

Applying principles of adolescent development in delinquency proceedings

This bench card is dedicated to the late Judge Willie J. Lovett Jr., for his enduring efforts to establish developmentally appropriate juvenile courts for all children.*

The United States Supreme Court has cited a comprehensive body of research on adolescent development in its opinions examining youth sentencing, culpability, and custody. Several key characteristics of youth have been noted in each of these opinions and must be considered in judicial decision-making and interactions with youth in court. We encourage judges to read the decisions and the underlying studies.¹ Judges and judicial leadership play a critical role in ensuring that juvenile and family courts recognize the developmental differences between youth and adults and integrate, at each stage of the case, applicable principles supported by the research on adolescent development.²

Principles of Adolescent Development with Key Cases and Research Studies

1. Adolescents are not just small adults; they are constitutionally different.

The Supreme Court's affirmation of the constitutional difference between children and adults for purposes of sentencing, culpability, and custody is rooted in three key developmental characteristics of youth: 1) the (in)ability to self-regulate, 2) sensitivity to external influences, and 3) a poor ability to appreciate the long-term consequences of their actions. As held in *Roper v. Simmons*, and then affirmed and expanded upon in *Grabam v. Florida*, *Miller v. Alabama*, and *Montgomery v. Louisiana*, these differences, grounded in biological and maturational development, have constitutional, legal, and practice implications.³ Poignantly, the Supreme Court in *J.D.B. v. North Carolina*, quoting *Eddings v. Oklahoma*, stated “[O]ur history is replete with laws and judicial recognition that children cannot be viewed simply as miniature adults.”⁴

2. Adolescents are less **CULPABLE** and more **CAPABLE** of reform than adults and are therefore less deserving of the most severe punishments.

Most delinquent conduct during adolescence involves risk-taking behavior that is part of normative developmental processes. The Supreme Court in *Roper v. Simmons* recognized that these normative developmental behaviors will generally lessen as youth mature and become less likely to reoffend as a direct result of the maturational process.⁵ *Trajectories of Desistance and Continuity in Antisocial Behavior Following Court Adjudication Among Serious Adolescent Offenders*, a research study led by Dr. Edward Mulvey at the University of Pittsburgh, demonstrates that most youth adjudicated for serious offenses demonstrate low or zero involvement in criminal activity years after court involvement.⁶

3. Adolescents develop at different rates in social, emotional, physical, and cognitive domains.

The Supreme Court has recognized adolescence as a period of continued brain growth and change based on research showing that frontal lobes, home to key components of circuitry underlying “executive functions” such as planning, working memory, and impulse control, are among the last areas of the brain to mature.⁷ Research shows that the rate of growth varies for each youth, but for most, this growth continues into their mid to late twenties. This period of development impacts a youth's ability to delay gratification and understand the long-term consequences of their actions.⁸

* *Fulton County Juvenile Court Presiding Judge Willie J. Lovett Jr. passed away on Monday, January 30, 2017, at the age of 53. Judge Lovett was one of the primary drafters of this bench card and will be greatly missed.*

Principles of Adolescent Development with Key Cases and Research Studies (cont.)

4. Adolescent development and learning are profoundly affected by early childhood experiences.

Traumatic experiences in infancy and early childhood have been found to have a long lasting impact into adulthood.⁹ Trauma can impair children's ability to think clearly, reason, and solve problems. Although children are resilient and the impact of trauma can be ameliorated with appropriate care, traumatic events can significantly alter the brain and interfere with a child's normal growth and development.¹⁰

5. Secure and healthy relationships promote adolescent success and positive development.

Secure attachment is associated with decreased engagement in high-risk behaviors, fewer mental health issues, and enhanced social skills and coping strategies.¹¹ The emotional bonds which develop from secure relationships, such as staying connected to parents (a protective factor) and stable, caring relationships with friends, community leaders, or school staff, among others, are important for healthy adolescent development and should be fostered through all stages of development.¹²

Important Judicial Considerations

Positive Youth Development is a prosocial approach to juvenile remediation that considers the potential and capacity of each individual young person as opposed to grounding its philosophy in youth adversity, risk, or challenge. The goal of the positive youth development approach is to enhance the strengths and future potential of each youth by fostering opportunities to develop their skills and interests.¹³

Racial and Ethnic Disparity in the Justice System. Features of adolescent development are consistent across all racial and ethnic groups. Research studies controlling for race and ethnicity found no significant difference in the key characteristics of adolescent development, such as impulsivity, sensation seeking, susceptibility to peer influence, and limited future orientation across all youth groups.¹⁴ The disproportionate representation of youth of color in the juvenile justice system cannot be explained by differences in adolescent development or even in differences of behavior across racial and ethnic groups.

In every case involving a youth of color, a judge should check implicit perceptions of culpability associated with race and begin with the viewpoint that the youth is exhibiting normal adolescent behavior and is amenable to redirection.

Once the judge has heard from all of those interested in the decision, including the child, the judge should ensure that the proposed disposition is developmentally appropriate and strengthens the child's likelihood for success while accounting for public safety, and is not driven by implicit or explicit bias.

Least Restrictive Alternative. Secure detention and commitment should be reserved for cases in which there are significant concerns about court appearance and public safety. More than half of youth who are arraigned do not return to court to face new charges. Unnecessary institutional confinement may increase recidivism and even one or two days of detention may be traumatic, expose youth to negative influences, and have the unintended consequence of a youth self-identifying as an offender. Court-ordered conditions of supervision should focus on supporting prosocial development since it is the most effective tool for reducing recidivism.¹⁵

The National Academies of Sciences, Engineering, and Medicine have noted that confinement in a facility disrupts a child's ability to grow within the "positive social context" of their communities, and that this phenomenon disparately affects youth of color, who are overrepresented at every stage in the juvenile court process and particularly in terms of placement.¹⁶

Additionally, LGBTQ-GNC youth are detained more frequently for status offense offenses, warrants, and probation violations and are detained at "twice the rate of their heterosexual and gender-conforming peers."¹⁷ Youth who are detained, especially girls, youth with mental health issues, and youth who identify as LGBTQ-GNC are at higher risk of being physically and sexually assaulted in detention. These risks are substantially higher in adult correctional facilities.¹⁸

“Now What?” How Judges Should Apply Adolescent Development Principles In Every Case

Courtroom Communication: A judge should make very clear, through tone, demeanor, and age-appropriate language that child development is important and should clearly describe what will happen during a hearing. The judge should use techniques and principles such as Motivational Interviewing, Trauma-Informed Care, the Principles of Positive Youth Development, and the Principles of Procedural Fairness.¹⁹

Judicial training in Trauma-Informed Care and Motivational Interviewing can develop listening and observation skills and help judges communicate in a way that improves outcomes and increases youth understanding of the court process. Principles of Positive Youth Development include ensuring the youth has access to nurturing relationships with caring adults, positive peer relationships, good physical and mental healthcare, effective education and job skills, and leadership and autonomous decision-making opportunities.

Procedural Justice: A judge should use procedural fairness principles in all juvenile court hearings. Listen to what the child says and consider how their expressed opinion can shape the court’s disposition and outcomes. A child is more likely to engage and comply when they identify their own strengths and needs. A judge should be clear, firm, and respectful. Both rigidity and too much flexibility with a child can cause frustration and lead to noncompliance. The judge can be a powerful motivator by openly recognizing successes and encouraging continued growth and opportunity. Outcomes are improved when children and their families feel they have been treated respectfully, sincerely, and fairly.

Sample Questions/Colloquies to Ensure Procedural Fairness and Youth Engagement at Each Stage of the Case²⁰

PRETRIAL - During pretrial stages a judge can develop a relationship and convey a sense of fairness by asking age-appropriate questions and making supportive, affirming comments such as: *Thank you for being on time! I like the way you speak loud and clear. Thanks for dressing nice and neat for court today! Your lawyer has asked me to continue your case so they can investigate your case and meet with you to prepare. Is that what you want to do? What is the best way for YOU to get in touch with your lawyer? Does the proposed court date work for you and your mom/dad? What do you think could happen if you aren't here on time?*

DETENTION HEARINGS - Offer the child an opportunity to comment on proposals and alternatives. *I am letting you go home while you and your lawyer are working on your case, but you have some things you must do before your next court date: work with your lawyer, meet with your probation officer, etc. Can you tell me what I just said that you need to do before our next hearing? What will happen when you do those things? Would it be a good thing for you to be done with the court? Is there someone who could help you while you're making these changes?*

TRANSFER HEARINGS - Research demonstrates that transfer of youth to the adult system increases recidivism — and at greater cost to taxpayers.²¹ During amenability hearings, consider the mitigating characteristics of childhood and ascertain whether a youth is amenable to rehabilitative services available through the juvenile justice system. Ask, “*What are some ideas for activities (you and your lawyer have discussed) that you think would help you succeed and help keep you out of court?*”

PLEA AND REVOCATION HEARINGS - During plea and revocation hearings, ask the child to describe in their own words: *What is the jury's job at the end of a trial? What kinds of things would your lawyer be doing if you had a trial? What do you think about your lawyer? Have you had enough time to talk to your lawyer about this case? What could you have done differently?*

SENTENCING AND PROBATION HEARINGS - Sentencing and probation hearings provide an opportunity for interaction between the judge, a child, and their parents. Listen to the child and look for topics that you and the child can discuss in a positive manner. Recognize challenges and offer support and practical solutions. *Is there something that I can do to help? What can we do to get that first clean drug screen? What's happening in your life right now that you'd like to change? What would you like to change about your school attendance? How do you think you could change that? How would your life be better with that change? Has your counselor given you some ideas about how you can control your emotions? Tell me about one or two of them.*

COURT ORDERS – Twelve-year-olds are different from 20-year-olds. Orders or forms should be developmentally appropriate, using simple language, clear instructions, and concise terms and conditions tailored to meet the goals of probation and the characteristics of the child. The judge should explain decisions clearly and allow the child to absorb the information and ask questions. Finally, the judge should talk about next steps and let the child understand the role they play in ending the court process.

ENDNOTES

1. See *J.D.B. v. North Carolina*, 564 U.S. 261 (2011); *Roper v. Simmons*, 543 U.S. 551 (2005); *Thompson v. Oklahoma*, 487 U.S. 815 (1988); *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016); *Miller v. Alabama*, 132 S.Ct. 2455 (2012); *Graham v. Florida*, 560 U.S. 48 (2010).
2. See National Council of Juvenile and Family Court Judges, *Resolution Regarding Judicial Training on Adolescent Brain Development* (2016), https://www.ncjfcj.org/sites/default/files/FINALResolution_AdolBrainDevel_7-2016_0.pdf.
3. See *Roper*, 543 U.S. at 569-570; *Graham*, 560 U.S. at 68; *Miller*, 132 S.Ct. at 2458; *Montgomery*, 136 S.Ct. at 733. *Montgomery*, taking the principals established in *Miller*, stated that “children are constitutionally different from adults for purposes of sentencing.’ These differences result from children’s ‘diminished culpability and greater prospects for reform,’ and are apparent in three primary ways”: 1) a “lack of maturity and an underdeveloped sense of responsibility,” (2) children “are more vulnerable to negative influences and outside pressures,” and (3) a child’s character is not as “well formed” as an adult’s, his traits are “less fixed” and his actions less likely to be “evidence of irretrievable depravity.” *Montgomery*, 136 S.Ct. at 733 (quoting *Miller*, 132 S.Ct. at 2464). See also REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 91 (Richard J. Bonnie et al., eds. 2013).
4. See *J.D.B.*, 564 U.S. at 274 (citing *Eddings v. Oklahoma*, 455 U.S. 104, 115-116 (1982)).
5. See *Roper*, 543 U.S. at 570-71; REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 4-5, 322 (Richard J. Bonnie et al., eds., 2013).
6. See Edward P. Mulvey et al., *Trajectories of Desistance and Continuity in Antisocial Behavior Following Court Adjudication Among Serious Adolescent Offenders*, 22 DEV. & PSYCHOPATHOLOGY 453 (2010).
7. See *Miller*, 132 S. Ct. at 2464; *Graham*, 560 U.S. at 68.
8. See Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD DEV. 28 (2009).
9. *Adverse Childhood Experiences*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/violenceprevention/acestudy/> (last updated April 1, 2016).
10. See Bruce. D. Perry, *Traumatized Children: How Childhood Trauma Influences Brain Development*, 11 J. CAL. ALLIANCE MENTALLY ILL 48-51 (2000).
11. M.C. Cooper et al., *Attachment Styles, Emotion Regulation and Adjustment in Adolescence*, 74 J. PERS. SOC. PSYCHOL 1380-97 (1998); M.S. Howard, et al., *Adolescents’ Attachment and Coping with Stress*, 41 PSYCHOL. SCHOOLS 391-402 (2004).
12. See Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, 128 Stat. 1919 (2014); JENNIFER POKEMPNER ET AL., JUVENILE LAW CENTER, PROMOTING NORMALCY FOR CHILDREN AND YOUTH IN FOSTER CARE (2015).
13. RICHARD M. LERNER ET AL., THE POSITIVE DEVELOPMENT OF YOUTH: COMPREHENSIVE FINDINGS FROM THE 4-H STUDY OF POSITIVE YOUTH DEVELOPMENT 8-9 (Dec. 2013), <http://3t61of1t6u3x3af7ir2y91ib.wpengine.netdna-cdn.com/wp-content/uploads/2016/02/4-H-Study-of-Positive-Youth-Development-Wave-9-Report.pdf>.
14. Dustin Albert & Laurence Steinberg, *Age Differences in Strategic Planning as Indexed by the Tower of London*, 82 CHILD DEV. 1501 (2011); Elizabeth Cauffman et al., *Age Differences in Affective Decision Making as Indexed by Performance on the Iowa Gambling Task*, 46 DEVELOPMENTAL PSYCHOL. 193 (2010); Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD DEV. 28 (2009); Laurence Steinberg et al., *Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model*, 44 DEVELOPMENTAL PSYCHOL. 1764 (2008); Laurence Steinberg & Kathryn C. Monahan, *Age Differences in Resistance to Peer Influence*, 43 DEVELOPMENTAL PSYCHOL. 1531 (2007); Lloyd D. Johnson et al., MONITORING THE FUTURE: NATIONAL SURVEY RESULTS ON DRUG USE 1975-2010, VOLUME I: SECONDARY SCHOOL STUDENTS (2011); CTRS. FOR DISEASE CONTROL & PREVENTION, YOUTH RISK BEHAVIOR SURVEILLANCE – UNITED STATES (2013), <http://www.cdc.gov/mmwr/pdf/ss/ss6304.pdf>.
15. REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 150 (Richard J. Bonnie et al., eds. 2013); RICHARD A. MENDEL, ANNIE E. CASEY FOUND., 14 PATHWAYS TO JUVENILE DETENTION REFORM BEYOND DETENTION: SYSTEM TRANSFORMATION THROUGH JUVENILE DETENTION REFORM (2007), <http://www.aecf.org/m/resourcedoc/AECF-BeyondDetention-2007.pdf>.
16. REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 3 (Richard J. Bonnie et al., eds. 2013).
17. JUVENILE JUSTICE: ADVANCING RESEARCH, POLICY AND PRACTICE 164 (Francine T. Sherman et al., eds. 2011).
18. NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE, NATIONAL PRISON RAPE ELIMINATION COMMISSION REPORT 7-8 (2009), <https://www.ncjrs.gov/pdffiles1/226680.pdf>.
19. WILLIAM R. MILLER AND STEPHEN ROLLNICK, MOTIVATIONAL INTERVIEWING: PREPARING PEOPLE FOR CHANGE (3d. ed. 2012); Tom R. Tyler, *Procedural Justice and the Courts*, 44 Court Review (2007-2008). <http://www.proceduralfairness.org/~media/Microsites/Files/procedural-fairness/Tyler.ashx>; Positive Youth Development: Key Principals YOUTH.GOV, <http://youth.gov/youth-topics/positive-youth-development/key-principles-positive-youth-development> (last visited June 23, 2017).
20. Richard J. Bonnie & Thomas Grisso, *Adjudicative Competence and Youthful Offenders*, in YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE 67, 76 (Thomas Grisso & Robert G. Schwartz eds., 2000); Jodi L. Viljoen et al., *Teaching Adolescents and Adults about Adjudicative Proceedings: A Comparison of Pre- and Post-Teaching Scores on the MacCAT-CA*, 31 L. & HUM. BEHAV 419 (2007); Jodi L. Viljoen & Thomas Grisso, *Prospects for Remediating Juveniles’ Adjudicative Incompetence*, 13 PSYCHOL. PUB. POL’Y & L 87 (2007).
21. See, e.g., UCLA SCHOOL OF LAW, THE IMPACT OF PROSECUTING YOUTH IN THE ADULT CRIMINAL JUSTICE SYSTEM: A REVIEW OF THE LITERATURE (2010); Robert Hahn et al., Ctrs. for Disease Control & Prevention, Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult System, 56 MORBIDITY AND MORALITY WEEKLY REPORT 1 (2007), <https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>.

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