



COLUMBIA UNIVERSITY | JUSTICE LAB

EMERGING ADULT JUSTICE:

Recent U.S. reform initiatives
in the context of European models

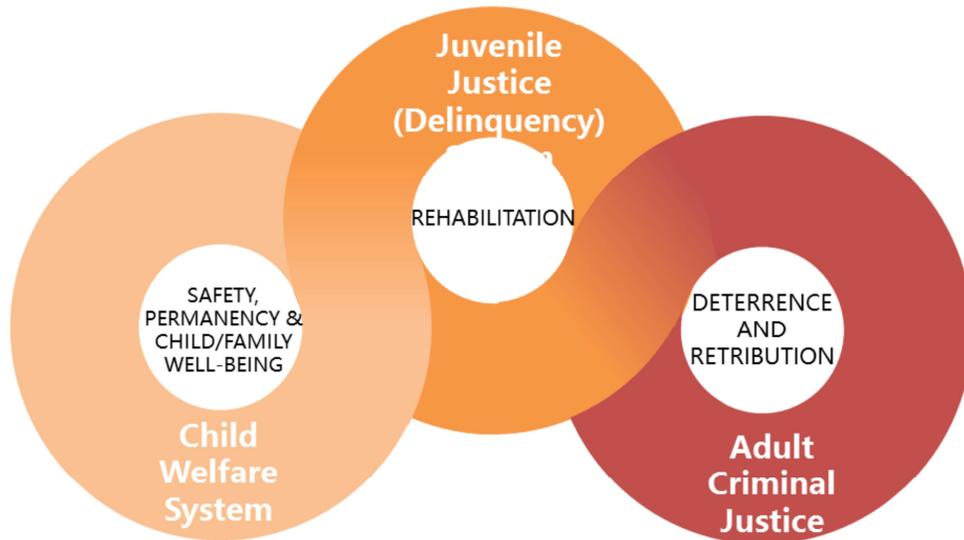
13 September, 2019

National Justice Symposium – Jesuit Social Services
Vincent Schiraldi, Co- Director of the Justice Lab

**Emerging
Adult
Justice
Project**

eajustice.org

Youth Justice System: AGE MATTERS



Youth subject to 3 distinct legal systems

Youth often flow from one to another

Age of jurisdictions can have an enormous impact on where a youth lands

CHALLENGE: Balancing fixed legal demarcation lines with developmental needs of youth

- ✓ Dynamic developmental needs of youth
 - Childhood → Adolescence → Emerging/Young Adulthood → Adulthood
- ✓ Growing variation in age of criminal responsibility (lower age) and demarcation line between juvenile justice and adult criminal justice system (upper age):
 - **Over time:**
 - Increasing research evidence on cognitive and emotional development of children and youth
 - International children's rights movement: United Nations Convention on the Rights of the Child, Beijing Rules
 - U.S.A.: Recent legislative interest to increase both lower and upper age across the states
 - **By Jurisdiction**
 - U.S.A.: State-by-state variation

While the legal systems need to set a fixed demarcation line between childhood/youth/adulthood to define their respective jurisdiction, in reality there is no magic birthday an infant turns into a child, a child into an adolescent, an adolescent into an adult.

- The transition to each of these developmental stages happens **gradually** – borders of each life stage are more blurry than clear-cut and highly individual: **particularly in the lower end, is it constitutional or just to try youth who are not competent to stand trial? Is it the best way to address their needs?**
- These transitional stages are also **not static**: they react to changing social and economical realities of today which are different than a generation ago. 18 year olds were occupying fully adult roles in 1899 when we established the court – even when I graduated high school, Wall Street example
- Finally, as the characteristics of each developmental stage change and adapt over time, our **understanding** of these developmental stages also **changes** with increasing research evidence. We now know, for example, that young people do not reach full neurocognitive maturity until well into mid-twenties and even into the third decade of life (AAP). We also now have a better understanding of distinct developmental stages of cognitive capability (cold cognition) and social and emotional functioning (hot cognition).

It is not surprising, then, that there is great and growing variation in age of criminal responsibility of a child (lower age of jj) and demarcation line between jj and adult criminal

justice system (upper age of jj):

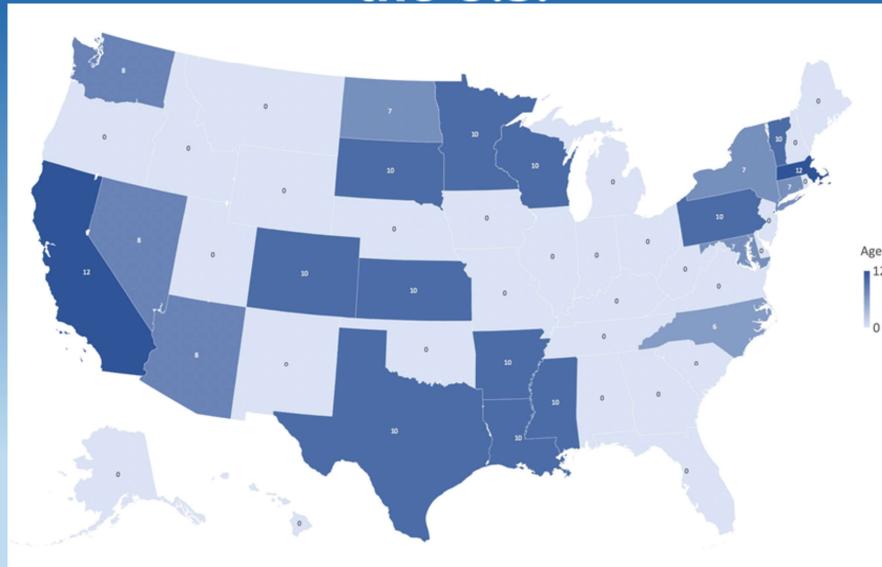
In the international standard is 12, many countries have set their minimums higher and in October, U.N Global Study on Children Deprived of Liberty coming out this year will call for raising the standard to 14.

sphere, **article 40 of the United Nations Convention on the Rights of the Child** (1989) declared that all nations set a minimum age of criminal responsibility (MACR) below which no child would be subject to formal prosecution. Subsequently, **Article 4 of the Beijing Rules** (Comment 10- Children's Rights in JJ) specified that this MACR be no younger than 12, and encouraged states not to lower their MACR to 12 if they were set higher (United Nations, 2007). While the international standard for the lower age is thus 12, many countries have indeed set up a higher lower age for jj: **14** in Germany, Croatia, Japan (with some exceptions), Korea; **15**: Sweden, Norway; while some other countries set even a higher age of criminal responsibility, but allows younger youth (in jj) to be tried for certain offenses (e.g. Poland (**17-15**), Russian Federation (16-14))

In addition, we believe that the forthcoming release of UN Global Study the Children Deprived of Liberty on October 8 will include a recommendation that the minimum lower age of jurisdiction be set at age 14.

In **USA**: There is no federal statute regarding the minimum age of juvenile justice jurisdiction. Rather state statutes, common law, court rules, or precedents determine the minimum age at which a child can be processed in the juvenile justice system, leading to state-by-state variation.

Lower Age of Juvenile Justice Jurisdiction in the U.S.



Source: Office of Juvenile Justice and Delinquency Prevention and National Juvenile Defender Center (2016) Edited and updated by Columbia Justice Lab in August 2019.

 COLUMBIA UNIVERSITY | JUSTICE LAB

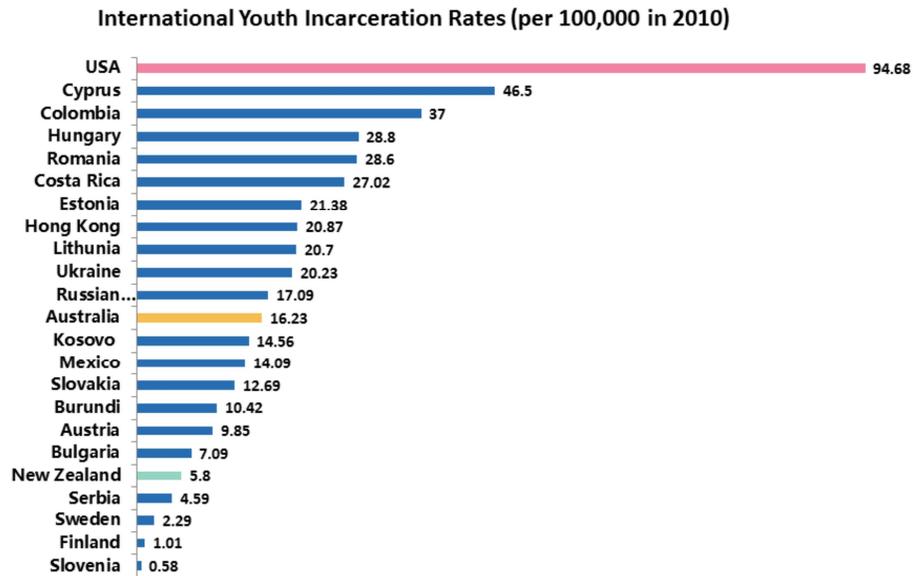
eajustice.org

In the United States, 29 states + DC set NO minimum age threshold for juvenile jurisdiction. Theoretically allowing a child to be sentenced to criminal penalties at any age, though in most of these states a capacity related test (capacity to stand trial) can be applied, but is seldom used.

19 states have established a minimum age threshold between ages of 6 to **12**:
Massachusetts raised the lower age of jj to 12 in April 2018 and CA followed soon thereafter (but with exceptions)

While the U.S.A is significantly behind the international standard in terms of submitting very young children in formal juvenile justice jurisdiction, there is increased awareness of the harm this practice causes, and legislative will for improvement (as seen in the case of MA and CA).

U.S.A. incarcerates youth at a substantially higher rate than any other country.



Source: United Nations Office on Drugs and Crime (2011)

IMPLICATIONS of NOT getting the age right: Expansion of juvenile justice system to the detriment of youth (see the chart).

- Although international comparisons of juvenile incarceration rates are challenging due to reporting variations, by all measures available, the United States incarcerates youth at a substantially higher rate than does any other country. According to the UNODC data, published in 2011 (using data from 2010), the U.S. incarcerates youth at more than twice the rate of the next highest incarcerating country (Cyprus) and nearly six times the rate of the Russian Federation. In 2015, US's rate of correctional placement was 176 per 100,000 juveniles across the USA (OJJDP, 2015).
- Such involvement of very young youth in JJ system causes more trauma and harm. Needs of youth are more appropriately met by resources in the the child welfare system, especially through community and school-based and family-centered programs.

Upper Age of Juvenile Justice Jurisdiction in the U.S.

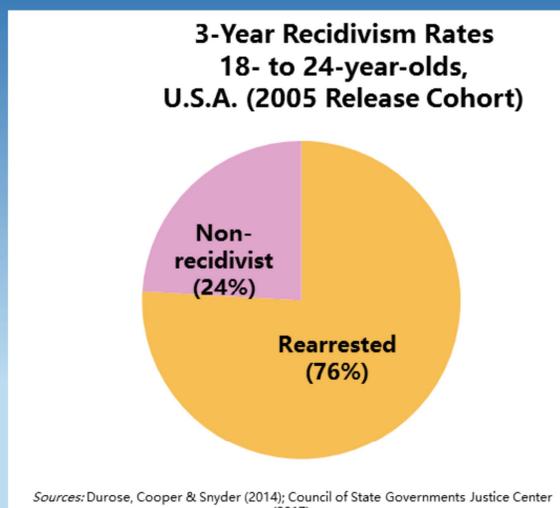
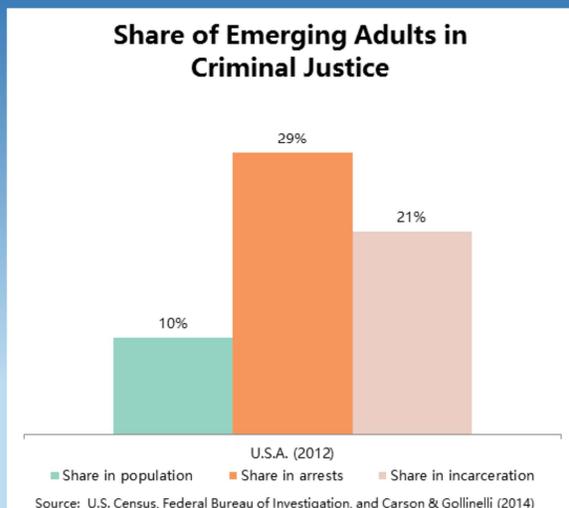
- In the US, **by 18th birthday at the very latest**, all youth are automatically tried and sentenced as an adult (same as a 50-year-old).
- Youth under 18 can also be tried as an adult depending on the type of offense.

Emerging Adults: A term first coined in 2000 by psychologist Jeffrey Arnett. It invokes the critical developmental period in which a child who is dependent on parents or guardians for supervision and guidance (as well as emotional and financial support) transitions into a fully mature, independent adult who engages as a productive and healthy member of society.

As for the upper age of juvenile jurisdiction in the US, every state has set the demarcation line somewhere between 16 and 18 since the creation of the 1st juvenile court in 1899 (although as will be discussed later, this is about to change for the 1st time in the history of the US). When I talk about raising the age, it'll be about raising the upper age.

Adult criminal justice system has demonstrated poor outcomes for individuals transitioning from childhood/adolescence to adulthood ...

Emerging adults have a disproportionately large share in adult criminal justice system with poor outcomes



JL been studying for four and established LC to look at this so next will be data and research we've uncovered during that time period – next several slides will lay that out.

End story – outcomes are terrible, they're terrible for the young people and their families, they're terrible for public safety and the rest of us.

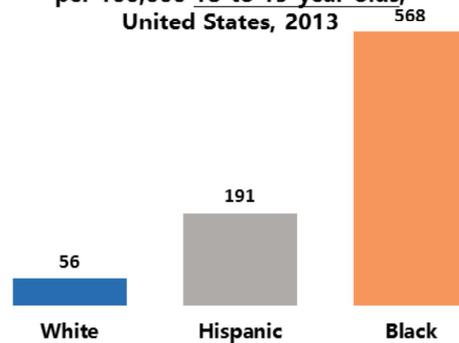
Because the line has been drawn between JJ and Adult CJ, very little attention was given to the EA population – data not generally collected or analyzed. But once examined, it becomes clear: Eas are over-represented the US justice system and have the highest recidivism rates of any age group.

PUBLIC SAFETY!

Racial and ethnic disparities of emerging adults in the criminal justice system are stark.

- Black male 18- to 24-year-olds comprised nearly 40% of all emerging adults admitted to state and federal prisons in the U.S.A. Overall, they are 7 to 9 times more likely to end up in prison compared to their white peers.
- Racial and ethnic disparities are higher for younger cohorts (ages 18-19).

Incarceration Rates by Race and Ethnicity
per 100,000 18-to 19-year-olds,
United States, 2013

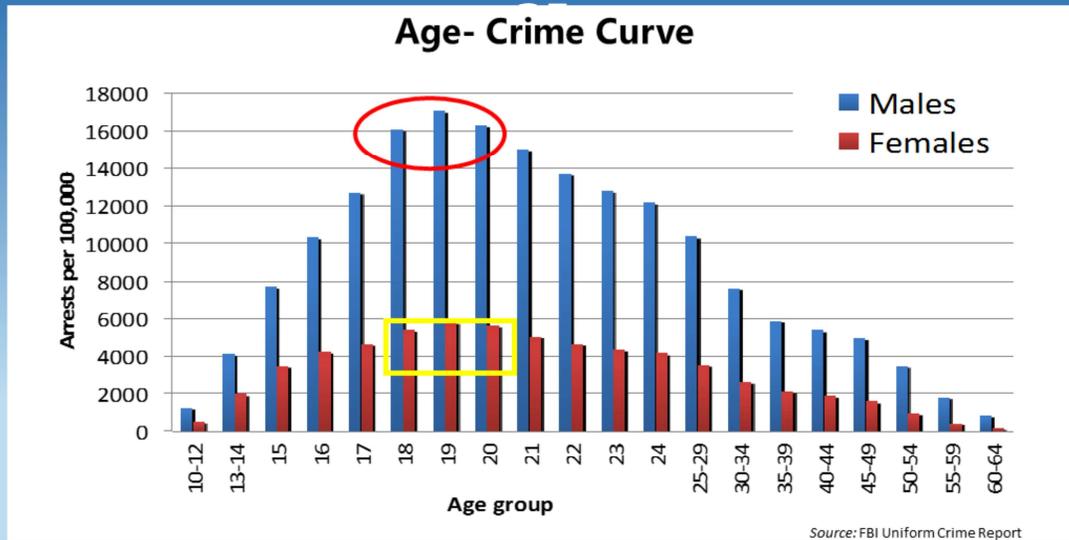


Source: *Prisoners in 2012: Trends in Admissions and Releases, 1991-2012, NCJ 243920*. Data Source: National Corrections Reporting Program yearend census records, National Prisoner Statistics program.

Some of the highest racial and ethnic disparities.

Black male emerging adults comprised nearly 40 percent of all emerging adults admitted to state and federal prisons in the U.S. in 2012, and overall they are 7 to 9 times more likely to end up in prison compared to their white peers. A narrower age group analysis suggests that the racial gaps are alarmingly wider for younger cohorts among emerging adults. In 2013, nationwide the incarceration rate for 18-to 19-year old African Americans and Hispanics was 568 and 191 per 100,000, that is 10 times and 3 times greater than their white peers respectively.

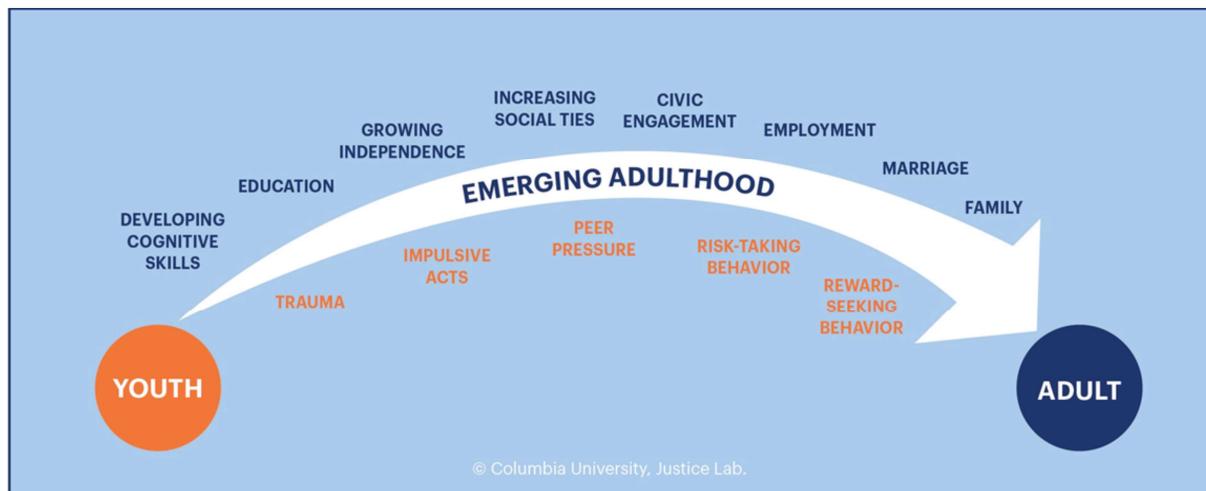
Relatively few emerging adults start criminal career after age 25, most “age out” of crime by



Now for some good news: Most emerging adults “age out” of crime.

Period of change (malleability): Both negative and positive (classic example – youth changes school – from negative peer group to positive one)

Developmental factors and milestones in the transition to adulthood



- The words in orange below the arrow indicates the risk factors associated with this period of transition (e.g., poor impulse control) and occur up to the mid-20s. Note: these have been found by our U.S. Supreme Court to be constitutional significant for youth under age 18 (death penalty, automatic, life w/o parole & due process cases) and there is active litigation to test whether they are also constitutionally significant for emerging adults.
- The words in blue mark the important developmental milestones on the path to adulthood (and **desistance from criminal activity**)

Changing Life Course Markers Impact

Resiliency

Young adults enter traditional, stabilizing adult roles at a later age

- Work and marriage help young males matriculate out of delinquency
- 45% of 18-24's were married in 1960; 9% in 2010
- Non-college median earnings down from \$40,000 ('73) to \$30,000 ('07) for young whites; \$34,000 to \$25,000 for young African Americans
- This prolonged transition to adulthood taxes ability to forgo immediate gratification and prolongs reliance on peers vs. family

Adolescent development is a challenge full of risks and heart-aches, as any parent knows all too well. But the flip side is that it's also a period of positive opportunity. The brains are particularly malleable and there is a ton of maturity that can happen, if in an environment that encourages this maturation process.

Effective interventions (many already used in the juvenile system)

Unfortunately, the adult criminal justice system – especially adult jails and prisons – more often interfere with healthy development than help it. Jails are traumatic places with few if any resources or programs designed for this distinct developmental population.

Other legal areas recognize emerging adults as more like juveniles than adults

- Cigarettes – 18 U.S. states + D.C. have raised sale age to 21
- Marijuana - All U.S. states that have legalized have set age at 21+
- Alcohol – Age 21 in all U.S. states
- Can stay on parental health insurance until age 26
- States are increasing age of gun purchase to 21
- In Australia, can't rent a car until age 21 and a surcharge is added up to age 25

U.S. RECENT EXPERIMENTS in Emerging Adult Justice

Local/Regional Initiatives

- **Specialized courts**
 - San Francisco, CA; Brooklyn, NY; North Lawndale, IL
- **Specialized probation**
 - Merrimack Valley, MA, and San Francisco
- **Specialized corrections**
 - P.A.C.T. unit in Middlesex County, MA
 - P.E.A.C.E. unit in Suffolk County, MA
 - T.R.U.E. unit (male) and W.O.R.T.H. unit (female) in CT
 - Young Men Emerging Unit in Washington D.C.

→ “Justice by geography” ←

Systemic Reforms

- **Hybrid/Youthful Offender Statutes**
 - Vermont
 - Washington D.C.: Youth Rehabilitation Act
 - Raised the age of eligibility to 25
- **Other special procedures:**
 - Enhanced parole in CA (for offenses committed before 26th birthday) and in IL (for offenses committed before 21st birthday)
 - Expungement (MA)
- **Expansion of juvenile jurisdiction**
 - **Vermont:** Passed law in May 2018 that will gradually raise the upper age of juvenile jurisdiction to a youth's 20th birthday by 2022
 - Bills in MA, Illinois, and Connecticut
 - Hearings and taskforces in other states, e.g. CO, UT, WA

I would group the recent reform activities in the US into 2 buckets:

- 1) Localized initiatives that focus on changes in practices (e.g. courts, probation and corrections) – share impressions of 1 to 2 types of reforms
- 2) Systemic reforms (potentially affect all youth in a state) that require legislation
 - Most exciting in terms of reaching more youth/transformational
 - Include interesting hybrid systems – combining elements of both the JJ and CJ systems (DC)
 - Sentencing type reforms – specialized parole, expungement
 - Expansion of upper age of juvenile jurisdiction (referred to as **Raise the Age** in the US)
 - Flurry of activity in past 3 years
 - Historic legislation passed in VT
 - At some point, if a few other states follow, there will be a tipping point and it may become a national trend/standard)
 - Not a coincidence that these states just went up to 18, impact much lower than anyone ever predicted, younger kids drop off as we raise the upper age. In that sense, raising the upper age de facto takes care of the lower age.

Opportunities for **positive** interventions

- Individualized and effective treatment (e.g., MST-EA)
- Family involvement (w/ family defined broadly)
- Education (special educational services) and vocational training
- Supervision and support
- Community organizations with expertise and experience
- **DIVERSION**

Most of these are deeply embedded in the juvenile justice system but not in the adult criminal justice system.

Adolescent development is a challenge full of risks and heart-aches, as any parent knows all too well. But the flip side is that it's also a period of positive opportunity. The brains are particularly malleable and there is a ton of maturity that can happen, if in an environment that encourages this maturation process.

Effective interventions (many already used in the juvenile system)

Unfortunately, the adult criminal justice system – especially adult jails and prisons – more often interfere with healthy development than help it. Jails are traumatic places with few if any resources or programs designed for this distinct developmental population.

European Approaches to Emerging Adult

- **20 out of 35** countries (57%) provide for *either* the application of educational measures/rehabilitation provided by juvenile law *or* special rules concerning specific sanctions for young adults in the general penal law.
- **18 out of 35** countries (51%) provide special rules in the adult criminal law concerning the mitigation of penalties for young adults.
- **10 out of 35** countries (29%) provide for the mitigation of sanctions according to the general criminal law *as well as* the application of juvenile law sanctions.

28 out of 35 countries in Europe provide some sort of special laws or procedures for emerging adults charged with crimes.

For example, Sweden discounts sentences by age



Croatia and The Netherlands - Discretionary Models -



- **Age of youth court jurisdiction:**
 - CROATIA:
 - Lower age of youth court is 14
 - Juvenile sanctions and special juvenile procedure can apply to youth up to 21st birthday *at time of trial*
 - THE NETHERLANDS:
 - Lower age of youth court is 12
 - Juvenile sanctions can apply to youth up to 23rd birthday *at time of crime*
- **Discretionary/hybrid systems**

Opportunity to visit 3 European countries in 2018 to see their EAJ systems in action.

Both Croatia and Netherlands – discretionary models – use experts/screening to determine whether EA should be treated as a juvenile or adult for sanctions.

Geographic differences (give example of trial that we observed in Rotterdam – Court scheduled trial with youth court judges as a routine matter; not done in other parts of the country)

Building momentum – see increase in #/% of youth being given juvenile sanctions in last 5 years.



GERMANY – Strict Model –



- **Age of youth court jurisdiction in Germany**
 - 14th birthday to 21st birthday
 - Since 1953, 18-, 19-, and 20-year-olds have been treated in youth justice system
- **Case outcomes involving emerging adults in Germany**
 - 67% result in youth sanction; 33% result in adult sanction (mostly cases involving MV offenses)
 - Rape/murder: ~ 90% result in youth sanctions

Germany stands out – long history (1953 – fatherless generation); use of youth court for all proceedings; vast majority of cases result in the application of juvenile sanctions.

Justice Lab's educational trip to Germany (March 2018)



Massachusetts delegation in Berlin Court House

Justice Lab hosted a 5-day educational trip to Germany for 20 justice leaders from MA to learn about the German justice system for older adolescents/emerging adults. Share a couple of take-aways/lessons learned (co-mingling of ages but with vast majority ages 18+; college campus like setting; vocational ed)

Resources on Emerging Adult Justice

- Siringil Perker, S. and Chester, L. (June 2017). "Emerging Adults: A Distinct Population That Calls for an Age-Appropriate Approach by the Justice System." Emerging Adult Justice Research Series, Program in Criminal Justice Policy and Management, Harvard Kennedy School. Available at https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/MA_Emerging_Adult_Justice_Issue_Brief_0.pdf
- Siringil Perker, S. and Chester, L. (January 2018). "Combating the Crisis: Using Justice Reform to Address the Drug Epidemic among Emerging Adults." Emerging Adult Justice Research Series, Justice Lab, Columbia University. Available at https://justicelab.columbia.edu/sites/default/files/content/FINAL_EAJBrief_CombatingtheCrisis_Final.pdf
- Chester, L. and Schiraldi, V. (December 2016). "Public Safety and Emerging Adults in Connecticut: Providing Effective and Developmentally Appropriate Responses for Youth Under Age 21." Submitted to the Tow Youth Justice Institute, University of New Haven. Available at https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/public_safety_and_emerging_adults_in_connecticut.pdf
- Schiraldi, V., Western, B., and Bradner, K. (2015). "Community-Based Responses to Justice-Involved Young Adults." New Thinking in Community Corrections Bulletin, Washington, D.C.: U.S. Department of Justice, National Institute of Justice. NCJ 248900. Available at <https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/ESCC-CommunityBasedResponsesJusticeInvolvedYA.pdf>
- Schiraldi, V. (March 2018). "Reflections on How Europe Handles Emerging Adults in Trouble With the Law." A blog post series on Justice Lab's educational trip around Europe. Available at <http://justicelab.iserp.columbia.edu/europe-blog-series.html>
- Matthews, S., Schiraldi, V., and Chester, L. (July 2018). "Youth Justice in Europe: Experience of Germany, the Netherlands and Croatia in Providing Developmentally Appropriate Responses to Emerging Adults in the Criminal Justice System." Justice Evaluation Journal 2018(1):59-81. Available at <https://doi.org/10.1080/24751979.2018.1478443>.
- Siringil Perker, S., Chester, L., and Schiraldi, V. (January 2019). "Emerging Adult Justice in Illinois: Towards an Age-Appropriate Approach." Emerging Adult Justice Research Series, Justice Lab, Columbia University. Available at <https://justicelab.columbia.edu/Emerging-Adult-Justice-in-Illinois>.
- Fair and Just Prosecution (January 2019). "Young Adults in the Justice System." Issues at a Glance. Available at https://fairandjustprosecution.org/wp-content/uploads/2019/01/FJP_Brief_YoungAdults.pdf.
- National Institute of Justice Study Group on the Transition from Juvenile Delinquency to Adult Crime, Study Reports. Available at <https://www.nij.gov/topics/crime/Pages/delinquency-to-adult-offending.aspx#reports>.