



Why Judges Need to Understand the “Developing Brain” for Juvenile Sentencing

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There is little controversy over the idea that the brains of juveniles and adults are different. Both the worlds of neuroscience and the law agree on this point. Considering such issues, the U.S. Supreme Court found that sentencing juveniles to life sentences without the possibility of parole was unconstitutional. In the pivotal case of *Miller v. Alabama* (2012), the Court ruled that an “adult punishment” like a life sentence without parole is a cruel and unusual punishment for juveniles due to the “fundamental differences between juvenile and adult minds.” In this line of jurisprudence, the Court has relied on the “developing brain theory,” the idea that adolescents are less responsible than are adults for the same criminal acts because their brains are still developing. Due to their developing brains, juveniles take more risks, are less likely to make well-reasoned judgments than adults do, and are more likely than adults to be rehabilitated after an offense.

Research and current trends in juvenile court practice indicate that the impact of developing brain theory on sentencing is spreading from serious crimes to less severe offenses. Consequently, we need to understand how this theory interacts with other factors that influence judges’ sentencing decisions. Such research can help head off inappropriate uses of developing brain theory. It may also help encourage judges and other criminal justice leaders to adopt more appropriate treatments and sentencing options for juvenile offenders – including programs that use environmental enrichments to rehabilitate such offenders.

The Developing Brain and Other Factors Considered in Juvenile Court

Research shows that various factors influence judges’ sentencing decisions in juvenile courts. For example, judges are known to be affected by the gender, age, and peer ties of offenders. Considerations drawn from developing brain theory are likely to interact in complex ways with factors already understood to influence juvenile sentencing decisions.

- **Gender** – Research on the developing brain of adolescents indicates that the prefrontal areas of the brain, related to sound decision-making and impulse control, develop earlier in girls during adolescence than in boys. The fact that girls mature earlier than boys could be viewed by judges in juvenile courts as evidence that younger female offenders are more responsible for their actions than boys of the same age. Therefore, judges might believe that girls should be held more responsible for their crimes and receive tougher sentences. However, on average girls already receive more punitive sentences than boys in juvenile court. Therefore, it is possible girls’ sentences could become even more punitive if judges rely too heavily on developing brain theory.
- **Age** – Research suggests that the immaturity “gap” between adults and juveniles is the largest around age 16 or 17. This means that 16- and 17-year-olds are the most likely to make risky decisions because of social and emotional factors not present in younger juveniles. Already, judges tend to deliver the most punitive sentences to juvenile offenders in this age range – even though developing brain research suggests that juveniles who offend during this time are at their highest likelihood of offending and that these juveniles may no longer represent a risk for offending after they grow older than this age range. Equipped with research indicating that offenses committed around this time are associated with a “peak” in brain immaturity and that offending may be less likely after age 17, judges could possibly become more open to ordering treatment rather than harsh or very restrictive punishments.
- **Peer Involvement** – Peer influences are one of the main drivers in adolescent risky decision-making. Developing brain research suggests juveniles overvalue social acceptance and are thus more likely to allow social feedback to affect their decision-making. This helps explain why juveniles most often commit crimes in groups. Judges in juvenile courts, equipped with this research, may be more likely to consider negative peer influences in their sentencing. For example, if juvenile offenders are known to

be involved in gang activity or delinquency with a peer group, judges applying developing brain theory could gain a better understanding of how this type of social acceptance can significantly increase a juvenile's likelihood of reoffending. Judges could be encouraged to order that juveniles in these situations gain exposure to more positive peer environments – for example, by requiring the offender to participate in community service or community groups as part of juvenile probation. This approach could help reinforce positive behavior rather than criminality.

The Promise of Environmental Enrichment Programs

Developing brain theory could be used to educate judges in juvenile courts and build support for rehabilitative options that are well suited to juvenile offenders' specific needs. In particular, judges should receive ongoing education about how **environmental enrichment programs** can be used as alternatives to severe sentencing to reduce the likelihood of future offenses by juveniles. Environmental enrichment strategies to help juvenile offenders include increased family support, mental health care and therapy, placement in quality schools, increased economic or job opportunities, and participation in community programs. Enrichment programs aim to improve brain functioning by exposing juveniles to positive physical and social surroundings. Appropriate environmental changes can help reduce stress and risk-related behaviors.

The developing brains of juveniles can put them at a disadvantage by leading them to have poor perceptions of risk, driving them to reward-seeking behavior, and increasing the likelihood that they will use poor judgment. Building on this research, judges who want to improve juveniles' chances at rehabilitation and later life success should consider sentences that include environmental modifications that can counteract immature brain deficits.

Legal advocacy organizations should work to increase judges' awareness of developing brain research findings, yet should also bear in mind that they could entrench overly severe approaches to certain categories of offenders, like young girls, if these findings are misapplied. Judges, community organizations, and legal advocates should endeavor to take proper account of the specific developing brain risks experienced by juvenile offenders and mold rehabilitative sentencing options to address those factors. Environmental enrichment strategies must be tailored to the needs of the individual offender to maximize each juvenile's chances at rehabilitation.

Read more in Colleen M. Berryessa, "Potential Impact of Research on Adolescent Development on Juvenile Judge Decision-Making and Sentencing," *Juvenile and Family Court Journal* 69, no. 3 (2018): 19-38.