



EXPLORING INNOVATIONS

ASSOCIATION OF PROSECUTING ATTORNEYS

AT THE BOUNDARY OF ADOLESCENCE & YOUNG ADULTHOOD:

THE NEXT GENERATION OF
CRIMINAL JUSTICE REFORM



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INTRODUCTION:

Last April, the Association of Prosecuting Attorneys (APA), attended "At the Boundary of Adolescence and Young Adulthood: The Next Generation of Criminal Justice Reform," a conference supported by the John D. and Catherine T. MacArthur Foundation. The conference focused on the intersection of neuroscience and juvenile and criminal law, and brought together leaders in the fields of law and policy, justice reform, and neuroscience to reflect on the past decade of justice system reform; explore the legal implications of current neuroscience research for adolescents and young adults involved in the justice system; and lay the groundwork for changing the way courts and corrections process, sanction, and rehabilitate young people who come into conflict with the law.

APA aims to help prosecutors' offices become fully informed regarding emerging issues in juvenile and criminal justice, by providing support, resources, and to assist with implementation and sustainability of evidence-based programs. The following resource guide summarizes the latest Supreme Court decisions in juvenile law, publications and analysis of emerging research in neuroscience, as well as their legal implications.

To learn more about APA, please visit our website, www.APAinc.org. We also encourage you to reach out to us regarding how we can support you in your effort prevent crime, ensure equal justice, and make our communities safer.

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PROSPECTS FOR DEVELOPMENTAL EVIDENCE IN JUVENILE SENTENCING BASED ON MILLER V. ALABAMA

Grisso, T., & Kavanaugh, A. (2016, June 23). Prospects for Developmental Evidence in Juvenile Sentencing Based on Miller v. Alabama. *Psychology, Public Policy, and Law*. Advance online publication. <http://dx.doi.org/10.1037/law0000090>

The U.S. Supreme Court prohibited the use of mandatory life without parole (LWOP) sentences for juvenile homicide in Miller v. Alabama, except in cases of "irreparable corruption." However, in Montgomery v. Louisiana, the Supreme Court ruled that Miller applied retroactively, which means that all previous mandatory LWOP sentences for juveniles must be resentenced. In Miller, the Court based their decision off of developmental factors related to juveniles and set forth several factors to consider when sentencing juveniles. The authors explore the relative developmental evidence and its limitations, as well as discuss areas in need of further analysis for Miller cases.

The authors begin their analysis with the assumption that Miller hearings will involve (a) in new sentencing and resentencing cases, to determine whether a youth manifests Miller's and Montgomery's concept of "irreparable corruption" qualifying for LWOP, and, (b) if LWOP is not appropriate, then to determine an alternative sentence.

The authors additionally highlighted that it is nearly impossible for a state to prove irreparable corruption. The heinousness of the crime itself cannot constitute irreparable corruption because in Roper v. Simmons, the Court explained that looking at the crime alone does not predict future behavior. Secondly, many courts have ruled that immaturity of a juvenile cannot constitute irreparable corruption, and additionally poor home lives and other extenuating circumstances usually do not stand as evidence for irreparable corruption.

The authors also highlight the issue in resentencing cases of using the offender's current behavior as an indicator for irreparable corruption. For example, if the offender has shown rehabilitation is possible, it may help his case. However, if the offender has made no effort to change simply because he is serving a LWOP sentence, this could hinder his chances of having his sentence changed. From this standpoint, the authors state that the courts should take into account only the behavior and characteristics of the juvenile at the time of the original crime. They also note that this is extremely difficult to do accurately, especially in cases such as Miller's, who was 50 years into an LWOP sentence.

Grisso and Kavanaugh then discuss the five developmental factors established in Miller and their applicability to future resentencing cases:

1. **Decisional:** focuses on a juvenile's tendency to make reckless, impulsive decisions, as well as their propensity to be influenced by peers.
2. **Dependency:** juveniles are more vulnerable to negative influences in their home environments and peers; courts must take into account negative home environments from which they cannot be removed on their own.
3. **Offense Context:** this considers the circumstances of the homicide offense, which includes the extent of his participation as well as outside influences such as family or peers.
4. **Rehabilitation Potential:** several courts, including the Supreme Court, have recognized that many youths do not continue their offenses as they mature, and that the rehabilitation potential for juveniles is much greater than that of adults.
5. **Legal Competency:** Miller recognizes that mandatory sentencing ignores that the juvenile may have been charged and convicted of a lesser offense if not for incompetency associated with youth, such as the ability to deal with police and prosecutors.

In closing, the authors discuss the importance of using developmental science as evidence in juvenile sentencing cases. Additionally, they highlight that models and methods to provide relevant developmental data are needed in cases

involving Miller sentencing and resentencing. As we await the addressing of ambiguities in these cases, the authors advocate for continued research to provide more accurate ways to measure developmental abilities to better address ambiguities in the law.

YOUNG ADULTHOOD AS A TRANSITIONAL LEGAL CATEGORY: SCIENCE, SOCIAL CHANGE, AND JUSTICE POLICY

Elizabeth S. Scott, Richard J. Bonnie, & Laurence Steinberg, *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 *Fordham L. Rev.* 641 (2016).

These authors explore the science behind young adult brain development and its implications for both crime and justice reform. Much of the developmental research has been done categorically between minors and “legal adults.” This means that adults ages 18-30 have been studied in the same category. Although the research is limited, the authors have found that young adults ages 18-21 have characteristics in common with both adolescents and adults, calling this category a “transitional” category, and arguing that they should be treated as such in the criminal justice system. In particular, the authors insist that this particular category of young adults should be “subject to reduced sanctions for less serious crimes, special expedited parole policies, and correctional programs and settings designed to serve their developmental needs.”

Developmental research does not support the stark boundary line drawn between adolescents and adults. In some ways, young adults behave in the same way as those in their mid-twenties, but in other ways, such as risk-taking behavior and impulsivity, young adults behave in the same way as teenagers. Young adults simply engage in more risky behavior than older adults, whether criminal or not, which the authors argue should serve as the underlying basis for the treatment of young adults as a transitional category. However, the authors highlight the fact that developmental research concerning young adults as a special category is still lacking. For example, some studies have shown that young adults behave in the same way as teenagers when it comes to exposure to peers, and other studies have found no such evidence.

Additionally, age differences in psychological functioning in young adulthood vary as a function of the context in which individuals are assessed. The MacArthur Foundation Research Network on Law and Neuroscience found that under non-arousing conditions, young adults’ performance did not differ from younger or older subjects; under positively arousing conditions, young adults performed better than adolescents and the same as older adults; and under negatively arousing conditions, young adults performed the same as adolescents and much worse than older adults.

The immaturity of the prefrontal cortex in adolescents and adults makes them more susceptible to impulsive decision-making, which is the basis behind the argument for appropriate legal responses to their criminal activity. Maturation of the prefrontal cortex occurs in different stages, all of which are completed at different ages. This is how we explain the results presented in the MacArthur study. It is widely accepted that because of this lack of maturation, adolescents are more susceptible to rehabilitation services. However, it is not known how long this malleability lasts. In conclusion, however, the authors argue that “the research on age patterns in risk-taking and on emotional maturation provides the most powerful evidence that young adult offending likely represents a continuation of adolescent risk-taking, driven by developmental forces.”

If juveniles benefit more from rehabilitative services and are less likely to commit crimes as they mature, the same should occur for young adults. However, because of the inconclusiveness of the research and the fact that young adults act more like teenagers only in certain conditions, the authors advocate for the treatment of young adults as a separate category, rather than absorbing them into the juvenile system. In practice, this would subject young adults between the ages of 18-21 to the aforementioned programs such as expedited parole programs for less serious crimes and other programs that meet their developmental needs.

WHAT THEY DON'T KNOW CAN HURT THEM: MOTHERS' LEGAL KNOWLEDGE AND YOUTH RE-OFFENDING

Cavanagh, C., & Cauffman, E. (2016, December 22). *What They Don't Know Can Hurt Them: Mothers' Legal Knowledge and Youth Re-offending*. *Psychology, Public Policy, and Law*. Advance online publication. <http://dx.doi.org/10.1037/law0000112>

Cavanaugh and Cauffman examine 324 dyads of mothers and their sons to determine the effect of mothers' legal knowledge or lack thereof on legal participation and youth re-offending. They did this first by determining mothers' legal knowledge with a test and then compared that score with their level of participation in the legal process and the level of re-offending by their sons. Cavanaugh and Cauffman found that mothers averaged a 66% out of 100% on the legal knowledge test as a whole. Mothers who scored the lowest were less likely to participate in their son's legal process and subsequently those sons were more likely to re-offend within the first year after arrest. Additionally, Latina women knew the least about the justice system and Black women knew less than White women and those reporting another race. However, no important associations between legal participation and demographics were found.

IS THE EFFECT OF JUSTICE SYSTEM ATTITUDES ON RECIDIVISM STABLE AFTER YOUTHS' FIRST ARREST? RACE AND LEGAL SOCIALIZATION AMONG FIRST-TIME YOUTH OFFENDERS

Fine, A., et al. (2017). Is the Effect of Justice System Attitudes on Recidivism Stable After Youths' First Arrest? Race and Legal Socialization Among First-Time Youth Offenders. *Psychology, Public Policy, and Law*. Advance online publication. <http://dx.doi.org/10.1037/lhb0000229146>

As youth who hold negative attitudes toward the justice system are more likely to engage in crime, the authors tested whether those attitudes are effected or stable after the first arrest. The authors studied 1,216 male, first-time, juvenile offenders and explored racial/ethnic differences in attitudes and reciprocal associations between youths' attitudes and both their offending behavior and rearrests in the following 2.5 years after their first arrest. The results show that White attitudes remain relatively stable, Black attitudes become more negative, and Latino attitudes become more negative but only for those that reoffend. However, after 2.5 years after their first arrest, attitudes no longer predicted reoffending or rearrests.

In order to find these results, the authors tracked attitudinal development over 2.5 years after first arrest for Black, White, and Latino youths, separating those who reoffended and those who did not. Next, they examined the reciprocal effects of attitudes on offending as a whole and as individual racial/ethnic groups. Third, the authors tracked attitudinal development over time, separated both by race ethnicity, and by whether the youths reoffended. Finally, the authors tracked the reciprocal effects of attitudes on rearrests over time.

THE ROLE OF PEER ARRESTS ON THE DEVELOPMENT OF YOUTHS' ATTITUDES TOWARDS THE JUSTICE SYSTEM

Fine, A., et al. (2016). The Role of Peer Arrests on the Development of Youths' Attitudes Towards the Justice System. *Psychology, Public Policy, and Law*. Advance online publication. <http://dx.doi.org/10.1037/lhb0000167211>

There is consistent evidence that personal experiences affect how youths view the justice system. However, because of the lack of studies, the authors tested how youths' views of the justice system are affected by the arrests of their friends. In order to test their hypothesis, the authors examined 1,216 first-time, male offenders and their attitudes toward the justice system over a two-year period.

After accounting for personal experiences with the justice system, including self-reporting, time on streets, and contact with the police, adolescents with friends who had been arrested had more negative attitudes toward the justice

system. Even more so, this affected youths who were experiencing a friend's arrest for the first time even more harshly. Approximately half of the youth studied had not experienced a friend's arrest before, which makes these results more reliable.

AND JUSTICE FOR ALL: DETERMINANTS AND EFFECTS OF PROBATION OFFICERS' PROCESSING DECISIONS REGARDING FIRST-TIME JUVENILE OFFENDERS

Fine, A., et al. (2017). And Justice for All: Determinants and Effects of Probation Officers' Processing Decisions Regarding First-Time Juvenile Offenders. *Psychology, Public Policy, and Law*. Advance online publication. <http://dx.doi.org/10.1037/law0000113>

The authors are seeking to determine how much extralegal characteristics affect probation processing decisions. They do this by examining first-time offenders to control for prior records, and examine whether parental disapproval of friends, youth attitude toward the crime, and home environments affect the rate at which youths are processed into the justice system. The study was conducted on 359 male, first-time, low-level juvenile offenders who were also asked to self-report their rate of reoffending.

After controlling for prior offending and demographic factors, the results indicate that youths whose homes were believed to be more problematic were more likely to be processed than diverted. Youths who were indifferent to their crime were more likely to be formally processed than youths that were remorseful. Finally, youths whose parents disapproved of their friends were more likely to be processed or diverted than to receive a sanctioned dismissal, but parental perceptions did not affect the decision between processing or diversion. However, youths whose parents disapproved of their friends had higher rates of recidivism.

Youths who were processed formally were 3 times more likely to be rearrested than youths who received diversion, and 9 times more likely than youths who received sanctioned dismissal. However, the factors above (home environment, parental approval, etc.) did not affect the rate of recidivism.

HOW CITIES CAN PROVIDE ALTERNATIVES TO JAILS AND IMPROVE OUTCOMES FOR YOUNG ADULTS WITH MENTAL CONCERNS

City leaders have begun exploring ways to deal with young adult mental health crises in their cities rather than throwing them in jail. Without the opportunity to receive mental health services, many young adults with mental illnesses end up in jail, and their stay is prolonged by that mental illness. In addition to the harm of the individual, the expense, and the inefficiency, the Americans with Disabilities Act provides

incentives for cities to ramp up their mental health services. The NLC lists a few key factors for cities reforming mental health services and policy:

- Map, formalize, and develop a strategy to fill gaps in the continuum of evidence-based, targeted mental health services that can contribute to meeting the needs of young adults with mental illness who might otherwise go to jail.
- Provide law enforcement officers with information about safe, effective and efficient alternatives, such as triage centers.
- Require training for all law enforcement officers, to help officers recognize when a mental health crisis may be driving offending behavior and give them the tools to de-escalate the situation.

For example, almost 30 years ago cities nationwide began implementing Crisis Intervention Teams (CIT). CIT models provide a collaboration between mental health providers and police departments and trains a team of police to approach people in mental health crisis in the safest, most effective manner. In San Antonio, the police department recently implemented a four-question mental health screening to complement its CIT program and divert people from jail into mental health services.

Seattle police officers focused on “high utilizers” or frequent fliers of the system. They put together a list of high utilizers and the resources they have, such as supportive family members, to reduce hours spent on patrol, recidivism, and officer contact with high utilizers.

http://nlc.org/sites/default/files/users/user75/YEF_Mental%20Health%20Brief.pdf

INTRODUCTION TO CITY STRATEGIES TO REDUCE USE OF JAILS FOR YOUNG ADULTS

Jails put five times as many people behind bars as prisons, 75% of whom are jailed before trial and facing nonviolent offense charges. Not only does jail time interrupt employment, education, and family life, but it also decreases the likelihood that the defendant will appear in court. Cities across the country have been dealing with ways to combat the massive jail population, and additionally have been addressing the racial and ethnic disparities within that population.

In this article, the National League of Cities outlines several strategies and real-world examples to reduce the jail population and the disparities within. Young adults ages 18-24 make up 28% of people arrested and jailed in the United States, while making up only 10% of the general population. The NLC argues that this high level of arrests is related to recent neurological development research that concludes that young adults’ risk-taking and decision-making characteristics are underdeveloped through age 25. Additionally, the NLC holds that the young adult age range is the most prolific time for the first appearance of mental illness. The NLC advocates for diversion programs, that can

occur at any stage during the administration, but one that prioritizes holding people accountable through community-based services and supervision in order to reduce crime and improve life-long outcomes.

The NLC lays out a series of helpful steps to reduce racial and ethnic disparities, support young people returning from jails, and to reduce the overall jail population:

- Begin to routinely request and analyze data from local law enforcement, disaggregated by race, ethnicity, gender, geography, and offense.
- Highlight existing services available in or near the city that can meet the variety of needs among young adults.
- Convene a coalition of stakeholders to develop alternatives to arrest and jail use for young adults
- Enhance community-based services to meet needs for diversion and re-entry (case management, youth development, focus on practical help, close partnerships with agencies that can provide services.)
- Establish data and information sharing agreements among stakeholders.
- Focus stakeholder engagement on areas most affected by arrest and jail policies.
- Analyze existing policies to determine unintended consequences.
- Implement better training for police officers, especially regarding implicit bias and community relations.

Some real-world examples include Florida’s early diversion of low-level offenders and Houston, Texas’ Homeless Outreach Team. Police officers in Florida began issuing civil citations for first-time minor offenses as a mechanism of diverting young college students from the justice system. Houston’s Homeless Outreach Team works with local service providers to seek out chronically homeless individuals and offer services to meet their needs and prevent long-term homelessness.

http://nlc.org/sites/default/files/users/user75/YEF_Intro%20Jails%20Brief.pdf



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