

Juvenile Justice and the Law
Fall 2024
Syllabus v.1.0
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1. 8/26 - Introductory class - This course will cover the history, philosophy, structure, and development of juvenile courts and other justice systems. Today we will do introductions, discuss class expectations, and talk about what we mean when we say 'juvenile justice.' The law review article assigned for this class is a sort of survey of the material we will be covering in detail during this class.
 - a. Alexandra O. Cohen et. al., *When Does A Juvenile Become an Adult? Implications for Law and Policy*, 88 Temp. L. Rev. 769 (2016).
2. 8/28 - The beginnings of Juvenile Justice - At common law, children were either treated as adults - subject to criminal prosecution - or as infants - not prosecutable at all.
 - a. *State v. Doherty*, 2 Tenn. 80 (Tenn. Super. L. & Eq. 1806)
 - b. Craig S. Lerner, *Originalism and the Common Law Infancy Defense*, 67 Am. U. L. Rev. 1577 (2018).
3. 9/4 - In 1899, Illinois established the first "juvenile court" to prosecute children separately from adults. The idea took off around the country (and the world) and in no time there were juvenile courts everywhere.
 - a. Franklin Zimring, *The Common Thread: Diversion in the Jurisprudence of Juvenile Courts*, in Rosenheim, M.K. et al., eds., *A Century of Juvenile Justice* (2002) (available at <https://escholarship.org/uc/item/1kq262bq>).
 - b. Barry Feld, *The Evolution of the Juvenile Court*, "The Progressive Juvenile Court" pp.19-39.
 - c. Quinn Myers, *How Chicago Women Created the World's First Juvenile Justice System*, National Public Radio (May 11, 2019) (available at <https://www.wbez.org/curious-city/2019/05/11/how-chicago-women-created-the-worlds-first-juvenile-justice-system>).
4. 9/9 - The first wave of judicial reform - Juvenile courts from the early 1900s to the 1960s were informal and lacked process. In the 1960s and 70s, the Supreme Court established for the first time that juveniles must be afforded basic due process rights and procedures to vindicate them.
 - a. *Kent v. United States*, 383 U.S. 541 (1966)
 - b. *In re Gault*, 387 U.S. 1 (1967)
 - c. Barry Feld, *The Evolution of the Juvenile Court*, "The Due Process Revolution and the Juvenile Court" pp. 43-68.
5. 9/11 - While the Supreme Court reigned in the juvenile courts, it did not extend every single right available to adults to children. The limiting principles that

developed in the years following *Gault* continue to define the boundaries of the juvenile justice system today.

- a. *In re Winship*, 397 U.S. 358 (1970)
 - b. *McKeiver v. Pennsylvania*, 403 U.S. 528 (1976)
 - c. Suja A. Thomas and Collin Stich, *Why (Jury-less) Juvenile Courts are Unconstitutional*, 69 Emory L. J. 273 (2019)
6. 9/16 - The 80s and 90s, crime and response - The 80s and 90s were marked by increases in crime generally and juvenile crime in particular. In response to - or at least in connection with - the increase in crime, government at all levels ratcheted up penalties on juvenile offenders. More children were tried and sentenced as adults, served long terms of confinement in juvenile and adult prisons, and faced lifetime consequences for normal juvenile misconduct. Black and brown children were (and remain) disproportionately impacted by the justice policies implemented in those decades.
- a. *Memories of a Murder Linger in Vermont*, New York Times (July 19, 1982) (available at: <https://www.printfriendly.com/p/g/6ndeA9>)
 - b. *State v. Hamlin*, 146 Vt. 97, 499 A.2d 45 (1985)
 - c. Barry Feld, *The Evolution of the Juvenile Court*, "The Get Tough Era I-II" pp. 71-104.
7. 9/18 - Race and punitive responses in the juvenile justice system - The more punitive changes to the juvenile justice system made in the 80s and 90s cannot be understood without examining the role of race in the development of those legal and policy initiatives, in court procedure, and in legal outcomes. We will start by looking at disparities in how adolescence is conceptualized and move on to looking at laws that target how children play and dress.
- a. Henning, Introduction through page 80
 - b. HBO/Vice, "Raised in the System," (available at: <https://youtu.be/yq3uVJQN8Gw>)
8. 9/23 - Race and punitive responses in the juvenile justice system – Today we will look at racial disparities in how adolescent expressions of sex and sexuality are treated, and begin to look at the structural relationships between police and adolescents.
- a. Henning, page 81 to 172
9. 9/25 - Race and punitive responses in the juvenile justice system – Today we will look at policing and how police interactions with white and non-white children (and adults) look different.
- a. Henning, page 173 to 235
 - b. *Commonwealth v. Warren*, 58 N.E.3d 333 (Mass. 2016)
10. 9/30 - Race and punitive responses in the juvenile justice system – continued.
- a. Henning, page 236 to the end

- b. Goff, et. al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, *Journal of Personality and Social Psychology*, 2014, Vol. 106, No. 4, 526 –545 (<https://www.apa.org/pubs/journals/releases/psp-a0035663.pdf>)
11. 10/2 - Children and policing – As we’ve read, the interactions between children – particularly children of color – and the police are particularly fraught. While there have been numerous cases addressing the rights of children in the “charging and adjudication” phase of a juvenile proceeding (*Kent, Gault*, etc.), and in the sentencing phase (stuff we haven’t read yet, *Roper, Miller*, etc.), fewer courts have addressed the interactions between police and children. The United States Supreme Court’s decision holding that a child’s youth is a critical factor in determining whether that child is in custody for *Miranda* purposes. Since then, other courts have examined similar issues.
 - a. *J.D.B. v. North Carolina*, 564 U.S. 261 (2011)
 - b. *Commonwealth v. Evelyn*, 152 N.E.3d 108 (2020)
 - c. Barry Feld, *The Evolution of the Juvenile Court*, “The Defendant is a Kid” pp. 224-272.
12. 10/7 - Juvenile statements, the Fifth Amendment and suppression – Laws regarding juvenile statements and interrogation illustrate the dynamic between law enforcement and children and the cases show the transition in the nature of those interactions. As we get ready to work on our suppression motions, we’ll examine the techniques used to elicit statements from children and adults and consider the constitutional implications of those methods.
 - a. *In re E.W.*, 2015 VT 7, 198 Vt. 311, 114 A.3d 112 (2015)
 - b. *In re D.A.C.*, 741 S.E.2d 378 (2013)
 - c. *United States v. Easley*, 911 F.3d 1074, 1081 (10th Cir. 2018)
13. 10/9 - Motion day – For today, you will read the charging documents, witness statements, and hearing testimony for our suppression motion assignment. We will talk about what goes into a motion and the process of pre-trial motion practice. Be prepared for some “mini-arguments” in class based on the readings.
 - a. *In re T.S.*, Information and affidavit, witness statements, hearing transcript – will be provided on Canvas.
 - b. Example suppression motion – to be provided.
14. 10/16 - Modern judicial reform - From the 2000s through the mid-2010s, the United States Supreme Court issued a series of landmark rulings that changed the way that courts look at juveniles, particularly those children charged with the most serious criminal offenses.
 - a. *Roper v. Simmons*, 543 U.S. 551 (2005)
 - b. *Graham v. Florida*, 560 U.S. 48 (2010)
 - c. Barry Feld, *The Evolution of the Juvenile Court*, “The Criminal is a Kid” pp. 195-223.

15. 10/21 - Modern judicial reform – The last few cases in the line of juvenile sentencing cases show a turn in the Supreme Court’s approach to juvenile law. We’ll look at those cases and start to see how the changing membership of the court affects the practice of juvenile law
 - a. *Miller v. Alabama*, 567 U.S. 460 (2012)
 - b. *Montgomery v. Louisiana*, 557 U.S. 190 (2016)
 - c. *Jones v. Mississippi*, -- U.S. --, 141 S.Ct. 1307 (2020)

16. 10/23 – Modern legislative reform – The United States Supreme Court and state High Courts made several changes to juvenile law and practice during the 00’s and 10’s, mostly in the areas of sentencing. At the same time, we began to see state legislatures and the United States Congress make changes of a different kind – focusing on eligibility for juvenile court and the nature of juvenile confinement and supervision. In this class we’ll look at the legislative process and why certain reforms are more easily achieved in statehouses or congress than in courtrooms.
 - a. Richard Teitelman & Gregory Linhares, *Juvenile Detention Reform in Missouri: Improving Lives, Improving Public Safety, and Saving Money*, 76 Alb. L. Rev. 2011 (2012)
 - b. Will Singer, *Judicial Intervention and Juvenile Corrections Reform: A Case Study of Jerry M. v. District of Columbia*, 102 J. Crim. L. & Criminology 901 (2012)
 - c. Annie E. Casey Foundation, *Experiencing Probation, Insight from Young People and Families* (available at https://assets.aecf.org/m/resourcedoc/Report_experiencingprobationinsights_2024.pdf)

17. 10/28 - Why treat kids differently? - Since the turn of the twentieth century, we have been treating children who behave wrongly differently than adults who commit crimes. But what is so different about children that requires a completely different court system? Since the invention of the functional MRI, we’ve begun to see research that, for the first time, shows how children’s brains actually function completely differently from adult brains.
 - a. Elizabeth S. Scott, Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. Crim. L. & Criminology 137 (1997)
 - b. If your last name begins with A-Ma, read the following studies and be ready to tell the rest of the class about them:
 - i. Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 Child Dev. 28 (2009)
 - ii. Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 Law & Hum. Behav. 333 (2003)
 - iii. Margo Gardner & Lawrence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 Developmental Psychol. 625 (2005)

- c. If your last name begins with Mc-Z, read the following studies and be ready to tell the rest of the class about them:
 - i. Elizabeth P. Shulman & Elizabeth Cauffman, *Reward-Biased Risk Appraisal and Its Relation to Juvenile Versus Adult Crime*, 37 L. & Hum. Behav. 412 (2013)
 - ii. Michael Dreyfuss et al., *Teens Impulsively React rather than Retreat from Threat*, 36 Developmental Neuroscience 220 (2014)
 - iii. Jessica Uy & Adriana Galvan, *Acute Stress Increases Risking Decisions and Dampens Prefrontal Activation among Adolescent Boys*, NeuroImage (2017)

18. 10/30 – Sentencing day – Today we’re going to talk about sentencing to get you ready to write a sentencing memo. Sentencing a juvenile in adult court is a special problem. The typical analysis that courts go through to decide what sentence to impose doesn’t always apply to children. Also, ordering a sentence that will commit a child to an adult prison is a very different type of punishment than sentencing an adult to prison. We’ll talk about what happens at sentencing and the role and purpose of a sentencing memo.

- a. Sentencing assignment materials – pre-sentence investigation, psychological evaluation, fact pattern, sentencing letters, victim statement – will be available on Canvas.
- b. Example sentencing memo – to be provided.

19. 11/4 - Adolescent brain development in the courtroom - The differences between children’s and adults’ brains is not merely academic. Adolescent brain development not only explicitly factors into some juvenile justice policies and decisions, but also is at the heart of a lot of forensic psychology practiced in the juvenile justice system. Forensic psychologists play a role at every phase of a juvenile proceeding, from the initial hearing to discharge planning.

- a. Brief for the American Psychological Association, and the Missouri Psychological Association as Amici Curiae Supporting Respondent, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633), 2004 WL 1636447.
- b. Thomas Grisso, *Juvenile Competency to Stand Trial Questions in an Era of Punitive Reform*, 12 Crim. Just. 4 (Fall 1997).

20. 11/6 - Kids and search and seizure – As we’re learning, children have constitutional rights, but they often look a little different from the same rights as enjoyed by adults. Unlike some of the other cases we’ve looked at – procedural rights cases, *Miranda* cases, and sentencing cases – there is no clear trend in search and seizure law. Rather, courts have relied on various analyses of the ‘reasonableness’ of a search.

- a. *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).
- b. *Safford v. Redding*, 557 U.S. 364 (2009)
- c. *State v. Jones*, 666 N.W.2d 142 (Iowa 2003)

21. 11/11 – Kids and speech – The intersection between juvenile justice and the First Amendment is really interesting. Children have different First Amendment rights than adults, particularly in school (and, as we’ll see, even when they’re not in school at all). While the United States Supreme Court’s First Amendment cases have generally been consistent and predictable, the cases related to schools and children have been all over the place.
 - a. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943)
 - b. *Tinker v. Des Moines Independent School District*, 393 U.S. 503 (1969)
 - c. *Hazlewood School District v. Kuhlmeier*, 484 U.S. 260 (1988)
 - d. *Morse v. Fredrick*, 551 U.S. 393 (2007)

22. 11/13 – The intersections between child welfare law and juvenile justice law. There is a tremendous intersection between children who have been abused or neglected and children who are accused of committing offenses as delinquent children or as adults. Today we’ll explore a bit of that intersectionality, some of the theories behind the correlation, and look at some of the attempts to break the cycle of abuse/neglect and justice system involvement.
 - a. *Intersection of Juvenile Justice and Child Welfare Systems*, Office of Juvenile Justice and Delinquency Prevention (available at: <https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/Intersection-Juvenile-Justice-Child-Welfare-Systems#0-0>)
 - b. *Is there an effective model for serving youth in both the child welfare and juvenile justice systems?*, Casey Family Programs (2022) (available at: <https://www.casey.org/crossover-youth-practice-model/>)

23. 11/18 – Schools and the juvenile justice system. There has been a lot written about the links between school discipline and the justice system. Today we’ll look the policy issues linking the two and the balance between safety, surveillance, justice interventions, and schools.
 - a. *The Thin Blue Line in Schools: New Evidence on School-Based Policing Across the United States*, Rand Corporation (available at: https://edworkingpapers.com/sites/default/files/thinblueline_wp_apr27_2023_0.pdf)
 - b. Barry Feld, *The Evolution of the Juvenile Court*, “The Student is a Criminal” pp. 173-191.

24. 11/20 – Gender in the juvenile justice system – There are stark gender differences in all aspects of the juvenile justice system from the decision to arrest to sentencing and commitment. While the vast majority of juvenile’s charged with offenses are young men, many of the deficiencies in the system affect young women in different ways. Additionally, there are differences in adolescent brain development that put young women and young men in different developmental states at the same age.
 - a. Barry Feld, *The Evolution of the Juvenile Court*, “The Girl is a Criminal” pp.

156-172.

- b. *Girls in the Juvenile Justice System*, Office of Juvenile Justice and Delinquency Prevention: Juvenile Justice Statistics National Report Series Bulletin (available at <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/251486.pdf>)
- c. Tiffany Brewer & H. Mitchell Caldwell, *No Girl Left Behind: Girls Courts as a Restorative Approach to Healing*, 52 Seton Hall L. Rev. 685 (2022).

25. 11/25 – Restorative Justice in juvenile court – From the beginnings of juvenile justice, restorative principles have been incorporated into the juvenile justice process. In recent years, the role of restorative justice has become more explicit, standardized, and widespread. Nationally, almost 50% of juvenile arrests are ultimately referred to a restorative diversion program. We’ll look at the use of restorative justice in juvenile cases and the politics and law that have both promoted and dissuaded the use of restorative practice.
- a. Barton Poulson, *Recreating Relationships: The Interpersonal Implications of Restorative Justice for Juvenile Offenders and their Victims*, 10 J. L. & Fam. Stud. 161 (2007)
 - b. Steve Mulligan, *From Retribution to Repair: Juvenile Justice and the History of Restorative Justice*, 31 U. La Verne L. Rev. 139 (2009)
 - c. James C. Backstrom, *The Proper Intersection of Restorative Justice and Public Safety in Juvenile Cases*, 54 APR-Prosecutor 7 (2020).
26. 11/27 – Wild card #1 – This class is reserved for... whatever. If we wind up “behind” on the syllabus because we find a subject that we want to explore for more than one class, this will allow us the flexibility to adjust. Or, if we are on schedule, this class can be reserved for any issues that you, as a class, want to explore but aren’t addressed in the syllabus. In past years we’ve used these wild card classes to look at specific issues in juvenile law that are of interest to the class including the special problems posed in cases of juvenile sex offenses, the juvenile probation and parole process, the strengths and weaknesses of juvenile detention and treatment facilities, issues of adolescent competence and sanity, etc.
27. 12/2 – Wild card #2 – Same as above.
28. 12/4 – Directions – For our last class, we’ll look at juvenile justice reforms taking place in Vermont and around the nation. The federal government has been pushing states to get children out of adult jails, to limit the use of secure juvenile confinement, and to stop incarcerating status offenders. Simultaneously, states, including Vermont, have been raising the minimum and maximum ages of juvenile

jurisdiction, decarcerating the juvenile population, closing juvenile jails, and increasing opportunities for court diversion and restorative justice outcomes. We'll look at the direction that our juvenile legal system is headed. And celebrate our last class, of course.

- a. Deborah Becker, *Why Vermont Raised Its Juvenile Court Age Above 18 — And Why Mass. Might, Too*, WBUR (10/3/2019) (available at: <https://www.wbur.org/news/2019/10/03/juvenile-court-age-vermont-massachusetts>)
- b. *Age Boundaries in Juvenile Justice Systems*, National Governors Association (8/12/2021) (available at: <https://www.nga.org/center/publications/age-boundaries-in-juvenile-justice-systems/>)
- c. Frieder Dunkel, *Juvenile Justice Systems in Europe – Reform Developments Between Justice, Welfare and 'New Punitiveness'*, Kriminologijos Studijos (1/1/2014) (available on Canvas in the Files section)