

12-2015

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Juveniles in the Adult Criminal Justice System: A Critical Look at Trying Juveniles as Adults

Lauren Weisner

Grand Valley State University

Defining a juvenile can be difficult due to the varying lenses of looking at it. For example, a juvenile can be defined as someone in the age range between nine and early 20s (Dahl, 2004). More broadly, adolescence can also be looked at as a developmental period rather than a single snap-shot in time (Casey, Getz, & Galvan, 2008). Even more broadly, Dahl (2004) defines age of 16.

Being a juvenile is a mere period of adolescence, so the two terms do have some overlap. The United States Department of Justice (1997) defines a juvenile as someone that has not reached the age of 18. But, this legal definition varies by state. For example, in Michigan, a juvenile is someone under the age of 17 while in New York, a youth is automatically tried as an adult at the age of 16. For the purpose of this paper, the terms juvenile and adolescent will be used interchangeably.

### What is a Juvenile?

In 2013, about 4,000 juveniles were transferred from the juvenile system to adult criminal court (Hockenberry and Puzanhera, 2015). If convicted, these juveniles likely ended up in adult prisons that were created for hardened criminals. Despite the data we have against transferring juveniles, such as an increased for suicide and high rates of recidivism, many policy makers still encourage transfer laws because they believe that they enhance public safety (Allen, 2002; Miner-Romanoff, 2014; Redding, 2006). But, why do policy makers not consider the impact that transfers have on the juveniles that experience them? Additionally, how do juveniles end up committing crimes that result in their transfer? Current research in both criminal justice and neuroscience suggest that juvenile development results in youth engaging in more delinquent behaviors than adults do, and that those juveniles benefit more from a rehabilitative focus. As a result, trying juveniles as adults should be rare and saved for only the most severe, violent cases.

In 2013, about 4,000 juveniles were transferred from the juvenile system to adult criminal court (Hockenberry and Puzanhera, 2015). If convicted, these juveniles likely ended up in adult prisons that were created for hardened criminals. Despite the data we have against transferring juveniles, such as an increased for suicide and high rates of recidivism, many policy makers still encourage transfer laws because they believe that they enhance public safety (Allen, 2002; Miner-Romanoff, 2014; Redding, 2006). But, why do policy makers not consider the impact that transfers have on the juveniles that experience them? Additionally, how do juveniles end up committing crimes that result in their transfer? Current research in both criminal justice and neuroscience suggest that juvenile development results in youth engaging in more delinquent behaviors than adults do, and that those juveniles benefit more from a rehabilitative focus. As a result, trying juveniles as adults should be rare and saved for only the most severe, violent cases.

adolescence as “the transition from the social status of a child to that of an adult” and “that awkward period between sexual maturation and the attainment of adult roles and responsibilities” (p. 9). Clearly, many different perspectives are present concerning how to define a juvenile, with age and onset of puberty playing the largest role.

Overall, it has been found that many animal species experience an increase in sensation seeking and risk taking during the adolescent years (Casey et al., 2008). This suggests that this type of behavior is a part of normal development in humans. One evolutionary theory concerning this behavior is that it encourages adolescents to leave their home and seek out partners to reproduce (Casey et al., 2008). Additionally, adolescents seek out intense and exciting situations (Dahl, 2004). This behavioral difference between adolescents and adults suggest that there is some sort of difference in the development between the two groups. As a result, many neuropsychologists have attempted to look at the brain development between the groups to determine the biological influences behind these differences.

There is a multitude of differences between our adolescent and adult brain structure. By the age of six years old, the human brain is 90% of its adult size. But, the gray matter (made of cell bodies) and white matter (made of cell axons) within our brain continues to change throughout our adolescent years (Casey et al., 2008). As we get older, we experience fluctuations in the amount of gray and white matter in our brains. This is due to neurogenesis, learning, and synaptic pruning (Casey et al., 2008). Our prefrontal cortex, which controls our higher executive functions, is one of the latest brain regions to finally mature (Casey et al., 2008). This maturation does not end until our late 20s which implies that a juvenile’s ability to conduct higher thinking

## Juvenile Brain Development

is not as advanced as an adult's. While many researchers have suggested that a slower prefrontal cortex development is related to juvenile delinquency, but ~~not still~~ others claim that risk taking is actually related to white matter development (Romer, 2009).

Additionally, youth demonstrate stronger short distance connections in their brain, while adults demonstrate stronger long distance connections (Shannon et al., 2011). Youth also simultaneously activate less cortical and subcortical brain regions than adults do (Shannon et al., 2011). Another important difference in brain structure of juveniles is the increase in dopamine activity during adolescence (Shannon et al., 2011; Steinberg, 2009). Dopamine release plays a large role in sensation seeking behaviors, so this increase in activity is extremely important when looking at juvenile delinquency (Romer, 2009; Steinberg, 2009). This part of our development may explain the rise in sensation seeking and risk taking that we observe during the juvenile years.

Overall, we see a strengthening in most brain systems through adulthood. For example, juveniles have a stronger ability to reason than children do and older teenagers can understand the consequences of risky behavior (Dahl, 2004). However, this strengthening is not seen in situations that require emotionally charged responses. For juveniles, situations that require emotionally influenced behaviors are more likely to result in a disregard for consequences and risks (Dahl, 2004). It seems that emotionally influenced situations and behaviors are some of the last aspects of brain function to develop fully. As Casey et al. (2008) states, "adolescents often appear to be relatively good at making decisions under conditions of low arousal and cool emotions... this same highly intelligent youth, under intense emotional arousal, can have a much more difficult time making a responsible choice (p. 19).

It is clear then, that explaining juvenile behavior simply through brain development is close to impossible to do. While it can tell us a lot, neuroscience cannot provide us a complete explanation for why people do what they do (Shannon et al., 2011). While neuroscience gives us a relative idea of what a brain is doing, it does not necessarily explain why. We cannot look to neuroscience to give us a complete explanation for juvenile behavior. For example, we cannot simply explain adolescent behavior through an underdeveloped prefrontal cortex, for if this was the sole influence on delinquency, then younger children would have the highest rates of delinquency (Casey et al., 2008).

Brain development is not only associated with age, but with life experience as well (Dahl, 2004). This is extremely important when considering abused youth. This is because "deprivation of developmentally appropriate experience may reduce neuronal activity, resulting in a generalized decrease in...synaptic connectivity...resulting in profound abnormalities in brain organization and structure" (Anda, Felitti, Bremner, Walker, Whitfield, Perry, Dube & Giles, 2005, p. 175). Childhood abuse has been linked to impulsivity, spatial and long-term memory deficits, substance abuse, aggressive behavior, risk taking, decreased social attachment, and long term brain circuit changes (Anda et al., 2005; Romer, 2009). Clearly, early adverse childhood experiences can negatively affect individuals later in life. This is likely because our brains rely on specific developmental and environmental experiences to influence the way our genes are expressed (Anda et al., 2005). The way we act is a combination of our nurture and nature, and juveniles that do not experience "normal" nurture are at a greater risk for "abnormal" nature, or brain development. This is extremely important when looking at the way the criminal justice system treats juveniles. Factors such as childhood trauma should be taken into consideration

From the start of our criminal justice system, there was no separate system to deal with children. As a result, the system held children accountable for their actions in the same way that adults are. In fact, in the 1700s there were reports of children between 12 and 14 being killed or beaten for their role in murder (Allen, 2002). But, common law did recognize two defenses that protected children during this time period. According to Allen (2012), children under seven were not held accountable for illegal actions and some children under fourteen who lacked maturity or were not able to understand the consequences of their actions were expected to be given less harsh treatment by the system. Most of the time, children after a certain age were held fully responsible for their actions and treated the same way as adults (Allen, 2002).

By the nineteenth century in the United States and England, there was a change in attitude towards juveniles and their legitimate criminal responsibility (Allen, 2002). The focus turned toward juveniles that could be "saved" because they were still innocent. Thus, the concern shifted towards rehabilitation rather than punishment for juveniles (Allen, 2002). Groups of individuals called Child Savers emerged. These groups formed in the attempt to save children that came from homes of poverty and neglect from a life of crime (Allen, 2002). Another growing concern in regards to juvenile crime arose in the nineteenth century - money. At this time, society realized that it would be cheaper to attempt to prevent delinquency and rehabilitate juveniles that committed a criminal offense rather than simply locking them away in facilities created for adults (Allen, 2002). As a result of these concerns, houses of refuge were created as a

### History of the Juvenile Justice System

juvenile's history of abuse was not always important when determining punishment.

when looking at juvenile's delinquent behavior. While the system attempts to do this today, a

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transit

way of dealing with these juveniles instead of sending them to prison. The first house of refuge was created in 1825 in New York as a means of housing juvenile offenders as well as children from a low socioeconomic status that were assumed would eventually turn to a life of crime (Allen, 2002). While these homes were created to protect juveniles, but many of them used juveniles sent here for forced labor (Allen, 2002). Additionally, these homes were never monitored to ensure that children were treated appropriately (Allen, 2002).

In 1899, Illinois passed the Juvenile Court act which designated categories for children: dependent, neglected, and delinquent. In Illinois, these groups of children were not allowed to be placed within jails or police stations, so this encouraged the differentiation between the treatment of juveniles and adults (Allen, 2002). By 1925, most states had created separate court systems for juveniles (Allen, 2002). The idea behind the separate systems was *parens patriae* - the state government's attempt to protect those that are unable to protect themselves (Allen, 2002).

In the 1960s and the 1970s, there was another shift in the attitude towards the juvenile justice system. This was largely due to the fact that the United States Supreme Court ruled on many different cases that gave juveniles due process within the system. As a result of these rulings, they created a juvenile system that more closely resembled the adult system. Allen (2012) describes the many different cases that influenced juveniles' futures. *Kent v United States (1966)* required a waiver hearing for juveniles that were to be transferred to the adult court. This case also established eight different criteria to be considered when trying to determine a transfer. By establishing a required hearing, the Supreme Court created a more formal process that resembled the adult system. *In re Gault (1967)* gave juveniles that were charged the right to written notice, right to counsel, right to question witnesses, and the right to protection against self-incrimination. *In re Winship (1970)* established "beyond a reasonable doubt" as the necessary



standard of evidence for a delinquency hearing. Additionally, in *Breed v Jones* (1975) the Supreme Court ruled that there could be no double jeopardy for juveniles. *Schall v Martin* (1984) established that placing juveniles in pretrial detention was acceptable. Many of these rulings gave juveniles rights that are afforded to adults in the criminal courts. By giving juveniles the same rights and regulations, the Supreme Court created a shift away from informal juvenile hearings, and as a result, created a shift away from the special immunities that were originally afforded to juveniles in the system.

In the 1970s through the late 1980s, the violent juvenile crime rate remained steady. But, in 1989 the arrests of juveniles for violent crimes increased by approximately 60% (Allen, 2002). These statistics, along with the idea of juvenile “superpredators”, introduced to the public by a Princeton professor in the 1990s created a panic (Becker, 2001). With this theory, Dillio suggested that an age of extreme street criminal juveniles was upon the United States. He predicted that juveniles were going to get more violent and commit far more crimes than had ever been seen in our country. This created the idea that juvenile offenders were “criminal who happen to be young, not children who happen to commit crime” (Redding, 2006, p.1). Naturally, as a result, the public became extremely fearful of juvenile crime. In response to this fear, policies and politicians that were “tough on crime” became extremely popular. Two provisions, truth in sentencing and three strikes laws, increased the number of convictions from states and federal funding to states that had higher conviction rates (Allen, 2002). Overall, the theme of the country was being as tough as possible on those that broke the law- including juveniles. For example, the Violent Crime and Law Enforcement Act was revised in a way that increased “the certainty of punishment for youthful offenders” (Allen, 2002, p. 8).

This public shift towards more punitive policies also affected the juvenile transfer

in favor of trying violent juvenile offenders as adults (Redding, 2006). As a result of this public opinion, transfer policies were expanded as a means of being tougher on juvenile offenders. In the early 1990s, the federal government changed the minimum age of transfer from 15 to 13

(Allen, 2002). This reduction in the age of youth transferred was seen within many different states. During this time period, more than 40 states made it easier for younger and younger children to enter the adult criminal court system (Allen, 2002). Even more, 21 states and

Washington D.C. have at least one provision that allows placing juveniles in the adult system

with absolutely no minimum age (Miner-Romanoff, 2014). By reducing the age of those brought into the adult system, the United States was somewhat abolishing the juvenile justice system in similar

altogether. There were arguments made in some states to get rid of the juvenile justice system

altogether (Allen, 2002). Overall, there was a general shift towards lowering the minimum age for transfer, as well as moving the discretion of transfer from judges to prosecutors (Redding,

2006). This resulted in more juveniles in the adult system as well as more punitive reactions to juvenile delinquency.

Between the early 1990s and today, there has been a decrease in juvenile crime three

times the decrease in adult crime (Redding, 2006). The current media system still attempts to place fear in citizens regarding juvenile offenders, but according to Redding (2006), most

Americans still believe that the juvenile justice system can be effective when paired with

rehabilitative programs. Furthermore, public opinion has shifted towards keeping juveniles out of adult prisons. This is likely because juvenile institutions focus more on treatment and

rehabilitation while adult prisons do not provide a lot of therapeutic programming.

## Juveniles in the Adult System

The reality of the current juvenile transfer system is that first time offenders as well as repeat property offenders are far more likely to be transferred even though this system was created to capture repeat violent offenders (Allen, 2002). Additionally, transfers are supposed to consider factors such as age, offense, treatment ability, and criminal history. However, transfers usually only consider the offense and concern for public safety (Allen, 2002). While these two concerns are very valid, the juvenile justice system was created to consider the many factors that contribute to juvenile delinquency and status offending. So, by not considering these factors, the system is straying from what it was designed for.

Since 2005, there have been three extremely influential juvenile justice cases heard by the Supreme Court. In *Roper v Simmons* (2005), the Supreme Court ruled that it was

unconstitutional to sentence a juvenile who committed a crime under the age of 18 to receive the death penalty. In *Graham v Florida* (2010), the Supreme Court ruled that the sentencing a juvenile who committed a non-homicidal offense to life without parole violates their Eighth Amendment right. Lastly, *Miller v Alabama* (2012) made it unconstitutional to sentence an individual under the age of 18 at the time of their crime to mandatory life without parole. In their opinion on this case, the Supreme Court stated that “developments in psychology and brain science continue to show fundamental differences between juvenile and adults minds” which “lessen a child’s ‘moral culpability’ and enhance the prospect that, as the years go by and neurological development occurs, his ‘deficiencies will be reformed’” (*Miller v Alabama*, 2012, p.9). All three of these cases have highlighted the trend of deinstitutionalization, which has stemmed from the decrease in punitive attitudes in America towards youth (“Three supreme court cases that have shaped juvenile justice”, 2014).

While public opinion may be swaying from trying juveniles as adults, there are still around 200,000 juveniles tried and prosecuted as adults in the United States each year (Devitt & Martinez, 2007). Those who encourage placing juveniles in the adult system claim that it would decrease the rate of juvenile crime. Many claim that juvenile transfers deter future criminal acts, but some researchers argue that deterrence may work less on juveniles due to their psychosocial immaturity (Redding, 2006). Additionally, the idea of specific deterrence suggests that a more severe sentence should discourage offenders from committing another crime. It also suggests that juveniles engage in rational choice. In other words, deterrence assumes the juveniles consciously weigh risks and rewards before committing an act (Miner-Romanoff, 2014). As it has been shown, it is unknown how well juveniles engage in rational choice. And, if they do not, deterrence would not work for juveniles at all. Thus, if deterrence is not effective for juveniles, then transfers would not have an impact on juvenile crime rates at all.

As mentioned above, it is assumed by many that juveniles transferred to the adult system will be deterred from committing crime in the future. Instead, juveniles who are convicted as adults are not any less likely to commit more crime in the future (Devitt & Martinez, 2007). In fact, juveniles that end up in the adult system have the highest rates of recidivism (Allen, 2002; Miner-Romanoff, 2014; Redding, 2006). Even more, juveniles that end up in adult prisons for robbery as well as violent offenses have the highest rates of reoffending post-release (Redding, 2006). But, overall, it is clear that juveniles who are transferred reoffend more quickly and with a more serious crime once released (Miner-Romanoff, 2014). In a study done by Redding (2006), it was found that “re-arrest rates were higher and the time to re-offending shorter for the transferred youth across seven offense types” (p.13).

Why does this happen? This is likely because adult prisons do not encourage positive change in the same way that juvenile facilities do. For example, Redding (2006), found that most of the youths in the juvenile system "felt confident that they would not reoffend after release, often crediting the staff with helping them make this positive change...[while] only a third of the juveniles in adult prisons said that they would not reoffend" (p. 17). Clearly, the adult criminal system does not encourage positive change in offenders nor does it focus on rehabilitations. Instead, it creates an environment that encourages further criminal activity. Transferred juveniles are also more likely to receive harsher and tougher sentences than those who are not transferred, so juveniles in the adult system spend far more time in their placements than juveniles who are not transferred. Essentially, transferred juveniles are forced to spend more time in negative facilities while those who are not spend less time in a more rehabilitative facility. It is also possible that increased reoffending rates are due to the stigmatization and labeling that results from being in prison. Juveniles are labeled as serious criminals by the system and society, and as a result decrease the opportunities available to the juveniles once released (Devitt & Martinez, 2007; Redding, 2006). Because of these labels, finding a job as well as getting an education post-release is extremely difficult, and it is next to impossible to go back to a life through normal means. These juveniles are forced to turn to crime as a way of surviving.

Placing juveniles in adult facilities not only places them at a higher risk for recidivism, but also puts them in danger of abuse and death. Juveniles in the adult system are far more likely to be physically and sexually abused by other inmates as well as the staff in the facility (Allen, 2002). More specifically, "juveniles incarcerated in adult prison are eight times more likely to commit suicide, five times more likely to be sexually assaulted, and almost twice as likely to be attacked with a weapon and beaten by staff (Redding, 2006, p. 18). Clearly, the adult prison

environment is hostile towards younger individuals. By transferring juveniles to the adult system, judges and prosecutors are increasing the likelihood of a juvenile experiencing harm. This is likely to increase the stress and fear levels of juveniles placed in adult facilities, which are likely to cause further harm to the juveniles.

**Suggestions for Solutions**

While it is clear that there are issues with the way the juvenile justice system is currently working, the system could impose different measures as a way of shifting back towards the original juvenile justice system ideals. We are now aware of multiple different treatment programs that exist, even for serious juvenile offenders. Though these can be expensive, they are less expensive when looking at the bigger picture (Allen, 2002). Additionally, creating a system that focuses on early intervention is extremely important. We know that there is critical period of development that can affect the functionality of a brain later on in life. This time of brain development helps set the trajectory for the rest of the adolescent's life, and by placing this individual in very stressful or violent scenarios while at a young age, brain development is harmed. Initiating intervention early can then have a larger impact on a younger individual who has more development ahead rather than on an adult whose trajectory is already established (Dahl, 2004). This means that the system needs to recognize that waiting until juveniles act out means waiting too long. Providing interventions early increases the possibility of a juvenile obtaining healthy brain development as well as normal developmental behavior.

One important early intervention is education. This concept is large and can encapsulate many different types of education- all of which are extremely important. Ensuring that a youth attends school is very important for their development and socialization. It has been proven that

youth that drop out of school are far more likely to commit crime as well as end up in prison (Center for Public Education, 2007). It also very important to make juveniles aware of the consequences of their criminal acts. In a study done by Miner Romanoff (2014), it was found that most of the juvenile offenders in the adult system interviewed were not even aware of the fact that they could have been tried as an adult for their crimes. This suggests that deterrence would not even work on a group of juveniles like this. Thus, it is key to make the public aware of consequences if deterrence is expected to work (Miner-Romanoff, 2014; Redding, 2006).

Additionally, it is important to make juveniles aware of the differences between the juvenile and adult systems. As Redding (2006) mentions, the mild sanctions that the juvenile justice systems hand out may communicate the wrong message about the consequences of crime as an adolescent. Juveniles like to talk, and this can allow for stories leading to assumptions about what our criminal justice system is actually like. If juveniles believe that the courts do not hand out tough sentences, then they would not be deterred from committing crime themselves. Individual, family, and trauma counseling are also beneficial for at risk juveniles. It allows them to talk through problems as well as learn different ways to handle situations. This would allow juveniles to have the tools they need to effectively deal with situations when they arise. Family counseling would be extremely important in increasing the relationships between members. We know that children born into families of a low socioeconomic status are at a risk for less nurturing from their mothers (Romer, 2009). By attending family counseling, children in these homes would be at a lower risk for abuse. Monitoring of juveniles is another important factor. According to Dahl (2004), juveniles need the right amount of monitoring from responsible adults in order to develop self-control while having support and protection. By

offering adolescents with the care and attention that they need, juveniles are able to develop in a safe zone. This allows them to make mistakes and learn from them in a supportive environment. Another area of change that would help the issues in the system would be focusing on rehabilitation in the adult system. Since we know that there is a high number of juveniles transferred to the adult system, it is important that these individuals get the proper treatment. Although this solution seems obvious, it is one of the hardest to put into action. Rehabilitation is not very prevalent in the adult system, and there is less public support to put it there. That is why it would simply be better to transfer fewer juveniles. This would include changing the transfer laws by decreasing the amount of crimes that result in transfer. As Redding (2006) claims, “policy makers must weigh the relatively short-term benefits of incapacitation resulting from transfer and imprisonment, against the long-term costs...in terms of increased recidivism, which in turn, would contribute to increased crime rates (p. 26). Changing the transfer laws would result in fewer juveniles in the adult system, which would improve the juvenile recidivism rates. Clearly, the juvenile justice system has not fulfilled its promise of providing juveniles with a completely separate, treatment focused system. Instead, many juveniles who are not repeat violent offenders end up transferred into the very punitive adult system. While this is problematic, it may be difficult to convince people to change the way our transfer system works. That is because people are more likely to accept behavioral research that has neuroscience attached to social science (Steinberg, 2009). Sadly, as we saw earlier, neuroscience does not provide us with a complete image of why people act how they do. So, it would be fairly impossible to change the minds of policy makers with the amount of information we have now. However, that does not mean that the research we have now is not important or that it does not give us a good idea of how juveniles are different from adults. We have a clear idea from



neuroscience and criminal justice research that a juvenile's development includes a period in which they seek out more delinquent behaviors than adults do, and that those juveniles benefit more from a rehabilitative focus. From this research, we should assume that adults should be rare and saved for only the most severe, violent cases.

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Literature Review Rubric<sup>12</sup>

48/48

Professor (Evaluator) Andrew Jones  
Student (Person Evaluated) L. Weisner

Criteria		Purpose		Content		Organization	
Exemplary	4	The writer's central purpose or argument is readily apparent to the reader.	<del>it.</del>	Balanced presentation of relevant and legitimate information that clearly supports a central purpose or argument and shows a thoughtful, in-depth analysis of a significant topic. Reader gains important insights.	<del>insights.</del>	The ideas are arranged logically to support the purpose or argument. They flow smoothly from one to another and	The ideas are arranged logically to support the central purpose or argument. They are usually clearly linked
Good	3	The writing has a clear purpose or argument, but may sometimes digress from it.		Information provides reasonable support for a central purpose or argument and displays evidence of a basic analysis of a significant topic. Reader gains some insights.		The ideas are arranged logically to support the purpose or argument. They are usually clearly linked	The ideas are arranged logically to support the purpose or argument. They are usually clearly linked
Acceptable	2	The central purpose or argument is not clear throughout the paper.		Information supports a central purpose or argument at times. Analysis is basic or general. Reader gains few insights.		In general, the writing is arranged logically, although ideas fail to make sense together. The reader is fairly	In general, the writing is arranged logically, although ideas fail to make sense together. The reader is fairly
Unacceptable	1	The purpose or argument is generally unclear.		Central purpose or argument is not clearly identified. Analysis is vague or not evident. Reader is confused or may be misinformed.		The writing is not logically organized. Frequently, ideas fail to make sense together. The reader cannot identify a line of reasoning and loses	The writing is not logically organized. Frequently, ideas fail to make sense together. The reader cannot identify a line of reasoning and loses
Points							

[illegible]

Very good paper. good incorporation of feedback on rough draft into final draft.

Comments:					
		Use of Most Recent Edition of the Publication Manual of the American Psychological Association (APA)	APA format is used accurately and consistently in the paper and on the "References" page.	APA format is used with minor errors.	There are frequent errors in APA format.
		confident that the information and ideas can be trusted.		reader is uncertain of the reliability of some of the sources.	
					Format of the document is not recognizable as APA.
					Total →