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## Young Adulthood as a Transitional Legal Category: Science, Social Change and Justice Policy

Elizabeth S. Scott,\* Richard J. Bonnie,\*\* Laurence Steinberg\*\*\*

In the past decade, much attention has focused on developmental brain research and its implications for the regulation of crime. Public and policy interest has been directed primarily toward juveniles: In light of recent research, courts and legislatures increasingly have rejected the punitive response of the 1990s and embraced a developmental approach to the crimes of young offenders.<sup>1</sup> Of particular importance in propelling this trend has been the framework offered by the Supreme Court in a series of four Eighth Amendment opinions that have rejected harsh adult sentences for juveniles.<sup>2</sup> The decisions, supported by adolescent brain research,<sup>3</sup> rested on two empirically-based principles: First, juvenile offenders, due to their developmental immaturity, typically are less culpable and deserve less punishment than their adult counterparts, and, second, because their criminal conduct is the product of immaturity, most juveniles have a greater potential to reform than do adults. This framework has influenced broader sentencing reforms for juvenile offenders.<sup>4</sup> It has also led policymakers to focus on the impact of juvenile justice programs and settings on youth development and crime reduction.<sup>5</sup>

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<sup>1</sup> See, e.g., ELIZABETH S. SCOTT & LAURENCE STEINBERG, *RETHINKING JUVENILE JUSTICE* 206—13 (Harv. Univ. Press, 2008). See generally NATIONAL RESEARCH COUNCIL, *REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH* (RICHARD BONNIE, BETTIE CHEMERS & JULIE SCHUCK, (EDS.)(2013, hereinafter NRC, *REFORMING JUVENILE JUSTICE*.

<sup>2</sup> See *Miller v. Alabama*, 132 S. Ct. 2455 (2012) (prohibits mandatory life imprisonment without parole (LWOP) sentence or homicide by juvenile); *Montgomery v. Louisiana*, 577 U.S. \_\_ (2016) (*Miller* created substantive constitutional right); *Graham v. Florida*, 560 U.S. 48 (2010) (Eighth Amendment prohibits juvenile LWOP for non-homicide offense); *Roper v. Simmons*, 543 U.S. 551 (2005) (prohibits death penalty for crime by juvenile) .

<sup>3</sup> See *Miller. Id.* at 2464-65 (citing developmental brain research showing differences between juveniles and adults); *Graham*, 560 U.S. at 68 (same).

<sup>4</sup> See Elizabeth Scott, Thomas Grisso, Marsha Levick, & Laurence Steinberg, *The Supreme Court and the Transformation of Juvenile Sentencing*, *MODELS FOR CHANGE* 1, 25—29 (2015), <http://www.modelsforchange.net/publications/780>Scott.

<sup>5</sup> See NRC, NRC, *REFORMING JUVENILE JUSTICE*, supra note 1.

More recently, advocates and some policy makers have argued that the developmental research should shape the law's response to young adult offenders.<sup>6</sup> Over the past decade, developmental psychologists and neuroscientists have found that biological and psychological development continues into the early 20s, well beyond the age of majority.<sup>7</sup> Recently, researchers have found that 18 to 21 year old adults are more like younger adolescents than older adults in their impulsivity under conditions of emotional arousal.<sup>8</sup> It is also well established that young adults, like teenagers, engage in risky behavior, such as drinking, smoking, unsafe sex, using drugs, and offending, to a greater extent than older adults.<sup>9</sup> The possibility that much risky behavior, including involvement in criminal activity, is a product of psychological and social immaturity, raises the question of whether the presumption of reduced culpability and greater potential for reform should be applied to young adult offenders as well as juveniles.

Major reform of this kind would represent a substantial departure from a what has become a commonly recognized boundary in the justice system between juveniles and adults, marked by the age of majority; legal adults charged with criminal acts are typically subject to a standard punishment regime that applies to all offenders whether they are 18 or 35 years old.<sup>10</sup> This response is not surprising. Legal line-drawing is inevitably arbitrary at the margins; age 18, the default age of majority, seems like a natural dividing line between adult and juvenile status in the justice system.<sup>11</sup> Moreover, individuals between the ages of 18 to 21 commit a large portion of serious offenses and have high recidivism rates.<sup>12</sup> Thus, limiting the rehabilitative and more lenient approach of the juvenile system to youths who are legal minors might be justified on

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<sup>6</sup> Vincent Schiraldi, Bruce Western & Kendra Bradner, *Community-Based Responses to Justice-Involved Young Adults*, HARV. KENNEDY SCHOOL: NEW THINKING IN COMMUNITY CORRECTIONS No. 1 (Sept. 2015) (recommending that young adults be dealt with in juvenile system. New York mayor de Blasio has appointed officials to address unique challenges posed by young adults in the justice system. Press release, at <http://www1.nyc.gov/office-of-the-mayor/news/082-14/mayor-de-blasio-appoints-heads-key-criminal-justice-positions#/0>

<sup>7</sup> LAURENCE. STEINBERG, *AGE OF OPPORTUNITY: LESSONS FROM THE NEW SCIENCE OF ADOLESCENCE* (2014).

<sup>8</sup> Alexandra Cohen, Kaitlyn Breiner, Laurence Steinberg, Richard Bonnie, Elizabeth Scott, Kim Taylor-Thompson. and B.J. Casey, When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Non-emotional Contexts. 4 *PSYCHOLOGICAL SCIENCE* 549 (2016).

<sup>9</sup> Different types of risky behavior peak at different ages. For example, binge drinking peaks at age 20, while involvement in criminal activity peaks at age 18. See t.a.n. \_ to \_infra

<sup>10</sup> Elizabeth Scott, *The Legal Construction of Adolescence*, 29 *HOFSTRA L. REV.* 547, (2000), hereinafter, *Construction of Adolescence*.

<sup>11</sup> Id. at \_

<sup>12</sup> Craig A. Perkins, U.S. Dep't of Justice Special Report, *Age Patterns of Victims of Serious Violent Crime* 2 (1997) (finding that 18-21 year old population commits the highest percentage of serious violent crime out of all age groups), <http://www.bjs.gov/content/pub/pdf/apvsvc.pdf>.

public safety grounds. Finally, until recently, no compelling scientific argument existed for treating young adults differently than their older counterparts; not so long ago, developmentalists thought that 18 year olds were biologically mature and that young adult brains were fully developed.<sup>13</sup>

In other legal domains, the age at which children attain adult status is often raised or lowered from the default age of majority (age 18) when social welfare interests are served.<sup>14</sup> Is it time to reconsider the law's approach to young adult offenders in light of the recent scientific research? In our view, modest policy reform is justified, although the developmental research suggesting that young adults are not fully mature is in an early stage. In part we reach this conclusion because the scientific research is reinforced by demographic data indicating that the social transition to independent adulthood extends well beyond the age of majority. In contemporary society, age 18 no longer marks the assumption of mature adult roles. Only a small percentage of young adults today marry or live self-sufficient, adult lives. Instead, this period has become a critical developmental stage of extended dependency and investment in acquiring the skills necessary to accomplish the transition to mature adulthood.<sup>15</sup> For many young adults in the justice system, the prospect of navigating this transition successfully is dim.

This essay seeks to advance discussions about the potential implications for justice policy of recent neuroscience, psychological, and sociological research on young adults. In doing so, we emphasize the importance of not exaggerating either the empirical findings or their policy relevance. The available research does not indicate that individuals between 18 and 21 are indistinguishable from younger adolescents in attributes relevant to offending and punishment.<sup>16</sup> Thus, we are skeptical on both scientific and pragmatic grounds about the merits of the proposal by some advocates that juvenile court jurisdiction should be categorically extended to age 21.<sup>17</sup> But the research does suggest that young adults, like juveniles, are more prone to risk-taking and

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<sup>13</sup> National Research Council and Institute of Medicine Forum on Adolescence; Kipke MD, editor. *Adolescent Development and the Biology of Puberty: Summary of a Workshop on New Research*. Washington (DC): National Academies Press (US); 1999.

<sup>14</sup> See generally discussion in Scott *Construction of Adolescence* supra note 10.

<sup>15</sup> INSTITUTE OF MEDICINE AND NATIONAL RESEARCH COUNCIL, *INVESTING IN THE HEALTH AND WELL-BEING OF YOUNG ADULTS* (RICHARD J. BONNIE, CLARE STROUD AND HEATHER BREINER, EDS., 2014 (hereinafter IOM./N RC., *YOUNG ADULTS* (report finding young adulthood in contemporary society to be vulnerable period of extended dependency and proposing policy reform in response).

<sup>16</sup> See discussion in Part I infra.

<sup>17</sup> See Schiraldi, Western & Bradner, *supra* note 6.

that they act more impulsively than older adults in ways that likely influence their criminal conduct. Moreover, correctional reform is justified because young adult offenders, like non-criminal young adults and juvenile offenders, are more likely to become productive members of society if they are provided with the tools to do so during a critical developmental period.

Policymakers today can draw lessons from the developmental model that has shaped juvenile justice reform. At the heart of this reform is a conception of adolescence as a distinct stage between childhood and adulthood;<sup>18</sup> this conception has supported a classification of juveniles as an intermediate category of offenders who are neither excused for their crimes as children nor deemed fully responsible adults.<sup>19</sup> Juvenile justice programs increasingly respond to the developmental needs of adolescent offenders, as the best means of reducing crime and promoting their productive engagement in society. Young adults between the ages of 18 and 21 constitute a less well defined category that has only recently received even informal acknowledgment. But this developmental stage has taken on heightened importance as a period of preparation for adult roles. We conclude that the research supports a regime that recognizes young adults as a transitional category between juveniles and older adult offenders.

This essay proceeds as follows. Part I analyzes the behavioral and neuroscience research on young adults. The research on age patterns of risk-taking, combined with the neuroscience and psychological research on young adulthood suggests that the period of young adulthood can be understood as a transitional stage between adolescence and mature adulthood. Part II turns to the sociological research that reinforces this conception of young adults as occupying a transitional developmental stage. Finally Part III explores the implications for crime regulation of the developmental and sociological research. We conclude that many of the developmental lessons that have driven reforms of the treatment of juveniles in the justice system can inform the response to the criminal conduct of young adults. Young adults should be treated as a distinct transitional category subject to reduced sanctions for less serious crimes, special expedited parole policies, and correctional programs and setting designed to serve their developmental needs. This approach can promote the social welfare goals of the justice system more effectively than the conventional binary approach that prevails today.

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<sup>18</sup> SCOTT & STEINBERG, RETHINKING JUVENILE JUSTICE, *supra* note 1 at 31.

<sup>19</sup> See Elizabeth Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 JUVENILE JUSTICE 15, 19 (2008).

## **I. Behavioral, Psychological and Neurobiological Development in Young Adults**

Studies of behavioral, psychological, and neurobiological development indicate that the years from the late teens to the early 20s constitute a transitional period that bridges adolescence and mature adulthood. Development is gradual, and the psychological boundaries between adolescence and adulthood are fuzzy. Although 18- to 21-year-olds are similar to individuals in their mid-20s in some ways, in others, young adults are more like adolescents in their behavior, psychological functioning, and brain development. Thus, developmental science does not support the bright line boundary observed by the criminal law under which 18 year olds are categorically deemed adults.

### **A. Age Patterns of Risk-Taking Behavior**

An important similarity between adolescents and young adults potentially relevant to justice policy is that 18 to 21 year olds, like adolescents, engage in risk taking behavior (including involvement in criminal activity) at a higher rate than older adults.<sup>20</sup> Research on the developmental trajectory of criminal behavior has consistently documented an age-linked pattern of offending, the “age-crime curve,” in which rates of criminal behavior increase over the course of adolescence, peak around age 18, and then decline during the early twenties.<sup>21</sup> Young adulthood is therefore both the stage during which criminal behavior is most common and the period during which the vast majority of offenders begin desisting from crime. In this regard, young adulthood is arguably the most significant transitional period in the development of criminal behavior.

Young adult offending is best understood as part of a broader behavioral pattern and not as an isolated phenomenon; many forms of risk-taking behavior are disproportionately likely during this period. It is noteworthy that the inverted U-shaped developmental pattern observed in the age-crime curve applies as well to most forms of risky activity, which increase over the course of adolescence, peak in the late teens or early twenties (the peak age varies somewhat

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<sup>20</sup> See I.O.M./N. R.C., YOUNG ADULTS REPORT, *supra* note 15 at 203-213; Willoughby, T., Good, M., Adachi, P.J.C., Hamza, C.A., & Tavernier, R., *Examining the Link between Adolescent Brain Development and Risk taking from a Social-developmental Perspective*, 83 BRAIN AND COGNITION 315 (2013).

<sup>21</sup> Gary Sweeten, Alex Piquero, Laurence Steinberg, *Age and the Explanation of Crime, Revisited*, 42 J. OF YOUTH AND ADOLESCENCE 921 (2013). This pattern is found across the developed world, over historical time within the United States, and with respect to both nonviolent and violent crime. *Id.*

across different behaviors), and then declines.<sup>22</sup> According to a recent Institute of Medicine report, young adults (aged 18-24) experience higher rates of morbidity and mortality than either adolescents or older adults from a wide variety of preventable causes, including automobile crashes, physical assaults, gun violence, sexually transmitted diseases, and substance abuse.<sup>23</sup> In short, developmental changes in criminal activity follow the same age pattern as do developmental changes in risky, but noncriminal, activity.<sup>24</sup>

Viewing offending as a specific instance of the more general inclination of young adults to engage in risky activity can inform discussions of how we should respond to criminal behavior at this age. During the past two decades, developmental science has been invoked in discussions of juvenile justice reform in advancing the argument that much adolescent crime is the product of developmental immaturity; this in turn supported policies based on the premise that adolescents are both less culpable and more amenable to reform than adults, in part, simply through maturation.<sup>25</sup> To the extent that young adult offending is also the consequence of normative developmental changes that create a transient inclination toward risky behavior, this should prompt a similar conversation.

## **B. Explaining Young Adult Risk-taking: Psychological Development in Young Adults**

In recent years, developmental scientists have sought to understand the underlying causes of age differences in risk taking. However, as we explain below, research on developmental differences between adolescents and adults often has not drawn age distinctions among individuals older than 18 and therefore is of limited value in understanding risk-taking among young adults.<sup>26</sup> Nevertheless, theoretical models advanced to explain heightened rates of risk taking among adolescents, relative to children or adults, can inform our discussion of risk taking in young adulthood. These “dual systems” or “maturational imbalance” models, emphasize the

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<sup>22</sup> Id.

<sup>23</sup> I.O.M./N. R.C., YOUNG ADULTS REP., *supra* note 15, at 202-213.

<sup>24</sup> In one large longitudinal study of serious juvenile offenders tracked for seven years, impulsivity was one of the best psychological predictors of offending in young adulthood; individuals who developed mature impulse control were most likely to desist from crime. Kathryn C. Monahan, Laurence Steinberg, Elizabeth Cauffman, Edward P. Mulvey, *Psychosocial (Im)maturity from Adolescence to Early Adulthood: Distinguishing between Adolescence-limited and Persistent Antisocial Behavior*, 25 DEV. AND PSYCHOPATHOLOGY 1093 (2013).

<sup>25</sup> SCOTT AND STEINBERG, RETHINKING JUVENILE JUSTICE, *supra* note 1. Adolescent brains are also more plastic than those of adults, which may contribute to amenability. LAURENCE STEINBERG, AGE OF OPPORTUNITY, *supra* note 7.

<sup>26</sup> This limitation also applies to developmental neuroscience research, *infra t.a.n \_ to \_*.

different developmental trajectories of reward-seeking and self-control.<sup>27</sup> Heightened risk-taking during adolescence is understood to be the result of a developmental asynchrony wherein inclinations to pursue exciting, potentially rewarding experiences are especially strong but the ability to control such urges is still relatively immature. The tendency toward heightened sensation-seeking is thought to be sparked by the hormonal changes of puberty, which are believed to increase activity in the brain's reward pathways, making individuals more attentive, sensitive, and responsive to actual and potential rewards.<sup>28</sup> However, because development of brain systems that regulate impulse control is more protracted, continuing into the early twenties, a period of vulnerability to risky behavior results. As some writers have described it, adolescence is a time when the “accelerator” is pressed to the floor but a good “braking system” is not yet in place.<sup>29</sup>

From this perspective, the relatively high rate of risky activity observed in late adolescence and young adulthood, including offending, is likely due to the combination of high reward-seeking and poor self-control, leading individuals to make impetuous, short-sighted decisions that privilege the potential rewards of risky choices and underestimate the potential costs. According to this view, risk-taking declines as individuals develop more mature judgment, as a result of a decrease in reward-seeking and/or an increase in self-control,<sup>30</sup> Importantly, these developmental changes, which continue into the early 20s, are now viewed as normative, driven by processes of brain maturation that are not under the control of young people.

These theoretical models, and the research they have generated, have influenced discussions of juvenile justice policy over the past decade.<sup>31</sup> Indeed, the tendency of adolescents to make impulsive and short-sighted decisions is one of characteristic features of adolescence highlighted by the U. S. Supreme Court in its Eighth amendment opinions limiting the use of harsh sentences for juveniles. The Court also pointed to adolescents' heightened susceptibility to

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<sup>27</sup> B.J. Casey, *Beyond Simple Models of Self-Control to Circuit-Based Accounts of Adolescent Behavior*, 66 ANN. REV. PSYCHOL. 295 (2015); Elizabeth P Shulman, Ashley R Smith, Karol Silva, Grace Icenogle, Natasha Duell, Jason Chein & Laurence Steinberg, *The dual systems model: Review, reappraisal, and reaffirmation*, 17 DEV. COGNITIVE NEUROSCIENCE 103 (2015).

<sup>28</sup> Ashley Smith, Jason Chein, & Laurence Steinberg, *Impact of Socio-emotional Context, Brain Development, and Pubertal Maturation on Adolescent Decision-making*. 64 HORMONES AND BEH. 323 (2013).

<sup>29</sup> LAURENCE STEINBERG, AGE OF OPPORTUNITY, *supra* note 7.

<sup>30</sup> Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-taking*, 28 DEVELOPMENTAL REV. 78 (2008).

<sup>31</sup> Laurence Steinberg, *The Influence of Neuroscience on U.S. Supreme Court Decisions Involving Adolescents' Criminal Culpability*. 14 NATURE REVIEWS NEUROSCIENCE 513 (2013).

social influence (particularly peer influence) and to the relatively unformed nature of adolescents' character, which makes them better candidates for rehabilitation.<sup>32</sup> The Court found that these hallmark features of adolescence contribute to reduced culpability in juvenile offenders as compared to adults, and to their greater potential to reform. Now that policy discussions about the treatment of young offenders are beginning to include young adults, it is important to ask whether these characteristics also apply to this group as well.

The age patterns in risk-taking would seem to offer support for the conclusion that young adults are also affected by the developmental influences that contribute to juvenile offending-- at least to some degree. But the study of psychological development in young adulthood is less advanced, and the findings of this research are less consistent than is research on adolescents.<sup>33</sup> One limitation is that studies rarely survey a sample that includes adolescents, young adults, and individuals in their late 20s using the same measures for all three age groups. A second is that studies that span the necessary age range frequently lack the statistical power to compare narrowly defined age groups. A third limitation is that many studies cluster individuals into broad age categories, often including in the same group individuals whose chronological age would place them on different sides of a legally important age boundary.

One challenge is to formulate research questions in ways that are most informative to legal policy debates. Scientists cannot point to a specific chronological age as the appropriate boundary between legal childhood and adulthood, because different aspects of psychological and neural functioning develop along different timetables.<sup>34</sup> But a reasonable, and potentially answerable, research question is whether development continues in legally-relevant psychological domains beyond age 18, the presumptive age of majority. The few existing studies that may be relevant to justice policy have yielded equivocal results that vary as a function of the outcome, age range, and sample studied. Thus a reasonable assessment is that the extant research is suggestive but inconclusive. Nonetheless, it is possible to draw several broad, albeit cautious, conclusions:

First, it is clear that individuals mature intellectually before they mature emotionally or socially, and that emotional and social development continue past age 18 in realms that are

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<sup>32</sup> *Roper v. Simmons*, 541 U.S. 1040 (2005).

<sup>33</sup> Alexandra Cohen et al., *When Does a Juvenile Become an Adult? Implications for Law and Policy*, *TEMPLE L. REV.*, (forthcoming 2016).

<sup>34</sup> Laurence Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy*, *ISSUES IN SCI. AND TECH.*, 67 (Spring 2012).

legally relevant.<sup>35</sup> Thus, studies of age differences in basic cognitive abilities, such as memory or logical reasoning, do not find appreciable growth after age 16. (This is consistent with studies of adjudicative competence, which also do not find significant age differences after 16<sup>36</sup>) In contrast, studies of the two hypothesized contributors to adolescents' immature judgment, often, but not always, have found continued decline in sensation seeking and improvement in self-control between ages 17 and 30. However, the age at which developmental change is most evident during this interval depends on the specific outcome being assessed.<sup>37</sup>

Second, conclusions about whether psychological development continues beyond age 18 are highly task-dependent. Consider, for example, the question of whether young adults, like juveniles, are more susceptible than older adults to peer influence. The answer is equivocal. Studies of resistance to peer influence using self-reports do not find age differences after 18,<sup>38</sup> but experimental studies comparing individuals' performance on decision-making tasks when they are alone versus when they are with their peers find peer effects on task performance after this age, at least into the early 20s. For example, exposure to peers increases young adults' preference for immediate rewards,<sup>39</sup> willingness to engage in exploratory behavior,<sup>40</sup> and ability to learn from experience.<sup>41</sup> In some studies, exposure to peers has been shown to increase young adults' risk taking,<sup>42</sup> but in others this has not been found.<sup>43</sup>

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<sup>35</sup> Laurence Steinberg, Elizabeth Cauffman, Jennifer Woolard, Sandra Graham, Marie Banich, *Are Adolescents less Mature than Adults? Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip-flop"*, 64 AMERICAN PSYCHOLOGIST 583 (2009).

<sup>36</sup> Thomas Grisso, Laurence Steinberg, Jennifer Woolard, Elizabeth Cauffman, Elizabeth Scott, Sandra Graham, Fran Lexcen, N. Dickon Reppucci & Robert Schwartz, *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 L. AND HUMAN BEHAVIOR 333 (2003); Thomas Grisso, & Linda Vierling, *Minors' Consent to Treatment: A Developmental Perspective* 9 PROF. PSYCHOL. 412 (1978).

<sup>37</sup> Laurence Steinberg, Dustin Albert, Elizabeth Cauffman, Marie Banich, Sandra Graham, & Jennifer Woolard, *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).

<sup>38</sup> Laurence Steinberg & Kathryn C. Monahan, *Age differences in resistance to peer influence*, 43 DEVELOPMENTAL PSYCHOLOGY 1531 (2007).

<sup>39</sup> Lia O'Brien, Dustin Albert, Jason Chein, and Laurence Steinberg, *Adolescents Prefer More Immediate Rewards When in the Presence of their Peers*, 21 J. OF RES. ON ADOLESCENCE 747 (2011); Alexander Weigard, Jason Chein, Dustin Albert, Ashley Smith & Laurence Steinberg, *Effects of Anonymous Peer Observation on Adolescents' Preference for Immediate Rewards*, 17 DEVELOPMENTAL SCI. 71 (2014).

<sup>40</sup> Karol Silva, Elizabeth P. Shulman, Jason Chein & Laurence Steinberg, *Peers Increase Late Adolescents' Exploratory Behavior and Sensitivity to Positive and Negative Feedback*, J. OF RES. ON ADOLESCENCE (2015).

<sup>41</sup> Id.

<sup>42</sup> Margo Gardner, & Laurence Steinberg, *Peer Influence on Risk-taking, Risk Preference, and Risky Decision-making in Adolescence and Adulthood: An Experimental Study*, 41 DEVELOPMENTAL PSYCHOL. 625 (2005).

<sup>43</sup> Lia O'Brien, Dustin Albert, Jason Chein, Kyle Uckert and Laurence Steinberg, *Peers Increase Adolescent Risk Taking by Enhancing Activity in the Brain's Reward Circuitry*, 14 DEVELOPMENTAL SCI. F1-F10 (2011).

Third, psychological maturity among individuals at any given age varies considerably.<sup>44</sup> Consider the research on the stability of personality over time. As we noted earlier, the Supreme Court cited the relatively unformed nature of character as a defining feature of adolescence that justified more lenient sentences for juveniles. Is young adulthood a similarly inchoate stage of character development? The empirical literature on personality development is ambiguous. The prevailing view among psychologists is that during adulthood, personality becomes more stable over time, but no consensus exists on when, if at all, personality ceases to change.<sup>45</sup> Some studies have found that young adulthood is a time of considerable stability in personality;<sup>46</sup> others have found that it is a time of instability, especially during the transition from adolescence to young adulthood,<sup>47</sup> while a third group find variation among individuals.<sup>48</sup> Moreover, studies also find variability within individuals in the stability of personality, in that some traits appear to be considerably more stable than others.<sup>49</sup>

Finally, age differences in psychological functioning in young adulthood vary as a function of the context in which individuals are assessed. Recent work conducted under the auspices of the MacArthur Foundation Research Network on Law and Neuroscience, of which the authors are members, is illustrative.<sup>50</sup> In this research, adolescents (ages 13-17), young adults (ages 18-21), and somewhat older adults (ages 22-24) were asked to perform a standard task measuring self-control under conditions that were systematically manipulated to vary the degree and nature (positive or negative) of emotional arousal. Under non-arousing conditions, young adults' performance did not differ from that of the younger or older subjects (the adolescents

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<sup>44</sup> Laurence Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy*, ISSUES IN SCI. AND TECH. 77 (Spring 2012).

<sup>45</sup> Avshalom Caspi and Brent W. Roberts, *Personality development across the life course: The Argument for Change and Continuity*, 12 PSYCHOLOGICAL INQUIRY 49 (2001); Robert R. McCrae and Paul T. Costa Jr., *The Stability of Personality: Observations and Evaluations*, 3 CURRENT DIRECTIONS IN PSYCHOL. SCI. 173 (1994).

<sup>46</sup> Richard W. Robins, R. Chris Fraley, Brent W. Roberts & Kali H. Trzesniewski, *A Longitudinal Study of Personality Change in Young Adulthood*, 69 J. OF PERSONALITY 617 (2001); Brent W. Roberts, Avshalom Caspi & Terrie E. Moffitt, *The Kids are Alright: Growth and Stability in Personality Development from Adolescence to Adulthood*, 81 J. OF PERSONALITY AND SOC. PSYCHOL. 670 (2001).

<sup>47</sup> Norma Haan, Roger Millsap, Elizabeth Hartka, *As Time Goes By: Change and Stability in Personality over Fifty Years*, 1 PSYCHOL. AND AGING 220 (1986).

<sup>48</sup> M. Brent Donnellan, Rand D. Conger & Rebecca G. Burzette, *Personality Development from Late Adolescence to Young Adulthood: Differential Stability, Normative Maturity, and Evidence for the Maturity-stability Hypothesis*, 75 J. OF PERSONALITY 237 (2007).

<sup>49</sup> Jatin G. Vaidya, Elizabeth K Gray, Jeffrey Haig & David Watson, *On the Temporal Stability of Personality: Evidence for Differential Stability and the Role of Life Experiences*, 83 J. OF PERSONALITY AND SOC. PSYCHOL. 1469 (2002).

<sup>50</sup> Cohen et al., *When is an Adolescent an Adult?* supra note 8.

performed worse than the oldest group, however). Under conditions of positive arousal, the young adults performed comparably to the older group, and better than the adolescents. Under negatively arousing conditions, however, the adolescent and young adult groups did not differ, and both performed worse than the oldest group. In other words, whereas the differences between adolescents under age 18 and individuals older than 21 were observed consistently, differences between young adults and the other two age groups depended on the emotional context. Sometimes young adults behaved like people in their mid-20s, but sometimes they behaved like teenagers, a conclusion that will surely resonate with those who spend time on college campuses.

### **C. Neurobiological Research: Brain Development in Young Adulthood**

Research on the extent and nature of age differences in brain structure and function after age 18 is also best characterized as suggestive but inconclusive. As with behavioral research, very few studies have systematically examined age differences in brain development among individuals older than 18. In most studies, adolescents are compared to “adults,” with the latter group composed of people who may be as young as 19 or as old as 50. When adult comparison groups average data from such a wide age range, it is impossible to draw specific inferences about potential differences between young adults and their older counterparts.

Brain maturation comprises several processes that vary in their developmental timetable across brain regions and systems.<sup>51</sup> The most important components of brain maturation in adolescence and young adulthood involve changes in the prefrontal cortex and its connections with other brain regions. The prefrontal cortex plays a crucial role in advanced thinking abilities, including planning ahead and weighing risk and reward, and in self-regulation, including impulse control and the coordination of emotion and cognition. Immaturity in the prefrontal cortex is thought to make adolescents and young adults more susceptible to impetuous and short-sighted decision making and more vulnerable to the effects of emotional and social arousal on intellectual functioning.<sup>52</sup> This aspect of brain development has been critically important to discussions about the appropriate legal response to criminal activity in adolescents and young adults.

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<sup>51</sup> Laurence Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy*, supra note \_\_.

<sup>52</sup> Cohen et al., *When is an Adolescent an Adult?* Supra note 8.

The maturation of the prefrontal cortex is multifaceted, involving synaptic pruning, which increases the efficiency of information processing by eliminating unnecessary connections between neurons; myelination, which increases the speed of information processing by “insulating” neural pathways; and improved structural and functional connectivity, which enhances communication between the prefrontal cortex and other brain regions. These processes are all ongoing during adolescence, but they are completed at different ages. For example, pruning of the prefrontal cortex is more or less complete by mid-adolescence, which is why there is little improvement in basic thinking abilities beyond this age.<sup>53</sup> In contrast, connectivity, especially between the prefrontal cortex and brain regions that process rewards and respond to emotional and social stimuli, is not complete until the mid-20s,<sup>54</sup> which is why aspects of social and emotional functioning, such as impulse control and resistance to peer influence, are slower to mature.<sup>55</sup> The bottom line is that brain systems that govern “cold cognition” – thinking that takes place under ideal conditions – reach adult levels of maturity long before those that govern “hot cognition” – thinking that takes place under conditions of emotional or socially arousal.<sup>56</sup> In the MacArthur study mentioned earlier, patterns of brain activation and functional connectivity in young adults resembled those of teenagers when brain activity was assessed under emotionally arousing conditions, but appeared more similar to those of people in their mid-20s when conditions were more neutral.<sup>57</sup>

Studies of brain development in adolescence and young adulthood have not yet significantly informed our understanding of the neural underpinnings of age differences in susceptibility to social influence or in the potential for rehabilitation, characteristics considered important in legal policy discussions on juvenile crime. The research indicates that brain systems governing thinking about social relationships undergo significant change in adolescence in ways that heighten concerns about the opinions of others. Compared to adults, adolescents seem especially sensitive to both praise and rejection, which make young people potentially

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<sup>53</sup> Cohen et al., *When Does a Juvenile Become an Adult?* *Supra* note 33.

<sup>54</sup> Nico U.F. Dosenbach, et. al., *Prediction of Individual Brain Maturity Using fMRI*, 329 *SCI.* 1358 (2010).

<sup>55</sup> Cohen et al., *When Does a Juvenile Become an Adult?* *Supra* note 33.

<sup>56</sup> LAURENCE STEINBERG, *AGE OF OPPORTUNITY*, *supra* note 7.

<sup>57</sup> Cohen et al., *When is an Adolescent an Adult?* *Supra* note 8; Marc Rudolph et al., *At risk of Being Risky: The Relationship Between “Brain Age” under Emotional States and Risk Preference* (unpublished manuscript).

more easily influenced by their peers.<sup>58</sup> But very little research has asked whether and how these brain systems continue to change beyond the teen years. One study that examined the impact of peers on neural responses to reward in a sample of adolescents (ages 14-18), young adults (19-22), and adults (24-29) found that the presence of peers increased activation in this region among adolescents, but had no impact in the other two age groups.<sup>59</sup>

With respect to potential for rehabilitation, there is a growing consensus that adolescence is likely to be a period of heightened brain plasticity—the capacity of the brain to change in response to experience—not unlike the first few years of life.<sup>60</sup> If so, juveniles are probably better candidates for rehabilitation than adults. This strengthens the argument against imposing long sentences on juveniles, and especially against harsh sentences that can inflict toxic harm during a susceptible developmental period. It is not known, however, how long this period of plasticity extends. One difficulty is that much of the evidence of heightened brain plasticity in adolescence comes mainly from studies of rodents, whose development can be reliably segmented into just three stages—infant, juvenile (i.e., peri-pubertal), and adult.<sup>61</sup> Thus, the distinctions between “young adult” and “adult” that can be applied to humans cannot be applied to most other animals.

Because the research described in this part is at a relatively early stage, its implications for justice system policies directed toward young adults are uncertain. It is clear that the psychological and neurobiological development that characterizes adolescence continues into the mid-20s but the research has not yet produced a robust understanding of maturation in young adults age 18 to 21. Studies find continued development during this period, but also find that in some ways, young adults are similar to adults in their mid-twenties. The research on age patterns in risk taking and on emotional maturation (particularly on impulse control in negative arousal states and peer influence in social contexts) provides the most powerful evidence that much

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<sup>58</sup> Sarah-Jayne Blakemore, *Development of the Social Brain in Adolescence*, 105 J. OF THE ROYAL SOC'Y OF MEDICINE 111 (2012); Sarah-Jayne Blakemore & Kathryn L. Mills, *Is Adolescence a Sensitive Period for Sociocultural Processing?*, 65 ANNUAL REV. OF PSYCHOLOGY 187 (2014).

<sup>59</sup> Lia O'Brien, Dustin Albert, Jason Chein, Kyle Uckert and Laurence Steinberg, *Peers Increase Adolescent Risk taking by Enhancing Activity in the Brain's Reward Circuitry*, 14 DEVELOPMENTAL SCI. F1–F10 (2011).

<sup>60</sup> LAURENCE STEINBERG, AGE OF OPPORTUNITY, *supra* note 25.

<sup>61</sup> Lynn D. Selemon, *A Role for Synaptic Plasticity in the Adolescent Development of Executive Function*, 3 TRANSLATIONAL PSYCHIATRY e238 (2013).

young adult offending likely represents a continuation of adolescent risk-taking, driven by developmental forces, but many uncertainties remain. The question is to what extent this still-developing body of research on young adults should affect justice policy.

## **II. The Changing Socio-economic Context of Young Adulthood**

Although the biological and psychological account of maturation is incomplete, it is clear that the transition to *social* adulthood is grounded in cultural norms that vary over time (and across cultures) dictating when young people are expected to achieve independence and assume adult roles. Demographic research indicates that young adults in the United States and other developed societies today experience a prolonged and stressful period of transition to adulthood. Contemporary society is marked by increased knowledge and information transfer, heightened risks, fairly low social mobility, and greater economic inequality, changes that have placed greater demands on young adults than previous generations experienced, while also providing less latitude for failure.<sup>62</sup> Not so long ago, the typical transitional path for most young adults was to graduate from high school, enter college or the workforce, leave home, establish an enduring romantic relationship, marry, and start a family. These milestones provided structure and direction for most young adults as they assumed adult responsibilities and fostered connection with the larger society and its institutions. Today, those pathways are considerably less predictable, often extended, and – for many -- significantly more challenging.

Based on this trend, a 2014 report of the Institute of Medicine and the National Research Council<sup>63</sup> characterized young adulthood in our society as a “critical” developmental period<sup>64</sup> – that has a profound impact on individuals’ future life-course trajectories, analogous to the critical periods of early childhood and adolescence. Success or failure during this time can have a life-long impact; thus, the stakes are high both for young adults and for society. The report drew out the policy implications of this social trend, particularly emphasizing the need to provide developmentally appropriate supports and interventions for young adults during this period.

### **a. Education and Employment**

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<sup>62</sup> See generally discussion in I.O.M./N. R.C., *YOUNG ADULTS*, supra note 15 at pages 35-67

<sup>63</sup> *Id* at 2.

<sup>64</sup> Young adults continue to mature, socially, psychologically and biologically. However, social features of maturation predominate during this period. *Id* at 2-3.

Achievement of financial independence has become a prolonged and uncertain challenge for increasing numbers of young adults. College enrollment has increased dramatically in recent years,<sup>65</sup> but many students who enroll in college do not earn a degree. Indeed, the college graduation rate in the U.S. has *dropped* even as enrollment rates have increased.<sup>66</sup> In part, this is because the cost of college has grown substantially, and many students are unable to finance the investment. Yet, prospects for well-paying jobs for young adults without a college degree are slim.

The problem for young adults without a college degree is exacerbated by the sharply reduced number of good manufacturing jobs in recent decades. Even accounting for the increased percentage of young adults attending college (and thus not in the work force), the unemployment rate among individuals under age 25 is twice that of the general population.<sup>67</sup> This disparity has been rising in recent decades, and has become especially pronounced since the start of the 2008 recession.<sup>68</sup> Young adults without a college degree who *are* employed generally receive low wages because they lack skills needed for higher-paying knowledge-based jobs; many obtain only part-time employment.<sup>69</sup> Not surprisingly perhaps, the earning gap between college graduates and those with only a high school education has more than doubled since 1980.<sup>70</sup> Today less educated young adults—a cohort that includes most individuals in the justice system—face greater challenges than did earlier generations in attaining financial self-sufficiency as adults.

#### **b. Partnering and Parenting**

A similar gap has emerged in contemporary patterns of family formation. Traditionally, marriage was a marker of adult status and independence from parents across social class. For

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<sup>65</sup>Id at 135

<sup>66</sup> M. Bailey & S. Dynarski, *Inequality in Post-Secondary Education*,” in G.J. Duncan and R. Murnane, (eds) *Whither Opportunity? Rising Inequality, Schools, and Children’s Life Choices* (Russell Sage 117-132 (2011).; IOM/NRC *YOUNG ADULTS* at 47. Large gaps exist in BA completion rates by race and socioeconomic position. Completion rates for whites exceed those for blacks and Hispanics by 20-30% and students from families in the bottom socioeconomic quartile have completion rates nearly 40% lower than those of other students. IOM/NRC *YOUNG ADULTS* at 137-38

<sup>67</sup> IOM/NRC, *Id* at 47; C. Belfield & H. Levin, *The Economics of Investing in Opportunity Youth* (Civic Enterprises, 2012) (study showing 17 percent of youth and young adults between ages 16 and 24 are neither in school nor working).

<sup>68</sup> IOM/NRC *YOUNG ADULTS*, at 48,

<sup>69</sup> *Id.* at 123-34. Many young adults earn less than did similar demographic groups in the past and increasing numbers of low skill jobs are part-time.

<sup>70</sup> *Id.*

middle and upper class couples, marriage often followed graduation from college, while for working class couples tended to marry at an earlier age.<sup>71</sup> Today middle class individuals tend to become independent of their parents, marry and have children years later than their parents did.<sup>72</sup> In part, of course, this is because the period of young adulthood is devoted to education, skill training and career development for this cohort; this investment in human capital can be more readily accomplished without family responsibilities. For less educated young adults, particularly those from disadvantaged backgrounds, the pattern is quite different. Marriage has become less common altogether for this group, and partnering typically takes the form of informal, often unstable unions.<sup>73</sup> Many less-educated young people have children outside of marriage, often before they have the skills and income to support them.<sup>74</sup> In turn, the burden of raising children impedes young parents' ability to acquire the skills and training necessary to become economically self-sufficient.

### c. Inequality

Recent changes in the established economic and social pathways of young adulthood have presented more choice and opportunity for some young adults and created more barriers for many others. Of particular importance for our purposes is the impact of these economic and social trends on marginalized young adults from disadvantaged backgrounds—children of low-income immigrants, those aging out of foster care, those with histories of involvement in the justice system, those with disabilities, and those who dropped out of school. These young adults are substantially less likely than their peers to experience a successful transition to adulthood. Compared with other young adults, for example, former foster youths are less likely to graduate from high school, have lower rates of college attendance, suffer from more mental and physical health problems, are more likely to be dependent on public assistance and/or unemployed, experience high levels of housing instability and homelessness, and are much more likely to be

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<sup>71</sup> NAOMI CAHN AND JUNE CARBONE, *MARRIAGE MARKETS: HOW INEQUALITY IS RESHAPING THE AMERICAN FAMILY* (2014).

<sup>72</sup> M.K. Johnson, R. Crosnoe, & G.H. Elder, *Insights on Adolescence from a Life Course Perspective*, 21 J. RESEARCH ON ADOLESCENCE 273 (2011); G.I. Roisman, et al, *Salient and Emergent Developmental Tasks in the Transition to Adulthood*, 75 CHILD DEVELOPMENT 123 (2004). In 1980 the age at first marriage was 22; today it is 27. IOM/NRC REPORT at 45

<sup>73</sup> This trend has been well-documented. See generally CAHN & CARBONE, *supra* note 71; ANDREW CHERLIN, *THE MARRIAGE GO-ROUND* (2010);

<sup>74</sup> SARA McLANAHAN & GARY SANDEFUR, *GROWING UP WITH A SINGLE PARENT* (1997).

involved with the criminal justice system.<sup>75</sup> They also are less likely to marry or cohabit, but have higher rates of unmarried parenting and more children. Indeed, a particular source of concern is the increase in early parenthood by adolescents and young adults in this cohort, and the increasing number of children with one or more incarcerated parents.<sup>76</sup>

Young adults in the justice system largely belong to the cohort of individuals whose prospects of making a successful transition to adulthood are poor. As the IOM/NRC report emphasized, meeting the needs of marginalized young adults potentially can not only improve their lives and reduce persistent inequalities due to family background, but also help them become more fully contributing members of society.<sup>77</sup> Absent deliberate action by policymakers, however, this period of development is likely to magnify inequality, with lasting effects through adulthood. For young adult offenders, the cost of failing to intervene to promote successful maturation extends even beyond the enormous social cost of continued involvement in criminal activity. Many young adults in the justice system have children born into non-marital relationships ; thus an increasing number of children have one or more incarcerated parents. This concern led the IOM/NRC committee to highlight the urgency of investing in incarcerated and otherwise marginalized young adults and their children to interrupt the transmission of disadvantage from generation to generation.

Young adulthood is a period of risk and heightened stress for those individuals without the support and resources they need. This includes young adult offenders, whose prospects for productive lives may depend on the justice system's response to their crimes. Counter-intuitively perhaps, their offending presents the opportunity for intervening in ways that can serve their interests and society's as well.

### **III. Young Adult Offenders in the Justice System**

The developmental and sociological research described above supports justice system reforms that focus on young adults as a transitional category of offenders between juveniles and adults. The research, although not conclusive, indicates that offending by young adults often

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<sup>75</sup> The I.O.M.\N.R.C. report emphasized the critical challenges facing this group. I.O.M./ N. R.C., YOUNG ADULTS, *supra* note 15.

<sup>76</sup> About 45% of incarcerated young adults have children. Parental incarceration is associated with family instability and economic hardship, reductions in fathers' involvement in their children's lives, and increased child behavior problems. *Id.* at 107, 357-58

<sup>77</sup> This is a major theme of the report. *Id.* at 347- 400.

may be driven by tendencies toward impulsivity and the propensity for risk-taking that characterize much of the criminal activity of juveniles; this conclusion is also supported by empirical data on age patterns in risky behavior. If immaturity continues to play a role in criminal involvement beyond age 18, then many young adults, like most juveniles, are likely to desist from criminal involvement as they mature. Moreover, recent social and economic trends have prolonged the period of dependency and vulnerability into adulthood. Against this backdrop, the potential criminogenic effects of imprisonment and the benefits of rehabilitative programs for young adult offenders become more salient. In short, our expanded knowledge about this period of life supports legal changes that acknowledge young adults' potential for reform and aim to facilitate offenders' transition to non-criminal adulthood.

The approach to reform that we propose draws on the developmental model that has powerfully influenced the law's response to juvenile crime in the past decade. Like juveniles, young adults are most usefully classified as a distinct category of offenders, in recognition of the social reality that young adulthood, like adolescence, is a critical developmental period.<sup>78</sup> This does not mean, however, that 18 to 21 year olds should generally be reclassified as juveniles, and their crimes adjudicated in the juvenile court. The evidence suggests that young adult offenders are developmentally distinguishable from younger adolescents in several ways; further, as we discuss below, pragmatic considerations militate against categorically raising the age of juvenile court jurisdiction to 21. But, just as the justice system has come to recognize that adolescents are neither innocent children nor fully responsible adults, lawmakers should understand that young adults occupy a transitional developmental space between adolescents and older adults. As we will explain, this approach supports reforms in the adult justice system directed toward young adult offenders that not only enhance the welfare of these individuals, but also offer the potential to reduce crime. These reforms include special sentencing and parole policies, and correctional programs that aim to provide young adult offenders with the skills necessary to function adequately in adult roles.

Attention to the research evidence comes at a propitious time, when many lawmakers and the public increasingly are receptive to reform. The extraordinary increase in incarceration rates

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<sup>78</sup> See t.a.n. \_ supra.

over the past 40 years has generated sharp criticism across the political spectrum.<sup>79</sup> Critics recognize that over-incarceration has had only a modest impact on crime reduction, while it has generated a wide range of well-documented financial and social costs; the latter have fallen particularly on the large cohort of incarcerated young adults.<sup>80</sup> It is well understood that criminal convictions and incarceration negatively affect employment, educational attainment, and civic engagement, diminishing the prospect that young adult offenders will become productive citizens or assume conventional adult roles. That the consequences of our penal policies fall disproportionately on racial and ethnic minorities makes the call for reform even more urgent.<sup>81</sup>

### **A. Young Adulthood- A Transitional Category**

The boundary between childhood and adulthood typically creates binary legal categories; individuals are either adults or children for the particular legal purposes. For most purposes, age 18 marks this boundary, but the line between childhood and adulthood is sometimes drawn either before or after this age.<sup>82</sup> For example, young adults are sometimes classified as legal children; they cannot obtain and drink alcoholic beverages, and may be entitled to financial support from non-custodial parents while they attend college.<sup>83</sup> These regulations recognize that a categorical assumption that 18 year olds conform to the conventional expectations of adults in their maturity, competence and independence sometimes can undermine social welfare.<sup>84</sup>

In the context of justice policy, age classification is more complex in a way that may be instructive for reforming the law's response to young adult offenders. To be sure, the binary norm currently prevails in the classification of adults in the justice system; 18- and 35 year old

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<sup>79</sup> See e.g. NATIONAL RESEARCH COUNCIL, COMMITTEE ON THE CAUSES AND CONSEQUENCES OF HIGH RATES OF INCARCERATION THE GROWTH OF INCARCERATION IN THE UNITED STATES 2 (2014)(describing increase as “historically unprecedented and internationally unique.”). Calls for reform come from both left and right. See e.g. Rightoncrime.com (conservative advocacy group supporting sentencing reform on crime reduction grounds).

<sup>80</sup> Approximately 410,900 young adults ages 18-24 were in state or federal prisons or local jails in 2010.

<sup>81</sup> Among young men ages 20 to 24, 8 percent of non-Hispanic blacks, 3.3 percent of Hispanics, and 1.3 percent of whites were incarcerated in 2010. *Id.*

<sup>82</sup> Legal minors can obtain motor vehicle licenses, exercise their right of free speech, and consent to particular medical treatments, including treatment for substance abuse, STDs, and mental illness. See Scott, *Construction of Adolescence*, supra note 10.

<sup>83</sup> *Id.* Congress raised the legal drinking age in response to data indicating that drunk drivers in this age cohort caused a disproportionate percentage of serious motor vehicle accidents. See generally, National Research Council, REDUCING UNDERAGE DRINKING: A COLLECTIVE RESPONSIBILITY (2004). See also FRANKLIN ZIMRING, THE CHANGING LEGAL WORLD OF ADOLESCENCE (1981)(DISCUSSING GAP BETWEEN DRIVING AND DRINKING).

<sup>84</sup> For recent discussion, see Scott, *Construction of Adolescence*, supra note 10 at \_ to \_; I.O.M./ N.R.C., YOUNG ADULTS, at 101-04 (parental support) and 235-39 (minimum purchase ages).\_\_

offenders typically have been subject to undifferentiated treatment as “adults.’ But in dealing with juvenile offenders, contemporary lawmakers have effectively created an intermediate category. Under the recent legal reforms, the response to juvenile offending has been tailored to the developmental needs and capacities of adolescents.

The acknowledgement that teenage offenders are neither children nor adults is grounded in pragmatic, political and scientific considerations; it has emerged from a recognition that the law’s conventional binary approach was unsatisfactory as a basis for responding to juvenile crime.<sup>85</sup> The traditional characterization of young offenders as children who lacked responsibility for their crimes seemed discordant as applied to older youths who committed violent crimes, and was effectively ridiculed by the punitive law reformers of the 1990s. But their view that juveniles are not different from adult criminals has also been rejected as costly, offensive to conventional morality and inconsistent with developmental research. Under modern law reforms, juveniles are held accountable for their crimes, but their culpability is mitigated as compared to adults. Further, contemporary lawmakers increasingly realize that correctional programs and dispositions tailored to the developmental needs of adolescent offenders are more likely to reduce crime at lower cost than either punitive adult sanctions or permissive policies that treat delinquent youth as children. A core objective of modern justice policy (and one submerged until recently) is to facilitate the transition of teenage offenders to productive adulthood by providing a healthy developmental context and giving them the tools they need to succeed.

This model can be adapted to young adult offenders, who also can be usefully classified as a transitional category, but one located within the adult justice system. Like juveniles, young adults are not fully mature and are more likely to reform than are older offenders. Also like juveniles, young adult offenders are in a critical period in which programs targeted to their developmental needs may powerfully influence their future lives in a positive direction. The monolithic classification of offenders over age 18 under contemporary law assumes that uniform offense-based sentencing policies directed at adults regardless of age will protect the public and reduce crime. But this strategy is short-sighted to the extent that much young adult crime is the product of immature risk-taking propensities and that investment during this developmental

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<sup>85</sup> The discussion in this paragraph draws on See SCOTT AND STEINBERG, *RETHINKING JUVENILE JUSTICE*, supra note 1 at 84-117.

period could facilitate these offenders' transition to productive adult lives. At the same time, however, existing research does not support the classification of young adults as juveniles. As we explain below, under current conditions, an institutional structure that generally treats young adults as separate transitional category of offenders is likely to enhance the effectiveness of the justice system

## **B. 21<sup>st</sup> Century Criminal Justice- A Developmental Approach to Young Adult Offenders**

In this section we suggest how an understanding of young adulthood as a period of biological, psychological and social maturation might be translated into policies and programs directed at this group of offenders. The elements of reform already exist: Some proposals draw on sentencing and parole policies directed at juvenile offenders, while others (youthful offender statutes) would revive ameliorative statutory policies enacted in an earlier era. The heart of reform, however, is an ongoing project to develop effective interventions to provide young adult offenders with the tools to make the transition to productive adulthood. Just as policymakers in the juvenile system turned to evidence-based correctional programs based on developmental knowledge in seeking effective responses to juvenile crime, criminal justice officials in some jurisdictions have begun to invest in programs directed at young adults in pursuit of the same goal. As we explain, although few programs have been evaluated, , investment in promising correctional programs that promote healthy development in these still maturing offenders is likely to be the most effective response to their criminal conduct.

### **1. *Young-Adult Offender Status for Non-Violent Offenders.***

For young-adults who commit non-violent crimes, a regime modeled on the young offender statutes of the 1960s and 1970s<sup>86</sup> can preserve future options. These statutes create a special status, extending rehabilitative features of juvenile proceedings to eligible young adults

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<sup>86</sup> See, e.g. COLO. REV. STAT. ANN. § 18-1.3-407.5 (West 2016), FLA. STAT. ANN. § 958 (West 2016), GA. CODE ANN. § 42-7 (West 2016), MICH. COMP. LAWS ANN. §§ 762.11 to 762.15 (West 2016), S.C. CODE ANN. § 24-19 (2016), N.Y. Crim. Proc. § 720 (McKinney 2016); MICH. COMP. LAWS ANN. § 762.11(1) (West 2016). A rationale for young offender status is to protect young offenders from the harshness and collateral consequences of criminal prosecution and conviction. *Raines v. State*, 317 So.2d 559, 561 (Ala. 1975), *People v. Perkins*, 309 N.W.2d 634, 636-37 (Mich. Ct. App. 1981). Other rationales include provisions of educational, training and rehabilitation programs to reduce recidivism. FLA. STAT. ANN. § 958.021 (West 2016), GA. CODE ANN. § 42-7-3(a) (West 2016), S.C. CODE ANN. § 24-19-60 (2016), *People v. Perkins*, 309 N.W.2d 634, 636-37 (Mich. Ct. App. 1981).

(as well as transferred juveniles) who are prosecuted in the criminal courts.<sup>87</sup> Young offender status limits sentence duration and shields offenders from the burdensome collateral consequences of having a criminal record, which can severely restrict their ability to pursue educational, employment and even housing opportunities essential to the transition to adulthood.<sup>88</sup> Typically, trial courts have discretion to confer this status on a young adult offender charged with designated crimes, and some laws limit the status to first offenders.<sup>89</sup> Most statutes limit the maximum sentence to between one and three years.<sup>90</sup> Other consequences of being a designated a young offender vary from state to state and include the opportunity to avoid a criminal conviction (and therefore a criminal record),<sup>91</sup> and to have the record sealed after a period of good behavior.<sup>92</sup> A contemporary young offender statute could confer the status presumptively on all adults under age 21 and transferred juveniles, charged with particular crimes, including misdemeanors, most property crimes and drug possession offenses.<sup>93</sup> Beyond this, brief sentences, together with protection from the collateral consequences of criminal conviction, can help to preserve the future options for many young adult offenders.

## 2. Sentencing and Parole Policies

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<sup>87</sup> See, e.g., William Easton, *Expunging Criminal Records: A Judge's Perspective*, 27 WAYNE L. REV. 1391, 1396 (1981), Sally Terry Green, *Realistic Opportunity for Release Equals Rehabilitation: How the States Must Provide Meaningful Opportunity for Release*, 16 BERKELEY. CRIM. L. 1, 24-26 (2011). One of the most comprehensive statutes is New York's, which provides confidentiality of records, restrictions on the consequences of a criminal conviction, and lenient sentencing alternatives. See N.Y. CRIM. PROC. §§ 60.02, 720.15, 720.35 (McKinney 2016). See also Alison Marie Grinnell, *Searching for a Solution: The Future of New York's Juvenile Offender Law*, 16 N.Y.U. J. HUM. RTS. 635 (2000).

<sup>88</sup> For a discussion of the collateral consequences of having a criminal record and the ways in which inhibits young adults ability to transition to protective adulthood, see Council of State Governments Justice Center, *Reducing Recidivism and Improving other Outcomes for Young Adults in the Juvenile and Adult Criminal Systems*(2015).

<sup>89</sup> See e.g. New York's young offender statute generally N.Y. CRIM. PROC. § 720.10(3) (McKinney 2016)(excluding murder, armed felonies, rape in the first degree, criminal sexual act in the first degree or aggravated sexual abuse); MICH. COMP. LAWS ANN. §§ 762.11(2), 750.520(b)-(e) (West 2016)(excluding offenses carrying maximum penalty of life imprisonment, major controlled substance offenses, traffic offenses and criminal sexual conduct). See also MICH. COMP. LAWS ANN. § 762.11(3)(a) (West 2015) (excluding offenders with a prior conviction or adjudication for an offense requiring a sex-offender registration).

<sup>90</sup> E.g. ALA. CODE § 15-19-6(a)(4) (LexisNexis 2016) (no more than three years for felonies), MICH. COMP. LAWS ANN. § 762.13(1) (West 2016) (no more than one year). See also FLA. STAT. ANN. § 958.04(1)(2)(c)-(d) (West 2016) (no more than six years), N.Y. PENAL CODE §§ 60.02(2), 70.00(2)(e) (McKinney 2016) (no more than four years for most felonies).

<sup>91</sup> E.g. ALA. CODE § 15-19-7(a) (LexisNexis 2016), MICH. COMP. LAWS ANN. §§ 762.11(1), 762.13(3) (West 2016), N.Y. CRIM. PROC. § 720.35(1) (McKinney 2016)

<sup>92</sup> See New York statute, *supra* note 86. E.g. S.C. CODE ANN. § 22-5-920(B) (2016) (providing for applications to expunge the records of arrest and conviction after five years from completion of sentence).

<sup>93</sup> In New York, there are bills proposing a presumption of youthful offender status to young defendants who do not have a prior conviction or adjudication for a felony. Assemb. 7642, 238<sup>th</sup> Leg. 2015-2016 Reg. Sess., § 79 (N.Y. 2016), S. 5642, 238<sup>th</sup> Leg. 2015-2016 Reg. Sess., § 79 (N.Y. 2016A).

Young offender status is unlikely to be deemed sufficiently protective of public safety for young adults who commit serious violent offenses; nonetheless, their relative youth should be considered in sentencing. Age has long been considered a basis for mitigation under both capital and non-capital sentencing statutes.<sup>94</sup> Immaturity has featured most prominently as a key mitigating factor in juvenile sentencing cases,<sup>95</sup> of course, but recently courts sentencing young adults also have begun to consider evidence of immaturity in mitigation. In 2015, for example, an Illinois court set aside a mandatory sentence of life without parole imposed on a 19 year old as a violation of the Eighth Amendment prohibition of cruel and unusual punishment.<sup>96</sup> The court cited the Supreme Court's juvenile sentencing opinions, and also pointed to developmental research indicating that brain maturation continues into the 20s. This evidence can also support a presumption that mandatory minimum adult sentencing regimes should exclude young adult offenders, just as juvenile offenders are excluded in some states.<sup>97</sup>

The determination of whether a reduced sentence is warranted can also be made *ex post* through parole policies designed for young adult offenders. Some states have adopted special statutes that allow juvenile prisoners sentenced for serious offenses in the adult system to petition for expedited parole and also provide programmatic assistance to prepare them for the hearing.<sup>98</sup> These laws are premised on developmental evidence that much juvenile crime is the product of immaturity and that many young offenders will reform as they mature. If the crimes of many young adult offenders similarly represent impulsive risk-taking behavior that is characteristic of this period of life, their inclination to offend is likely to decline with maturation. A special parole statute would allow the young adult offender to demonstrate on an expedited basis that he no longer represents a threat to society. These prisoners can be held accountable and public safety protected through briefer sentences than those imposed on prisoners who offended as older adults or who have not demonstrated reform.

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<sup>94</sup> *E.g.* ARIZ. REV. STAT. ANN. § 13-751(G)(5) (considering the defendant's age as a mitigating circumstance), S.C. CODE ANN. § 16-3-20(3)(C)(b)(7) (2016) (same), UTAH CODE ANN. § 76-3-207(4)(e) (West 2016) (same).

<sup>95</sup> See note \_ *supra*, discussing Supreme Court opinions finding harsh sentences for juveniles in violation of proportionality under the 8<sup>th</sup> Amendment.

<sup>96</sup> 2015 Il. App. 1<sup>st</sup> 110580 (4<sup>th</sup> Div. December 24, 2015). See also *United States v. C.R.*, in which a federal district judge ordered a sentence below the 5 year minimum in a case involving a 19 year old convicted of child pornography. In an exhaustive memorandum, Judge Jack Weinstein described the research on brain development in young adulthood as justification for his sentence. Memorandum and Order 09-CR-155 (E.D. N.Y.).

<sup>97</sup> *State v Lyle* 854 N.W.2d 378 (Iowa 2014))(finding mandatory minimum sentences inappropriate for juveniles.

<sup>98</sup> Cal. Penal Code §§ 3041, 3046, 3051, 4801 (West 2014) (special expedited parole statute for juvenile offenders); See also Wash. Rev. Code Ann. §10.95.030 (West 2014).

### 3. *Specialized Correctional Facilities and Programs.*

At this point, the justice system has only begun to offer correctional programs or special facilities aimed at young adult offenders (and juvenile offenders sentenced as adults<sup>99</sup>), and few programs have been subject to rigorous evaluation. But although no blueprint exists for transforming correctional policy, promising reforms implemented in the juvenile system over the past generation provide guidance for policymakers focusing on young adult offenders. Effective juvenile programs, policies and practices that are tailored to the unique needs of this population can be (and are being) adapted for young adults.<sup>100</sup> For example, Multi-Systemic Therapy, which has been shown to effectively reduce recidivism in juveniles, is being adapted to treat young adults.<sup>101</sup> Substance abuse and other mental health services, and social skills training are important interventions with justice-involved young adults, as with juveniles. Finally, developing effective educational and vocational skill training programs for this age cohort is essential to successful justice policy, and poses a challenge perhaps even greater than in the juvenile justice context. Sociological research indicates that young adult offenders are often detached from the socializing institutions of work and family that reduce recidivism.<sup>102</sup> What is needed is a comprehensive effort to provide these offenders with programs and facilities that will aid in promoting their integration into the larger society as productive adults.

Increasingly, states and localities have begun to take up this challenge, persuaded that policies targeting young adult offenders potentially can be an effective means to reduce recidivism. Localities have developed promising community-based programs for young adult offenders that provide intensive services and supervision, with good employment and recidivism-reduction outcomes.<sup>103</sup> For incarcerated young adult offenders, some states have created separate

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<sup>99</sup> Colorado's Youthful Offender System (YOS) was legislatively created for primarily to reduce recidivism in violent offenders, both transferred juveniles and (through a later statute) young adults age 18 and 19, and to provide them with the means to become productive adult citizens. *Youthful Offender System Fiscal Year 2013*, Colorado Dep't of Corrections 4 (2014) See discussion in note 99 infra.

<sup>100</sup> See Council of State Governments, at 7.

<sup>101</sup> Council of State Governments, supra note \_ at 7. Multi-systemic therapy has been one of the most effective programs with both violent and non-violent juvenile offenders. See SCOTT & STEINBERG, *RETHINKING JUVENILE JUSTICE*, supra note \_ at 217-220.

<sup>102</sup> See Vincent Schiraldi, Bruce Western, and Kendra Bradner, *Community-Based Responses to Justice-Involved Youths*, U.S. Dep't of Justice, National Institute of Justice NCJ 2489000 at \_\_ (2015).

<sup>103</sup> The San Francisco Adult Probation Transitional Age Youth Unit is a successful community-based program. *Id.* at 11. Roca, a Massachusetts program that combines cognitive behavioral therapy, substance abuse treatment and best-practice community corrections, has effectively reduced recidivism and increased employment in justice-involved high-risk young men. *Id.* at 12.

facilities modeled on successful juvenile facilities and programs. These facilities have developmentally trained staff; they emphasize education, work-force development and cognitive behavioral training, and typically are connected with specialized aftercare services.<sup>104</sup> Programs directed at young adults within integrated facilities are also being developed.<sup>105</sup> Through these programs, policymakers recognize that even when incarceration is justified for punishment and public protection, society's interests, as well as that of offenders, are served by investing in the education, health and well-being of young adults who will eventually be allowed to return to the community.<sup>106</sup>

### **C. Why *Not* Extend the Jurisdictional Age of Juvenile Court?**

As we have indicated, reforms in the justice system's treatment of young adult offenders should build on the developmental approach to juvenile justice. Thus, the natural next move might seem to be a unitary rehabilitative justice system with general jurisdiction over juveniles and young adults. Nonetheless, we are hesitant for several reasons to join advocates arguing for this bold reform. As we have shown, the scientific evidence, does not currently justify an institutional reform of this magnitude. Moreover, the political and practical obstacles to such a change are formidable. Although modest steps toward consolidation in response to minor offenses by young adults may be feasible, it is not clear that, under current conditions, the interests of either juveniles or young adults would be promoted by a unitary justice system.

Some reformers have pointed to neuroscience and other research in advocating that young adults be adjudicated in the juvenile system. But the research supporting the presumption underlying the lenient, rehabilitative approach of the juvenile system--that youthful offending is

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<sup>104</sup> The Colorado Youthful Offender System is among the most comprehensive programs aimed at young adults age 18 and 19. See note 99, *supra*. First established in 1994 for violent juvenile offenders in the adult system, YOS houses offenders in separate facilities and provides specially designed programs and services that focus on academics, rehabilitation, the development of pro-social behaviors and reentry planning. The recidivism rates of offenders who successfully complete the YOS program (most offenders) is far better than comparable offenders. *Id.* at 49. YOS offenders receive career and technical education, anger management treatment and substance abuse treatment. New York City and California are developing facilities for young adults. The planned California facility, the California Leadership Academy, is modeled on the successful Missouri Model of juvenile residential facilities. Reducing Recidivism, Council of State Gov'ts Justice, *supra* note 87.

<sup>105</sup> *E.g. About the Division of Juvenile Justice*, CAL. DEP'T OF CORR. & REHAB., [http://www.cdcr.ca.gov/Juvenile\\_Justice/About\\_DJJ/index.html](http://www.cdcr.ca.gov/Juvenile_Justice/About_DJJ/index.html) (last visited April 4, 2016) (providing training and treatment to young adult offenders), FLA. S., YOUTHFUL OFFENDER DESIGNATION IN THE DEPARTMENT OF CORRECTIONS: INTERIM REPORT, S. 2011-114, at 3 (2010) (providing educational, work and rehabilitative programs to young adult offenders).

<sup>106</sup> IOM/NRC Report at 361-66

driven by developmental immaturity—is weaker for young adults. Because of their youth, adolescents are deemed less culpable and more malleable than older offenders. The emerging developmental evidence indicates that young adult brains are developing and that these offenders may be similar to adolescents in their impulsivity, but the developmental factors that likely drive offending in younger teens are more subtle in young adults, and in some regards, young adults are more like older adults than teenagers.<sup>107</sup> As explained in Part I, scientific evidence is simply not robust enough to support a response of categorical leniency toward young adult offenders.

We are also concerned that raising the age for juvenile court adjudication to 21 may have the unintended consequence of making justice-involved adolescents worse off than the current regime without producing the intended benefits for young adults. Political reality dictates that public safety will always be a preeminent concern of justice policy. Indeed, the juvenile system, with its commitment to rehabilitation, has often been challenged on the ground that its lenient response to young offenders sacrifices public safety. During periods when public fears about violent juvenile crime are aroused, such as the 1990s, politicians have responded by adopting punitive laws facilitating the adult prosecution and punishment of juveniles.<sup>108</sup> To be sure, the moral panic of that period has receded. But the lessons of the 1990s are that public and political acceptance of the special status of juveniles is tentative and that the developmental approach to juvenile justice policy could be readily destabilized.<sup>109</sup> Extending the general jurisdiction of the juvenile system to age 21 would only increase its vulnerability. A system committed to leniency and to more abbreviated sanctions is unlikely to be deemed satisfactory in dealing with a category of offenders who commit a substantial percentage of serious offenses.<sup>110</sup> Moreover, young adult offenders have different needs from younger juveniles, and integrating substantial numbers of young adults into the juvenile system could have a negative impact on its ability to serve the needs of the youths that are its primary concern.<sup>111</sup>

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<sup>107</sup> See discussion of research, including study finding that young adults respond more like adolescents on measures of self-control under conditions of threat, but perform more like adults under conditions of positive arousal, *supra* t.a.n. note 1 to 2.

<sup>108</sup> For a discussion of the “moral panics” of the 1990s in response to an increase in juvenile crime, see SCOTT & STEINBERG, *RETHINKING JUVENILE JUSTICE*, *supra* note 1 at 94-99; Elizabeth Scott, *Miller v. Alabama and the (Past and) Future of Juvenile Crime Regulation*, J. L. & Inequality (2013).

<sup>109</sup> See *Miller v. Alabama and the (Past and) Future of Juvenile Crime Regulation*, J. L. & INEQUALITY (2013);

<sup>110</sup> See Perkins, *supra* note 12.

<sup>111</sup> See generally Tamar R. Birckhead, *North Carolina, Juvenile Court Jurisdiction, and the Resistance to Reform*, 86 N.C.L. REV. 1143, 1494-1500 (2008) (discussing arguments against raising the age of the juvenile system, such

Young adults themselves are likely to attain greater benefit from institutional reforms in the adult system than from juvenile status. Even if the age of juvenile court jurisdiction were raised, young adults charged with serious crimes predictably would be transferred to an adult system with few programs or policies dedicated to their rehabilitation. Reformers are better advised to concentrate on ameliorative institutional reforms in the adult system. As the youngest offenders within the jurisdiction of the adult system, young adults have a claim to correctional responses that acknowledge their transitional status and potential for reform. More importantly, perhaps, to the extent that programs tailored to the needs of young adult offenders reduce crime by giving them the tools to assume conventional adult roles, society may also reap substantial benefits.

Modest extensions of juvenile court jurisdiction are possible. Indeed, many states have extended the jurisdictional age for juvenile court *dispositions* to 21 or even beyond.<sup>112</sup> This extension allows older juveniles whose offenses and age warrant more extensive interventions than would be possible if jurisdiction ended at age 18 to avoid transfer and the harsh sanctions of the adult system and to benefit as young adults from programs in the juvenile system. A more innovative reform (and an alternative to young offender status<sup>113</sup>) would be the extension of juvenile court jurisdiction to individuals who commit minor crimes as young adults. Adjudication and disposition in the juvenile system of these offenders allows them to avoid the stigma of criminal conviction without undue destabilizing impact on the juvenile system.<sup>114</sup>

## Conclusion

At a time when policymakers and the public are likely to be receptive to reforms that reduce crime, developmental and sociological research support a new approach to young adult offenders. Drawing on lessons from juvenile justice reforms, we argue that individuals in this age cohort should be treated as a discrete and transitional category between juveniles and adults.

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as expansion of an already underfunded system). See also Nancy L. Iredale & Paul L. Joffe, *Between Juvenile and Adult Courts: A No Man's Land for the Youthful Offender*, 1 YALE REV. L. & SOC. ACTION 49, 53 (1970-71) (noting arguments, made by a juvenile court judge, that the juvenile system's facilitates for treating the older offenders are inadequate and that raising the age of the juvenile system would dilute the trust and efficacy of the special handling of juveniles by a specialist court).

<sup>112</sup> Statutes in 35 states extend dispositional jurisdiction beyond age 18. See Report, National Criminal Justice Reference Service, *State Statutes Define Who is under Juvenile Court Jurisdiction* (June 2003) at <https://www.ncjrs.gov/html/ojjdp/195420/page3.html>

<sup>113</sup> See discussion *supra* notes 89-96.

<sup>114</sup> An alternative is youth offender status that shields criminal records. See discussion \_ to \_ *supra*.

Tailoring sentencing policies to this group and investing in effective programs to give them the tools to become productive non-criminal adults will serve social welfare, as well as the interests of the most vulnerable young adults.