

Juveniles Should Remain Juveniles: The Case for
Wisconsin to Move 17-Year-Olds Back Under Juvenile
Court Jurisdiction

Approved: Dr. Nancy Gartner

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Jill M Stenson

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Abstract

Most young adults look forward to turning 18, and finally being able to consider themselves an adult. However, in the State of Wisconsin, any 17-year-old charged with committing a crime is automatically put in the adult criminal justice system. Wisconsin is one of only three states that treat 17-year-olds as adults for criminal justice proceedings. This paper will explore changes that have been made in the juvenile court system since its inception in the 1800s as well as how the juvenile court system works in Wisconsin. Changes in how the court system deals with juveniles has changed based on extensive brain research that has been done on the juvenile brain. This research shows full brain development does not occur until someone is well into their 20s, and slow development causes a juvenile to be impulsive and not clearly think through their actions. The United States Supreme Court has made several landmark decisions based on these brain development studies and what is most appropriate for juvenile offenders. States that have “raised the age” of juvenile court jurisdiction to include 17-year-olds have not shown any negative consequences to that. Finally, recommendations have been made as to why it is appropriate for Wisconsin to include 17-year-olds in juvenile court, instead of automatically having them charged as adults.

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INTRODUCTION

Statement of the Problem

Currently 17-year-olds in Wisconsin are subject to adult court jurisdiction when they are charged with a crime. Wisconsin is one of only three states in the nation where 17-year-olds fall under adult court jurisdiction (Teigen, 2021). The 2022 Wisconsin budget currently has several propositions for changes to the juvenile court system including raising the age of original court jurisdiction to age 18, modifying the conditions of when a juvenile may be waived to adult court, and raising the age at which a juvenile can be charged with a crime from 10 to 12. According to Wisconsin Governor Tony Evers, “We are one of the only states in the nation that has not made this evidence-based change in ensuring that youth are treated as youth, and that needs to change now” (Poltrock, 2021). Brain research has confirmed that as individuals age, they outgrow risky behaviors. But at age 17, youths are still more likely to participate in risky behaviors, lack impulse control, cannot regulate emotions well, are less likely to engage in moral reasons, cannot consider long-term consequences of their actions, and are more likely to give into peer pressure (“IDHS: Findings: Why Should 17-Year-Olds Be In Juvenile Court?”, n.d.).

Purpose of the Study

The purpose of this research paper is to highlight why 17-year-olds should remain under the jurisdiction of juvenile court in Wisconsin, like they are in 47 other states. There has been extensive research done on brain development of juvenile and young adults. There is specific research that shows that the brain develops from the back to the front, indicating that the last part of the brain to develop is the frontal lobe. This research is important when it comes to juveniles and adult court jurisdiction because the frontal lobe of the brain controls decision making,

risk/reward thinking, and impulsivity. Several different United States Supreme Court decisions regarding juveniles have cited scientific evidence of undeveloped cognitive function in juveniles (Cohen & Casey, 2014).

A study by Williams (2020) looked at how adverse childhood experiences (ACEs) such as physical abuse or neglect, sexual abuse, household substance abuse issues, family violence, and incarceration of a household member affect whether a juvenile becomes involved in the court system. The study showed that these childhood traumas increase the chances of issues during brain development, which then has a negative impact on cognitive abilities. Research showed that 93% of juveniles entering the court system have at least one ACE, and over 50% report having six or more ACEs. Research has shown that childhood trauma prevents development of the prefrontal cortex of the brain, the area responsible for decision making and impulse control. (Williams, 2020)

In a 2008 report, the Wisconsin Legislative Bureau looked at 17-year-olds charged in adult court since the law changed in 1996. The research showed that between 2002 and 2006, there were 32,638 cases filed against 17-year-olds. Only 585 of those individuals were sentenced to prison, while 10,632 were placed on probation for their crimes (although the study does not indicate any other conditions of sentencing, such as jail time). The majority of the prison sentence cases came from Milwaukee County. Most cases filed against 17-year-olds were misdemeanors, with one-third of the cases having felony charges. The study also showed that 17-year-olds that had been released from prison in 2002 had a reincarceration rate (48.1%) three years post-incarceration more than double that of any other group looked at, including juveniles at four years post-incarceration (26.6%) and adults (21.3%). (Wisconsin Legislative Audit Bureau, 2008)

This research paper will argue why it is more appropriate for 17-year-olds in the State of Wisconsin to be under the jurisdiction of juvenile court, not adult court, as it currently stands. Brain development research will be used to argue why 17-year-olds are better served by being kept under juvenile court jurisdiction. There are ample treatment services available in juvenile court, as well as punishment and protection of the public, which are all key areas of juvenile court. Effective juvenile court treatment programs are multisystemic, and include individual and family treatment, which have been shown to strengthen families and decrease delinquent behaviors (National Institute on Drug Abuse, 2014) That way, mistakes of youthfulness are not hindering someone as they progress through their life.

Limitations of the Study

Because juvenile court records are confidential, there is not much data available. Available data is also often dated. Take into consideration a report by the Wisconsin Department of Corrections on 17-year-olds in the adult court system. The last time this report was published was in 2008, so the available data is more than 13 years old (Wisconsin Legislative Audit Bureau, 2008). Data on 17-year-olds in the adult court system from the United States Department of Justice – Office of Juvenile Justice and Delinquency Prevention is more recent than the Wisconsin information but is still from a report from 2011 (U.S. Department of Justice – Office of Juvenile Justice and Delinquency Prevention, 2011).

This paper will examine the history of juvenile court in the United States, including landmark United States Supreme Court decisions that have impacted the sentencing of juvenile offenders. This paper will also examine brain development of juveniles, including research regarding how brain development affects critical thinking and impulsivity in juveniles, as well as how adverse childhood experiences (ACES) affect how the brain develops. While this paper is

exploring reasons for 17-year-olds to remain in juvenile court, it will also examine when it is appropriate for juveniles to be charged in adult court.

LITERATURE REVIEW

History of the Juvenile Court System

In the 1700 and 1800s, the juvenile court system did not exist. At that time, all criminals were treated equally and housed together, no matter what their age. In 1825, the New York House of Refuge was opened to house juveniles that were believed to be become delinquent. As time went on, more juvenile homes and reform schools, specifically for juvenile delinquents, were opened across the United States. The first formal juvenile court system opened in Cook County, IL in 1899. The juvenile court system developed as society looked to develop new ways of dealing with juvenile offenders. Juvenile courts developed with a primary motive of rehabilitation of juvenile offenders which juvenile courts still focus on today. (Juvenile Justice History – Center on Juvenile and Criminal Justice, n.d.)

Adult Court Process Versus Juvenile Court Process in Wisconsin

An adult court case begins with a case being opened by a police agency. The police agency refers their file to the district attorney's office. If the offender is arrested at the time of the incident and placed in jail, the district attorney's office has several options to handle the case. A case can be filed immediately, the offender can be released from custody but be notified that the district attorney's office may file a case at a later date, or the district attorney's office may decline to prosecute the incident. The police can also refer a case over to the district attorney's office where an individual has not been placed into custody for the case to be reviewed for possible charges. The statute of limitations in Wisconsin for misdemeanor charges is three years,

and for felony charges it is six years, except for homicides and some sexual assaults, which have limitations of at least 10 years and up to no limitation, depending on the level of severity of the charge.

A misdemeanor case will typically move through the criminal justice system quicker than a felony case. After an Initial Appearance, a misdemeanor case will either be scheduled for a Pretrial Hearing or a Plea Hearing. If the case cannot be resolved at the Pretrial Hearing, a Jury Trial is set. During the time leading up to the Jury Trial, the district attorney and defense attorney work to come to a plea agreement on a case. Most cases do not end up having a Jury Trial and instead a plea agreement is entered. After either the defendant agrees to a plea, or is found guilty at a Jury Trial, the case moves to a Sentencing Hearing, and is concluded after the defendant is sentenced.

Felony cases have several other hearings before they are closed. After the Initial Appearance the case is scheduled for a Preliminary Hearing, where the state must prove that a crime has been committed. The case then moves onto an Arraignment Hearing, where a plea of either guilty, no contest, or not guilty is entered. If a plea of not guilty is entered, the case is then scheduled for a Final Pretrial Hearing, as well as a Jury Trial. Much like in misdemeanor cases, most felony cases are resolved before a jury trial, and if a defendant agrees to a plea or is found guilty at a Jury Trial, the case moves to sentencing and is concluded after the defendant is sentenced. While there are other types of hearings that can be scheduled in adult cases, such as hearings for filed motions to be argued, requests for competency evaluations, and status conferences if the parties are not ready to proceed, the previously listed types of hearings are standard on all adult criminal cases.

In adult criminal cases, there are very few timelines in which hearings need to be held. For felony cases, a Preliminary Hearing must be held within 10 days if the defendant is in custody, or 20 days if the defendant is not in custody. Those hearings, however, can be rescheduled multiple times, if the defendant requests an attorney and does not have one, or if a testifying witness is not available. For misdemeanor cases, there are no time limits in effect. Because there are no time limits, this significantly slows down how cases move through the system. A defendant in Brown County, WI, was just recently found guilty after a Jury Trial of First-Degree Intentional Homicide for an incident that happened in December 2015 and was charged in January 2016. The defendant fired multiple public defenders that had been assigned to his case, entered a plea and then filed to have it withdrawn, and filed multiple motions that needed to be argued (Thomsen, 2021). Because of the lack of timelines for criminal cases, there is nothing to stop a defendant or the prosecution from dragging out a case.

A case going through the juvenile court system follows a much more streamlined process. A case will be referred by the police department to the county's Juvenile Justice department, overseen by that county's Human Services department. Once that referral is received, the Juvenile Justice department has 40 days to decide what should happen to the juvenile. There are several different outcomes that can happen. A letter can be sent to the juvenile and their family with an explanation of the laws they broke. The juvenile can be brought in for a counseling session and informal services. The police agency can be requested to give the juvenile a citation. The juvenile can be placed on a Deferred Prosecution Agreement (DPA) where they are under supervision by a Juvenile Justice social worker and given a formal list of rules they are to follow, such as attend school, AODA counseling, and/or payment of restitution. If the juvenile successfully completes the terms of the DPA, there are no formal charges against the juvenile. A

DPA can be in effect from three months to a year, depending on the severity of the incident and need for supervision.

If none of those outcomes are acceptable for rehabilitation of the juvenile and protection of the community, the charges are then referred over to the District Attorney's Office. Once received by the District Attorney, a petition (the juvenile equivalent of a criminal complaint) must be filed within 20 days. Once the petition is filed, an initial appearance is held in approximately two weeks. At that hearing, the juvenile is given their rights and enters an initial plea, usually of not guilty. A plea hearing must be held within 30 days from the initial hearing. If the juvenile enters either a not guilty or no contest plea at the plea hearing, then the case is set for a dispositional hearing (the equivalent of an adult court sentencing hearing) within 30 days again. At a dispositional hearing, the juvenile is placed on a dispositional order for a certain length of time, with conditions they must follow. If the juvenile is placed in secure custody at any time during the proceedings, the process goes even quicker. If a juvenile is arrested and placed in a secured facility, the petition must be filed within 48 hours of the juvenile being taken into custody. If the juvenile remains in custody, hearings must be scheduled within 10 days, unless the juvenile and their attorney agree to waive the time limits.

Unlike adult cases, juvenile sentences do not have long terms of supervision. A majority of dispositional orders are only entered into for a year. The longest time period a juvenile can be on a dispositional order is five years and that is only in the case of a juvenile that is determined to be a Serious Juvenile Offender. A Serious Juvenile Offender is a juvenile that is convicted of one of nine serious crimes. At disposition, the juvenile is placed in a secured correctional facility (either Lincoln Hill School for Boys or Copper Lake School for Girls). At some point during their five-year order, they are transferred back into the community for supervision.

The Process for Waiver into Adult Court in Wisconsin

In Wisconsin, juveniles may have their cases transferred to adult court in one of two ways. The first way is for a juvenile to commit a crime that can immediately be charged in adult court. There are three types of crimes that fall under adult court jurisdiction for juveniles. The first type is if a juvenile that is ordered to be placed in a correctional facility and while placed in the correction facility is charged with Battery by Prisoner, which is a felony charge. The second is if a juvenile age 16 is charged with certain criminal traffic violations, such as an Operating While Intoxicated, second offense and above, or Operating Without a Valid License, second offense and above. The third type is if a juvenile is charged with homicide. In Wisconsin, a juvenile as young as 10 years old can be charged as an adult for intentional homicide, reckless homicide, or an attempt at either.

The prosecuting attorney can also petition to have a juvenile whose case is filed in juvenile court be transferred to adult court. There are six different criteria for waiver into juvenile court:

- The personality of the juvenile, including whether the juvenile has a mental illness or developmental disability, the juvenile's physical and mental maturity, and the juvenile's pattern of living, prior treatment history, and apparent potential for responding to future treatment.
- The prior record of the juvenile, including whether the court has previously waived its jurisdiction over the juvenile, whether the juvenile has been previously convicted following a waiver of the court's jurisdiction or has been previously found delinquent, whether such conviction or delinquency involved the infliction of serious bodily injury, the juvenile's motives and attitudes, and the juvenile's prior offenses.

- The type and seriousness of the offense, including whether it was against persons or property and the extent to which it was committed in a violent, aggressive, premeditated or willful manner.
- The adequacy and suitability of facilities, services and procedures available for treatment of the juvenile and protection of the public within the juvenile justice system, and, where applicable, the mental health system and the suitability of the juvenile for placement in the serious juvenile offender program under s. 938.538_or the adult intensive sanctions program under s. 301.048.
- The desirability of trial and disposition of the entire offense in one court if the juvenile was allegedly associated in the offense with persons who will be charged with a crime in the court of criminal jurisdiction. (Wis. Stats 938.18(5))

Brain Development from Infancy through Young Adulthood

Development of the human brain begins shortly after conception. The infant brain contains all the neurons that a person will have. Brain development continues at a rapid pace in early childhood. The brain increases in size and functioning. Millions of connections in the brain happen every second. These connections enable emotion, movement, and learning. As a child grows, these connections keep building on one another, leading to more complex speaking, thinking, and moving. Interactions with other individuals lead to brain connections for communication (Brain Development, n.d.).

Brain development continues through adolescence. Connections are still occurring in the brain, which lead to changes in language, learning, and communication. The brain is learning how to work in a more effective manner. The amygdala, which is in the back of the brain and controls emotions like fear and aggression, is fully formed. The frontal lobe is still developing.

This area of the brain controls reasoning and impulsivity. Because of the differences in development of these two areas, teenagers are more likely to be involved in fights, not consider the consequences of actions, and be involved in risky behaviors (American Academy of Child and Adolescent Psychiatry, n.d.).

Studies have also looked at the development of the hippocampus, located in the back of the brain. This area develops quicker than the prefrontal cortex. The hippocampus regulates motivation and emotions such as aggression. A 2018 study examined the relationship between brain development and externalized behaviors in children and adolescents. The study examined parental-report and self-report aggression and rule breaking. The researchers found that self-destructive behaviors emerge during adolescence. The hippocampus had a smaller volume in adolescents that had higher parental reports of aggression. The researchers also determined that those adolescents with thicker cortical prefrontal regions were more apt to externalize behaviors (Bos et al., 2018)

Cauffman and Steinberg (2012) researched four areas of change during adolescent brain development. The first was the increased release of dopamine in early adolescence. This increased release, which causes sensation seeking, is linked to higher risk-taking. The second happens during early adolescence when the brain gets rid of unused synapses in the prefrontal cortex. By getting rid of these synapses, the existing connections become more efficient. The third brain transformation happens during adolescence and involves the insulation of neurotransmitters with myelin. The addition of myelin quickens the speed of transmission in the brain. This begins the process of response inhibition and thinking about costs and benefits. The fourth area of change happens during late adolescence when neural connections continue to

grow, leading to increased self-regulation and ability to make judgments about risks, as well as the ability to control impulses and regulate emotion (Cauuffman & Steinberg, 2012).

Environment Factors and Brain Development

The environment in which a child is raised has a direct effect on brain development. Whittle et al. (2016) examined parenting styles and the effect on brain development in adolescents. The researchers studied 166 adolescents ages 11 to 20. Lab task assessments were given to the mothers of the adolescents. These assessments were coded by the researchers in terms of positive and negative behaviors of the adolescents. MRI scans were then done of the adolescents' brains to look for cortical thickening. The researchers found that the adolescents of the mothers who were observed to have aggressive behavior were more likely to have cortical thickening. Cortical thickening is associated with delayed development of brain areas, as well as limited ability to express and regulate emotion. Adolescents with cortical thickening were also seen as having poor general functioning, as well as increased rates of not completing schooling (Whittle et al., 2016).

Lawson et al. (2017) performed a study to determine if low socioeconomic status (SES) and maltreatment during childhood negatively influenced brain development. The researchers studied a group of individuals ages 25 to 36. The researchers determined the SES of the individuals during childhood using a self-report interview. The individuals also completed a questionnaire regarding adverse events they experienced as a child, such as abuse and neglect. The individuals were given an MRI to look at the volumes of the hippocampus, which also controls emotion as well as memory, and the amygdala. The data showed those individuals with low SES in childhood as well as adverse events had decreased hippocampal volume. The researchers did not find a correlation between amygdala volume and low SES. The researchers

determined that brain development is negatively affected by low SES and adverse events during childhood (Lawson et al., 2017).

Adverse Childhood Experiences (ACE) are common among juveniles going through the court process. ACEs are traumatic events that occur through a person's childhood. These events can include violence or substance abuse in the home, instability due to divorce or parental incarceration, or having a family member attempt or complete suicide (About Adverse Childhood Experiences, 2019). Baglivio et al. (2015) examined ACE scores in juvenile offenders. Ten ACE indicators were used for different types of traumatic events. The data indicated that ACE indicators increased not only the chance that a juvenile would become involved in the juvenile court system, but also the risk of reoffending (Baglivio et al., 2015). Navalta et al. (2018) examined the role that ACEs play in brain development. The researchers hypothesized that brain dysfunction in the hippocampus, amygdala, and prefrontal cortex were related to ACEs. The researchers determined that ACEs affect neurotransmissions in areas of the brain that regulate behavior and emotion (Navalta et al., 2018).

Even as children grow into adolescence, environmental factors continue to play a role. Adolescents are responsive to peers, yet unable to regulate emotions. Juveniles continue to be influenced by social contexts like neighbors and schools. These social contexts can influence behavior. Negative social contexts can lead to increased risky behaviors and criminal activity. While all juveniles have tendencies to engage in risky behaviors, those living in high-crime neighborhoods are more likely to be involved in criminal activity. During the years of continued brain development, juveniles can be highly influenced by both positive and negative environmental stimuli. Reward seeking behavior reaches its peak during adolescence and then trends downward through adulthood (Scott et al., 2018)

Studies have also shown a link between Traumatic Brain Injury (TBI) and delinquent behaviors. A TBI is defined as a disturbance in the natural functions of the brain caused by some sort of trauma. A study by Farrer et al. (2013) examined the prevalence of TBIs in juvenile offenders. The analyzed data showed that of the 1524 juvenile offenders that were examined, 30.6% of them had a history of TBI. The researchers concluded that those juveniles with a history of TBI are 3.38 times more likely to be involved in delinquent behaviors.

Substance abuse can have a key effect on juvenile brain development. The underdeveloped brain is susceptible to substance use and abuse. Juveniles are more likely to be involved in risky behaviors including experimentation with alcohol and other drugs. Current research shows that alcohol use can damage the prefrontal cortex. Chronic alcohol use has also been shown to have an effect on verbal and non-verbal memory, even after one stops drinking, because alcohol can reduce the volume of the hippocampus (Winters & Arria, 2011).

Brain Development and Juveniles in the Court System

The juvenile court was perceived as a form of treatment for troubled youths. Leniency was given to juveniles. The establishment of the juvenile justice system was formed as an alternative to the adult criminal justice system. The basis for the creation of the juvenile justice system in 1899 was the underdeveloped character of youth, putting an emphasis on rehabilitation (Cauffman & Steinberg, 2012). However, that leniency gave juveniles a perception that there were no consequences when a crime was committed. That leniency changed in the late 1980s and early 1990s when the United States saw a rise in violent juvenile crime (Buchen, 2012). The juvenile court process changed from treatment-based to punishment-based. Juveniles were being waived to adult court and given harsh punishments, including capital punishment and life

imprisonment, at a much higher rate. In 2012, there were over 2,500 juveniles who were serving life sentences without the possibility of parole.

Juvenile brain development also comes into play after a crime is committed. When a person is placed into custody, *Miranda* warnings must be read, apprising the individual of their rights. Because the brain of a teenager has not fully developed, there is a question as to the ability to comprehend *Miranda*. A study on the ability to understand *Miranda* was performed, with the researchers examining comprehension of both the right to remain silent and the right to an attorney (Zelle et al., 2015). The researchers determined most juveniles had difficulty understanding *Miranda*, especially regarding their right to an attorney. Data also showed that juveniles perceived remaining silent as leading to negative consequences. These difficulties can be explained by the inability to comprehend complicated concepts. The underdeveloped prefrontal cortex makes it harder to think in terms of abstract concepts, such as those stated in *Miranda* (Zelle et al., 2015).

Does the underdeveloped prefrontal cortex also play a role in a juvenile's ability to assist in their own defense? For a plea to be entered in a case, a juvenile must be able to know and understand the charges and potential penalties. A study of defense attorneys examined how defense attorneys deal effectively to prepare a juvenile to enter a plea. It was noted that pleas were often made for short-term satisfaction, such as release from corrections, or to just get the case done with (Fountain & Woolard, 2018). This goes back to the underdeveloped frontal lobe, which is responsible for reasoning, and reward seeking behaviors that increase during adolescence. Defense attorneys also mentioned feeling like the juvenile court process is rushed, leading to inability to truly determine if the juvenile understands all the concepts of the plea. As

stated earlier, it is difficult for juveniles to understand abstract concepts including all facets of a plea questionnaire (Fountain & Woolard, 2018).

Mental health issues are increasing in juveniles involved in the court system. Disruptions of neural connections in the amygdala and prefrontal cortex have been associated with mental health issues such as depression, and personality and conduct disorders (Park et al., 2018). A study of these neural connections showed a correlation between stressful life events and connectivity issues in the amygdala. These connectivity issues were associated with symptoms of poor mental health. The connectivity issues were also associated with aggressive behavior and attention problems (Park et al., 2018).

New studies have looked at the effect of mental health on the juvenile court. There is growing attention on mental health issues across the United States. Studies have shown that juveniles in the criminal justice system are more likely to have mental health disorders (Wylie & Rufino, 2018). As stated earlier, trauma influences the juvenile brain and its development. Wylie and Rufino examined mental health issues in almost 3,000 juveniles who were involved in the juvenile court system. The researchers determined that two-thirds of the juveniles in their study had one or more mental health issues, including anxiety, substance abuse, or disruptive disorder (Wylie & Rufino, 2018). Another study from 2015 examining mental health and juvenile court determined that 74% of their sample met the criteria for at least one mental health disorder. This study shows there is a need not just for punishment, but also for mental health treatment for those going through the court process.

The studies of brain development in juveniles and young adults show that a juvenile does not look at the long-term effect of their actions. A conviction can carry a firearms restriction, voting restrictions, or make a person ineligible for the military or other employment. After

looking at brain studies and criminal justice, New York developed a youthful offender's program for youths ages 14 to 18. This program gets rid of the stigma of an offender as a criminal. The program has alternatives to incarceration and gives juveniles the tools they need to become successful adults. The program is a way to hold juveniles accountable for actions, but also realizes that the underdeveloped brain of a juvenile does not lead to the best decision making (Migden, 2017).

THEORETICAL APPLICATIONS

Labeling Theory

One of the biggest issues with anyone involved in the criminal justice system is labeling. Labeling theory came about in the 1960s and looks at how people react based upon labels that are given to them, and how someone will let those labels become their self-identity. When it comes to juveniles, does society want labels placed on them that could potentially follow them through adulthood? Labeling a juvenile as a criminal offender can cause that juvenile to have not only their path in life, such as employment and educational opportunities, altered, but also can lead a juvenile to have a higher rate of criminal recidivism (Kroska et al., 2016).

Once a juvenile is in the adult court system, any of their criminal history is available. In Wisconsin, anyone charged with a crime as an adult can have those charges viewed on the Wisconsin Circuit Court Access Program (CCAP). Adult criminal histories are also found when a background check is done on an individual. When someone is charged as a juvenile, those records are not accessible to the general public, and release can usually only happen with a court order. While having criminal charges does not necessarily preclude someone from being hired for a job, one can assume that a record could have some impact.

Criminal charges can also influence funding for higher education. When filing out the Free Application for Federal Student Aid, one of the questions that must be asked is if a student has any criminal convictions, and if a student has been convicted for a forcible or nonforcible sexual offense, they are not eligible to receive any Pell Grants for schooling (“Federal Student Aid”, n.d.). When a juvenile is found guilty of a crime, they are not convicted of a crime, but adjudicated delinquent of a crime. An adjudication is not a conviction, therefore, someone charged as a juvenile and adjudicated delinquent would not need to disclose this information.

Social Learning Theory

In 1977, Albert Bandura came up with the idea of how observing, modeling, and imitating behaviors and reactions of others influences how people act. This theory was called Social Learning Theory. When 17-year-olds are charged as adults for crimes, they run the risk of being incarcerated, both in jails and in prisons. According to Social Learning Theory, being placed with criminal individuals, especially career criminals, can have a negative effect on future criminality of an individual.

Bechtold and Cauffman (2014) studied placements in juvenile facilities versus adult facilities and the impact it can have. Juveniles housed with adults are more apt to develop criminal skills that are more sophisticated than their peers housed in juvenile facilities, and actually have an increase in antisocial behaviors. Unfortunately, juveniles housed with adult offenders also find themselves more at risk of becoming victims of physical and sexual abuse. Juveniles housed with adult offenders were also at a higher risk of self-harm behaviors. Of note in their study, the researchers found that when adult offenders (under age 18 but charged as an adult) were placed in juvenile facilities instead of adult facilities, they did not engage in high levels of

reoffending. Being housed in a juvenile facility also gave offenders more access to educational programming, and staff was more trained in the unique needs of youthful offenders.

RESULTS

Major Court Decisions Regarding Juveniles

In early court systems, juveniles were treated no differently than adults. With the advent of the juvenile court system in the 1800s. There was a change in how the unique needs of juvenile offenders were addressed, with more emphasis being placed on rehabilitation. As more has been studied about brain development in juveniles and young adults, several landmark cases have been heard in the court system regarding how cases involving juvenile offenders are handled. While these cases mainly deal with juveniles that had been tried and convicted in adult court, these rulings show how the study of the juvenile brain has had an impact in cases involving juvenile offenders.

Supreme Court Rulings

Because the teenage brain is not fully developed, does that effect how court cases regarding juveniles should be handled? Steinberg (2017) examined developmental science and its role in four landmark Supreme Cases involving juveniles. The cases involved capital punishment, and life without parole. Steinberg (2017) focused on whether these cases involved a violation of the 8th Amendment, regarding cruel and unusual punishment. In all the cases, the Supreme Court found that both capital punishment and life imprisonment without parole are deemed as cruel and unusual punishment. The main issue was whether brain development and lack of maturity made juveniles culpable when committing crimes. Throughout the review of these cases, the Supreme Court determined brain development should be taken under advisement

when juveniles are sentenced. Juveniles are less likely to consider long term consequences and are more likely to think of risks in terms of reward rather than cost (Steinberg, 2017).

The case of *Thompson v. Oklahoma* examined death penalty cases for juveniles under age 16. This case was argued before the U.S Supreme Court in 1987. *Thompson* involved a 15-year-old male that, with the help of three adult accomplices, stabbed and beat his sister's abusive ex-husband to death in 1983. The juvenile was waived to adult court for his actions and sentenced to death. Briefings submitted to the Supreme Court noted that because of immature development, juvenile offenders should not be sentenced to death. It was also argued that violent juveniles suffer from neurologic illness that impairs their judgment. Continued research on the adolescent brain confirms these facts today (Flaherty, 2002).

The case of *Roper v. Simmons* examined death penalty cases for juveniles under age 18. This case was discussed by the Supreme Court in 2005. *Roper* involved a 17-year-old male who had committed first-degree murder in 1994 in Missouri. The Missouri Supreme Court invalidated the death sentence. The case was appealed by the state and heard by the U.S. Supreme Court (Missouri, 2019). In the Supreme Court's review of the case, it was determined that a minor could not be held fully accountable for their crimes. Because a minor has not reached full intellectual maturity, the death penalty could not be imposed as a sentence. The *Roper* decision permanently took away a jury's ability to sentence a juvenile to death (Myers, 2006).

The case of *Graham v. Florida* looked at life imprisonment without parole for juveniles under age 18, unless in the case of homicide. *Graham* involved a 16-year-old male convicted for an attack on a restaurant manager while the teen and his friends attempted to rob the restaurant. The juvenile was sentenced to probation, which was violated during an armed home invasion. Due to the violation, the juvenile was sentenced to life in prison without parole ("Graham v.

Florida – Locked Up for Life,” 2017). The U.S. Supreme Court heard this case in 2010. The Supreme Court determined that juveniles have a lack of maturity and underdeveloped sense of responsibility. The Supreme Court also stated that juveniles are more vulnerable to negative influences and outside pressures. The Supreme Court decided that juveniles should be given a meaningful opportunity to obtain release (Dharmavarapu, 2019)

The case of *Miller v. Alabama* took *Graham* one step further and looked at all juveniles sentenced to life in prison without parole, including those convicted of homicide. *Miller* involved a 14-year-old male that killed his neighbor and was sentenced to life in prison without parole (Smith, 2017). The U.S. Supreme Court ruled on this case in 2012. The Supreme Court determined that in juvenile homicide cases, life in prison without parole could not be a mandatory sentence. Once again, the Supreme Court stated that juveniles could not be held to the responsibility levels of adults because of underdeveloped brains. The Supreme Court made decisions for all four of these cases based upon research of brain development, as well as behavioral functioning of juveniles (Grisso & Kavanaugh, 2016).

The case of *Montgomery v. Louisiana* came about because of the findings in *Miller*. *Montgomery* focused on a case from 1963 where a 17-year-old black male was arrested and convicted for the murder of a white sheriff’s deputy and was sentenced to death. This conviction was overturned in 1966, and the male was retried and resentenced to life in prison without parole (“*Montgomery v. Louisiana*,” n.d.). The United States Supreme Court reviewed this case in 2016. The Supreme Court found that any juvenile that had received a sentence of life in prison was eligible to be resentenced. All juveniles serving life without parole had to receive either a parole hearing, be resentenced, or be released (Heilbrun et al., 2018).

The findings in *Miller* and *Montgomery* led to resentencing of juveniles across the United States. These two cases also led to multiple states banning sentences of life in prison without the possibility of parole for sentencing juveniles. As of 2019, 23 states and the District of Columbia enacted bans on sentencing juveniles to life without parole (Rovner, 2019).

However, not all cases where a juvenile was sentenced to life imprisonment were resentenced. *State v. Ninham* is a case from Wisconsin in which two males, ages 13 and 14, chased another juvenile male to the top of a parking garage with three other juveniles. The males grabbed the victim's hands and feet and swung him over the edge of the wall. While swinging the victim, the juveniles let go, and the victim fell to his death. Omer Ninham, 14 at the time, was charged and convicted of first-degree intentional homicide and sentenced to life in prison without the possibility of parole. The judge at sentencing opined that Ninham was such a danger to the public, a sentence of life in prison without parole was the only way to keep the community safe ("*Zong Vang*", n.d.). Ninham challenged his sentence under *Roper* and was denied. Ninham also challenged his conviction under *Miller*, which was denied as well. While *Miller* does state that a trial judge needs to review all the circumstances regarding the juvenile before deciding if life in prison is appropriate, it does give the judge the discretion to sentence how they see fit (Antes, 2013).

There are various other state court and United States Supreme Court decisions that have changed how juveniles are handled in the criminal justice system. It is clear from these judicial decisions that juveniles and young adults should be handled differently than adults. The court system is continuously evolving and raising the age to be charged as a juvenile in Wisconsin to age 17 is an evolution that is much needed.

How “Raise the Age” Affected Crimes Statistics in Other States

On January 1, 2010, Illinois Public Act 095-1031 went into effect. This act stated that 17-year-olds that were charged with misdemeanors would now be charged as juveniles instead of adults. Illinois became the 39th state to enact “Raise the Age” legislature. In 2013, the Illinois legislature looked back at Public Act 095-1031 and how crime rates have changed since, to discuss whether all crimes, both felony and misdemeanor, committed by 17-year-olds should be charged in juvenile court. The Illinois Juvenile Justice Commission made the following findings:

- Adding 17-year-olds charged with misdemeanors back into juvenile court did not cause the juvenile court system to become overwhelmed,
- There was a 14 percent decrease in violent crime,
- Juvenile detention centers were not filled to capacity. In fact, three detention/correctional facilities ended up closing,
- It is less costly to prosecute someone in juvenile court than adult court (illinois.gov).

Based upon those findings, the Illinois legislature voted to raise the age for charging juveniles with a felony to 17 in 2013.

The state of Vermont is taking the “Raise the Age” initiative even further. Vermont is the only state currently where 18-year-olds are still charged as juveniles. The Vermont legislature voted to move 19-year-olds to juvenile court jurisdiction beginning in 2022, with plans to eventually move 20-year-olds under juvenile court jurisdiction in 2024. However, lawmakers are looking to possibly put a hold on raising the age in Vermont. Lawmakers are concerned that some individuals are too violent to be dealt with in juvenile court, such as individuals charged with forcible sexual assaults or crimes involving weapons. Lawmakers

would like there to be an assessment tool to be used to determine which individuals would be appropriate for prosecution as a juvenile. However, an assessment tool is not without its faults. Other Vermont lawmakers believe that instead of raising the age to 20, the state should create a youthful offenders court for those ages 19 to 25.

New York currently has a youthful offenders status which serves the needs of young adult offenders, while not compromising the juvenile justice system (Hirschfeld, 2021). This program, which began in 2018, targets juveniles and young adults between the ages of 14 and 19 when their crime was committed. An individual cannot be considered for youthful offenders status if they have a prior felony conviction, they have already been given youthful offenders status, or charged with an A-I or A-II felony, which including homicides, certain drug trafficking offenses, and some sexual assault charges. When an individual enters into youthful offender status, they have their record sealed, and it does not have to be reported on job applications or college applications, much like a juvenile being adjudicated delinquent instead of being convicted. (Kaye, 2021)

Forty-seven states across the country have enacted legislation to have 17-year-olds charged as juvenile instead of adults. No states have moved to put 17-year-olds back into adult court, except under certain specific circumstances, such as being charged with intentional homicide. As evidenced by Vermont, there are also thoughts that young adults over age 17 still should be involved in the juvenile court system as well.

RECOMMENDATIONS AND CONCLUSION

There are several different groups in Wisconsin that are pushing for Wisconsin to raise the age for juvenile prosecution to 17, including the ACLU, League of Women Voters,

Wisconsin School Social Workers Association, and Disability Rights of Wisconsin (“Raise The Age Wisconsin”, n.d.). Unfortunately, while there is so much support for raising the age, the measure failed to pass in Wisconsin again in 2021. Raise the Age Wisconsin (n.d.) raises eight reasons why raising the age should pass:

- There is bipartisan support for raising the age, which, in today’s day and age is quite rare
- Youth in the juvenile justice system are more likely to get a high school diploma or GED, become employed, and deal with substance abuse issues than their counterparts charged as adults
- The juvenile justice system offers more ways to deal with mental health issues through community-based programming than the adult system
- While there has been concern of higher costs associated with moving 17-year-olds back under juvenile court jurisdiction, other states that have raised the age have not seen that happen
- Keeping 17-year-olds under adult court jurisdiction affects youths of color disproportionately, and Wisconsin has the second highest black-white racial disparity
- Raising the age keeps youths out of adult correctional facilities, which reduces the chance of becoming a victim of physical and sexual abuse in the adult prison system, as well as lowering the rate of suicide
- Brain studies have shown that the young adult brain is not fully developed, resulting in risky and illegal behaviors, but as the brain develops, those risks are greatly reduced
- Youths placed in adult court are 30% more likely than their juvenile counterparts to reoffend with a violent offense (“Raise The Age”, n.d.).

The Sentencing Project (2021) studied Raise the Age legislation starting from 2007. Since 2007, 11 states have raised the age to remain under juvenile court jurisdiction to 17, with the most recent being Missouri and Michigan in 2021. Their studies showed that none of the states needed to open more juvenile detention facilities. In fact, some states, like Connecticut and Illinois, ended up closing some of their detention facilities. The Sentencing Project opines that raising the age to be considered a juvenile to 17 is the minimum that states should be doing, as research has shown adolescent brain development continues until approximately age 24. (The Sentencing Project – Research and Advocacy for Reform, 2021)

Research has shown how long it takes for a brain to be truly developed. The brain is still developing through adolescence and early adulthood. The last area of the brain to develop is the prefrontal cortex. The prefrontal cortex is the area of the brain that is responsible for impulsivity and decision making. Therefore, juveniles do not function with sound reasoning. Juveniles tend not to think about the consequences of actions. Juveniles are more often risk-takers. Oftentimes, juveniles cannot think about the long-term effects of their actions, choosing to focus on the short-term rewards. When in a group of peers, a juvenile is more likely to feel the effects of peer pressure. All these actions play a role in why a juvenile might enter the juvenile court system.

Environmental factors play a large role in brain development. Research has found that childhood trauma, low socio-economic status, Traumatic Brain Injury, and peer influences all influence how the brain develops during adolescence. The type of parenting environment a juvenile grows up with also is a factor. Studies show that juveniles that grow up in non-attentive environments or who experience parental maltreatment are more likely to have delinquency issues.

The court process can be difficult for a juvenile to handle, either in juvenile court or adult court. The court system needs to look at the functioning of the juvenile brain in all areas of the justice system.

Legislatures in Wisconsin need to make a concerted effort to have Raise the Age legislation passed. The simplest way for Wisconsin to make change is a specific bill that looks only at raising the age. While there is additional juvenile justice reform that needs to be looked at, the most important is to raise the age and keep pace with most other states in the nation. As noted, there is bipartisan support for passing a bill to raise the age; however, Republican lawmakers have stated that they oppose this reform coming in through the state budget (Carroll, 2021). Instead of putting Raise the Age legislation tied in with other juvenile justice reform suggestions in the proposed state budget, Raise the Age legislation should be brought forward in a stand-alone bill. As other states have discovered, raising the age to 17 has not resulted in an increase in spending, and several states have actually been able to lower spending by closing juvenile correctional facilities. Even if legislation to raise the age is passed, the actual legislation cannot take effect immediately, so the sooner this bill is introduced, the sooner raising the age can be implemented. This is a bill that needs to be proposed and presented to lawmakers for change that is proven to be much needed for Wisconsin juvenile justice reform.

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