

# Time to Rethink the Age of Adult Court Jurisdiction

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The Progressives of the late 1800s literally invented many of the legal constructs surrounding what we now call “adolescence.”<sup>1</sup> They created open spaces and parks, child labor laws, and compulsory education. In 1899, Jane Addams, Lucy Flower, and Julia Lathrop of Chicago’s Hull House also successfully founded the nation’s first juvenile court.

The idea spread like wildfire; by 1925, 46 states and 16 countries had opened separate courts for juveniles where none had previously existed. These courts were focused on rehabilitation rather than punishment, were more individualized and community-based, and had fewer collateral consequences than their adult counterparts. Just as it is hard to imagine society without laws forbidding 12-year-olds from factory work, it is difficult to conceive of American jurisprudence without the juvenile court.

But while the women of Hull House got a lot right when they founded the juvenile court, the chosen age of 18 as its jurisdictional “ceiling” was arbitrary, based on the mores of the time rather than hard evidence. Guided by new research<sup>2</sup> on brain development, the elongation of adolescence, and other countries’ experiences, we believe that the age of family court jurisdiction should be raised to 21 or 25 and that young adults should be handled in more developmentally appropriate ways.

## New Research on Young-Adult Development

New research in psychology and neurobiology reveals that young adults are not fully mature in many important respects until their mid-20’s, far later than was previously thought. Such young people are closer developmentally to juveniles than to fully mature adults.

Studies have shown that we do not develop fully mature reasoning capacities until we are in our twenties and that psychosocial capacities develop even later, giving cognitive functioning a developmental “head start” over executive functioning.

This maturity gap manifests itself in several areas particularly relevant to criminal justice involvement. Young adults take more risks and are less likely to consider the future ramifications of their actions; are more susceptible to peer influences; and are more volatile, especially in highly emotional settings.

## Is 22 the New 18?

The nature of, and expectations for, young adults have also changed dramatically. Getting married, obtaining employment, moving out of the family home, and completing one’s education are all important life course events that can be bridges to full maturity. All are coming later than they did a generation ago. Compared to previous generations, 22 is the new 18. For example:

- Nine percent of young adults were married in 2010, compared with 45 percent in 1960.
- 27 percent of young African American men ages 18-24 are disconnected from work and school compared to 20 percent in 1960.
- Non-college median earnings for young whites have dropped from \$40,000 in 1973 to \$30,000 in 2007 and from \$34,000 to \$25,000 for young African Americans during the same time period.

These historic changes in education, employment, and family attachment have left a much larger proportion of our young men

<sup>1</sup> In fact, the word “adolescence” did not appear in the dictionary until 1904.

<sup>2</sup> Schiraldi, Vincent, Bruce Western, and Kendra Bradner. *Community-Based Responses to Justice-Involved Young Adults*. New Thinking in Community Corrections Bulletin. Washington, DC: U.S. Department of Justice, National Institute of Justice, 2015. NCJ 248900.

detached from the stabilizing influence of family and the labor market at the same time that sentencing laws and practices have increased incarceration as a response to law breaking.

### **Implications for Law and Practice**

If the juvenile court is firmly established in American jurisprudence (it is), and young adults are more similar to adolescents than to fully mature adults (they are), it follows that we should be treating young adults more like we treat juveniles under the law.<sup>3</sup> Here are three ways that research and experience suggest it would make sense to do so.

#### **1) Raise the age of family court jurisdiction to 21 or 25**

The most straightforward way to address this issue is to set the family court's jurisdiction at a scientifically justifiable 21 or 25 years old. Lawmakers in the Netherlands did this in April when they raised their family courts' jurisdiction to age 23 and, closer to home, lawmakers in Connecticut and Illinois did so when they raised their family courts' "roof" from ages 16 and 17, respectively, to 18.<sup>4</sup>

Advantages of this approach are that a system already exists equipped with judges, prosecutors, defense attorneys, and probation staff trained to deal specifically with adolescents. Programming and diversionary options are in place and separate facilities exist, specifically designed for young people. Due to a 52 percent decline in juvenile incarceration from 1997 to 2003, many of these facilities can absorb new populations of young people. This new system should favor community-based placements and, only when necessary, use small, home-like facilities. None of the above will be easy. Young adults constitute 30 percent of arrests and 21 percent of prison admissions, so this expanded system would have to methodically absorb this shift in purpose and size. Furthermore, throughout the country, the juvenile justice system is beset with charges that the rehabilitative ethic is alive in name only, with inadequate programming and "training schools" that are little more than prisons. Still, raising the age of family court jurisdiction to 21 or 25 could be methodically phased-in and absorbed by juvenile justice practitioners over a reasonable time period, thereby improving public safety and youth development outcomes.

#### **2) A third system**

Another option is to create a separate legal system geared toward the developmental and life course realities of emerging adults. This could amount to separate legal codes with shorter sentences; more diversion

and greater confidentiality; separate courtrooms; distinct systems of supervision and community programs; and for the few who need to be confined, separate, rehabilitatively robust correctional facilities.

This third system could include a "youth discount" that creates shorter and more rehabilitative sentences; holding youth accountable while preventing them from becoming too accustomed to either probation or prison. Youth in Finland are eligible for release at one-third of their sentences, and in Sweden, youth under age 21 are not subject to mandatory sentences. In New York, youth sentenced as Youthful Offenders receive the shortest sentencing range and there is an accelerated release option for young prisoners in high-intensity programming.

Judges could sit in special courts designed to individualize sentencing under a penal code that eschews mandatory sentencing and that encourages determinations of "youthful offender" erasing the mark of a criminal conviction (or allowing earned "expungement"). Such a court could be equipped with programming that assists the transition out of home and high school and into the worlds of work, higher education, and marriage/family life.

A new system designed from scratch can be geared toward this population's specific needs. The system could be semi-permeable allowing youth without sufficient maturity to be sent "down" to the juvenile justice system, while waiving more serious or recalcitrant offenders into adult courts (young adults ages 22 to 25 can be "waived down" to family court in Germany, while those ages 18 to 21 start in family court and can be waived up).

The main challenge of such an approach is the resources and effort required to create a separate set of courts, correctional facilities, probation caseloads, and contracted programs distinct from the current juvenile and adult systems. Given the negative outcomes experienced currently by court-involved young people<sup>5</sup>, these challenges appear worth tackling.

#### **3) A legal, systemic, and programmatic package of age appropriate reforms**

Short of raising the family court's age or creating a third system, jurisdictions could establish a network of legal, administrative, and programmatic reforms specific to the needs of young adults. Such reforms should flow from a youth's first contact with the criminal justice system to the last day of reentry. Upon arrest, police could divert youth from formal processing in less serious cases, as in the LEAD program in Seattle for drug offenders or Project Reset for young

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<sup>3</sup> For example, the Council of Europe's Rules for the treatment of juvenile offenders states, "Reflecting the extended transition to adulthood, it should be possible for young adults under the age of 21 to be treated in a way comparable to juveniles and to be subject to the same interventions."

<sup>4</sup> Lawmakers in Connecticut and Illinois "phased in" the age change, so that their system could gradually absorb the new population, something we would suggest doing if such a change were implemented here. Predictions that both systems would be overwhelmed with new cases never materialized.

<sup>5</sup> Seventy-eight percent of 18- to 24-year-olds released from prison are rearrested, and about half return to prison within three years, the highest recidivism rate of any age cohort.

adults in Brooklyn and Manhattan. Probation officers could divert some cases from formal processing as they do in some juvenile justice systems.

Further “downstream,” judges should consider that young adults are less future oriented (making them a worse bet for court appearance) and have fewer resources to pay bail. More aggressive court-reminder programs and neighborhood-based supervision paired with voluntary programming would improve appearance rates, reduce rearrests, and nudge young people along a better path. Jurisdictions involved in the Annie E. Casey’s Juvenile Detention Alternatives Initiative experimented broadly with such programs with significant success.

Special courts that provide individualized attention with trained personnel would improve the legitimacy of the system for young adults. Improved procedural justice has been shown to improve outcomes, including recidivism. This year, both San Francisco District Attorney George Gascon and the Federal Court for the Southern District of New York launched special courts for young adults.

Such youth courts could be equipped with “youthful offender” laws allowing judges to “adjudicate” instead of “convict” young defendants and expunge convictions after a period of law-abiding behavior. Probation officers serving youth courts should have specialized caseloads, like they do in San Francisco, in which they are trained on the unique needs and challenges of emerging adults.

Finally, if they need to be confined, young adults should have shorter stays, separate from older prisoners, in facilities with education,

workforce development, cognitive behavioral therapy, and productive reintegration programming to reduce recidivism. Simply creating separate facilities without improving programming or design is not likely to improve conditions or outcomes.

While a piecemeal approach might be easier to undertake, this option’s disadvantage is that it can fall short of comprehensively reforming a badly failing system.

## Conclusion

America’s criminal justice system needs to overhaul its work with young, court-involved adults. Young people are less culpable than fully mature adults and developmentally their brain plasticity renders them highly malleable, for the last time. Ignoring their developmental needs, saddling them with lifetime records, and surrounding them with negative inmates/peers invites disaster. We are reaping what we’ve sown as these youth experience diminished prospects for work and family, and disastrous recidivism rates. There is growing innovation overseas and some noteworthy U.S. experiments addressing the challenges and opportunities this transition-aged population presents. These need to go to scale and be studied as our nation rolls back our decades-long experiment with mass incarceration.

*For more information on the treatment of young adults in the justice systems of Europe, visit [www.t2a.org.uk](http://www.t2a.org.uk).*

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their goals. Some agencies have already broken important ground in pursuing these goals with their communities. They should be models for the rest of the country.

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