

RETHINKING THE JUVENILE IN JUVENILE JUSTICE

Implications of Adolescent Brain Development
on the Juvenile Justice System

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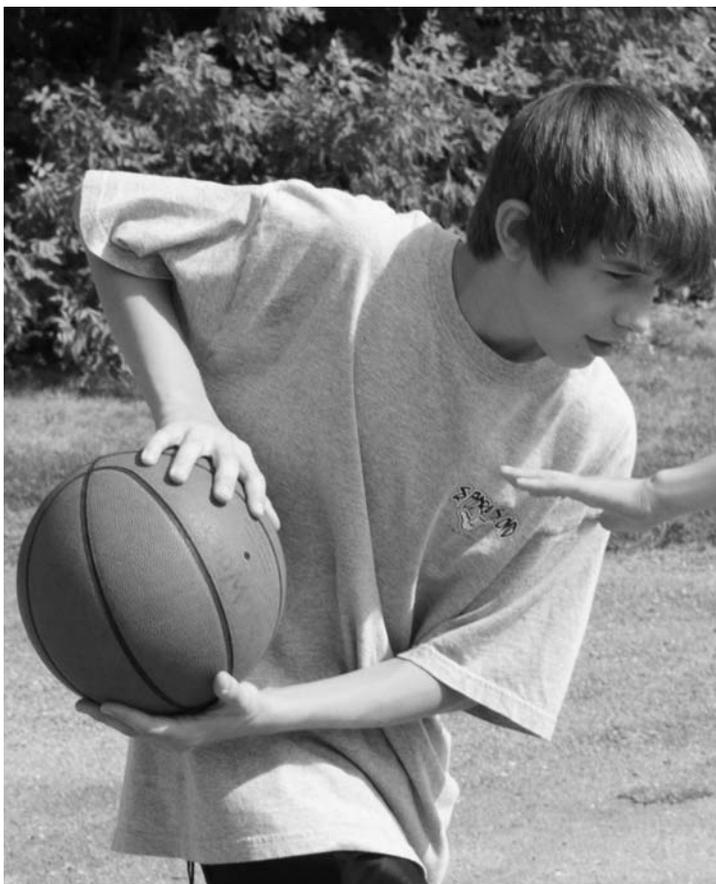
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Executive Summary

Rethinking the “Juvenile” in Juvenile Justice, a new report by the Wisconsin Council on Children and Families, links for the first time research about adolescent brain development with our treatment of minors in the criminal and juvenile justice systems. This report suggests that applying what we know about adolescents to their treatment will provide more effective and more cost-effective solutions to criminal justice. Policy recommendations are made to address community safety while also taking into account the developmentally appropriate treatment of adolescents in legal trouble.

Under current Wisconsin law, 17-year-olds are treated as adults only for the purpose of criminal prosecution and are legally minors for every other purpose. It is possible for children as young as 10 to be tried in adult courts in Wisconsin. A decade ago, the laws surrounding juvenile justice in Wisconsin were changed to make it easier to try more youth in adult court. Since that time, there has been a significant leap in our understanding of adolescent brain development. We now know that the characteristics of adolescence which make teens more likely to be arrested are part of a developmental stage, rather than a type of adult criminality.

This report explores the national and Wisconsin trend of criminal arrests peaking during adolescence. The vast majority of juvenile arrests are for non-violent crimes, with violent crime arrests accounting for a mere 4 percent of all juvenile arrests nationally. The bulk of juvenile arrests are for much less serious law violations, such as disorderly conduct, curfew violations, and possession of alcohol or drugs. These facts make sense in light of what we now know about the influence of normal brain development on adolescent behavior.

Major findings of this report include:

- Almost 5,000 17-year-olds were admitted to adult jails in 2004.
- From 2003 to 2004, almost three hundred youth 17 years old and younger were admitted to adult prison.
- Arrests for violent crimes in Wisconsin have decreased steadily for the past decade.
- The ability to control behaviors in emotionally charged situations does not develop until late adolescence.

- Adolescence is a distinct period of brain development - decision making is one of the last brain functions to mature in the early 20s.

Within the report is an analysis of the most recent findings on adolescent brain development, along with the practical implications for the justice system. For example, research in the field of adolescent brain development has confirmed that adolescents are more likely to engage in risk-taking behavior and less able to consider long-term consequences of risky behavior than adults. Research in the field of juvenile justice has found that the vast majority of adolescents who commit a crime will not go on to a life of crime.

Analysis of the laws governing the adult and juvenile penal systems highlights that the juvenile system is designed, funded and staffed for community protection, accountability and treatment. The adult system is neither required nor able to provide the same level of rehabilitation and education to its inmates as the juvenile system. A decade of studies around the country have found that children who are tried and incarcerated in the adult system are more likely to recidivate than minors tried and incarcerated in the juvenile system. Researchers have found that “adult crime, adult time” is ineffective public policy.

It is time to take what we now know about adolescents and extend that knowledge to the juvenile justice system. Simply put, we should not impose the adult criminal justice system on Wisconsin's children. By providing developmentally appropriate treatment for youth, we can increase the likelihood that the community will be protected from juvenile crime and that youth will be successful in making more positive choices for their future. To that end, we recommend the following:

1. 17-year-olds should be returned to the original jurisdiction of the juvenile court.
2. The Juvenile Justice Code should be revised such that the juvenile court has presumptive jurisdiction over all youth under 18 years old, and only a juvenile court judge can waive that jurisdiction.
3. Children under 18 should not be placed in adult prisons or jails.

Rethinking the “Juvenile” in Juvenile Justice

Implications of Adolescent Brain Development on the Juvenile Justice System

“Adult” means a person who is 18 years of age or older, except that for the purpose of investigating or prosecuting a person who is alleged to have violated any state or federal criminal law or any civil or municipal ordinance, “adult” means a person who has attained 17 years of age.

Wis. Stat. Ann., sec. 938.02(1).

After a decade of handling youth in the adult corrections system, it is time to reevaluate the wisdom of this practice. Wisconsin has updated the juvenile justice code each decade for the past thirty years. The legislature has tried diligently to find the most effective ways to tackle the unique issues attendant to juvenile delinquency. Juvenile justice task forces over the years responded to the latest trends in crime and the most current thinking about delinquency prevention, community protection, and effective treatment of juveniles. Given new information about adolescent brain development, in combination with research about the cost-effectiveness of treating juveniles and the relative efficacy of the Wisconsin juvenile justice system in comparison with the adult system, it is time to once again revisit how people under 18 are treated in the Wisconsin justice system.¹

In the mid-1990s, when the current juvenile justice code was written, it was widely believed that the brain was fully formed well before adolescence. We now know that critical areas of the brain continue to develop throughout adolescence. The purpose of this paper is to spark dialogue about the implications of this new and ever-growing body of brain development knowledge on our treatment of children in conflict with the law.

Section I: Introduction

A 17-year-old in Wisconsin, while defined as a child for all other legal purposes, forgoes the right to be treated as one upon commission of a crime.² A 17-year-old offender is treated as a criminal: brought to the county jail and incarcerated in adult prison. In 2004, there were almost 5,000 admissions of 17-year-olds to adult county jails.³ That is the equivalent of almost the entire freshman class at the University of Wisconsin Madison. Given that most 17-year-olds are juniors or seniors in high school, this paper revisits the debate over where to draw the line between childhood and adulthood. For criminal prosecution, that line is currently drawn at 17; for certain crimes it can be even lower, as young as 10.

Until recently, it was believed that the brain was essentially formed early in childhood, and that adult maturation was a process of gathering experience. In the past decade, however, scientists have uncovered a new stage of brain development which occurs from early adolescence until the early twenties. During that time, there is considerable growth and reorganization in the brain, with the areas affecting impulse control and behavioral regulation being the last to mature. Behaviors that are the hallmark of adolescence, such as risk taking, thrill seeking, and impulsiveness, are now explained by the lag in development of the portion of the brain that allows adults to minimize these behaviors.

In the mid-1990s, prior to mainstream acceptance of this scientific breakthrough, there was a nationwide spike in violent crime, including juvenile violent crime. The policy response was to get tough on crime and treat more juveniles as adults. As a result, there are more juveniles serving adult time, where they are less likely to obtain the treatment they need. Rather than continue to rise, as predicted, juvenile crime has decreased steadily in the past decade.

This paper explores recent developments in adolescent brain research and offers some legislative solutions to the problems created by imposing the adult justice system on adolescents.

How Did We Get Here?

Wisconsin has been at the forefront of the juvenile justice movement from its inception. The first juvenile court in Wisconsin was created in 1901, just two years after the nation’s first juvenile court was established. Prior to the juvenile court’s creation, all people alleged to have committed crimes were processed through criminal court in a similar manner. The juvenile court

was created to allow judges the flexibility to take the individual circumstances of juveniles into account throughout the process and to provide a more treatment-oriented approach to delinquent children.⁴ It was based on the belief that children were different from adults and with the intention of removing long-lasting consequences from youthful crimes.

From 1901 until 1967, juvenile courts around the country operated under their own sets of rules, often lacking the procedural formality of adult courts. In 1967, the U.S. Supreme Court decided that juveniles need to be afforded at least minimal due process protections, given that they could be subject to limits on their liberty through the juvenile court.⁵ That landmark decision led to a second wave of juvenile court reform in the 1970s. The 1978 revision of the Wisconsin Children’s Code put the focus more squarely on community-based rehabilitation, and encouraged counties to use their dollars to provide rehabilitation locally through the development of the Youth Aids funding formula.⁶

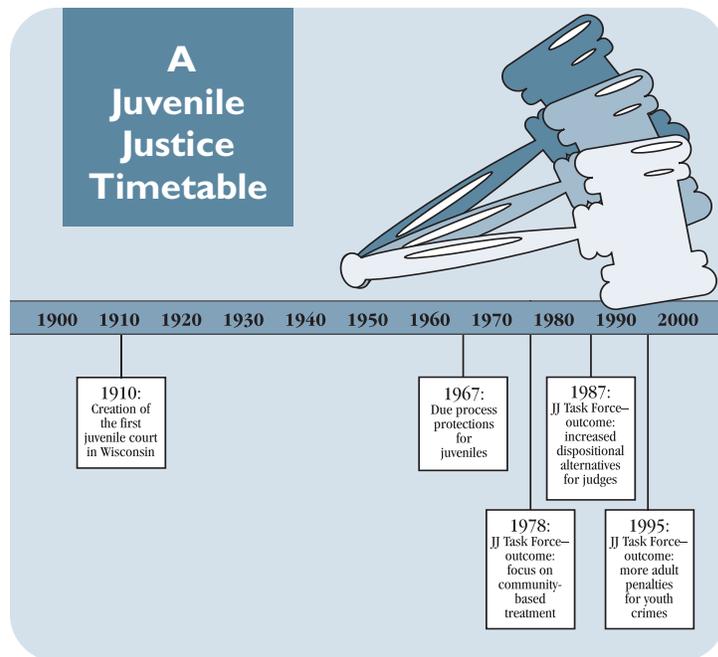
The 1980s saw another Juvenile Justice Task Force and another major change. The requirement for rehabilitation in the least restrictive environment was replaced with greater dispositional flexibility for judges.⁷ The Youth Aids funding mechanism was not changed, so the incentive at the county level to provide services in the community remained intact.

Following a national trend, in 1995 the Wisconsin Legislature literally rewrote and retitled its juvenile justice code.⁸ The shift included taking juvenile delinquency out of the old Children’s Code, where it used to reside along with child welfare, and creating an entirely new law dedicated to the management of unruly and delinquent children. Prior to the new legislation, children under 12 charged with crimes were treated through the child welfare system rather than in the delinquency system. Under the new law, the delinquency system was expanded to address kids 10 and over. The purpose of the new Juvenile Justice Code was threefold: (1) to protect the community; (2) to impose accountability for violations of law; and (3) to equip juvenile offenders with competencies to live responsibly and productively. Removing delinquencies from the Children’s Code represented more than just a technical shift. By placing the new juvenile justice code next to the criminal code in statute, the message to counties was clear: Children in the juvenile justice system were criminals more than they were children.⁹

Once again at the forefront of the juvenile justice movement, Wisconsin embraced the idea of balanced and restorative justice in its treatment of young offenders. Balanced and restorative justice, or BARJ, emphasizes the combination of competency development in offenders with the protection of the community

and victim impact work. However, rather than look at a child, assess needs and provide rehabilitation, the new code looks first at the crime to determine the consequences. The Youth Aids funding mechanism, which encourages community rehabilitation by giving money for juvenile justice to the counties and then having the counties pay the state for the cost of secure incarceration, was not changed. However, the more punitive legislation opened the door to sending juveniles to adult corrections. In that way, it did not truly reflect the integration of the BARJ approach.

Nationally, there was a movement to get tough on crime, and this was reflected in the “adult crime, adult time” concept.¹⁰ While the juvenile justice system in Wisconsin continued to focus on competency building and treatment, many kids were excluded from that system entirely, due to either their age or the nature of the crime, and were put in the ill-equipped adult system. It was in the mid-1990s that 17-year-olds were statutorily excluded from the juvenile justice system and the adult courts were given original jurisdiction over the most serious crimes for kids 10 and up.



Current State of the Law

Wisconsin is one of only 13 states that consider adolescents under the age of 18 to be adults for the purpose of criminal prosecution.¹¹ All 17-year-olds are considered adults; that is, 17-year-olds are under the original jurisdiction of the adult criminal court and are statutorily excluded from the juvenile court for crimes committed after their seventeenth birthday. Children as young as 10 can be tried in adult criminal court for first or second degree murder.

Original Adult Court Jurisdiction

Age	Crime
10 through 16	First Degree Intention Homicide, First Degree Reckless Homicide, Second Degree Intentional Homicide
10 through 16	Juvenile who commits assault or battery while in a secure correctional facility on a corrections officer or another inmate
17 Years Old	Always original Adult Court Jurisdiction

Waiver

Age	Crime
14 through 16	Felony Murder, Second Degree Reckless Homicide, First or Second Degree Sexual Assault, Taking Hostages, Kidnapping, Burglary, Robbery with a dangerous weapon, Manufacturing or Distributing Controlled Substances, Commission of a Felony at the Request of a Gang
15 and Older	Violation of Any State Criminal Law

If the definition of adolescent is malleable, the definition of adult is arbitrary at best. With the sweep of a pen in 1995, the legislature responded to predictions about a violent generation — which have not been supported by juvenile crime data (see Chart D) — by lowering the age of adulthood for the purposes of criminal prosecution.

The aftermath of the adultification of the juvenile justice system has been seen at the national level and in Wisconsin. Research has emerged about the ineffectiveness of imprisoning young people in adult prisons, as well as the financial impact of failing to provide developmentally appropriate treatment to juveniles who are sentenced as adults. Research at the national level has illuminated the potential dangers of incarcerating youth in adult prisons.¹² Additionally, the staffing patterns and availability of treatment in adult prisons and jails are not comparable to juvenile facilities, due to the differing missions of the adult and juvenile systems.

The Adolescent Brain Development – Juvenile Justice Link

For the past decade, knowledge of adolescent brain development and knowledge of what works with juveniles in the justice system have been progressing, albeit on separate tracks. Looking at juvenile justice through the lens of brain development, we can begin to make informed policy decisions that will hold adolescents accountable while also providing the developmentally appropriate treatment they need. **The brain development - juvenile justice link is a work in progress, but it is the key to delinquency prevention, community protection, and the nurturance of a new generation of adolescents.** By working with at-risk youth in smarter ways, we can increase the likelihood that they will successfully transition into adulthood and become contributing, productive members of our communities.

Adolescents do not have the same capacity for understanding long-term consequences as adults. The vast majority of adolescents who commit crimes will not reoffend, because as the brain matures there is heightened ability to control reckless impulsivity, which can lead to adolescent crimes. As judgment improves and impulse control develops, very few people will actually continue to offend in to adulthood. With that in mind, how do we structure programs that foster the normal, pro-social development for those kids who would not reoffend, while still providing proven, effective interventions to those kids who are more likely to reoffend?

Recent developments in juvenile justice suggest that the best, most effective programs mirror a supportive family environment or foster a supportive family environment in the community.¹³ These programs nurture development, and help families that do not have the structure to provide positive outcomes to gain the structure necessary. Positive Youth Development models have recently been reported as the emerging field in juvenile justice.¹⁴ Increasing competencies and building on natural strengths, the juvenile justice system can be a positive force in adolescent growth and maturation.¹⁵ Strengthening natural supports and lessening dependence on outside supports ultimately can help a child as a part of a family unit function. For kids who need more intensive services, who are unable to be in a community setting, still the most important components of successful programs are those that teach empathy through human connections.¹⁶ Along with intensive treatment, connections with a small group of service providers can be indicators of positive outcomes. Finally, outcomes must be measurable to ensure that limited resources for juveniles are spent in the most effective ways.

An understanding of adolescent criminal behavior in the context of brain development leads to the conclusion that children under 18 are amenable to treatment. That treatment is more readily available through the juvenile justice system. Section II of this paper reviews the current data on adolescent criminal behavior. Section III discusses the most recent research on brain development. Section IV reviews current programming in juvenile and adult corrections and the long term cost-savings of keeping juveniles in the juvenile system. Section V contains recommendations for extending our knowledge of brain development into the realm of juvenile justice, specifically in terms of who is treated through the juvenile versus adult system.



Section II: What We Know About Crime

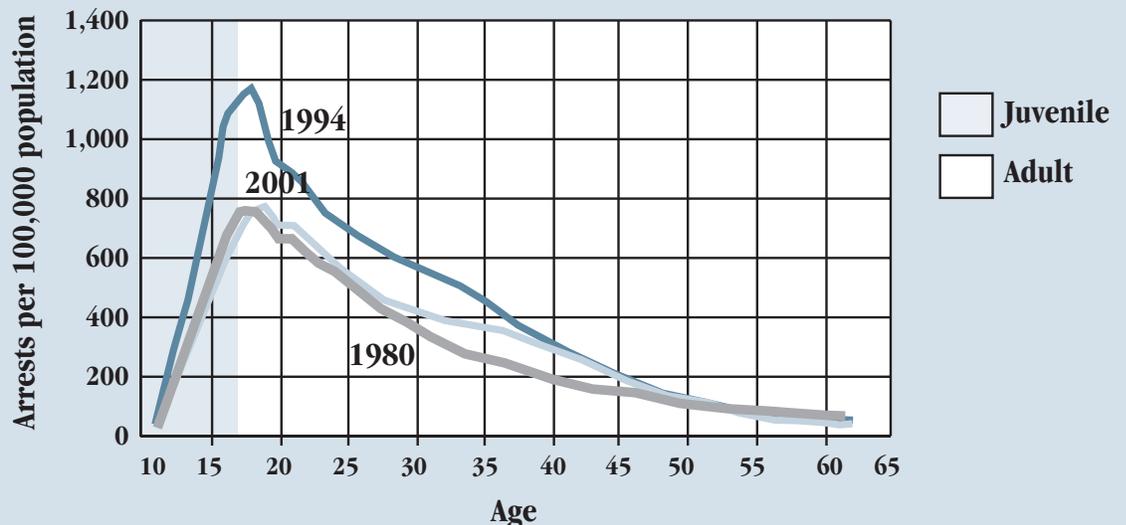
National Trends in Adolescent Criminal Behavior

Nationally and in Wisconsin, there is a spike in arrests for all criminal behavior from the mid-teens to the mid-twenties. National data from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) show that this is true regardless of the overall amount of violent crime arrests in a particular year. Chart A depicts the national age distribution of violent crime index arrests¹⁷ in 1980, 1994 and 2001. The arrest rate for the 15- to 20-year-old age group, regardless of the overall amount of crime, is elevated. There is a significant drop off in crime after the peak age, which is around 18.

Research by Terrie Moffitt of the University of Wisconsin explains this trend.¹⁸ Most adolescents who commit crimes will not go on to be adult criminals. As they mature and their judgment improves, they will stop committing crimes. Moffitt found that roughly 3 to 6 percent of the male population is chronic offenders, those people who had behavioral difficulties early, young ages of first arrest, and then violent crime arrests prior to age 20. She found that while 20 – 25 percent of adolescent males will be arrested between the ages of 15 – 18, more than three quarters of youth who commit violent crimes prior to age 21 will age out of those behaviors by age 21. Additionally, more than 80 percent of violent crime is committed by people over 20 years old.¹⁹

CHART A

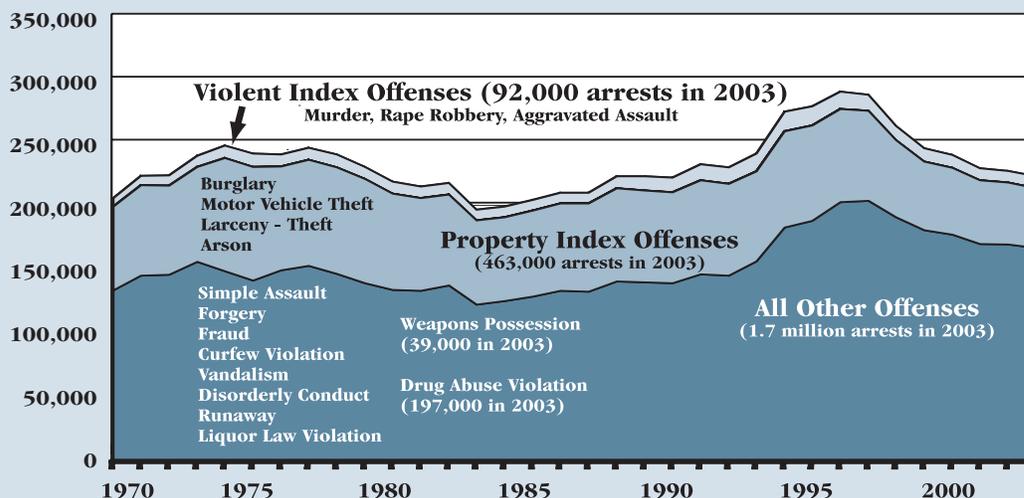
Violent Index Crime Arrest Rate



Source: National Violent Crime Arrests per 100,000 Population by Age, Bureau of Justice Statistics

CHART B

Number of Arrests Nationally Involving Youth Under Age 18



Source: *Focusing Juvenile Justice on Positive Youth Development*, J. A. Butts, Chapin Hall, 2005

Finally, while the majority of dialogue around youth crime focuses on violent crime, Chart B illustrates that the vast majority of arrests of juveniles around the country are for non-violent offenses. In 2003, only about 4 percent of juvenile arrests nationally were for violent index crimes.

Wisconsin Juvenile Arrest Trends

Arrests for violent index crimes in Wisconsin have been decreasing steadily since 1994.²⁰ In 2004, arrest rates had declined back to levels of the early 1990s. Predictions that violent crime would continue to increase, used to justify lowering the age of juvenile court jurisdiction, were erroneous.

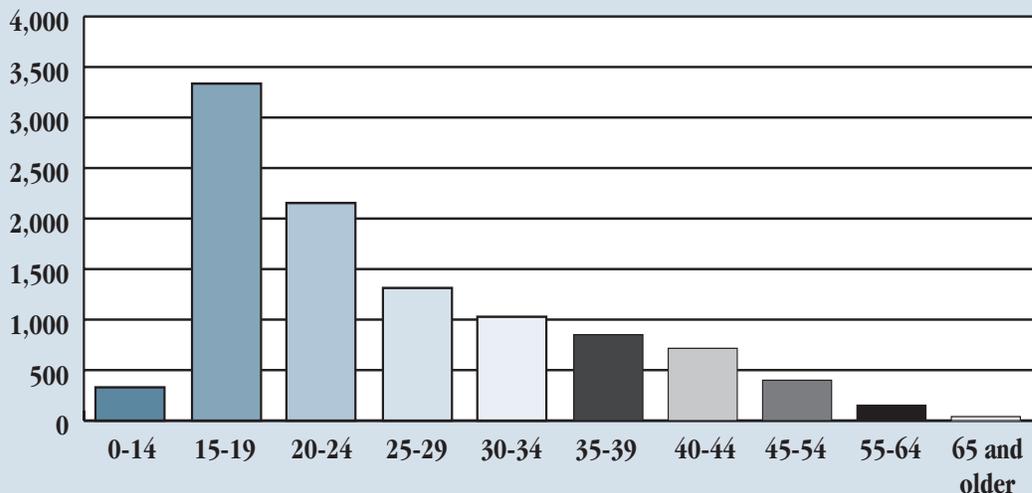
As illustrated in Chart C, arrests among teenagers 15 to 19 in

Wisconsin significantly outpace arrests of any other age group. Both in raw numbers and as a rate, teens are arrested far more often than adults. Similar to the rest of the nation, the trajectory for arrests is a sharp downward curve after adolescence. That does not mean that there is more violent crime during adolescence, but rather that there are more arrests overall. There are about the same number of 16- and 17-year-olds arrested in Wisconsin. It is not until after age 19 that the arrests drop off. As discussed below, the lag time in brain maturation, especially in those areas of the brain that govern impulse control, long-term planning and reasoning, may explain this burst in arrests.

In Wisconsin, violent juvenile arrest trends mirror national trends in that violent crime has been on the decline for more than a decade.

CHART C

Wisconsin Rate of Arrest Per 10,000 People 2004



Source: *Arrest Data from Office of Justice Assistance; Census Estimate from the Department of Health and Family Services*

CHART D

**Wisconsin
Juvenile
Violent
Index
Arrests
(per
1,000
children)**

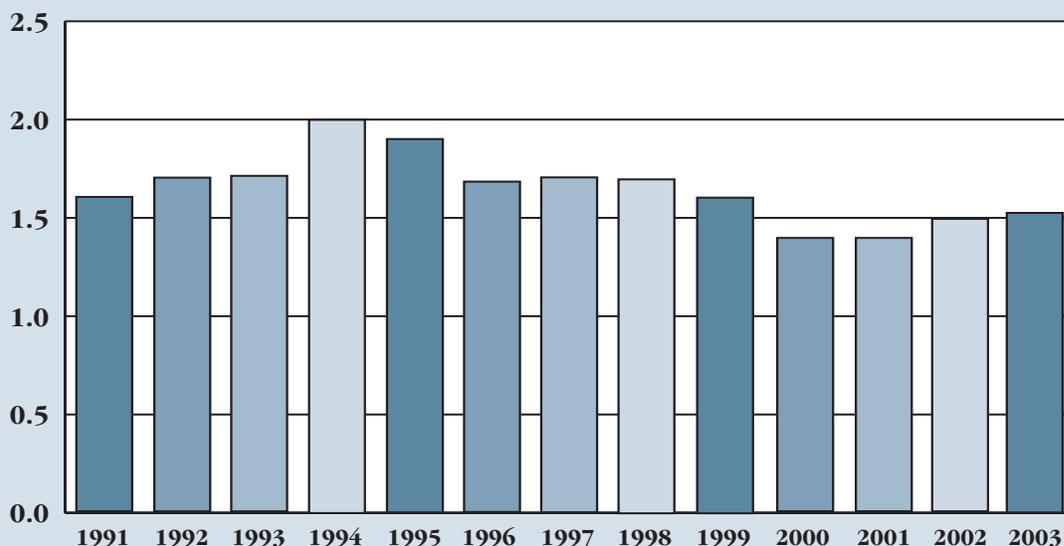


Chart D above shows the Wisconsin trend in arrests for juvenile violent crime, which peaked in 1994 and has been on the decline since. For purposes of this chart, 17-year-olds are included as juveniles. The drop in juvenile crime arrests mirrors a decade long decrease in the same type of arrests nationwide. The decrease cannot be explained by a deterrent effect of more stringent juvenile crime laws because, as the US Supreme Court has recognized, deterrence does not work with juveniles. The Supreme Court found that there was a very low likelihood that a juvenile would perform the kind of long term analysis of consequences that would take into account the possibility of a harsh sentence.²¹ Moreover, the drop in crime cannot be attributed to taking 17-year-olds out of the juvenile justice system, as the above chart shows that even when 17-year-olds are included there was a precipitous drop in violent crime.

The only arrests that have increased in the past decade have been drug arrests, which have shown rapid increases. The juvenile arrest rate for drug offenses increased by 296 percent between 1985 and 2004, from 98 to 388 per 100,000.²² Explanations for the increase in drug arrests vary from a heightened attention to drugs on the part of law enforcement to more expansive drug laws.

Commitments to the Division of Juvenile Corrections (DJC) are down as well. Several factors have contributed to this decline. Fewer violent crime arrests among youth is one factor. This, in combination with improvements in some counties' ability to serve kids in the community—thereby relying less on corrections placements—has led to a decrease in Juvenile Correctional Institution (JCI) placements in the past 10 years.

The lower numbers in both arrests and JCI commitments presents an opportunity to work with a smaller number of adolescents more intensely. By understanding what adolescents need and will respond to through treatment, we can maximize the effectiveness of our juvenile justice expenditures. Understanding adolescent brain development is the key to determining which children to treat in the juvenile system and what sort of treatments will be most effective.



Section III: Adolescent Brain Development

The exact definition of adolescence is difficult to pin down in a few words. Essentially it is marked by the onset of puberty and concludes when adult roles are assumed. In neuroscience, adolescence is considered to conclude when adult brain function is attained. This is generally thought to occur in the early 20s. However, as with most markers of brain development, there are individual differences.

Developmental Framework

Within the brain, an active limbic region, particularly the amygdala, drives many adolescent behaviors, which are characterized by emotional intensity and volatility. The ability to reflect and consider consequences is not readily apparent.

Risk-taking and sensation-seeking characterize adolescent behaviors, particularly in situations of high emotional intensity (hot cognition). Youth are more likely to engage in high-risk behaviors in the company of peers. In the classroom and around the dinner table, they often are able to acknowledge the consequences of behaviors (cold cognition), but in the company of friends, those acknowledged outcomes are often not considered.

The onset of puberty (and the concomitant changes in brain activity), which now occurs at an earlier age than in previous generations, leads to the heightened emotional intensity. These changes precede development in the frontal lobe of the brain that will allow reasoned judgment to rein in emotional decision-making.

As the adolescent period widens – beginning earlier, ending later – youth are at risk of making poor decisions for a longer period of time.

Brain/Behavior Changes

Puberty: Scientists know that the amygdala (limbic region), which is closely linked to emotionally-laden responses, is particularly active during adolescence. The behaviors of adolescents in circumstances of hot cognition (those occurring in situations of high emotional context) contrast with their capacity to engage in intellectually challenging conversations in the classroom or at the dinner table that consider the consequences of behaviors and actions (cold cognition). The behaviors of an adolescent in

*In adolescence, physical health is approaching its peak. Adolescents are not only bigger and stronger than children, but also show developmental increases in a wide range of mental and physical abilities, including reaction time, reasoning skills, problem solving, immune function, and capacity to cope with many kinds of stresses and challenges. Yet, during this period of resilient health, burgeoning energy, and new-found capabilities, we witness a dramatic increase in death and disability: soaring rates of serious accidents, suicide, homicide, aggression and violence, use of alcohol and illegal drugs, emotional disorders, and health consequences of risky sexual behavior. Behind this paradox lies the complex story of adolescent development. **To understand it, we must consider the maturing adolescent brain, as well as the impact of social context and experience on the development of biological systems.***

Dahl, Ronald, M.D.,

“Beyond Raging Hormones: The Tinderbox in the Teenage Brain,” Cerebrum, Vol. 5, No. 3, Summer 2003

(emphasis added)

Vocabulary of the Brain

Limbic Region

Brain structures internal to the brain involved with emotion, memory, and some aspects of movement.

Amygdala

Structure within limbic regions involved with emotional responses, especially anger.

a situation of hot cognition (behind the wheel of a car with four friends, blaring music, and a “need for speed”) often contrast vividly with behaviors in a driver education car (cold cognition), where consequences are more readily apparent and acknowledged.

This may explain why youth tend to engage in violent acts in groups or with more powerful peers. Understanding the essence of hot cognition/cold cognition may help us develop more effective ways of addressing youth behavior in groups.

Also important is the fact that male amygdala undergo a growth spurt during adolescence that is more pronounced than in females. “... (O)ne of ‘the most robust differences’ found between males and females, from rats to humans, is the level of rough-and-tumble play. Males simply do more of it. And males running high on androgens [male hormones] engage in more rough play than males on the low side.”²³

As stated by Ron Dahl, “... changes in adolescent brain development that are specific to puberty have their primary effects on motivation and emotion. These changes manifest as mood swings, increased conflict with parents, a greater tendency for risk-taking and rule-breaking, an increased draw toward novel experiences and strong sensations, ... and an increased risk of emotional disorders (particularly depression in adolescent girls).”²⁴

<i>Cold Cognition</i>	<i>Hot Cognition</i>
Stealing is wrong.	On a dare from a more popular peer, steal an item.
Carrying a weapon into school is illegal.	Friend shows you a weapon on the way into school and you do nothing.
Unprotected sex is dangerous because of risk of teen pregnancy and STDs.	Backseat of a car.

At the same time however, the prefrontal cortex (located behind the forehead), especially the dorsolateral prefrontal cortex (located at the temples), is not yet fully developed so the consequences of these emotionally-laded behaviors are often not considered by teens. Risk-taking, sensation-seeking, situations of hot cognition are very pleasurable for the adolescent. The judgment portions (prefrontal cortex) of the brain, when fully developed, regulate responses to pleasurable activities so the individual does not engage excessively in pleasure-producing activities. That is, once an adolescent matures into adulthood, the natural tendencies toward risk taking are mitigated by increased forethought and crime rates drop precipitously.

The prefrontal cortex is the control center; neural pathways provide feedback to the limbic region in order to control the intensity of emotional responses, particularly those involving pleasure. The major neurotransmitter involved in the brain pleasure circuit is dopamine. Dopamine is associated with both “motivation” (nucleus accumbens – limbic region) and “salience” (cortex), recognizing when something is important. An interesting phenomenon appears to be occurring during the teen years. The amount of dopamine decreases in the human brain from childhood to adulthood, which means that the level of dopamine in the adolescent brain is decreasing. It appears that because there also is a shift of dopamine to the cortical regions, the most pronounced drop in the neurotransmitter occurs in the nucleus accumbens, which is associated with the motivation to attain rewards. As demonstrated recently by NIH scientists, the brains of adolescents do not show activity in the nucleus accumbens in anticipation of a reward in a game-like scenario risking monetary gain or loss; on the other hand, an adult brain lights up in anticipation of the reward.²⁵

Vocabulary of the Brain

Neurotransmitters

Chemical messengers linking neurons in the various neural pathways of the brain.

A second set of research findings is also important. Reporting in *Science* magazine (March 21, 2003), scientists found that dopamine neurons in the nucleus accumbens are most active when the prospect of reward is least certain (greater motivation). In other words, the nucleus accumbens produces more dopamine when the individual is engaged in activities that have undetermined outcomes – activities that are more risky. When the reward is known, there is less activity (less motivation).²⁶

How might these two research findings relate specifically to the adolescent brain? In a game-like scenario risking monetary gain or loss, there is a limited amount of uncertainty – only the extent of the gain or loss is undetermined. In an adult brain, where there is more dopamine present in the nucleus accumbens, there may be enough uncertainty to prompt a response. However, with depleted amounts of dopamine, the adolescent nucleus accumbens may not be activated because a rewarding outcome is anticipated; it’s only the size of the reward that is unknown. Higher levels of uncertainty may be necessary to prompt activity in the nucleus accumbens of teens – hence a propensity to engage in higher-level, risk-taking activities! The “feel-good” aspects of dopamine are related to the activity rather

than the outcome. The adolescent reward system appears to bias choice toward excitement, even if that includes risk.

This discovery could have significant meaning for the development of appropriate programming that motivates teens to change their delinquent behavior. If teens are more motivated by novelty than by predictable rewards, it would follow that traditional point and level systems, used throughout the state, need to be updated to reflect the way adolescent brains work. What are the motivators that move teens? While this area has not been thoroughly explored by researchers, utilizing current information in our treatment programs may lead to new treatment models for juveniles that are based in science and can be tested through further research.

Linda Spear, a leading researcher in adolescent brain development, thinks “teenagers, as a group, perhaps dopamine-depleted in their reward system, might need more stimulating activities to get the same ‘kick’ as we get.”²⁷ The best-behaved adolescents may, at some time, engage in behaviors that adults would consider to be out of character for that individual. Even adolescents who seem more mature in the manner in which they work in a goal directed fashion might still engage in risk-taking and thrill-seeking behaviors. It is critical to remember that adolescence is a developmental stage; a brain still “under construction” is not always fully capable of regulating all behaviors.

In addition to the changes in the reward system, there are equally dramatic changes in the frontal cortex. “B. J. Casey, an expert on scanning children’s brains, ...looks at its [dopamine] action in the frontal cortex. Since dopamine helps us to notice things and take action more quickly, it might have a special job at that time in life in the prefrontal cortex. As it seeps into the frontal lobes, it may help teenagers recognize the ‘new’ thing, decide it’s important or ‘salient,’ and act quickly.”²⁸ Again, the clear implication here is that teens, biologically, are destined to pursue the novel, the risky, and the sensational activities – those characteristics are what make certain actions appealing to the teen brain.

Brain changes that include a combination of a highly active limbic system (amygdala), a largely underdeveloped prefrontal cortex, and changes in neurotransmitter levels are a prescription for volatility, at least for some youth.

Another change that impacts behavior is in the sleep/arousal patterns of adolescents. In the context of complex social situations, this biologically-based developmental change can compound emotional instability (see box entitled Sleep: or the Lack Thereof).

Despite the biologically-driven propensity of teenagers to engage in risk-taking behaviors, Alan Booth (Pennsylvania State University)



found that, in every case he studied, the influence of environment trumped the influence of biology. Looking at 400 stable middle-class families, he found that when parent-teenager relationships were poor, high-testosterone sons were more likely to engage in high-risk behaviors, such as skipping school, sex, lying, drinking, and stealing. Low-testosterone sons were more likely to be depressed. High-testosterone daughters with poor relationships with their mother were also more likely to engage in risky behaviors; low-testosterone daughters also reported feeling depressed. However, if parent-child relationships were healthy, testosterone levels didn't seem to matter at all.²⁹

The message here seems to be that although an adolescent has more difficulty performing the higher-level activities mediated by the frontal cortex in the context of high-intensity social situations (igniting passions), he or she can, within the proper structure and with guidance, successfully navigate the challenges of adolescence.

Age-Related: Among the changes in the brain, those that occur on an age-related timeline in the dorsolateral prefrontal cortex are among the most important. It is this part of the brain that has been linked to the ability to call upon working memory to put events in context, to make sense of environmental activities, to reflect upon an idea, and, most importantly in the juvenile justice context, to control impulsive behavior. Working memory is linked to impulse control. The brain is, among other things, an inhibition machine.

As noted earlier, there is strong evidence that the brain continues to change and mature into the early 20s. Those changes involved with the prefrontal cortex and, particularly the dorsolateral prefrontal cortex, include synaptic pruning and myelination, both of which lead to hard-wiring and efficiency – and the ability to exercise sound judgment in situations of hot cognition.

“(W)hen we scanned the brains of the same children every two years, we were shocked to find a second wave of overproduction [of synapses] that begins around age nine,” Dr. Jay Giedd said.³⁰ The brain doesn't get bigger, but the gray matter, or thinking portion, of the brain thickens between that age and the peak, which occurs at about 11 years in girls and 12 years in boys, indicating an increase in synaptic connections.

Then over the next few years, “the excess connections are eliminated or ‘pruned,’ resulting in a thinning of the gray matter,” Giedd said. UCLA researchers compared MRI scans of young adults 23 to 30 with those of teens 12 to 16. They looked for signs of myelin, which would imply more mature, efficient connections, within gray matter. As expected, areas of the frontal

The world gets more complex, school gets harder, social relationships get more obtuse. Adolescents have bigger passions, too. ‘They need to be independent from their parents; they want to be adults and they’re exposed to a semiadult culture. But they don’t have the prefrontal cortex to regulate those adult behaviors; they drink and they drive without seatbelts, all of that.’ Or as Giedd puts it: ‘They have the passion and the strength, but no brakes and they may not get good brakes until they are twenty-five.’

Staugh, Barbara

The Primal Teen. Doubleday, NY, 2003.

Vocabulary of the Brain

Synapses

Connection points between neurons.

Myelination

The process of forming a myelin sheath around an individual neuron, which makes the transmission of ‘messages’ more efficient and the pathway less plastic or changeable.

lobe showed the largest differences between young adults and teens.³¹ This increased myelination in the adult frontal cortex likely relates to the maturation of cognitive processing and other “executive” functions. A combination of synaptic pruning and increased myelination, leading to more efficient pathways, proceeds throughout adolescence. The pruning of synaptic connections seems to follow the “use-it-or-lose-it.” principle evident in early childhood. The adolescent brain is not yet efficient; it is being sculpted through use. Said Jay Giedd, “If time is spent on academics or music, that is what the brain will be hard wired or optimized for. Or, you can hard wire your brain for sports or video games.”³² The effect of the type of sensory deprivation on brain development that occurs in Wisconsin institutions, where the most serious juvenile offenders may be locked in cells for 23 hours per day, is something that should

be considered in making correctional system more amenable to juvenile rehabilitation.

Affect Regulation

Adult Affect Regulation (AF) includes a combination of cognitive skills and emotional self-regulation that fosters mature judgment, social skills, the attainment of one's goals, and behavioral/emotional health. This ability does not fully mature, according to the scientists, until the early 20s when the dorsal-lateral prefrontal cortex is more completely developed.

According to Dahl, early to middle adolescence (early teens through age 18) is a time of "special opportunities/vulnerabilities." There are neurodevelopmental underpinnings for the mature skills involved in affect regulation. In particular, there is a late-developing dimension of AF "that includes cognitive-emotional integration... [a] combination of cognitive skills (e.g. using learned rules, strategies, and plans in the pursuit of long-term goals) and emotional self-regulation (e.g. abilities to navigate strong feelings, desires, and competing motivations) in the development of mature judgment, social skills, and behavioral/emotional health in adults."³³

In essence, brain development may be one key to understanding delinquent behaviors. The research done by Moffitt in the mid 1990s is again validated by what we have learned about brain maturation. As detailed above, adolescents often have crime bursts that subside over time; as the dorsolateral prefrontal cortex matures, they increasingly are able to control their behaviors even in situations of high emotional intensity. However, that ability only fully develops late in adolescence (age 18-22). Therein lies the disconnect for the younger adolescent. S/he may understand the moral values associated with "right and wrong," but the situational context often has a greater influence on their behavior. This is the essence of the hot cognition/cold cognition differential. An adolescent who knows that stealing is wrong may not be able to say no to a more powerful peer in the heat of the moment.

Obviously the intimation that adolescence may comprise yet another "sensitive period" in brain development brings home the need to provide a proper environment for delinquent teens as they traverse this complex and dangerous period in life. The need for adult guidance is clear. Teens need direction as they deal with "contemporary adolescent social contexts filled with complex, ambiguous, and emotionally arousing situations."³⁴

Sleep: *or the lack thereof!*

A fundamental change in sleep patterns occurs with the onset of puberty - a change that can exacerbate problems with emotional control. What do we know about sleep in adolescents?

- 1. The biological clock shifts with the onset of puberty - the adolescent doesn't become sleepy until 10-11 pm, instead of 8-9 pm as a child.*
- 2. The need for sleep remains at about 9.5 hours per night.*
- 3. The school/sleep squeeze means many adolescents are not getting sufficient sleep.*
- 4. The sleep cycle is often pushed further back during summers, weekends, and vacations, making it difficult to reset the cycle to earlier bedtimes when school begins.*
- 5. Various stressors associated with adolescence, i.e., academic and extra-curricular expectations, work obligations, relationships, can interfere with sleep, often leading to Difficulty Falling Asleep (DEA).*

As teens struggle to meet the demands of school, work, and social schedules, they are likely to experience sleep deprivation. Affect regulation and cognitive-emotional integration are more difficult because sleepy teenagers have even less control of their emotions and those emotions tend to be more exaggerated. Learning is more difficult; the individual is more at risk of negative outcomes.

Those adolescents who have less stable homes, less adult monitoring, and less incentive to adhere to social rules are at even greater risk of experiencing sleep deprivation and its attendant impact on behaviors.

Section IV: Adult Crime, Adult Time Fails Our Youth, Fails to Protect the Community, and is a Financial Drain on Our State.

Hard science now lends support to the notion that adolescents should be treated differently from adults. The juvenile code in Wisconsin is not aligned with what we know about brain development. While we know from research about brain development that adolescents are immature in their ability to make decisions and evaluate long-term consequences, the law does not incorporate that knowledge. Wisconsin law bases the severity of the punishment on the crime, ignoring the offender's developmental level. Therefore, a 10-year-old who biologically cannot understand the long-term consequences of a murder is treated as an adult for commission of that crime. Children are not mini-adults, yet punishment in adult court is dependent on the crime committed, rather than the individual child. Thus, a greater level of criminal responsibility is attributed to a 10-year-old who murders than to a 15-year-old who manufactures drugs. The 10-year-old will automatically be tried in adult court, while the 15-year-old will not. Neither has the long-term planning ability and impulse control of an adult. This legal framework is simply incongruous with what we now know about adolescent brain development.

Where are Juveniles in the Correctional System?

The vast majority of juveniles who come in contact with the juvenile court system are in their home communities. Because Wisconsin's is a county run juvenile justice system, those children are receiving a myriad of services that are at times difficult to track. While one county may have a terrific first time offender diversion program, another may not have the resources to build such a program.

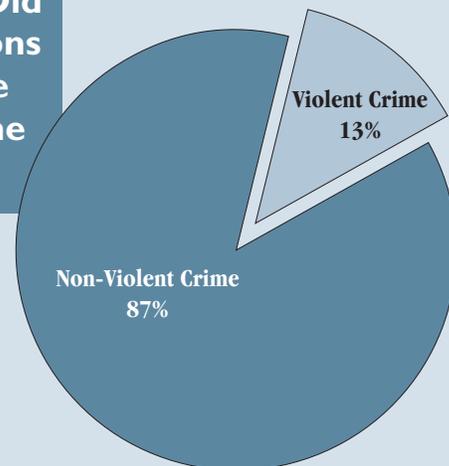
Of the nearly five thousand jail admissions for 17-year-olds, 87 percent of the admissions were for nonviolent crimes. That is 4,225 jail admissions for nonviolent crimes.

In 2003, there were 117,224 juvenile arrests. In 2004, that number shrank to 113,209, a 3.4 percent reduction in overall arrests.³⁵ In 2003, there were 25 adolescents under 17

admitted to adult prisons, and another 114 17-year-old admissions. In 2004, there were 17 children under 17 admitted to adult prisons and another 130 admissions of 17-year-olds.

CHART E

17 Year Old Admissions By Type Of Crime 2003



	Number in 2003	Number in 2004	Percent Change
Juvenile Arrests	117,224	113,209	- 3.4%
Under 17 admissions to adult prison	25	17	- 32%
17-year-old admissions to adult prison	114	130	+ 14%
17-year-old admissions to adult jails	4,856 ³⁶	4,762	-1.9%

Incongruous Assumptions

A 14-year-old cannot consent to sex. Therefore, if a 20-year-old has sexual contact with a 14-year-old, that is considered sexual assault of a child. However, if that same 14-year-old has sexual contact with a 12-year-old, the 14-year-old is now the sex offender and can be tried as an adult for a sexual offense. So the person who is unable to consent to sexual contact now becomes a sexual offender, with all of the steepening ramifications.

What a Difference a Day can Make:

The juvenile justice system and adult criminal system have two very differing purposes, as described by their legislative intents. The legislative purpose of the juvenile justice code is as follows:

“It is the intent of the legislature to promote a juvenile justice system capable of dealing with the problem of juvenile delinquency, a system which will protect the community, impose accountability for violations of law and equip juvenile offenders with competencies to live responsibly and productively.” *Wis. Stat. Ann. 938.01.*

The intent statement outlines that holding juveniles accountable and responding to each offender’s treatment needs are equally

important in the juvenile system. Those goals are not equal in the adult system, whose purpose is:

“To prevent delinquency and crime by an attack on their causes; to provide a just, humane and efficient program of rehabilitation of offenders...”
Wis. Stat. Ann. 301.001.

It is on the basis of these differing mission statements that the two systems allocate their resources. The cost of juvenile corrections, almost three times as much as adult corrections, reflects the heightened services provided in accord with the mission of the juvenile justice system. Below is a schedule of the programming in a typical day at a juvenile correctional facility, the Southern Oaks Girls School:

CHART E: A Typical Daily Schedule Comparison

Daily Schedules Provided Upon Request by Each Facility.

	Southern Oaks Girls School	Lincoln Hills Boys School	Mendota Juvenile Treatment Center	Taycheedah Correctional Institute
5:45-6:00 am				
6:00-6:30 am	Breakfast	Breakfast		
6:30-7:00 am				Breakfast/Showering Grooming/Count
7:00-7:30 am	Chores	Chores		
7:30-8:00 am			Breakfast/Showering Grooming	
8:00-8:30 am	Parenting	English		Educ: Goal Lab
8:30-9:00 am			English	
9:00-9:30 am	Keyboarding	Math		Educ: Int/HSED Social Studies
9:30-10:00 am	Outdoor Rec	Social Studies	Social Studies	
10:00-10:30 am			Anger Management	Educ: Title 1-Math
10:30-11:00 am	Math	Careers		
11:00-11:30 am			Math	
11:30-12:00 noon	Community Service	Phy. Ed/Health		Lunch/Count
12:00-12:30 pm	Lunch	Lunch	Lunch	
12:30-1:00 pm				
1:00-1:30 pm			Structured Recreation	Educ: Title 1-Writing
1:30-2:00 pm	Science			
2:00-2:30 pm		AODA	Science	Educ: Title 1-Reading
2:30-3:00 pm	Geography			
3:00-3:30 pm	AODA	Bible Study	Cognitive Intervention	Leisure Time
3:30-4:00 pm				
4:00-4:30 pm	English	Intramurals	Open Recreation	
4:30-5:00 pm			Individual Therapy	Supper/Count
5:00-5:30 pm	Supper	Supper/Chores	Dinner/Quiet Time	
5:30-6:00 pm			Homework/Recreation	
6:00-6:30 pm	Skillstreaming	News Group		
6:30-7:00 pm				
7:00-7:30 pm	Bible Study	Recreation	Gym/Courtyard	
7:30-8:00 pm				Leisure Time - Dayroom Recreation/Library
8:00-8:30 pm	Snacks, Meds, Chores	Study/Shower	Dayroom Recreation	
8:30-9:00 pm				
9:00-9:30 pm	Clean up, Bed	Clean up, Bed	Peer Club	Count
9:30-10:00 pm				
10:00-10:30 pm			Club 19	
10:30-11:00 pm				
11:00-11:30 pm			Club 23	Dayroom
11:30-midnight				

It is important to note that the schedules detailed on the previous page are just a sampling of what is available at any institution at a given time. The institutions were asked to give a typical Monday schedule for one of their inmates and to illustrate the amount and type of programming available each day. While it may seem at first that all of the programs provide similar services, there are a couple of important distinctions to be made between the juvenile and adult schedules. First, while the adult schedule has five hours of education, the student is not required to attend classes. An inmate may work or may choose not to do either school or work. Second, the counseling and therapies are weaved through the day in the juvenile facilities. Adult facilities certainly have therapy, but some courses may be reserved for those inmates preparing to leave prison and may have a wait list for the general population. The staffing patterns at the juvenile facility simply allow for more therapeutic intervention, in line with the mission of juvenile corrections, than the staffing in adult corrections.

Adult prisons simply cannot compete with the level of programming available to juveniles in a juvenile setting. While the up front costs for providing this level of treatment are about three times as much, new research is showing those expenditures are a drop in the bucket compared to the savings through lowered recidivism. For example, a study completed by the Mendota Juvenile Treatment Center (MJTC) found that for every dollar spent on intensive treatment for seriously delinquent youth, we saved \$7.18 in lowered recidivism and associated victim costs.³⁷ Given the finding by the Journal of Qualitative Criminology that the cost of a youth offender's crimes and incarceration over his or her lifetime can cost as much as \$1.7 million,³⁸ a front-end investment in interventions proven to help young people is a more effective public safety spending.

The Juvenile Justice System Produces Better Results

In addition to being developmentally inappropriate for adolescents, adult prisons and jails are ineffective at reducing recidivism among young offenders.³⁹ The adult correctional system has had to accommodate a growing number of young people, but the services and philosophy of adult corrections conflict with what we know about adolescence.

The services in adult jails are minimal for young people. Sheer numbers dictate that children do not get the same level of attention in adult prison as they do in juvenile corrections. For example, in one medium security adult prison in Wisconsin, a social worker has a caseload of up to 225 inmates at any given time.

In that facility, there is no ongoing individualized therapy. There is only crisis management. Compared with between 12 and 20 kids per treatment provider in the juvenile system, there is a vast difference in the capacity to treat kids in developmentally appropriate ways.

Reductions in recidivism reduce the long-term costs and consequences of crime. Recidivism rates for juvenile correctional facilities in Wisconsin are much lower than the national average and much lower than adult corrections.

A Word About Recidivism:

Comparison of recidivism rates can be incredibly difficult because recidivism can be defined in several ways, each of which would drastically change the outcome of the rate.

Studies over the past decade have confirmed that children who are tried and incarcerated as adults are more likely to recidivate than minors tried and incarcerated in the juvenile system.⁴⁰ The most recent study in Florida, looked at the recidivism rates for matched pairs of youth sentenced in the juvenile and adult courts. The youth were matched for age, sex, offense, race, number of prior offenses and most serious prior offense. The recidivism rate for juveniles in the adult system was 49 percent, compared to a 35 percent rate for juveniles in the juvenile system.⁴¹ Further matching the pairs by weapon use, victim injury, property damage, gang involvement, and a host of factors typically cited as predictors of recidivism led to a 49 percent to 37 percent adult to juvenile comparison.

The 2002 reincarceration rates for Southern Oaks Girls School are reported at between 9 and 11 percent, while the boys in JCI had an overall rate of 27.1 percent. A study of the Bureau of Justice Statistics found that the national rate for adults is over 50 percent. In Wisconsin, the adult recidivism rate for men who commit a new offense is around 40 percent. The rate for women is lower, around 27 percent.⁴² With a cost savings associated with each crime averted, the overall efficacy of the juvenile justice system is quite important to the financial well-being of the state.

The High Cost of a Criminal Record

Adultification of juvenile crimes has other lasting consequences as well. The consequences of trying youth as adults far outlast the sentences meted out and served. Adult criminal convictions have enduring ramifications which are governed by a combination of state and federal law, but which can further impede the successful reintegration of a recently released prisoner. Some of the long term consequences which attach to adult but not juvenile crimes include:

- Bar on federal financial aid from universities and technical colleges
- Drivers license revocations
- Barriers to employment including employers having access to criminal convictions

- Bar on some public housing
- Lifetime ban on federally funded food stamps and cash assistance for some drug felonies
- Listing on CCAP⁴³, a public website where any person can have access to one's criminal record

It is possible that a child could commit a crime at 16 and spend 10 years in prison, during which he reforms his ways and commits himself to living a productive life. Upon discharge, he has no money and attempts to get a job, but is not able to find a job because of his adult criminal record. Even employers hiring for jobs he is not barred from can access CCAP and see what sort of crime has been committed. He might be barred from public housing and cash assistance as well. What are the odds that individual can make the turnaround he has committed to without a house, a job, a driver's license, a source of income, or the ability to attend a university or technical college?



Because we know that the majority of kids who commit crimes, even violent crimes, will not go on to a life of reoffending, their treatment must be responsive and must foster positive youth development. As Richard A. Mendel, PhD., puts it,⁴⁴

Understanding this self-correcting dynamic is crucial in any attempt to combat juvenile crime. Most juvenile offenders – even those who commit serious acts of violence – are not destined for lives of crime. Instead, they are teenagers exercising bad judgment – sometimes catastrophic judgment – succumbing to peer pressure and temporarily losing control. These youth should be punished for their crimes, but punished in ways that do not seriously damage their future life chances.

In many ways, returning juveniles to the juvenile justice system is an issue of fairness. While we try to instill values and fairness into youth today, we also hold over their heads lifelong consequences for actions they have a higher propensity to do because of their lagging brain development.



The Supreme Court Has Spoken

Roper v. Simmons

US Supreme Court Strikes Down the Juvenile Death Penalty

In March 2005, the US Supreme Court struck down the death penalty for juveniles. Of the twenty five page opinion of the court, there were four pages devoted to the differences between adults and juveniles. The Court's ruling is highlighted below:

First, as any parent knows and the scientific and sociological studies respondent and his amici cite tend to confirm, a lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. . . . It has been noted that 'adolescents are overrepresented in virtually every category of reckless behavior. . . . In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent.

The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. Youth is more than a chronological fact. It is a condition of life when a person may be the most susceptible to influence and to psychological damage. This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment. As legal minors, juveniles lack the freedom that adults have to extricate themselves from a criminogenic setting.

The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.

From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed. Indeed, the relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside.

Selected quotes from Roper v. Simmons, internal citations and quotations omitted.

Hope for the Juvenile Justice System in Wisconsin

In addition to lowering rates of recidivism through the juvenile correctional facilities, there are some very promising practices throughout Wisconsin that are diverting young people from corrections altogether.

Milwaukee County:

According to Kathy Malone, Chief Probation Officer for Milwaukee's Juvenile Court, a number of changes over the years have led to a reduction in the numbers of kids in correctional placements. She attributes much of the reduction to the success of Milwaukee's First Time Offender program, which has been running for ten years. Of the thousands of kids who have completed the program in the last decade, only 31 percent of them have been re-referred to juvenile court for a new offense.

From Milwaukee County judges to District Attorneys to intake and probation officers, the consensus is that one of the most effective programs in reducing corrections commitments has been the FOCUS program. The FOCUS program is based on relationships and respect. There is no isolation or restraint in the program. Young offenders work with the same group of trained personnel each day and are forced to work on the issues that brought them to the court system. During a 3 to 6 month residential stay, the young men in the program are required to attend school and group sessions that tackle topics from violence on the streets to truth in sentencing to employment barriers, in an effort to get them thinking about the consequences of a life of criminal behavior, and, more importantly, the alternatives.

The program at FOCUS boils down to three key components: empathy, human connections, and structure.⁴⁵ A life without empathy or human connections allows children to continue committing crimes. Once both are successfully introduced, it is very, very difficult to continue committing crimes. The FOCUS program takes kids out into the community to meet business leaders and community members, shop owners and doctors, anyone a child might be able to respect and look to as a role model.

Much of the credit for the program has been attributed to the staff and the Milwaukee judges.⁴⁶

Outagamie County: Clean Break Juvenile Mentoring Program

Outagamie county has woven together funding from several grants to create a five-month diversion program designed to keep kids out of the juvenile justice system altogether. There are

six components to the program: cognitive intervention, self esteem building, mentorship, prison visitation, community service, and a graduation. Of the 66 youth who have completed the program since 2000, 41 have not reoffended. Those are very encouraging numbers, given that the population of kids in the program is kids who have either been accused of a delinquency or have been identified as being at risk of delinquency.⁴⁷

Jefferson County:

Jefferson County has operated a teen court since April 1998.⁴⁸ The program serves about 50 to 60 youth per year who admit they have been delinquent and then are sentenced by a jury of their peers, usually to a combination of community service, an apology, and other restorative justice activities. Upon completion of all the ordered requirements, the teen's record is cleared of the offense.

A recent study of the teen court in Jefferson County found that there can be substantial cost benefits to this type of program.⁴⁹ There is also a low rate of recidivism, 7 percent, for the offenders who complete the program.⁵⁰ Investing more resources in this type of program may yield better results for juveniles in the justice system, while also averting future crimes.

Dane County:

The Neighborhood Intervention Program (NIP) of Dane County has been cited as a model for intensive community supervision that can keep kids out of juvenile corrections and in their homes. Kids are assessed at the outset for their level of need and level of risk, utilizing a risk assessment tool. After looking at factors such as family history and structure, prior delinquent acts and mental health, the juveniles are placed in one of five programs, which range from opportunities to participate in positive youth development activities, such as a Future Leaders Club or a performance troupe, to intensive case management to a weekend and night time reporting center.

According to Andre Johnson, Social Worker Supervisor for the five programs that make up the community supervision unit of the NIP, the success of the programs comes back to the staff. The dedication of the staff and their ability to have frequent contact with the kids they supervise are the main reasons the program has been so successful. Roughly 60 to 70 percent of the kids who complete the programs do not reoffend, according to Johnson. He sees the kids who end up going to corrections in Dane County as those kids who have been in the system for a prolonged period of time. He finds they have a good success rate with the kids they reach early.

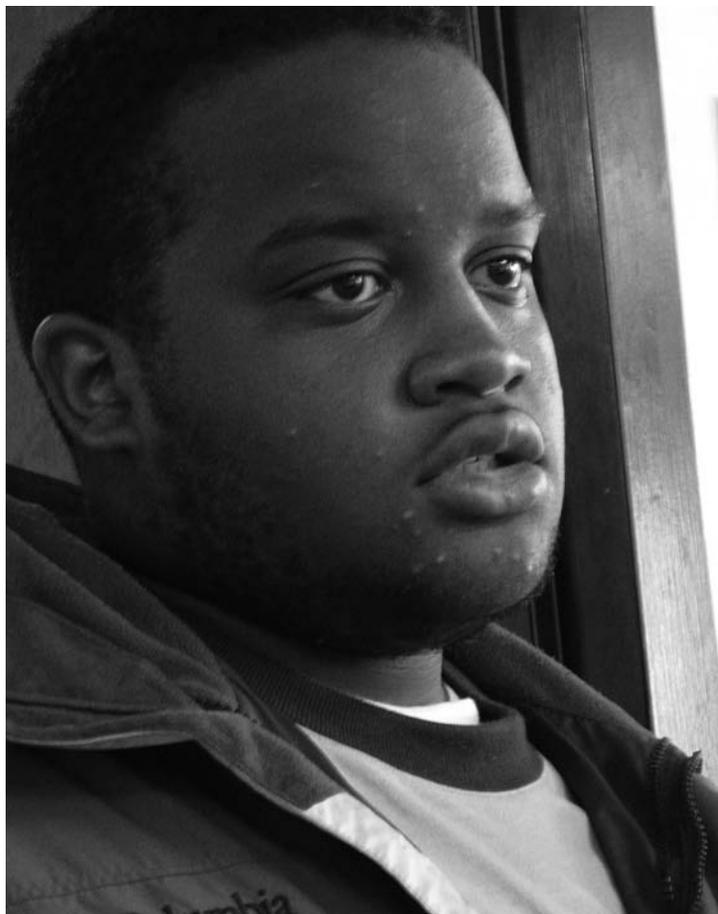
Section V: Conclusion and Recommendations

A Child is a Child.

There is nothing a child can do that could turn him/her into an adult. It is a fact that the only thing that can turn a child into an adult is the gift of the passage of time.

— Javier Stauring,
L.A. Juvenile Detention Ministry

It is time once again to reevaluate how we are providing services and treatment to youth in the juvenile system and to reexamine those youth excluded from the system in light of the above research. The juvenile justice system, as it is currently structured, is out of step with what we know about adolescents. We now know that the areas of the brain not yet developed by adolescence are those that inhibit commission of crimes. Applying what we know about brain development to the justice system suggests three policy changes:



Recommendation One:

17-year-olds should be returned to the original jurisdiction of the Juvenile Court.

The legislative change to move 17-year-olds into the adult court was made prior to the knowledge we now have about the brain development of a normal adolescent. Given the leap in knowledge over the past decade, it is time to apply our current knowledge about brain development to bring kids who are still immature, including 17-year-olds, into the juvenile system.

Recommendation Two:

The Juvenile Justice Code should be revised such that the juvenile court has presumptive jurisdiction over all youth under 18 years old, and only a juvenile court judge can waive that jurisdiction.

The current system of determining who is transferred to adult court is based largely on the heinousness of the crime, rather than the individual who committed the crime. Once a case is in adult court, it is up to an adult court judge to waive a child back to juvenile court. Given juvenile court judges' expertise in child development and their greater knowledge of the services available to juveniles, it makes more sense for juvenile court judges, not prosecutors or adult court judges, to decide whether juvenile court is the appropriate venue for a child's case.

Recommendation Three:

Children under 18 should not be placed in adult prisons or jails

There are two fundamental reasons why young people should not be housed in adult jails or prison. First, young people are more vulnerable and more susceptible to harm in an adult prison. Second, adult jails and prisons do not have the training, personnel or resources to handle the complex needs of children. Imprisonment of youth with adults may serve a punishment or retributive function, but it does not deter young people and in fact has the reverse effect. It is time to put youth back into the treatment-based juvenile system.

The implementation of these three recommendations would vastly improve the delivery of services to youth involved in the justice system. The presumption that people under 18 are juveniles for the purpose of criminal prosecution empowers juvenile court judges; those judges most equipped to work with young people, to make the decision to waive a child into adult court. Utilizing what we know about adolescence along with our understanding of the problems associated with processing youth through the adult criminal court system, we can begin to make better choices for the future of the youth of Wisconsin.

Endnotes

- ¹ There is a new movement in juvenile justice to base systems reform on outcome-based research. The reforms that underlie the current system were predicated on crime trends and erroneous predictions rather than systemic efficacy.
- ² Wis. Stat. Ann., sec. 938.02(1).
- ³ That number, collected yearly by the Office of Justice Assistance Statistical Analysis Center through a self-report survey of county jails, only accounts for the 61 counties which responded in 2004, and does not include some larger counties such as Dane, Brown and Sheboygan. *Office of Justice Assistance*. There is a high likelihood the number may actually top 10,000 admissions per year.
- ⁴ One difference between the juvenile and criminal court is the terminology used. A child is alleged to be 'delinquent' if alleged to have committed an act which would be considered a crime by an adult.
- ⁵ *In re: Gault*, 397 US 1 (1967).
- ⁶ For a detailed explanation of the Youth Aids funding formula, refer to the 55th Information Paper released by the Legislative Fiscal Bureau in January 2005, <http://www.legis.state.wi.us/lfb/Informationalpapers/55.pdf>.
- ⁷ Juvenile Justice: A Wisconsin Blueprint for Change. *Report of the Juvenile Justice Study Committee, January 1995*, p. 12.
- ⁸ The Governor appointed a Juvenile Justice Study Committee with representation from the legislature, judges, and other interested parties to re-examine the treatment of juveniles in delinquency proceedings and make recommendations. Those recommendations, along with a more complete history of juvenile justice in Wisconsin are reported in *Juvenile Justice: A Wisconsin Blueprint for Change*, 1995.
- ⁹ The cross-over between the juvenile justice and child welfare system suggests that the children in the justice system are the same children as those in the child welfare system. Of the girls in Southern Oaks Girls School as of June 30, 2005, 70 percent had confirmed abuse or neglect cases.
- ¹⁰ In 1995, Princeton Professor John DiIulio created the myth of the Superpredator. According to his wildly false predictions, by the year 2010 we would have 270,000 teens who were merciless antisocial killers running wild in the streets. 44 states passed responsive 'Get Tough on Crime' legislation. From the covers of Time and Newsweek to articles in the New York Times, the media embraced the Superpredator. High profile crimes were singled out as examples of youth running wild. He later recanted this theory.
- ¹¹ The states with original adult court jurisdiction under 18 are: Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas and Wisconsin (17 years old) and Connecticut, New York and North Carolina (16 years old).
- ¹² A summary of the research is available in *Childhood on Trial: The Failure of Trying and Sentencing Youth as Adults*, Coalition for Juvenile Justice, 2005.
- ¹³ Casey Foundation, *Small is Beautiful*, Report on the Missouri Department of Youth Services.
- ¹⁴ Butts, J., Mayer, S., & Ruth, G., *Focusing Juvenile Justice on Positive Youth Development*, Chapin Hall, 2005.
- ¹⁵ *Ibid.*
- ¹⁶ Interview with Charles Glynn, Director, FOCUS Program.
- ¹⁷ Violent Index Crimes are defined as murder, forcible rape, aggravated assault and robbery.
- ¹⁸ Moffitt, T., *Juvenile Delinquency: Seed of a Career in Violent Crime, Just Sowing Wild Oats Or Both?* (Washington, DC: Federation of Behavioral, Psychological and Cognitive Sciences, 1994).
- ¹⁹ *Ibid.*
- ²⁰ Violent index crimes are murder, forcible rape, robbery and aggravated assault.
- ²¹ Thompson, 487 U.S., at 83.
- ²² Wisconsin Office of Justice Assistance.
- ²³ Strauch, Barbara, *The Primal Teen*. Doubleday, NY. 2003, p. 143.
- ²⁴ Dahl, Ronald, M.D., "Affect Regulation, Brain Development, and Behavioral/Emotional Health in Adolescence," *CNS Spectrums*, Vol. 6, No. 1, January 2001.
- ²⁵ NIAAA News Releases, "Adolescent Brains Show Reduced Reward Anticipation," <http://www.niaaa.nih.gov/press/2004/BrainsShow-text.htm> April 3, 2004.
- ²⁶ Fiorillo, C.D., P.N. Tobler, W. Schultz. "Discrete Coding of Reward Probability and Uncertainty by Dopamine Neurons," *Science*, Vol. 299. March 21, 2003.
- ²⁷ Strauch, p.102.
- ²⁸ *Ibid.*
- ²⁹ *Ibid.*, p.142.
- ³⁰ Cox News Service, "Brain Scans of Kids Helped Shape White House Agenda," May 1, 2000.
- ³¹ NIMH, "Teenage Brain: A Work in Progress," April 3, 2004.
- ³² Cox News Service, "Brain Scans of Kids Helped Shape White House Agenda," May 1, 2000.
- ³³ Dahl, Ronald, M.D., "Affect Regulation, Brain Development, and Behavioral/Emotional Health in Adolescence," *CNS Spectrums*, Vol. 6, No. 1, January 2001.
- ³⁴ Dahl, *Cerebrum*.
- ³⁵ Preliminary Crime and Arrests in Wisconsin – 2004. Office of Justice Assistance, Statistical Analysis Center, May 2005.
- ³⁶ This figure is representative of the 47 counties which responded.
- ³⁷ Caldwell, M. F., Vitacco, M. & Van Rybroek, G. (In press) Are Violent Delinquents Worth Treating? A Cost-Effectiveness Study, *Journal of Research in Crime and Delinquency*
- ³⁸ Cohen, Mark A. (1998), "The Monetary Value of Saving a High Risk Youth," *The Journal of Qualitative Criminology*, 14, (1), 5-33.
- ³⁹ *Childhood on Trial*.
- ⁴⁰ Butts, J.A., *What have Researchers Learned about Criminal Court Transfer*, Presentation on behalf of Chapin Hall at Georgetown University, January 2006.
- ⁴¹ Lanza-Kaduce, et. al., as reported in Butts, J.A., *What have Researchers Learned about Criminal Court Transfer*, Presentation on behalf of Chapin Hall at Georgetown University, January 2006.
- ⁴² Wisconsin Department of Corrections, 2006.
- ⁴³ CCAP is the Consolidated Courts Automation Program, a public website which logs arrest and offense details for Wisconsin residents.
- ⁴⁴ Mendel, Richard, *Less Hype, More Help: Reducing Juvenile Crime, What Works – and What Doesn't*, 2000 American Youth Policy Forum, Washington, DC.
- ⁴⁵ Telephone interview with Charlie Glynn, director, FOCUS Program.
- ⁴⁶ *Ibid.*
- ⁴⁷ This rate is a point in time rate – the follow up period ranges from 5 years to possibly just a few months because it covers 5 groups who have graduated from the program since January of 2000.
- ⁴⁸ *Jefferson County Teen Court: A Cost-Benefit Analysis*, December 2005.
- ⁴⁹ *Ibid.*
- ⁵⁰ This recidivism rate only follows juveniles until they turn 17. A more complete picture of recidivism with a longer period of scrutiny may have a higher percentage of recidivism.



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