2000) has described the "Byzantine complexity" of blended sentencing laws. In Kansas, judges can impose a blended sentence on a youth as young as 10 years of age for any offense, and several states specify no or a very low minimum age (e.g. 12 or 13 years) for a blended sentence (see state-by-state discussion of blended sentencing provisions in Griffin, 2012). Many youths who receive blended sentences fail on their juvenile probation, which then leads the courts to execute the adult criminal sentences. This process can result in "net widening" and, in particular, criminal sentences for youths convicted of nonserious offenses. Net widening occurs when a new sanction intended to serve as an alternative to a given level of system processing inadvertently brings more youths into the system's net.

Specialized Courts. Juxtaposed against a clear "get tough" trend in juvenile justice stands a countervailing trend toward embracing sanctioning options that include both punishment and rehabilitation as central guiding tenets (Butts & Mears, 2001; Mears, 2002). Specialized courts including youth courts are operating in both the juvenile and adult justice systems. However, as with the "get tough" trends, little is known about the implementation or impacts of these courts. Butts, Buck, and Coggeshall (2002) evaluated four youth courts and found that recidivism rates among teen court youth were lower than those of youth in the regular juvenile justice system. Systematic steps were taken to ensure a "good" to "high" degree of comparability in the absence of random assignment. A recent meta-analysis suggests that drug offenders processed in a drug court are less likely to reoffend than similar offenders sentenced to traditional correctional options (Mitchell, Wilson, & Mackenzie, 2012). This research along with another study

indicates that drug courts are less effective with juvenile offenders than with older offenders (Shaffer, Hartman, Listwan et al., 2011).

SPECIAL CONSIDERATIONS FOR JUVENILES

Culpability

Culpability focuses on an actor's blameworthiness and degree of deserved punishment. Youths' diminished responsibility requires mitigated sanctions to avoid damaging penalties and provide room for reform. Compared with adults, youths' immature judgment reflects differences in appreciation of risk, appraisal of short- and long-term consequences, self-control, and susceptibility to negative peer influences (Scott & Steinberg, 2008). The Supreme Court's 2005 decision in *Roper v. Simmons* (543 U.S. 551) to abolish executions of juvenile offenders in the United States provides the backdrop for the discussion of adolescents' reduced criminal responsibility.

In *Roper v. Simmons*, the Supreme Court conducted a proportionality analysis (defined as "the punishment fits the crime") of adolescents' culpability to determine whether the death penalty could ever be an appropriate punishment for some juveniles. The majority of judges offered three reasons why states should *not* punish juveniles as severely as adults (*Roper*, 2005). First, juveniles' immature judgment and lesser self-control causes them to act impulsively and without full appreciation of consequences and reduces their culpability. Second, juveniles are more susceptible than adults to negative peer influence, which further diminishes their criminal responsibility. Third, juveniles' personalities are more transitory and less well formed than those of adults, and their crimes provide less reliable evidence of "depraved character." The Court's *Roper* decision (2005, p. 569) also attributed youths' diminished culpability to a "lack of

maturity and . . . underdeveloped sense of responsibility . . . [that] often result in impetuous and ill considered actions and decisions.” In sum, the Supreme Court concluded that juveniles’ reduced culpability warranted a categorical prohibition of execution (Feld, 2008).

Although the Supreme Court’s capital punishment jurisprudence insisted that “death is different” (*Eddings* 1982; *Harmelin* 1991; *Graham* 2010), youths’ criminal responsibility is just as diminished when states impose life without parole (LWOP) or other lengthy sentences (Logan, 1998; Feld, 2008; Human Rights Watch, 2005). The same developmental psychological characteristics and penal considerations that reduce youths’ criminal responsibility for purposes of execution also reduce their culpability and warrant mitigated sentences (Zimring, 1998). Despite youths’ diminished responsibility, 42 states permit judges to impose an LWOP sentence on any offender – adult or juvenile – convicted of serious offenses such as murder or rape; and 27 states require mandatory sentences for offenders convicted of those crimes. Judges may also impose very lengthy or consecutive terms that create the functional equivalent of life sentences.

Mandatory LWOP sentences preclude consideration of youthfulness as a mitigating factor. Several states used their legislative authority to abolish the common-law infancy defense for very young children and removed the only substantive criminal law protections for youth (Carter, 2006). Appellate courts regularly uphold LWOP sentences and long terms of imprisonment imposed on youths as young as 12 years of age and reject juveniles’ pleas to consider youthfulness as a mitigating factor (Feld, 2008; Human Rights Watch, 2005). About one in every six juveniles who received an LWOP sentence was 15 of age or younger when they committed their crimes (Human Rights Watch, 2005). Although the Court’s death penalty jurisprudence treats youthfulness as a mitigating factor, trial courts perversely treat it as an

aggravating factor and sentence juveniles more severely than their adult counterparts (Kurlychek & Johnson, 2004, 2010). Youths are more likely than adults convicted of murder to enter prison with LWOP sentences (Human Rights Watch, 2005).

In *Graham v. Florida* (2010), the Supreme Court applied *Roper*'s diminished responsibility rationale to cases in which judges sentenced youths convicted of non-homicide crimes to life without parole. Historically, the Court's Eighth Amendment proportionality analyses distinguished between capital sentences and long terms of imprisonment and deferred to legislative decisions about deserved punishments. However, *Graham* (2010) concluded that offenders who did not kill were "categorically less deserving of the most serious forms of punishment than are murderers." *Graham* emphasized youths' immature judgment and reduced self-control, susceptibility to negative peer influences, and transitory character development. *Graham* also asserted that subsequent research in developmental psychology and neuroscience bolstered *Roper*'s conclusion that adolescents' reduced culpability required somewhat mitigated sentences. In *Miller v. Alabama*, the U.S. Supreme Court ruled that that states may no longer mandate life without parole sentences for juveniles convicted of homicide offenses, and mandates that punishment be appropriately tailored to account for the unique attributes of juvenile offenders, while still advancing the moral imperatives of the criminal law and promoting "just deserts" (Rosado, 2012).

The Science of Child and Adolescent Development

For many years, developmental psychologists focused on logical reasoning capacity as the linchpin of maturity. Yet "trying to understand why risk taking is more common during adolescence has challenged psychologists for decades" (Steinberg, 2007, p. 55). Steinberg, a

leading scientist in this research, promotes a new perspective on adolescent risk taking that begins with the premise that risk taking in everyday life is the product of both logical reasoning and psychosocial factors. “However, unlike logical-reasoning abilities, which appear to be more or less fully developed by age 15 psychosocial capacities that improve decision making and regulate risk taking—such as impulse control, emotion regulation, delay of gratification, and resistance to peer influence—continue to mature well into young adulthood” (Steinberg, 2007, p. 56; see Figure 1).

[Put Figure 1. The Reasoning-Maturity Gap about here]

Many of the differences between adolescents’ and adults’ thinking and behaving reflect developmental differences in the human brain, which is not fully mature until early adulthood. Researchers at the Harvard Medical School, the National Institute of Mental Health, the UCLA School of Medicine, and others have collaborated to map the development of the brain from childhood to adulthood and to examine the implications of this development. Their research used magnetic resonance imaging (MRI) to measure brain development. Until recently, most neuroscientists believed that the essential ‘wiring’ of the brain was completed very early—perhaps by age 6—and that the brain matured fully in childhood and certainly by early adolescence. However, neuroscientists discovered a second spurt in brain development, one that occurs during the adolescent years. In other words, the teen brain is not a finished product but a work in progress, with maturation continuing well into the 20s (Giedd, Blumenthal, Jeffries et al., 1999; Paus, Zijdenbos, Worsley et al., 1999; Sowell, Thompson, Jernigan, & Toga, 1999; Sowell, Thompson, Tessner, & Toga, 2001).

The prefrontal cortex (PFC) of the frontal lobe of the brain operates as the “chief executive officer” to control advanced cerebral activities including reasoning, abstract thinking, planning, anticipating consequences, and impulse control (Gruber & Yurgelun-Todd, 2006; Sowell et al., 1999; Sowell et al., 2001; Aronson, 2007). During adolescence and into the early 20s, increased maturation of the PFC improves cognitive functioning and reasoning ability (Paus et al., 1999; Sowell et al., 2001). Hence adolescents and young adults simply do not have the physiological capacity of adults over age 25 to exercise judgment or control impulses (Gruber & Yurgelun-Todd, 2006).

Decision Making and Judgment

Established in 1997, the MacArthur Foundation’s research network on Adolescent Development and Juvenile Justice (ADJJ) has studied juveniles’ decision-making and judgment, adjudicative competence, and criminal culpability (Feld, 2008; Scott & Steinberg, 2008). The ADJJ research reports a disjunction between youths’ cognitive abilities and their maturity of judgment. Even though adolescents may exhibit intellectual and cognitive abilities comparable to adults, they do not develop the psychosocial maturity, ability to exercise self-control, and competence to make adult-quality decisions until their early 20s (Scott & Steinberg, 2003). The “immaturity gap” represents the disjuncture between cognitive maturity—the ability to distinguish right from wrong—which reaches near-adult levels by age 15 or 16, and adolescents’ psychosocial maturity of judgment, risk assessment, and self-control, which may not emerge fully for nearly another decade.

The ADJJ researchers also studied juveniles’ ability to evaluate risks and to delay gratification (Feld, 2008). This research suggests that adolescents’ risk perception actually

declines during mid-adolescence and then gradually increases into adulthood. As a result, 16- to 17-year old youths perceive fewer risks than do either younger or older research subjects. Youths engage in risky behavior because it provides heightened sensations, excitement, and an “adrenaline rush” (Spear, 2000; Steinberg, 2004). The widest divergence between the perception of and the preference for risk occurs during mid-adolescence when youths’ criminal activity also increases.

Adjudicative Competence

Competence is the constitutional prerequisite to the exercise of other procedural rights. To be competent to stand trial, a criminal defendant must have sufficient ability to consult with his lawyer with a reasonable degree of rationale understanding, have a full understanding of the proceedings against him/her, and have the capacity to assist in preparing his/her defense (Bonnie & Grisso, 2000; Grisso, Steinberg, Woolard et al., 2003). Adjudicative competence involves a defendant’s ability to communicate with lawyers or aid in his/her defense, to make legal decisions and understand and participate in such legal procedures, to waive *Miranda* rights, to waive or assist counsel, to stand trial, and to exercise other constitutional protections.

Developmental psychologists strongly question whether juveniles possess the cognitive ability, psychosocial maturity, and judgment necessary to exercise legal rights (Grisso et al., 2003; Kruh & Grisso, 2009). They argue that immaturity *per se* produces the same deficits of understanding, impairment of judgment, and inability to assist counsel as does severe mental illness and, as a result, it renders many juveniles legally incompetent. For adolescents, generic developmental limitations adversely affect their ability to understand legal proceedings; to

receive information from, communicate with, and assist counsel; and to make rational decisions (Scott & Grisso, 2005; Redding & Fuller, 2004).

Despite clear developmental differences between adolescents and adults, the Court and most state laws do not provide youths with additional procedural safeguards to protect them from their own immaturity and vulnerability. About half the states address juveniles' competency to stand trial in statutes, court rules of procedure, or case law and conclude that delinquents have a fundamental right not to be tried while incompetent (Scott & Grisso, 2005; Feld, 2009). However, states use adult legal standards to gauge juvenile competence. Developmental psychologists contend that all children and adolescents younger than 16 years of age should receive automatic competency assessments and express serious reservations about the competency of 16-17-year-olds (Scott & Steinberg, 2003).

A critical challenge to assessing competency is the fact that many jurisdictions do not provide adequate or appropriate competency assessments of youth (Grisso, 2004). The MacArthur Competency Assessment Tool-Criminal Adjudication (MacCAT-CA; Hoge, Bonnie, Poythress et al., 1999) was developed to assess an individual's competency to stand trial. MacCAT-CA consists of three scales, Understanding, Reasoning, and Appreciation, along with several other variables (age, IQ, achievement level, experience with the juvenile justice system, and a screen for psychopathology) that may be related to competence to stand trial. Results of a validation study suggest that performance on the MacCAT-CA varied with age, with younger participants performing significantly worse than older juveniles (Ficke, Hart, & Deardorff, 2006).

Reentry Challenges and Contexts Unique to Young People

An estimated 200,000 juveniles and young adults ages 24 and younger leave secure juvenile correctional facilities or state and federal prisons and return home each year (Mears & Travis, 2004). Most reentry research has focused on adults, and little is known about the reentry of young people. It would be risky to assume that the challenges young offenders face upon returning to society is the same as those for adults; substantial differences exist. For example, young people, and adults alike, who are released from secure confinement, confront several barriers:

- School systems may not be receptive to working with them and may warehouse them in special classrooms or alternative schools.
- Developmental disabilities may have gone undiagnosed, untreated, or mistreated.
- Violence and drug dealing may occur in family settings.
- Peer networks may foster criminality, a particular concern because of the greater importance of peer influences among adolescents.
- Youth may be unemployable because they typically will not have graduated from high school, and have a limited, if any, employment history. Only one-third (68%) of state prison inmates received a high school diploma (Harlow, 2003).
- Young people released from confinement may have little experience in positive prosocial experiences involving friends, prosocial recreation, intimate emotional relationships, the self-discipline needed for employment, etc.

Civil disqualifications remain a major obstacle to successful offender reentry into society, but few studies have systematically compared these needs and experiences among youth populations. A systematic review of prisoner reentry programs (Seiter & Kadela, 2003) for adults indicated generally positive outcomes for several programs, including vocational training and/or

work release, drug rehabilitation, education programs (to some extent), halfway house programs, pre-release programs, and promising results for sex- and violent offender programs. Such programs as these need to be tested for young adult offenders.

SIDE BAR

International Law and Practice

The U.S. is the only developed nation that tries its youngest offenders in its regular criminal courts without modified procedures.¹ Until *Roper v. Simmons* (2005) banned executions of persons who commit capital murder before they reach age 18, the U.S. was the only country in the world that gave official sanction to the juvenile death penalty. The U.N. Convention on the Rights of the Child (CRC) codified the basic human rights of children and was adopted by the United Nations General Assembly in 1989. The U.S. and Somalia are the only countries that have not ratified this convention. Other international covenants provide special protections to juvenile offenders around the world. These include Articles VII (right to special protection), XXV (right to due process), and XXVI (right to protection against cruel, infamous, or unusual punishment) of the American Declaration of the Rights and Duties of Man. By way of contrast, in Scandinavian countries juveniles below the age of criminal responsibility (age 14 in Denmark) are regarded as children and cannot be punished regardless of the seriousness and other circumstances related to their crimes. Offenders aged 18 to 20 years are treated more leniently than older adults not only in Scandinavia, but also in 18 other European countries.

¹ Sweden, Norway, and Denmark do not have juvenile courts, but try youths 15 or older in the adult criminal justice system, albeit with modified procedures and social welfare alternative sentencing options to adult sentences (Tonry, 2004).

Race and Ethnicity

The over-representation of racial and ethnic minorities in the juvenile and adult criminal justice systems poses issues of justice, fairness, and equity. Most research reports that minority youth are over-represented at all stages of juvenile and criminal justice processing from arrests to confinement (Feld, 1999; Howell, 2003b; Liebman, Fagan, & West, 2000; Snyder & Sickmund, 2006; Tonry, 1994, 2009). In particular, black youths are disproportionately arrested and processed in the juvenile and adult criminal justice systems for drug offenses in comparison with white offenders, even though their drug use rates are no higher than those of white youngsters (Centers for Disease Control and Prevention, 2006). Latino youth are also overrepresented in the U.S. juvenile and adult criminal justice systems and receive harsher treatment than white youth (Arya, Villarruel, Villanueva et al., 2009; Villarruel & Walker, 2002).

Gender

It is accepted in criminology “that official female criminality, as well as self-reported delinquency, is less serious, begins later in adolescence, and is less persistent than male criminality and delinquency [and that] the gap is largest for serious offenses” (Cernkovich, Lanctôt, & Giordano, 2008, p. 4; see also Steffensmeier, Schwartz, Zhong et al., 2005). Although relatively more girls are present in the juvenile justice system than in previous years, the system is not currently flooded with them (Snyder & Sickmund, 2006). However, between 1985 and 2005, the number of girls on probation nationwide nearly doubled, and girls’ placement in detention rose by 98% (Pasko & Chesney-Lind, 2010). Similarly, more women are now present in the adult criminal justice system, particularly for “violent assault”. However, the greater presence of girls and women in court appears to be a policy change rather than an actual rate

increase in violence, that is, it is attributable to more policing of females fights, physical attacks, and threats of marginal seriousness (Steffensmeier et al., 2006).

Justice systems should assess all offenders' risk for continued offending, treatment needs and so on, regardless of sex, while ensuring that these instruments have been validated for females.

Considerable evidence suggests that generic treatment services are about equally effective with females ages 12-21 in comparison with males (Lipsey, 2009).

RECOMMENDATIONS

The evidence, especially from developmental neuroscience, suggests that, in many respects, young adult offenders aged 18-24 are more similar to juveniles than to adults.

Therefore, we make the following policy recommendations (some of which are alternatives):

1. The effects of raising the minimum age for adult court to age 21 or 24 should be considered.

We recommend cost-benefit analyses to quantify the benefits of legally raising the maximum age of juvenile jurisdiction to age 20 or 24³. Such cost-benefit analyses have been executed abroad (in the U.K.).

2. A promising forward-looking model for older serious and violent adolescent offenders is the British T2A initiative. The Barrow Cadbury Trust has established three pilot projects (in London, Worcestershire, and Birmingham). Each of these new approaches to the supervision of and specialized support for young adult offenders differs slightly but all include a maturity assessment (see <http://www.t2a.org.uk>; Barrow Cadbury Trust and International Center for Prison Studies, 2011; Helyar-Caldwell, 2009, 2010). We think that the preliminary research findings could constitute a template for developing an American model for supervision of

and support for young adult offenders. Therefore, we recommend that similar pilots should be implemented and tested in the U.S. as a mechanism and program for bridging the gap between the juvenile justice and adult criminal justice systems.

Three sets of reasons support creating such an initiative: (i) excessive punishment of youth who land in the adult justice system; (ii) immaturity as a mitigating factor; and (iii) the developmental needs of young people. The focus could be on rehabilitation rather than retribution (Jolliffe & Farrington, 2009). Because juveniles who are transferred to adult U.S. courts tend to receive more severe sentences and tend to have higher recidivism rates than those in juvenile courts, we expect that these special courts could cause a decrease in recidivism and a decrease in incarceration, and consequently they could save money. In a national study (Brown & Langan, 1998), transferred juveniles convicted of felonies were given longer prison sentences than adults for the same types of offenses. Transferred juveniles were sentenced to prison for a maximum of 9 years on average, compared with 7 years for under-18 adults (as defined by state statutes) and 5 years for adults 18 and older.

There could be special correctional facilities for young adult offenders, within which tailored services should be provided including cognitive-behavioral therapy, drug treatment, mentoring, education and vocational training, and work release. Special facilities for young adults already exist in some states (e.g., the Pine Grove institution in Pennsylvania). Along these lines, several European countries (e.g., Sweden, Germany and Austria) have long had separate young adult sentencing options and separate institutions for 18-20 year olds. Most research shows that there is no evidence that either longer sentences or lengthening the period of incarceration provides practical benefits in terms of reducing the recidivism rates of serious offenders. Since juveniles sent to adult correctional facilities have higher recidivism

rates than those in juvenile facilities, we expect that the special facilities could cause a decrease in recidivism and consequently could save money (even taking account of the additional cost of the programs).

3. There could be a “youth discount” or “immaturity discount” for young adult offenders: a decrease in the severity of penalties to take account of their juvenile-like lesser culpability and diminished responsibility. Because of these factors, death sentences and life without parole sentences should be abolished for young adult offenders.
4. There should be risk/needs assessments and screening of young adult offenders to guide the selection of appropriate disposals and interventions. This screening should assess the topics listed in (a)-(j) in Box 1, in addition to risk factors such as low intelligence. Young adult offenders with substance use problems should be diverted to drug courts, and those with mental health problems should receive mental health services or be diverted to mental health courts.
5. There should be evidence-based programs for young adult offenders in the community and after release, including multisystemic therapy, family therapy, cognitive-behavioral therapy, drug treatment, mental health treatment, mentoring, and educational and vocational training programs. Also, employment and relationship programs should be mounted to encourage desistance, and other programs should aim to reduce disorderly transitions such as not graduating from high school and teenage parenthood.
6. Other useful programs are those aiming to reduce opportunities for offending, such as hot spots policing and situational crime prevention, and programs aiming to reduce gang membership and drug dealing, especially targeted on high crime neighborhoods. In addition, in light of the long-term effects of early nurse home visiting, parent training, and family-

based programs, these also should be implemented and followed up to assess their effects on young adult offending.

State legislators, judges and policy makers should consider implementing the following actions.

Youth or Immaturity Discounts

Given the evidence to date, policymakers should revisit waiver laws and policies with an eye towards limiting the option of transferring youth from the juvenile court system. Waiver constitutes a less-than-ideal option that should be used only in the most serious cases and for older youth, who, on average, would be more culpable and who would spend less time incarcerated in juvenile justice facilities than in adult facilities. In some instances, waiver may be appropriate for youth who have extensive records of recidivism or unsuccessful treatment.² It bears emphasizing, however, that repeated recidivism may stem from poor treatment. As a result, when considering waiver in such cases, a careful assessment of prior treatment quality is important. Waiver criteria should identify those combinations of factors that deserve “real time” sentences substantially longer than those available in juvenile court. These factors include serious current offenses, offense histories, offender culpability, criminal participation, clinical evaluations, and other aggravating and mitigating factors.

Because a youth or immaturity discount should substantially reduce the length of adult sentences, only extraordinarily serious cases should warrant consideration for transfer. An adversarial waiver hearing at which both the state and defense can present evidence about the offense, culpability, and clinical responsiveness will produce more accurate and fairer transfer decisions than prosecutors can make in their offices without access to clinical information and

² The authors are not in full agreement with transfer policy (for an explanation see Howell et al., 2012).

devoid of political considerations (e.g., Feld, 2003; Zimring, 2000; Bishop, 2005; Kupchik, 2006). Finally, in cases where waiver occurs, youth sent to adult facilities should be housed primarily with younger offenders and offered similar services and treatment to what they would receive in the juvenile justice system. The separate housing and greater emphasis on treatment reflects an evidence-based approach to sanctioning young offenders (Lipsey, 2009; Lipsey & Cullen, 2007) and accords with the tenets of the juvenile court and with public opinion (Mears, 2001; Cullen, 2007).

When sentencing youth, judges should apply a youth or immaturity discount to the sentence that he or she would impose on an adult offender. A categorical youth or immaturity discount would provide adolescents who are sentenced as adults with fractional reductions in sentence-lengths and would achieve this using age as a proxy for culpability (Feld, 2008; Scott & Steinberg, 2008; Tanenhaus & Drizin, 2002). In addition to recognizing youths' diminished responsibility, a youth or immaturity discount provides a corrective that addresses the fact that same-length sentences often exact a greater "penal bite" from younger offenders than older ones (Von Hirsch, 2001). The youth discount includes a sliding scale of diminished responsibility and gives the largest sentence reductions to the youngest, least mature offenders (Scott & Steinberg, 2003; Tanenhaus & Drizin, 2002). The deeper discounts for younger offenders correspond with their greater (on average) developmental differences in maturity of judgment and self-control. Hence, careful screening with validated instruments is all the more important for very young offenders.

Categorical Rule of Youthfulness

A categorical rule of youthfulness as a mitigating factor in sentencing is preferable to individualized discretion. The *Roper* court opted to treat adolescents' diminished responsibility categorically rather than individually. It adopted a categorical prohibition because "[t]he differences between juvenile and adult offenders are too well marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability" (*Roper*, 2004, pp. 572–573). *Roper* concluded that neither clinicians nor jurors could accurately distinguish between the vast majority of immature juveniles, who deserve leniency, and the rare youth who might possess adult-like culpability. Despite individual variability, the Court reasoned that a rule that occasionally "under-punishes the rare, fully-culpable adolescent still will produce less aggregate injustice than a discretionary system that improperly, harshly sentences many more undeserving youths" (*Roper*, 2004, p. 573).

Culpability and Competence

Adolescents' reduced culpability should be incorporated in sentencing decisions. This recommendation is supported by two observations. The first is the inability to either define or identify what constitutes adult-like culpability among offending youths. Despite adolescents' developmental differences, clinicians lack the tools with which to assess youths' impulsivity, foresight, or preference for risks in ways that relate to maturity of judgment and criminal responsibility (*Roper*, 2005; Zimring, 1998). The development and validation of such tools is a top priority. The second reason to treat youthfulness categorically is the inability of judges or juries to fairly weigh an abstract consideration of youthfulness as a mitigating factor against the aggravating reality of a horrific crime.

Tools and Protocols for Assessing Adjudicative Competence

Tools and protocols should be developed to assess adjudicative competence. Many youths in the juvenile and criminal justice systems lack adjudicative competence because of developmental immaturity (Grisso et al., 2003). Moreover, the prevalence of mental illness among young offenders heightens concerns about their ability to understand and participate in legal proceedings or to assist counsel (Grisso, 2004). In some young offenders, reasoned judgments may be impaired by incomplete brain maturation. The combination of generic developmental immaturity and mental illness requires the development of protocols to assess adolescents' competence. Depending on whether states try youths in juvenile or criminal courts, clarification of the operative legal standard is needed, whether an adult standard or a juvenile standard. It requires training of judges and lawyers to recognize the developmental limitations of younger offenders (Grisso, 2004).

Community Programs

Expenditures saved from lower custody rates should be reinvested in evidence-based community programs that address the specific needs of young adults and the causes of their offending. Community-based programs are far more cost-effective than correctional institutions. Moreover, the earlier that successful intervention occurs in offender careers, the greater are the cost savings (Cohen, & Piquero, 2007).

Forward-Looking Administrative Models

Both the juvenile and criminal justice systems in every state should be developing forward-looking organizational models that are organized around risk management, using offender

management tools that increase the capacity of state justice systems to more effectively control and rehabilitate transition offenders. The *Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders* (Howell, 2003a, 2003b, 2009; Wilson & Howell, 1993) is a user-friendly forward-looking administrative framework that promotes system-wide management of juvenile offenders, services, and resources. Early intervention is paramount (Loeber & Farrington, 1998). The necessary tools are available to make system-wide improvements and to perform statewide evaluations of all service programs against research-based guidelines. The best practice tools include validated risk and needs assessment instruments, a disposition matrix that guides placements in a manner that protects the public, and implements protocols for developing comprehensive treatment plans that improve the matching of effective services with offender treatment needs (Lipsey, Howell, et al., 2010), and a Standardized Program Evaluation Protocol (Howell & Lipsey, 2012). This tool (called the SPEP, for short) can be used to evaluate juvenile justice programs statewide, and because it identifies the areas with the greatest discrepancies between the program's practices and the research-based best practice guidelines, the SPEP gives programs a blueprint for improvement. If service providers and juvenile justice managers can collaborate, they should be able to make collective improvements and achieve recidivism reductions statewide across multiple types of programs, and thus lower offender trajectories and promote desistance (Lipsey & Howell, 2012).

Use of this framework for targeting the most serious, violent, and chronic offenders should increase the capacity of state juvenile justice systems to more effectively control and rehabilitate adolescents on the verge of becoming transition offenders—or at high risk thereof. Validated risk screening instruments can differentiate between different developmental trajectories of offending during the transition between adolescence and adulthood (Hoge,

Vincent, & Guy, 2012). Several states are presently implementing the Comprehensive Strategy coupled with Lipsey's evidence-based program evaluation tool (Howell & Lipsey, 2012). A demonstration project should be established to test the overall model for transitioning youth.

SUMMARY AND CONCLUSION

This bulletin addresses what happens with older adolescents who transition into the criminal justice system, what should happen, and what we need to know. It emphasizes that neither the juvenile nor criminal justice systems handles this offender group well. Studies have not found that the wide diversity of measures in use are effective, and little research has accompanied them. The States are left with dysfunctional—and sometimes contradictory—policies and practices that would be very challenging to isolate and evaluate, if not impossible in some instances. As a result, a systematic adoption of research-based policies is needed, and a major investment in evaluation of the experimental policies and practices is necessary to determine to what extent they have the desired effects. A forward-looking administrative framework organized around risk management that promotes a statewide continuum of graduated sanctions and services that parallel offender careers holds the most promise for equitable and effective administration of justice for juvenile offenders. Objectively and clinically assessed high-risk offenders can be controlled with graduated sanctions and confinement in juvenile correctional facilities, and most of them can be rehabilitated with evidence-based services (Howell & Lipsey, 2012; Lipsey & Howell, 2012). This framework can be extended into the criminal justice system to handle transitioning adolescent offenders. The prospect of lowering the age-crime curve in statewide juvenile and criminal justice systems is within reach provided that a continuum of

evidence-based programs are matched to offenders' individual treatment needs (Loeber, Farrington, Howell, & Hoeve, 2012).

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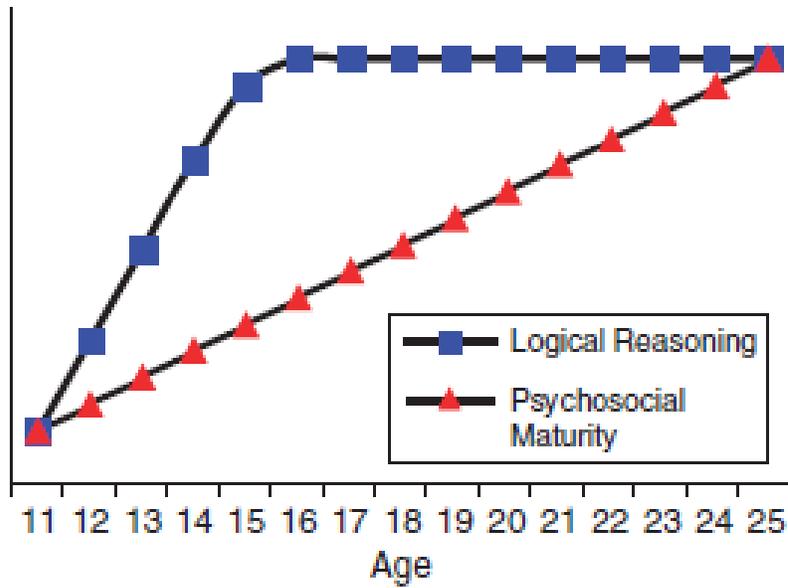
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Box 1: Some features of juveniles which are relevant for justice processing:

1. Less mature judgment.
2. Poorer decision making in offending opportunities.
3. Poorer executive functioning, reasoning, abstract thinking, planning.
4. More influenced by immediate desirable consequences than longer-term possible undesirable consequences.
5. Poorer impulse control, more likely to take risks and commit crimes for excitement rather than according to a rational choice.
6. Less set in their offending habits, more changeable, more redeemable.
7. Less culpable or blameworthy, diminished responsibility, less deserving of punishment.
8. Poorer emotion regulation and self-regulation.
9. Less avoidance of self-harm.
10. Lower adjudicative competence to communicate with lawyers, make legal decisions, understand and participate in legal procedures, stand trial.
11. More susceptible to peer influences.

Figure 7.1. The Reasoning-Maturity Gap



Source: Steinberg, 2007, p. 56