

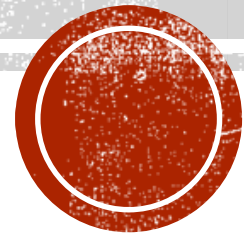
AGE IS JUST A NUMBER: LAW, SCIENCE, AND SENTENCING

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Washington Sentencing Guidelines Commission

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ROADMAP

- Who is an adult or juvenile for criminal prosecution?
- What are the mechanisms for turning “juveniles” into “adults”?
- History of legislative changes to juvenile and adult status
- US and WA Supreme Court Cases and the legislative response (*Miller, Graham, Houston-Sconiers, O'Dell* and the “Miller Fix”)
- State trends in sentencing youth
- Issues to be considered in light of youth culpability and rehabilitation



WHO IS AN ADULT FOR CRIMINAL PROSECUTION?

- 18 (in 42 states including Washington)
- 17 (7 states, GA, LA*, MO, SC*, TX, WI)
- 16 (2 states NY,* NC)
- Vermont raises age of juvenile court jurisdiction gradually to 21 by 2018



HOW DO JUVENILES BECOME ADULTS FOR CRIMINAL PROSECUTION? (WHO DECIDES?)

- Judicial discretion (Discretionary Decline) -- Every state (although some limits for younger youth)
- Statutory/Legislative Exclusion (Auto-decline) -- 29 states
- Direct File (prosecutorial discretion) 25 states



WHAT TO DO WITH 18-25 YEAR-OLDS?

Youthful Offenders

Emerging Adults



WASHINGTON

Juveniles Transferred to Adult Criminal Court Jurisdiction * and Sentenced/Convicted in Adult Court by Type of Transfer or Waiver State Fiscal Years (FYs) 2010 - 2014

	2010	2011	2012	2013	2014	5-Year Period	% of Total
Exclusive Original Adult Criminal Court Jurisdiction-- Auto Decline (Statutory Exclusion):	73	52	56	52	38	271	46.4
Discretionary Decline of Jurisdiction (Judicially Controlled Transfer):							
Original Juvenile Court Jurisdiction -- Transferred by the Juvenile Court to Adult Criminal Court after a Discretionary Decline Hearing	84	65	60	50	32	291	49.8
Original Juvenile Court Jurisdiction--Transferred by the Juvenile Court to Adult Criminal Court after a Mandatory Decline Hearing	5	8	4	4	1	22	2.0
Total Judicially Controlled Transfers	89	73	64	54	33	313	53.6
Total # of Juveniles Charged and Sentenced in Adult Criminal Court	162	125	120	106	71	584	100.0

Data Source: Forecasting Division, Office of Financial Management, WA State Statistical Analysis Center, January, 2015.

* These person-level data provide only youth whose cases were filed/charged in adult criminal (Superior) court while under the age of 18 years, **and** who were convicted in adult court.



WASHINGTON

- Between 2012 and 2015, **47% of cases transferred to the adult system were for Robbery offenses.**
- Assault is the second most common offense for which youth are charged and convicted as adults.
- This applies to both automatic transfers and discretionary decline transfers.



RACIAL DISPROPORTIONALITY

- Of all juveniles charged and sentenced in adult criminal court between 2010 and 2014, **68.5% were minorities.**
- **Almost 43% of cases involving black juvenile offenders were auto-declined**, compared to 29% of Hispanics and 18.5% of whites.
- Of those transferred by the juvenile court following a discretionary or mandatory hearing, **29.1% were Hispanic.**



LEGISLATIVE JUVENILE/ADULT SENTENCING REFORM

- Pre- 1994 Discretionary Decline only (Judge weighs *Kent* factors)
- 1994 peak violent crime rate for adults and juveniles
- 1994 Auto-Decline, 16 and 17 year olds
- 1995 Hard Time for Armed Crime (mandatory weapon enhancements, etc.)
- 1997 Auto-Decline Expanded/juvenile record sealing restricted/juvenile offenses included in adult offender score
- 1999 Juvenile Sentencing Grid simplified to a formula similar to adult grid (seriousness of offense and criminal history only) and giving discretion to judges (local sanctions) and JRA (commitments)



LEGISLATIVE JUVENILE/ADULT SENTENCING REFORM

- [2004: MRI imaging studies on adolescent brain development show prefrontal continues developing up until age 25]
- 2005: “Age at time of offense” not age at filing for auto-decline
- 2009: Prosecutor and defense can agree to juvenile court jurisdiction for auto-decline offenses with court’s approval
- 2013: WSIPP Report on Recidivism for juveniles tried in adult system
- 2014 Early release for youthful (<18) offenders (“Miller fix”)
- 2015 Youthful offenders Custody Authority

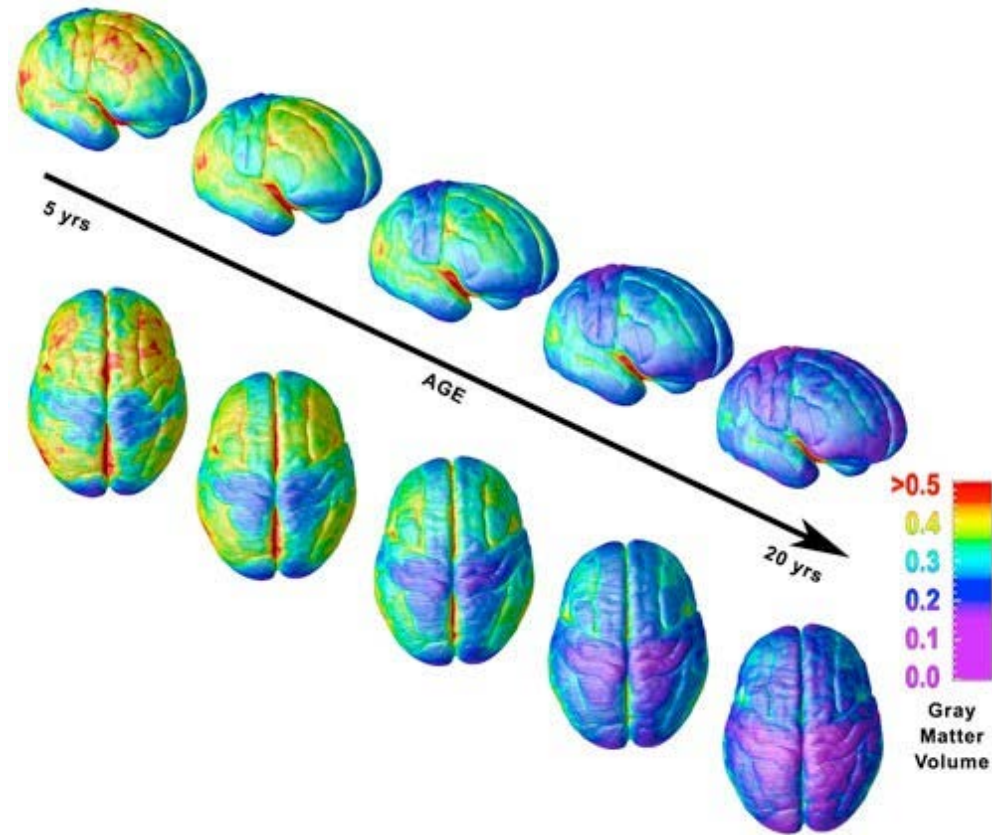


STATE TRENDS

- “Raise the age” – Connecticut, NY, South Carolina, Illinois, Vermont
- Extended Rehabilitation – Colorado (Youth Offender System), Oregon (judicial review at 25 when transferred to adult prison)
- Second Look – Oregon, youth tried as adults request hearings before sentencing judges
- Youth Parole -- California



SCIENCE: BRAIN DEVELOPMENT IN ADOLESCENCE AND YOUNG ADULTHOOD



SCIENCE: KEY CONCEPTS

Not fully developed until mid-20s

Emotions eventually moderated by judgment

Impulsivity

Risk-seeking

Susceptibility

Capable



DEVELOPMENT: HOW IT HAPPENS

Refinement, not growth

Pruning

Fattening

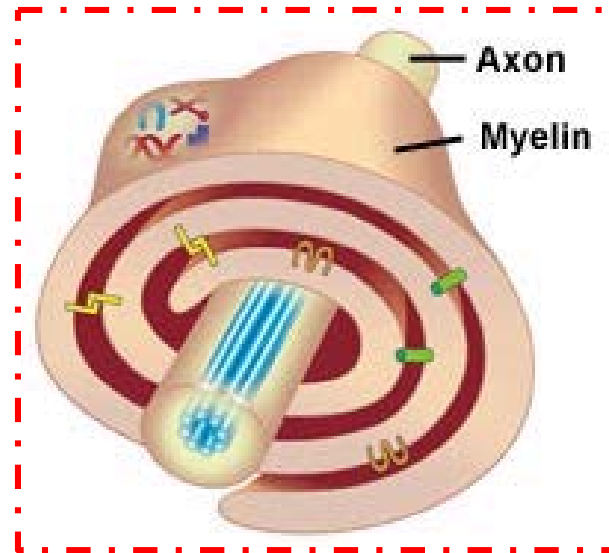


USE IT OR LOSE IT: PRUNING



BRAIN MATURATION IN ADOLESCENCE: FAT CITY

Myelination



- **Improved Brain Function**
 - **Increased efficiency of local computations**
 - **Increased speed of neuronal transmission**



FOR ADOLESCENTS, EMOTIONS RULE

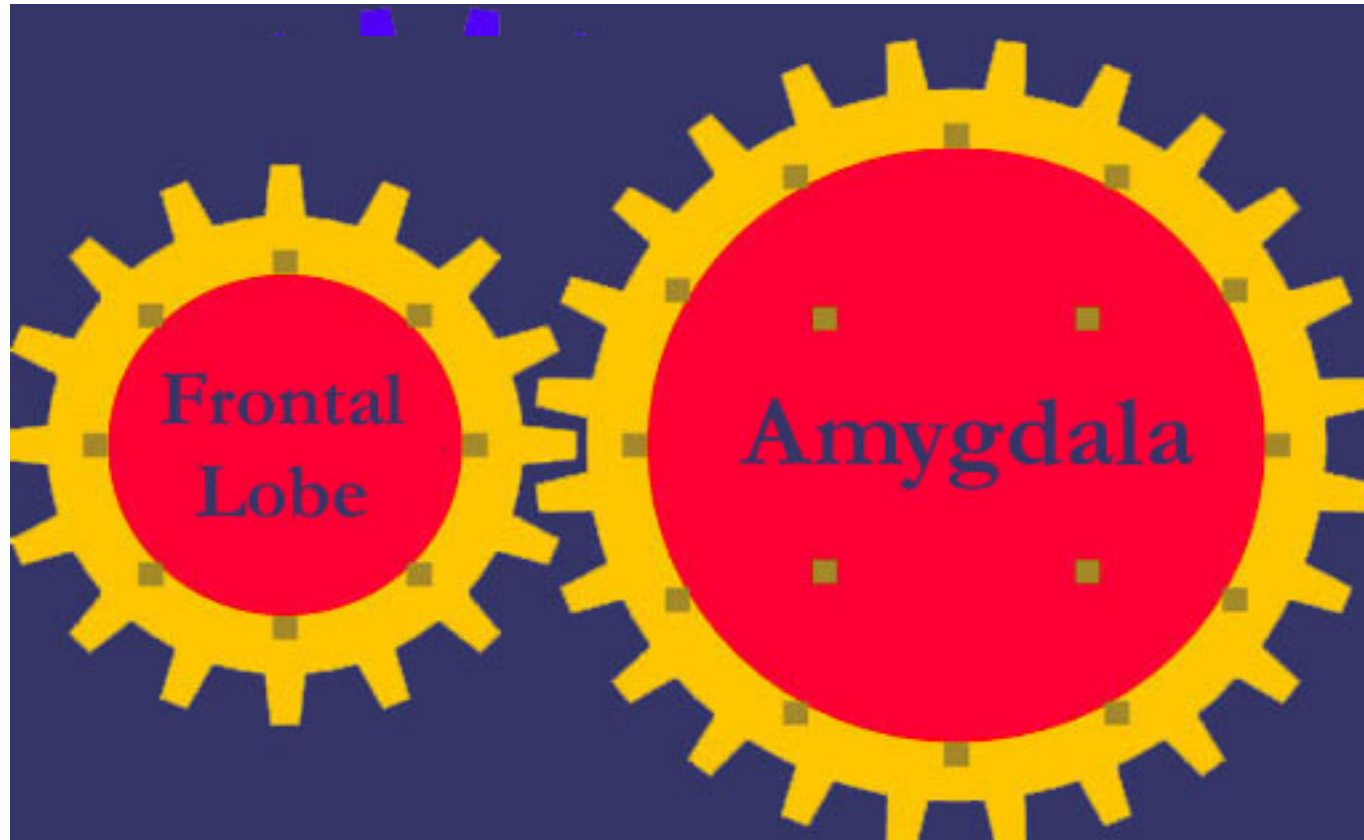
Intensity

Inaccuracy

Inconsistency



ADULT'S AMYGDALA: EMOTIONS "DISENGAGED" FROM PROCESSING

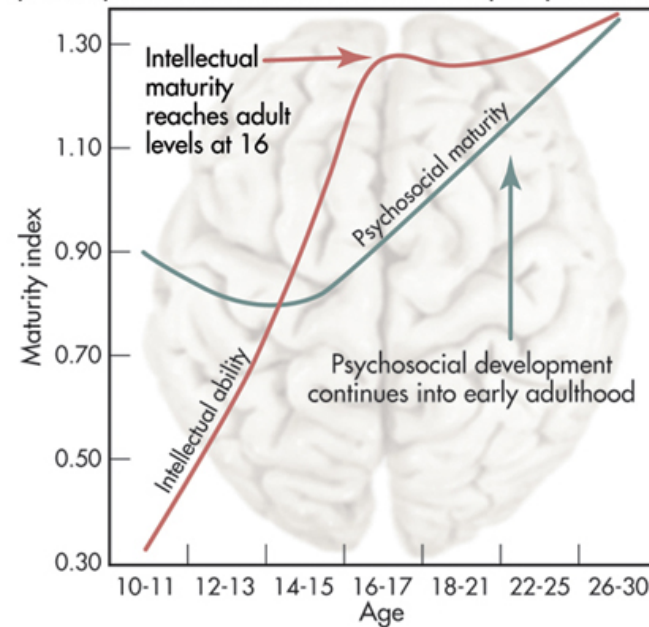


SPUTTERING

HOW CAN SOMEONE SO SMART DO SOMETHING SO STUPID?

The Immaturity Gap

As psychosocial development lags behind intellectual maturity, juveniles make shortsighted decisions, show poor impulse control and are vulnerable to peer pressure.



RISK-SEEKING



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PEER PRESSURE



THE PEER PRESSURE EFFECT

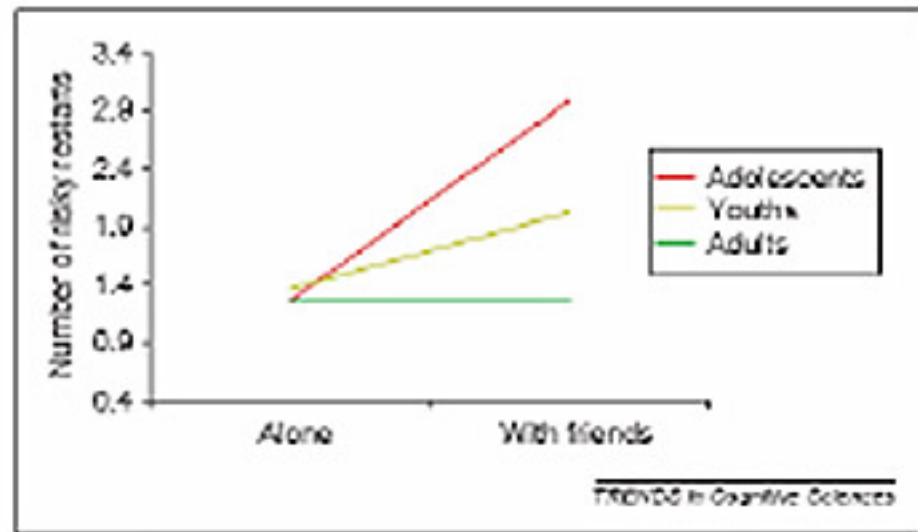


Figure 1: The number of risks taken by adults did not differ depending on whether participants were alone or with friends. However, adolescent risk-taking increased dramatically when participants were with friends. Taken from Steinberg et al. (2005)



HOW THE LAW HAS ADAPTED

USSC: LIMITATIONS ON PUNISHMENT

Death Penalty

LWOP



CHANGES IN WASHINGTON

MILLER-FIX STATUTE

EVOLVING CASELAW

de facto life sentences

no mandatory sentences

consideration of youth when imposing sentence

beyond 18



UNRESOLVED ISSUES

What does “youth must be considered” mean, in all contexts?

Front end (jurisdiction)

Back-end (sentencing and modification)

Jurisdiction & Placement

Which court?

What facilities?

Who decides?

Later impact

Scoring; strikes; registries



WHERE DO WE GO FROM HERE?

