

Opinions

Why 21 year-old offenders should be tried in family court

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[Razor wire surrounds the Rockville, Ind., Correctional Facility. (Michael Conroy/Associated Press)]

By Vincent Schiraldi and Bruce Western October 2

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Just over 100 years ago, there was no separate court for juveniles anywhere in the world. Adolescents were viewed as smaller versions of adults, were prosecuted under the same laws and often sent to the same prisons.

But in 1899, a pioneering group of women — Jane Addams, Lucy Flower and Julia Lathrop — persuaded the state of Illinois to create a separate court to handle juveniles' cases individually, be more rehabilitative and less punitive and ensure that youthful mistakes wouldn't haunt youngsters throughout their lives. The family court was a smashing success, spreading to 46 states and 16 countries by 1925 and decidedly reducing recidivism compared with trying children as adults.

But while family court's founding mothers got a lot right, the setting of 18 as the court's maximum age was an arbitrary choice based on the mores of the time rather than hard evidence. It's time we expanded the protections and rehabilitative benefits of the family court to young adults.

Research in neurobiology and developmental psychology has shown that the brain doesn't finish developing until the mid-20s, far later than was previously thought. Young adults are more similar to adolescents than fully mature adults in important ways. They are more susceptible to peer pressure, less future-oriented and more volatile in emotionally charged settings.

Furthermore, adolescence itself has become elongated compared with that of previous generations. Today's young people finish college, find jobs, get married and leave home much later than their parents did. Just 9 percent of young adults were married in 2010, compared with 45 percent in 1960.

Non-criminal law and practice frequently recognize these developmental differences. States prohibit young adults from smoking cigarettes, consuming alcohol, possessing firearms, gambling and adopting children. You can't serve in the House of Representatives until age 25, it costs more to rent a car as a young adult and you can stay on your parents' health insurance until 26.

However, despite the developmental differences between young and fully mature adults, criminal law draws a stark, scientifically indefensible line at 18. This has disastrous public safety outcomes. For example, 78 percent of 18- to 24-year-olds released from prison are rearrested and about half return to prison within three years, the highest recidivism rate of any age cohort.

Fortunately, there has been growing innovation overseas along with some noteworthy U.S. experiments designed to address the challenges and opportunities this transition-aged population presents. The age of family court jurisdiction in Germany and the Netherlands is 21 and 23, respectively. Many European countries have separate correctional facilities for young adults. In Finland, young people can earn accelerated release from prison by participating in educational and professional training programs.

Several states — Florida, Michigan and New York — have laws that permit young adults' convictions to remain confidential. San Francisco's probation office has a special caseload category for "transitional-aged youth," and this summer the city established a specialized youth court.

New York City's justice officials are experimenting with specialized handling of young adults at every stage of the process. The police and district attorneys in Brooklyn and Manhattan have just launched "Project Reset" to divert youths upon arrest. The state courts have "adolescent diversion parts" in every New York borough. New York City's probation department is planning to launch specialized young-adult caseloads, and the Department of Correction is planning dedicated young-adult facilities with specialized reentry services. A range of nonprofits target programming specifically at young adults.

Attorney General Loretta E. Lynch recently convened an expert panel to explore developmentally appropriate responses to young adults caught up in the justice system. "Research indicates that . . . we may have a significant opportunity, even after the teenage years, to exert a positive influence and reduce future criminality through appropriate interventions," she said. This "offers a chance to consider new and innovative ways to augment our criminal justice approach."

Such thinking will undoubtedly face political head winds in some places, but improved outcomes can be used to build support with the public. Frequently, U.S. juvenile justice practice moves adolescents in the opposite direction — from family court into adult court and, too often, adult prisons. An estimated 247,000 people under 18 were tried as adults in 2007, and more than 5,000 adolescents are incarcerated in jails and prisons. There, they are at greater risk of sexual assault and experience higher rearrest rates vs. youth retained in the juvenile justice system. Any reforms for young adults need to also reduce this destructive practice of transferring young people into the maw of the adult system.

Given advances in research and successful innovation here and abroad, now is the time for practice to catch up with science — whether it is raising the family court's age to 21 or 25 or otherwise creating a separate approach to young adults that reflects their developmental needs and furthers public safety.