

# S.4, February 17 Testimony

## Office of the Defender General

A (tiny) bit of  
history

The Ping  
Pong  
Problem

Expanding  
the Big 12 to  
the Big 50+

The problem  
with  
discretion

Process

The current  
state of  
Juvenile/  
YO/Criminal

The Ping  
Pong  
Solution

Why does  
age matter  
so much?

## Juvenile Justice Stakeholders Group

- Juvenile justice law is complex and is much more 'statutory' than criminal or civil law
- Informal group of experts from prosecution, defense, judiciary, DCF, DOC, Victims Representatives, etc.
- Usually works over the summers and fall to work through problems and processes in juvenile practice to propose legislation.
- Every single bill dealing with juvenile justice in the last many years has come from the JJ stakeholders group

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- Juvenile court wasn't invented until 1899 - Chicago
- Before that, nobody under the age of 14 could be prosecuted for any misdemeanor
- Children over the age of 14 could be prosecuted for felonies
- Even after age 14, children could not be prosecuted for unintentional misdemeanors until age 18, and could not be prosecuted for any offense of inaction until age 21
- The first juvenile courts were not designed to keep kids *out* of adult court, but to bring kids who were not being prosecuted for misdemeanors into a juvenile court system (actually only for certain kids)
- The first juvenile courts acted as "super-parents," there were no rules, no evidence, no lawyers, no due process
- In 1967, the USSCT said that children couldn't be treated like that - if you are going to restrict kids' liberty, you must give them due process rights - that's where we get our modern juvenile courts

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## Juvenile court is its own thing:

- No criminal record
- Non-public proceeding
- No adult facilities
- Focus on rehabilitation and restoration rather than punishment
- Age limited (0-19)
- Didn't exist at common law - purely a creation of statute

## Adult court is a traditional:

- Proceedings are public and result in a criminal record
- Those convicted are incarcerated in adult prisons
- Focus on punishment, retribution, and deterrence rather than rehabilitation and restoration
- Our criminal courts look today very similar to they way they did in 1215

So what is  
YO?

## The simplest definition:

- Youthful offender is an adult, criminal, deferred adjudication program for young people charged with adult crimes that uses the juvenile court system to provide confidentiality and age-appropriate services

## Why is it an adult proceeding?

- If you violate your YO probation, even though you were supervised by a juvenile probation officer, you will be sentenced to an adult sentence to be served in an adult prison - that means it's an adult status.
- In order to be treated as a Youthful Offender, a youth must choose to waive their Sixth Amendment rights to a jury trial and to a public proceeding, both rights that apply to criminal cases, but not to juvenile cases.

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# An example:

- Biff is 16 and he and a friend light a porta-potty on fire - charged with first degree arson.
- Because of Biff's long history of burning porta-potties and other malfeasance, the prosecutor decides that Biff should be given a chance to rehabilitate himself, but should be sent to prison as an adult if he cannot.
- Prosecutor moves to transfer the case to the criminal division, and after a hearing the court agrees and Biff's case is transferred to the criminal division.
- In the criminal division, Biff's attorney moves for Youthful Offender status, arguing that though Biff may not be appropriate for the juvenile system, he would be better supervised by juvenile probation officers and that if he is successful he should have the chance to avoid a criminal record, and after another hearing, the case is transferred to YO status and the venue is moved to the juvenile division.

	Murder	Big 12	Non-Big-12-Felony	Misdemeanor
0-10	Juvenile	No liability (CHINS)	No liability (CHINS)	No liability
10-12	Juvenile	Juvenile	Juvenile	Juvenile
12-14	Juvenile, but transferred to criminal on motion of the prosecutor	Juvenile, but transferred to criminal on motion of the prosecutor	Juvenile	Juvenile
14-16	Criminal	Criminal	Juvenile	Juvenile
16-19	Criminal	Criminal	Juvenile, but transferred to criminal on motion of the prosecutor	Juvenile
19+	Criminal	Criminal	Criminal	Criminal

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# The problem is too many hearings, the solution is to combine the hearings.

- The evidence at a "transfer up" hearing is usually very similar (if not identical) to the evidence at a "YO consideration" hearing.
  - Focus on history of risky/violent behavior
  - Public safety
  - Probability of success at rehabilitation
  - Extent of harm to the victim and community
  - Maturity of the child
  - Availability of social and familial supports
- Under the current laws, there must be two separate hearings, often held months apart, to reach the eventual goal of moving a juvenile from the juvenile court system to YO status
- Proposal is to simply combine the hearings - allow the court to first determine whether the state has overcome the presumption that the child should be in juvenile court and if criminal status is appropriate, move **immediately** to consider whether YO status is appropriate.

Why won't  
the state's  
proposal  
work?

# Unconstitutional:

- The state's proposal is to scrap the YO system entirely and replace it with a system of sealed criminal court proceedings to accomplish the same of things and the YO process: confidentiality and discretion but still with the full force of the adult penal system behind it.
- Connecticut tried to do exactly the same thing - rather than create an expansion of their juvenile courts, they created a presumption that any juvenile charged in the adult courts as an adult would be in a sealed and confidential court.
- The Second Circuit held that it was a violation of the First Amendment because criminal courts (unlike juvenile courts) are traditionally open forums and cannot be closed to the public in any kind of "blanket" manner.

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# The significance of the Big 12:

- The Big 12 are the most serious felonies in Vermont law and more-or-less reflect the original 14 common-law capital felonies
- If a child as young as 14 is charged with a Big 12 offense, they are treated as an adult.
- **14 is very, very, very young**
- The state does not even have the capacity to handle the small handful of juveniles it treats as adults today - to more than double the number of children that we put through the adult system.



Examples



- Some of the administration's proposals make sense and will make the law more consistent with practice:
  - Aggravated murder, aggravated domestic assault, willful injuries caused by explosives.
- Others make no sense at all:
  - Including conspiracy, for example, would require two 14 year-olds who steal candy bars together to be publicly arraigned in adult court and treated as adults (conspiracy to receive stolen property)
  - Including any crime enhanced with a "hate motivated crime" enhancement would mean that 14 year old children who write offensive and inappropriate language on a school desk would be treated as adult criminals.
  - Including human trafficking makes no sense because there are no children who are engaged in human trafficking who are not themselves victims.

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**Brain  
Development**

**Brain  
Change**

**Brain  
Systems**

**The Effects**

# Principles of Adolescent Brain Development

- Adolescence - from early teens to mid-20s - is a period of increased brain plasticity
- Brain maturation is taking place as connections inside the brain are developed
- Different parts of the brain mature at different rates
- The different developmental timetables of the different parts of the brain are what creates the characteristics that we call adolescence

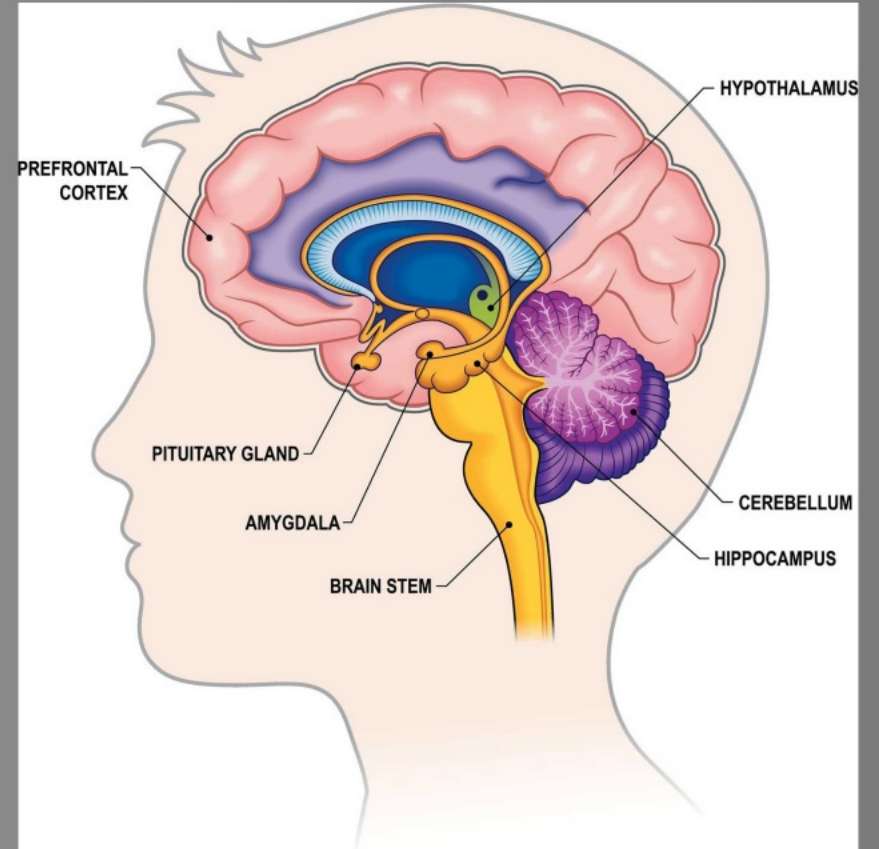
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# Big Brain Parts



**Limbic  
System**

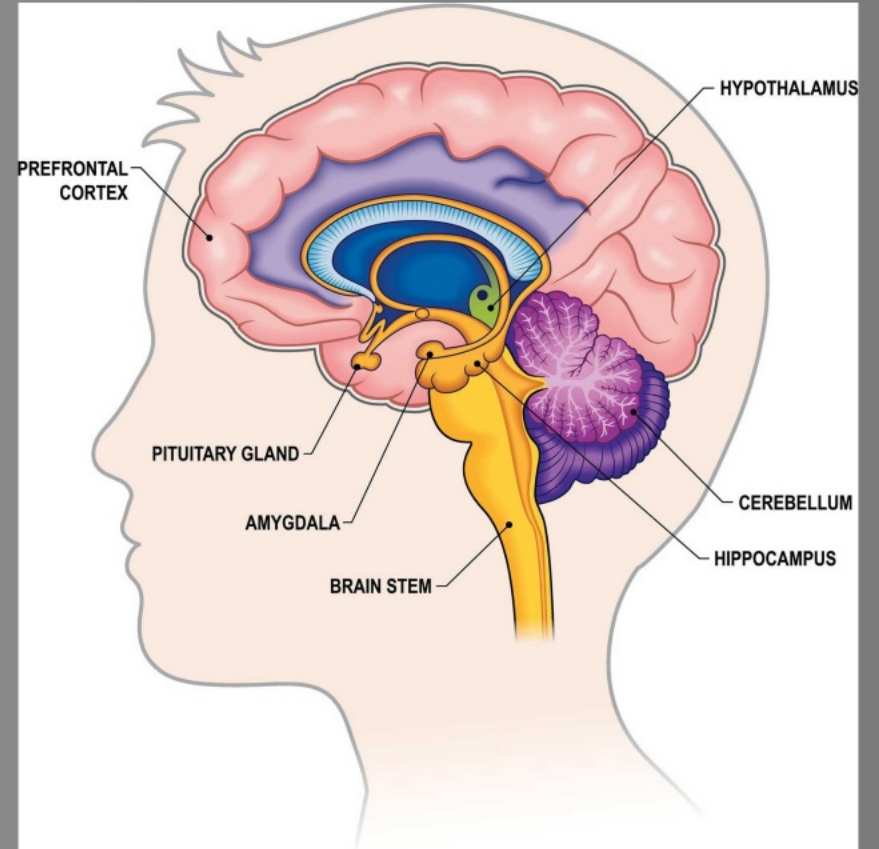
**Prefrontal  
Cortex**

# Limbic System - Emotion and Reaction

- Process emotions
  - "I'm so angry!"
  - "I'm in love!"
- Associate emotion with memory
  - "I see the picture of my brother and I get so mad."
  - "When I smell peonies it makes me miss my grandmother."
- Understand social information
  - "They think I'm a jerk."
- Experience reward and punishment
  - "This feels really good!"
  - "This feels awful!"



# Big Brain Parts



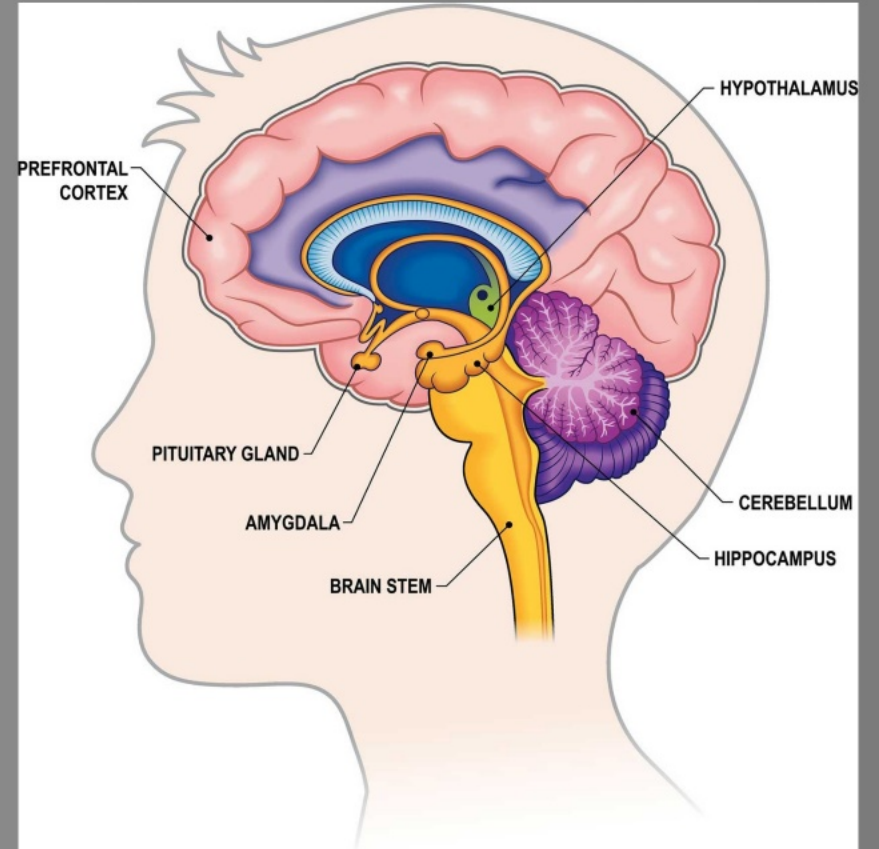
**Limbic  
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# Prefrontal Cortex - Decision Making

- Deliberative thinking
  - "I wonder whether I have enough time to watch TV and get my homework done."
- Logical reasoning
  - "If I don't spend enough time on homework, my grades will go down."
- Planning ahead
  - "I'm going to do my homework now so I don't have to do it on the bus."
- Regulating impulses
  - "Maybe I should talk with my parents before I decide to tell my teacher I'm never doing homework again."

# Big Brain Parts



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# So what happens?

**PFC  
Efficiency**

**Limbic  
Arousal**

**Faster  
Connections**

# Prefrontal Cortex Efficiency

- Throughout adolescence, the prefrontal cortex becomes more efficient
- In early adolescence, the prefrontal cortex isn't well developed and processes more slowly
- Later in adolescence, the prefrontal cortex processes more efficiently, but it is still "bottlenecked" by inefficient communication with the rest of the brain

# So what happens?

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# Limbic Arousal

- Throughout adolescence, the limbic system is hyper-aroused
- Everything the limbic system does is elevated - emotions feel more intense, reactions are more sudden, connections between perceptions and feelings are heightened
- This is an evolutionary trait - fight or flight reactions, stimulus-response, and developing protective memories



# So what happens?

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# Connecting the Prefrontal Cortex

- In late adolescence (into the mid-20s), the connections between the prefrontal cortex and the rest of the brain are "pruned."
- Connections become faster and more efficient
- Gives the brain "access" to the prefrontal cortex for processing that could otherwise take place in the limbic system
- "Balances" the prefrontal cortex with the limbic system

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**Prefrontal  
Cortex  
Immaturity**

**Limbic  
Arousal**

**Connection  
Development**

**Let's See  
Data**

# Immature PFC

- Adolescents are less likely to consider future consequences of present actions
- Adolescents are less likely to plan ahead
- Adolescents are less able to control impulses
- Adolescents are less likely to be able to simultaneously consider risks and rewards of a decision
- Heavily influenced by peers - relying on others to do the "deciding"
- Adolescents spend less time thinking about decisions before they make them

**Prefrontal  
Cortex  
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# Limbic Arousal

- Adolescents are especially sensitive to emotional cues or memories
- Adolescents are especially sensitive to social status information
- Adolescents seek rewards and pleasurable feelings
- Adolescent "highs" are higher and "lows" are lower
- Highest rates of accidental self-injury and death
- Inability to defer reward or delay gratification
- Adolescents engage in risky or thrill-seeking behavior compulsively



**Prefrontal  
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# Brain Connections

- Adolescents are likely to react to a situation - utilizing the limbic areas of the brain - rather than processing the situation - using the prefrontal cortex
- Young adults (in the brain development sense) have faster connections between the PFC and the rest of the brain and the PFC begins to regulate emotion, response, and reaction more than before

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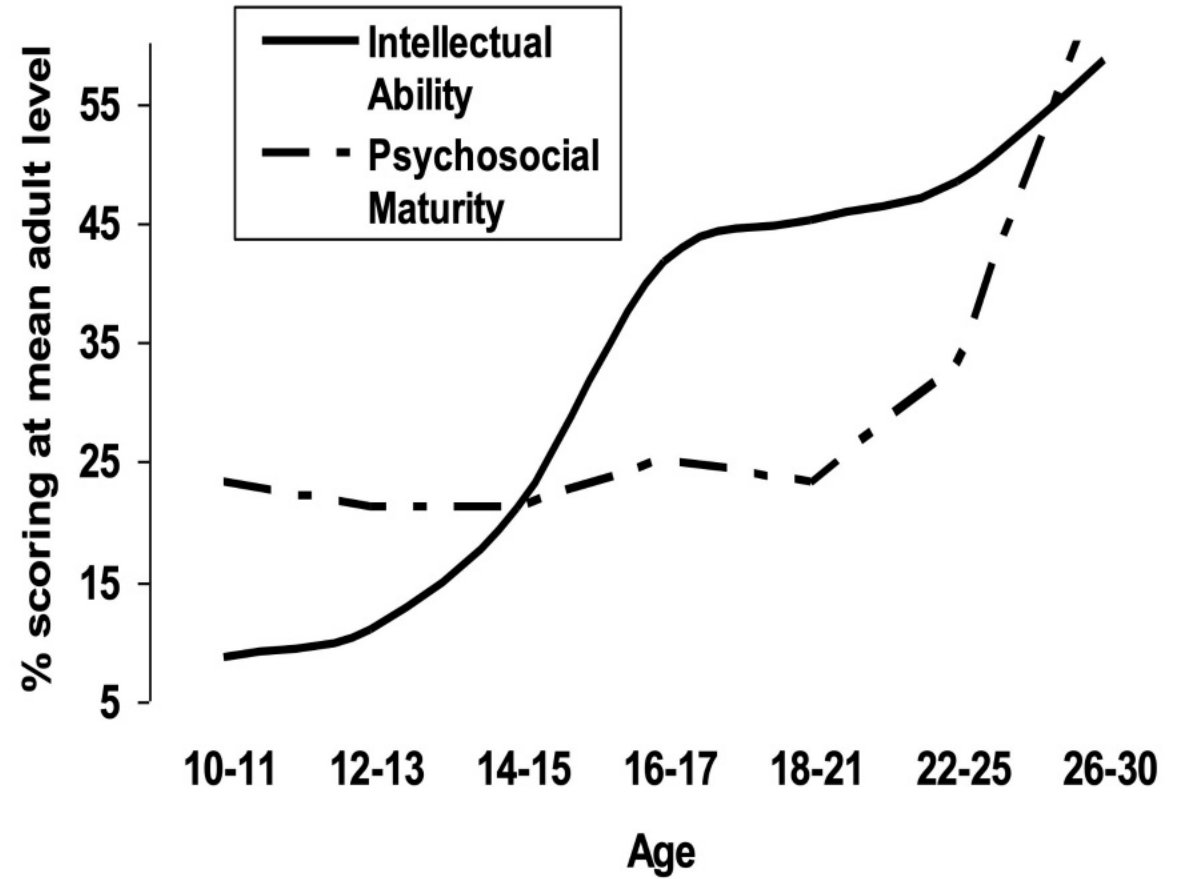
**Let's See  
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**Maturity**

**Pruning**

**Age/Arrest**

**Universality**

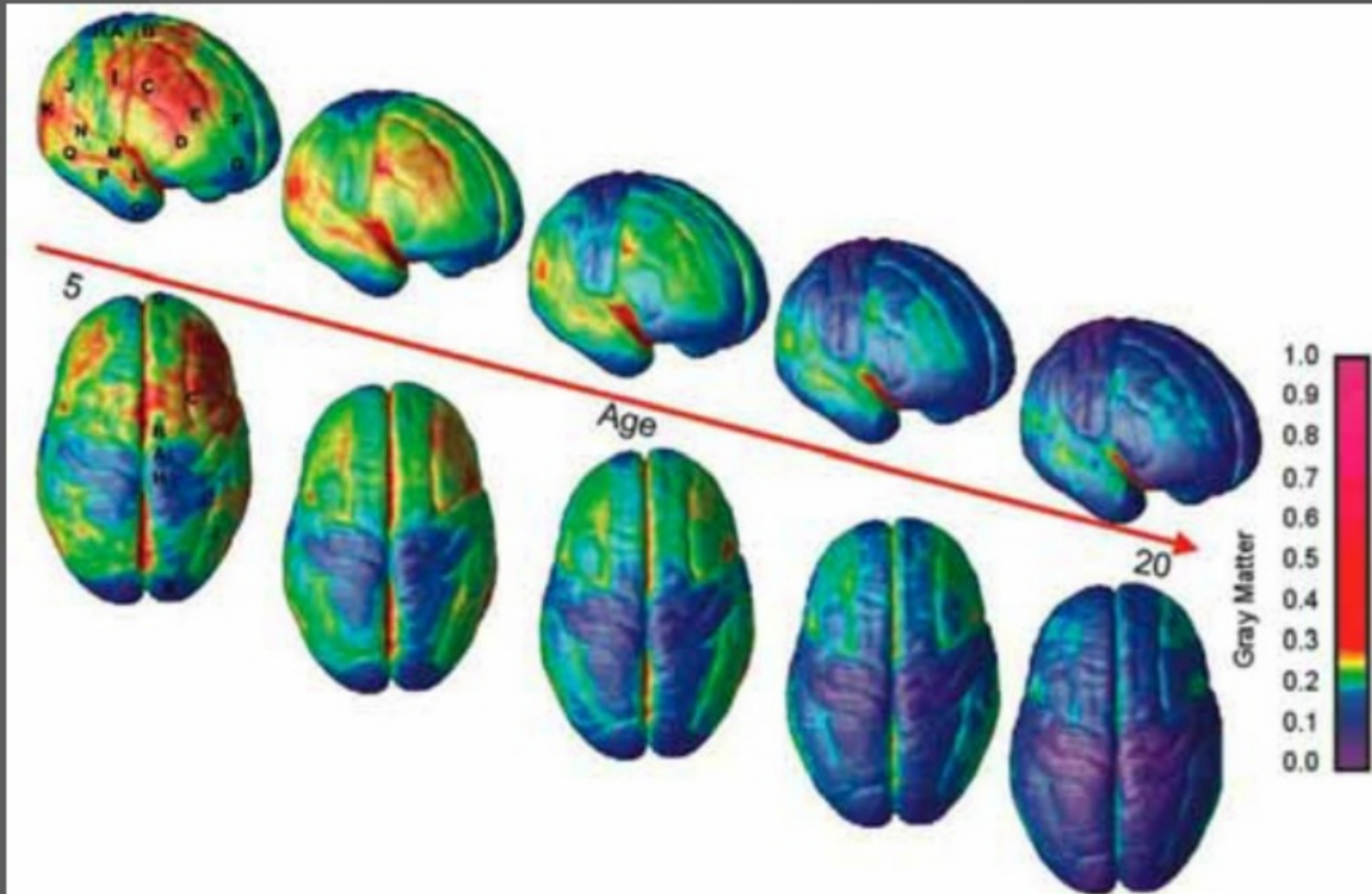


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**Maturity**

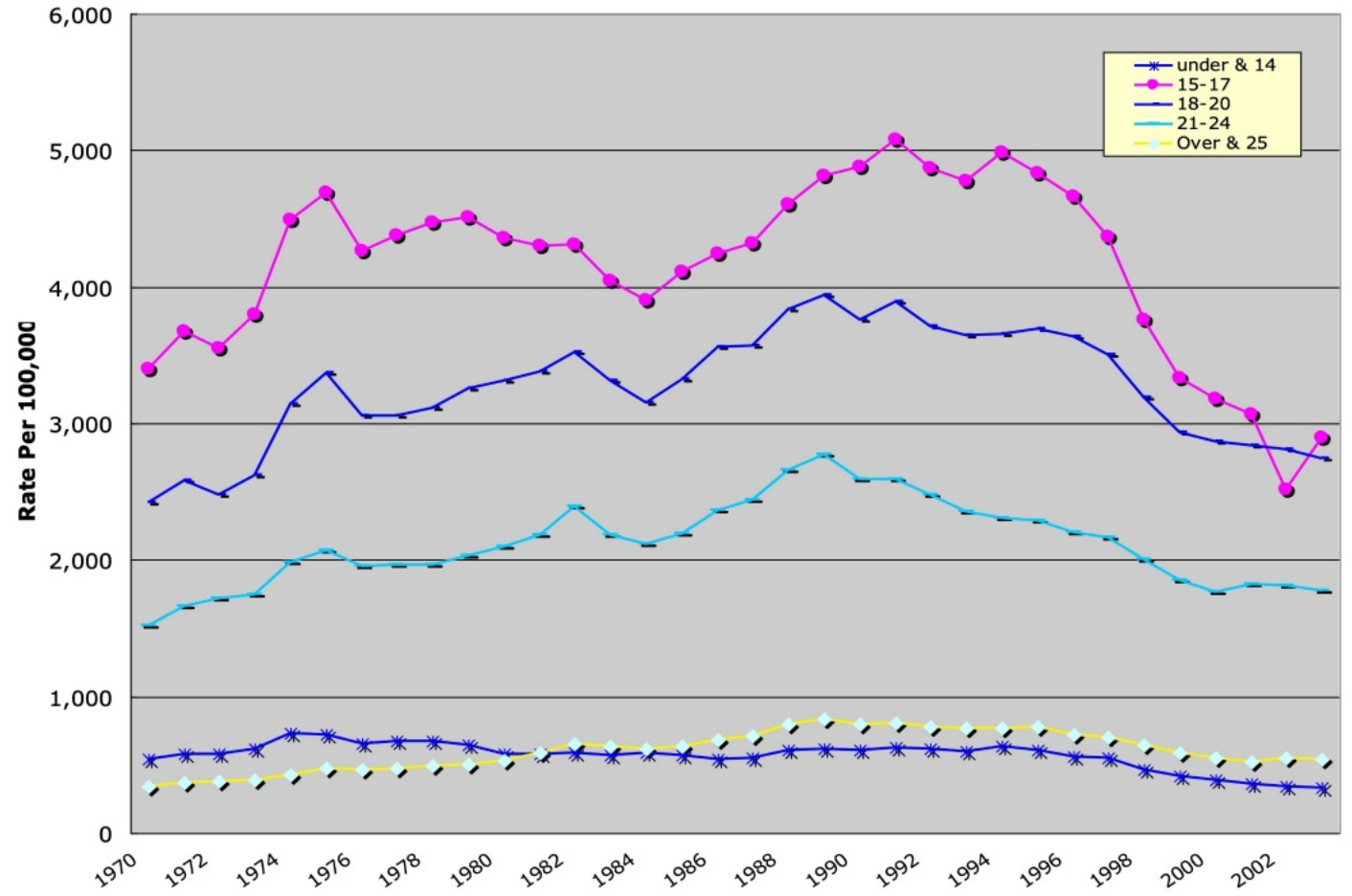
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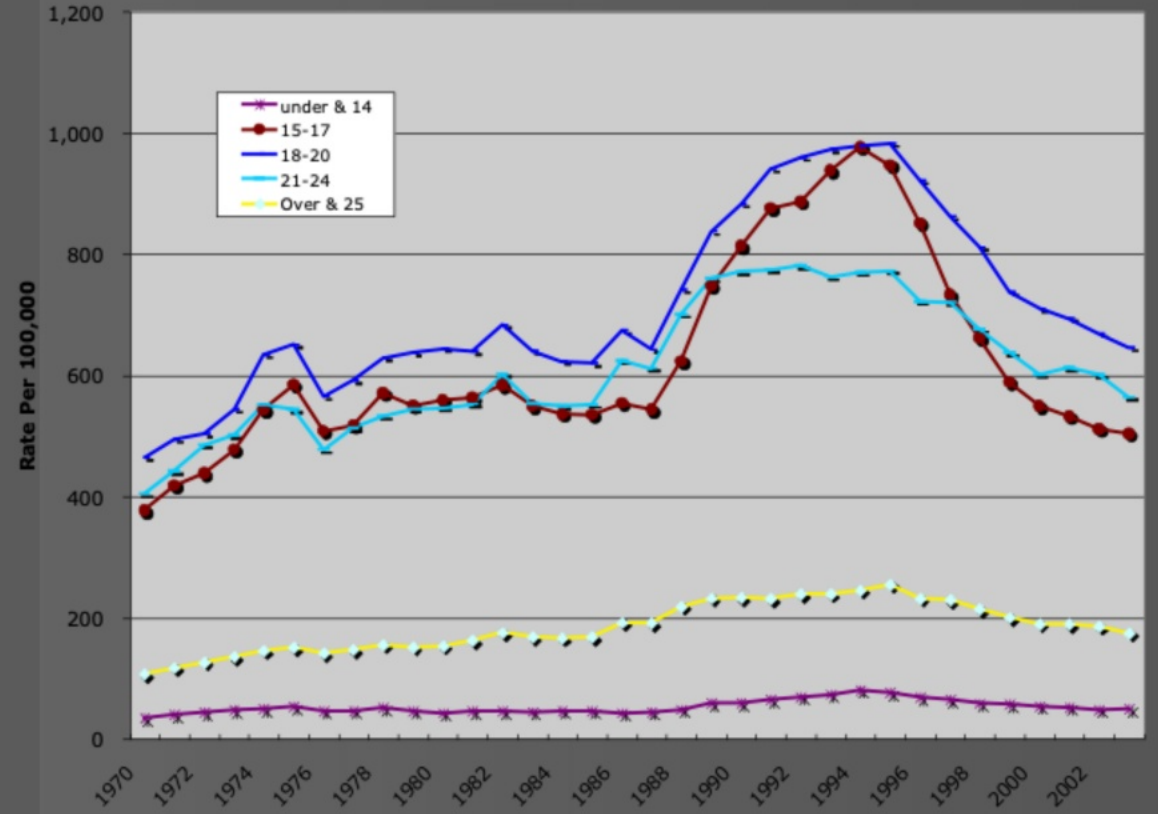
**Universality**



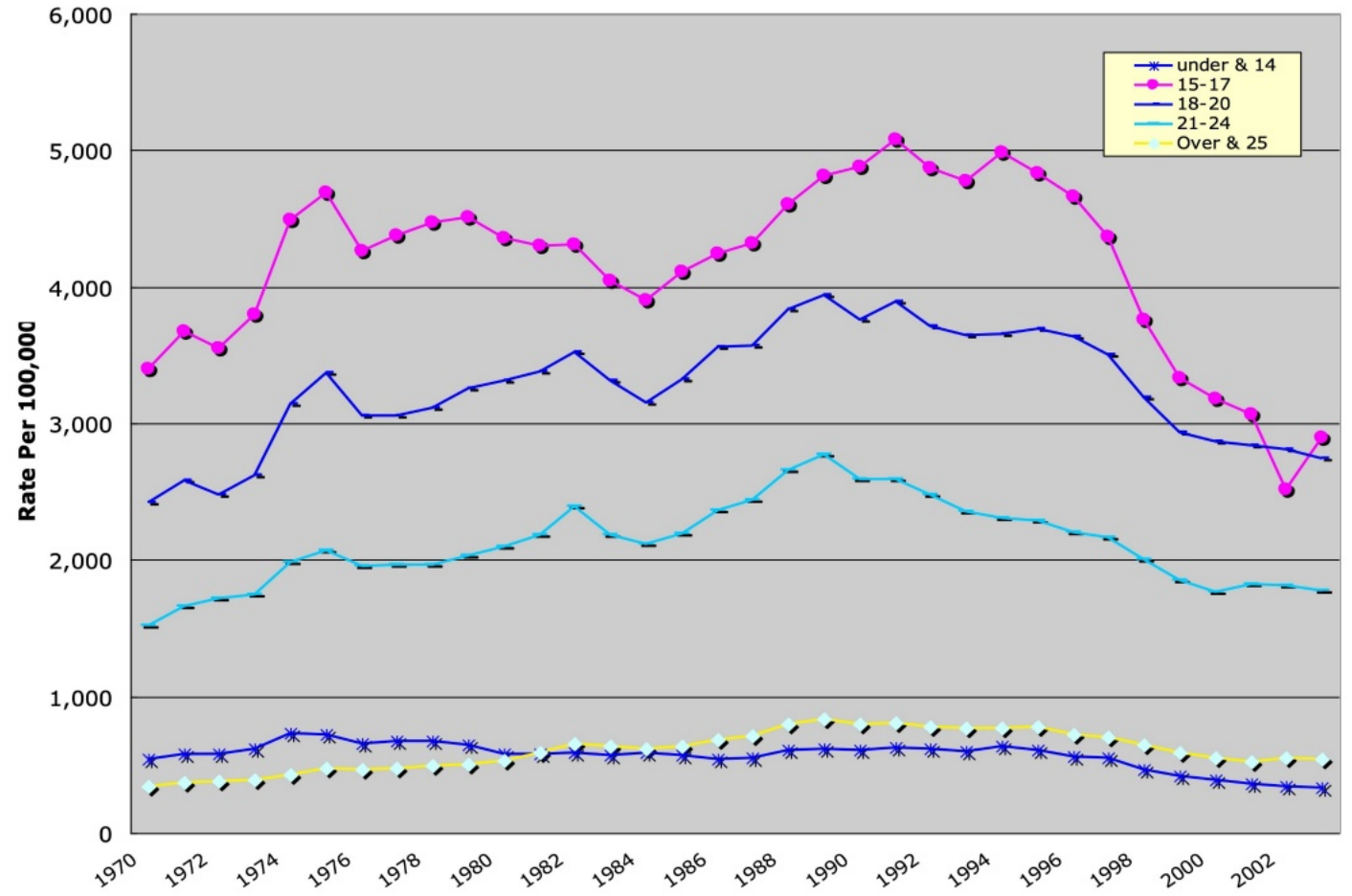
### Age-Specific Arrest Rate For Index Crimes, 1970-2003



**Age-Specific Arrest Rates For  
Violent Index Felony Crimes, 1970-2003**



### Age-Specific Arrest Rate For Index Crimes, 1970-2003



**Maturity**

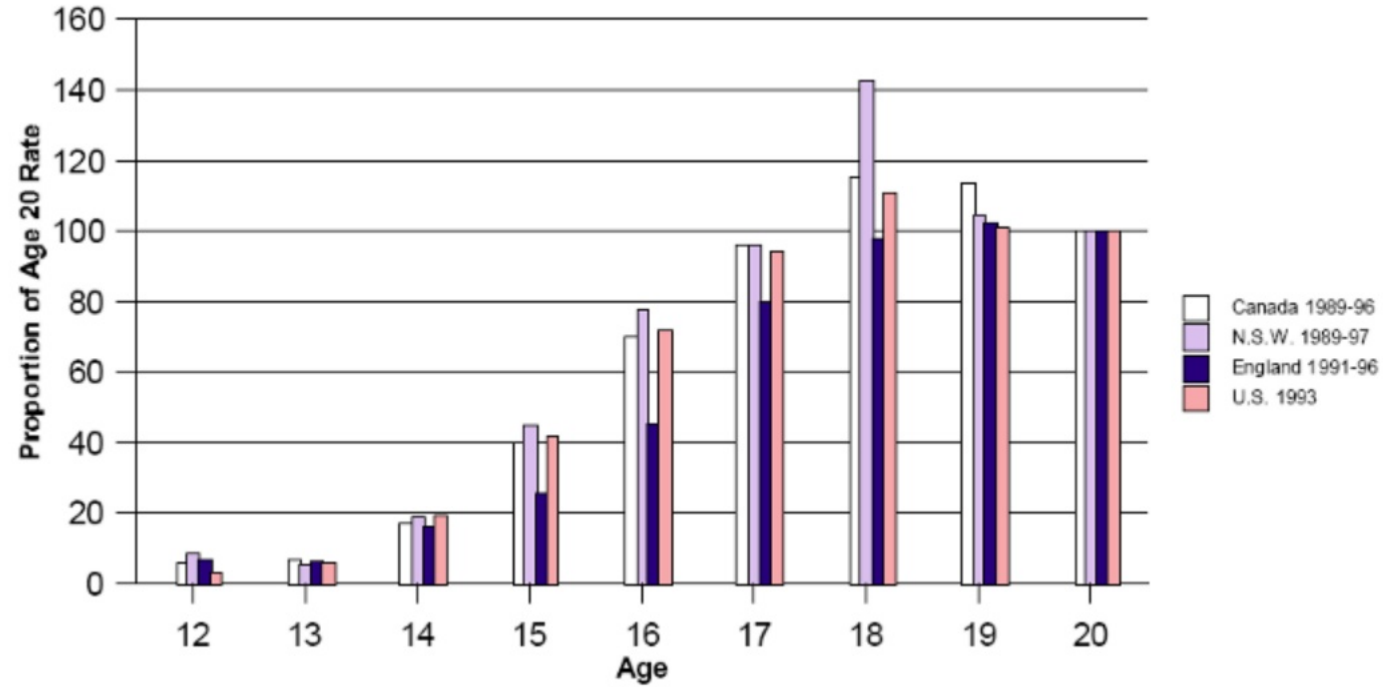
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# Universality - Is the data the same everywhere?

Figure 7.5 (p. 127)



**Maturity**

**Pruning**

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# The more discretion is given to prosecutors and judges, the more biased the outcomes are.

- Study after study has shown that judges sentence black convicted defendants to longer prison terms than similar white defendants
- Despite similar rates of offense, black children in Chittenden County were 700% more likely to be incarcerated at Woodside than non-black children
- As recently as 2018, a Cornell/UVM study showed that black drivers in Vermont were 400% more likely to have their car searched in a stop, but were 20% less likely to have that search result in contraband.
- In Burlington, 20% of juveniles transferred to the adult court system were black even though only 6 percent of the kids in Burlington are black.

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