



JUVENILE COURT YOUTHFUL OFFENDER

Office of the Defender General
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How we got to where we are.

- At common law there was no “juvenile” status.
- Everyone was either an “infant” – incapable of *any* responsibility – or an “adult” and subject to the full force of the criminal justice system.
- The consequences of “adult” crimes were drastic – prison was not an option.
- First juvenile court in 1899 – Chicago settlement house movement.
- “Flexible, nonadversarial, and informal”
- But juvenile courts became TOO flexible...

Flexible, nonadversarial, informal, what's not to like?

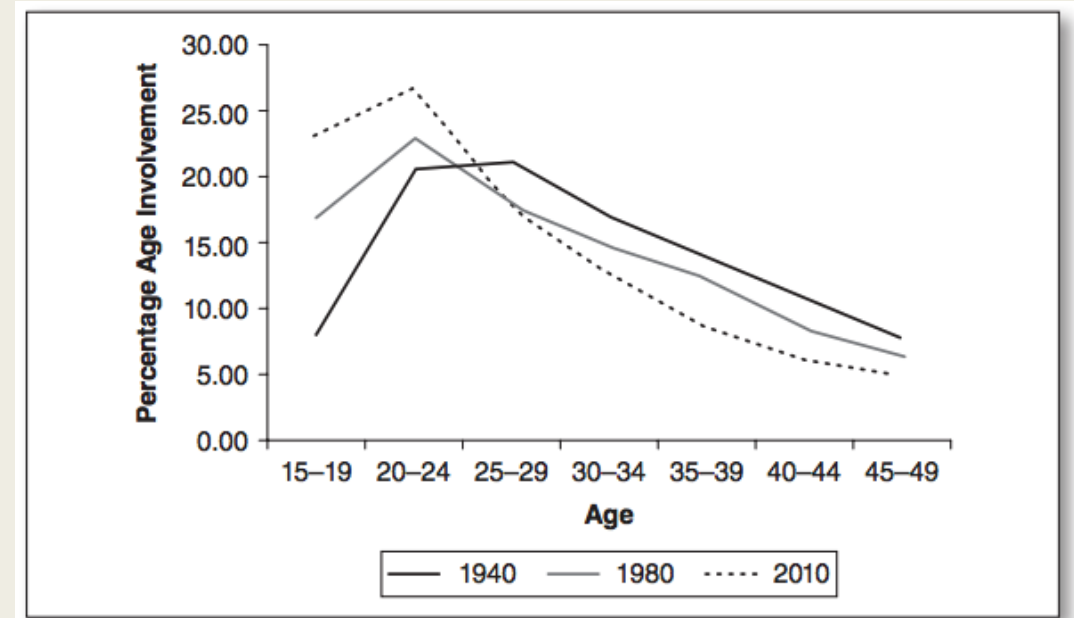
- In re Gault, 387 U.S. 1 (1967) – 15 year old boy in Arizona made an “indecent” phone call to an adult neighbor. Police arrested him, brought him to court with no formal charges, he was tried with no witnesses, no record of the proceedings, no right to appeal, and committed to the “Industrial School” until age 21.
- “Juvenile Court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure.”
- Grants juveniles most of the rights protected by the 5th and 6th Amendments.

Trend of juvenile criminalization and incarceration – then science happens

- 1980s and 1990s, states move to decrease access to criminal courts, increase sentences on low-level offenders, impose incredibly long sentences on serious offenders, target enforcement against youth.
- Prior to 1990s, very limited understanding of adolescent brain development.
- Functional MRI changes everything – “adult” processing doesn’t happen until mid 20s. Until then, processing is driven by impulsivity, peer influence, risk-taking, reward-seeking. Adolescent decision-making is uninhibited by concern about consequences.

The science is consistent with the statistics.

- Most young people “age out” of criminal behavior in their mid-20s.
- Many “intense” interventions (out-of-home placement, close supervision, long terms of probation, behavioral therapy) have *negative* effects on low-level young offenders.
- The severity or violence of a youthful crime does not correlate with continued offending one way or another.



Turning the tide: Graham, Roper, Miller, J.D.B., and state-level reforms

- US Supreme Court takes on a series of cases about treating juveniles like adults:
 - *No death penalty for offenses committed by juveniles*
 - *No LWOP for non-homicide offenses committed by juveniles*
 - *No automatic LWOP for homicide offenses committed by juveniles*
 - *Questions about consent and voluntariness must be looked at from the perspective of the child*
- States increase age of juvenile court, add diversion and community-justice programs, move toward community supervision and treatment, move to non-incarcerative placements where custody is necessary.

Juvenile Delinquency vs. Criminal Offense

Juvenile Court

- No criminal record
- Confidential proceedings
- No DOC involvement
- “Adjudication” instead of conviction
- No jury – trial by judge
- “Disposition” instead of sentence
- DCF supervision of probation
- Punishment is *not* a goal
- Record is confidential
- Supervision to age 19.5

Criminal Court

- Creates public record
- Public proceedings
- DOC custody or supervision
- Criminal conviction
- Right to jury trial
- Criminal sentence based on statute
- DOC supervision of probation
- Punishment is a goal
- Record is public
- Supervision/custody set by statute

Youthful Offender

- Criminal record is created unless the youth successfully completes the treatment and probation conditions
- Proceedings are confidential if the youth successfully completes treatment and probation conditions
- DOC and DCF work together to design appropriate plan of probation and treatment – supervision may be by DCF or DOC or both
- Criminal conviction is deferred – if the youth successfully completes treatment and probation it is never entered, if the youth is unsuccessful the conviction is entered and the case proceeds to a regular criminal sentencing
- Youth waive their right to a jury trial
- Criminal sentence hangs over the case unless and until treatment and probation are completed successfully
- Supervision to age 22

Court Diversion

- Chance to avoid court process entirely
- Flexible approach to meet offenders where they are
- If successful, never returns to court
- Not a supervision mechanism
- Requires support of prosecutor
- Often includes a restorative and reorative component
- If unsuccessful, back to square one
- A “light touch” approach – appropriate for *many* cases

Who goes where?

Under age 10:

- Never to criminal court
- Never to youthful offender
- Juvenile court only for murder

Age 10-12:

- Never to criminal court
- Never to youthful offender
- Juvenile court for any offense

Age 12-14:

- Big 12 can *transfer* to criminal court
- Big 12 can *transfer* to YO
- All offenses must *start* in juve court

Age 14-16:

- Big 12 must *start* in criminal court or YO
- Big 12 can transfer to YO
- Juvenile court only for all other offenses

Age 16-18:

- Big 12 must *start* in criminal court or YO
- Big 12 can transfer to YO
- All other offenses start in juvenile court, felonies can transfer to criminal or YO

Age 18-22:

- All offenses can *start* in criminal court
- All offenses can *transfer or start* as YO
- Never in juvenile court (yet)

The “Big 12” – 33 V.S.A. § 5204(a)

- The twelve felonies that are treated different:
 - *Arson causing death*
 - *Assault and robbery with a dangerous weapon*
 - *Assault and robbery causing bodily injury*
 - *Aggravated assault*
 - *Murder*
 - *Manslaughter*
 - *Kidnapping*
 - *Unlawful restraint*
 - *Maiming*
 - *Sexual assault (only by force or coercion)*
 - *Aggravated sexual assault*
 - *Burglary of an occupied dwelling*

How does YO status work?

1. Case starts in criminal court or is direct filed as a YO case (only if it *could* be filed in criminal court).

2. Case is transferred to the juvenile division for a YO consideration hearing.

3. Within 15 days, DCF risk screening and a YO plan or a recommendation that the court not grant YO status.

4. Within 35 days, hearing to determine whether a) public safety will be protected by YO status; b) youth is amenable to treatment and rehabilitation as YO; and c) sufficient services exist in the YO system to meet treatment and rehabilitation needs. Only YO if “yes” to all three requirements.

5. If YO status is not granted, back to criminal court. If granted, proceeds to confidential bench trial.

6. If court finds youth committed offense, conviction is deferred and youth is placed on probation with plan of treatment.

7. If youth successfully completes probation and treatment by age 22, records are sealed/expunged.

How does YO status **NOT** work?

7. If a youth on probation violates probation or fails to complete treatment conditions, VOP is filed by DOC or DCF.

8. VOP hearing – if there was a violation, court can modify conditions or revoke YO status and send it to criminal court.

9. If YO status is revoked, the conviction is entered and the case goes to criminal court for a regular sentencing on the underlying charges.

YO status is a big deal.

- YO supervision and treatment is an intensive intervention – often more so than criminal conviction supervision.
 - *Supervision by DCF and DOC*
 - *Treatment and rehabilitation conditions rather than monitoring*
 - *Oversight by the juvenile court*
 - ***Open** criminal sentence hangs over the process the whole time*
- Completely inappropriate for low-risk youth, usually inappropriate for low-level offenders
- Only inappropriate for high-risk, high-level offenders where it cannot protect the public or where services are not available.
- Backstopped by criminal sentencing, criminal conviction, public record