

HOLDING TEEN DATING VIOLENCE OFFENDERS ACCOUNTABLE

Disposition and Sentencing Considerations Generally

The Supreme Court has ruled that both capital punishment and life imprisonment without the opportunity for parole as applied to juvenile defendants are unconstitutional in violation of the Eighth Amendment.¹ Crucial to the Court’s reasoning in both cases were the differences in brain development between juveniles and adults.

In *Roper v. Simmons*,² the Court focused heavily on the importance of the neurological differences between children’s and adults’ brains, which is discussed in *The Teenage Brain: New Knowledge From Neuroscience* Information Sheet. The Court noted three main differences which mitigated juveniles’ culpability:

- First, “a lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.”
- Second, “juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.”
- Third, “the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.”³

How Does Brain Development Factor In?

Adolescent behavior might seem inappropriate, but in the context of teen experiences and brain development this may not be the case. It is important to have an awareness of the impact of social and developmental factors in order to intervene effectively.

Two brain systems contribute to adolescent behaviors: the socio-emotional system and the cognitive control system.⁴ They have different locations in the brain and develop differently.

- Socio-emotional system: Responsible for processing emotions, social information, and reward and punishment. Major changes in early adolescence are related to hormones. Changes lead to increased thrill seeking, easier emotional arousal, and increased interest in social information.
- Cognitive control system: Responsible for deliberate thinking and weighing of costs and benefits, planning ahead, and regulating impulses. Develops from pre-adolescence through mid-20s.

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Children and adolescents are still developing biologically (brain development), cognitively (reasoning and problem solving), and psychosocially (peer pressure and risk taking), all relevant to culpability. Adolescence is a time characterized by a social emotional system that is easily aroused and highly sensitive to social pressure, as well as a still immature cognitive control system. As a result, adolescents are less able to control impulses, less able to resist pressure, less likely to think ahead, and more driven by the thrill of anticipated rewards.

Overall intellectual ability largely stops maturing after 16; however, psychosocial maturity continues to develop through the mid-20's and beyond. Thus, the "Immaturity Gap" arises, and an adolescent's short-sightedness, impulsivity, and susceptibility to peer influence can undermine their more developed decision making ability.⁵

It is important to place adolescents' actions in the context of their cognitive, psycho-social, and intellectual development, and while judges should not excuse abusive behaviors, they should consider the developmental stage of adolescence as a mitigating factor when determining the proper disposition or sentencing.

Factors Leading to Teens' Poor Decision Making:

- Lack of foresight and attention to immediate gratification
- Less sensitivity to risk and a focus on the potential benefits, contributing to impulsivity
- Coercion and distress in the form of peer-pressure
- Desire for peer approval and fear of rejection

Examples of Poor Decision Making:

- Joining gangs
- Shoplifting
- Drug Use
- Cheating on school exams

Approaches to Disposition Hearings & Sentencing

Recognizing teen dating violence as distinct from general violence is essential when making disposition determinations. An understanding of developmental and neurological differences between youth and adults, as well as the high cost of incarceration, has led to juvenile justice system reform. Initiatives, such as the Crossover Youth Practice Model, the Juvenile Detention Alternatives Initiative, and Models for Change, help prevent youth from entering the juvenile justice system unnecessarily and improve their family and community environments for the future.⁶ Intervention programs generate opportunities to re-educate perpetrators of teen dating violence about their relationships and their use of violence. Program activities might include "discussions of healthy and unhealthy relationships, sex-role stereotyping, coping with anger or

rejection, and the effect of alcohol or drug use on one's behavior, among other topics."⁷ Studies show that "a court-based intervention program for juveniles... is especially effective for first-time offenders who have not yet "hardened" into a destructive behavior pattern."⁸ These findings suggest that by working with adolescent victims and perpetrators, courts may be able to attain a level of rehabilitation that might be unattainable in an adult population.⁹

A response which holds youth offenders accountable while providing rehabilitative opportunities shows adolescents that the legal system and social structures do not condone violence but also do not discard youth.¹⁰ Recognizing the potential crossover issues among criminal, family, and juvenile law can help uncover "the information necessary to making safety-driven decisions and interventions that do not inadvertently re-victimize adolescents and expose them to greater risk."¹¹

The National Research Council (NRC) proffers a developmental approach to juvenile justice reform that provides a clear path for systems.¹² The NRC identified seven hallmarks of a developmental approach to juvenile justice:¹³

- Accountability without criminalization;
- Alternatives to justice system involvement;
- Individualized response based on assessment of needs and risks;
- Confinement only when necessary for public safety;
- A genuine commitment to fairness;
- Sensitivity to disparate treatment; and
- Family engagement.

The Santa Clara County Juvenile Domestic and Family Violence Court (JDFVC) uses similar features to ensure appropriate intervention with adolescents. These include:¹⁴

- Intake procedures that flag cases;
- A dedicated docket with trained attorneys in both the district attorney's office and the public defender's office; and
- Monthly meetings with involved staff.

Tailoring the Response

Creating a tailored response sends the message that teen dating violence is unacceptable and offers the opportunity to work with adolescent victims and perpetrators to curtail future violence.¹⁵ Conceptually, it might be difficult to accept youth, for example, as young as eight, in dating relationships, but acknowledging the violence in this context is critical and should not be dismissed as acceptable "rough-housing."¹⁶

Teen Dating Violence ranges from misdemeanors to murder. Craft tailored responses that:

- Implement early and effective intervention. It is important that all consequences be given as quickly as possible after finding a teen is responsible/guilty. Keep in mind, all dispositions should be evidence based.
- Require accountability for youth perpetrators. It is important for the court to recognize the severity of the offense and issue a commensurate sentence. However, equally important is the need to facilitate rehabilitation. Balancing both interests is left to the discretion of each judge, but accounting for the teen's development can help accord weight.
- Dispositions should be age/developmentally appropriate; 14 is different than 16
- Require close monitoring by the court. Similar to adult domestic violence court, it is especially important that teen batterers have frequent court reviews. Require at least a monthly check in, and consider whether the teen dating violence perpetrator should appear more often, for example, every two weeks. A court should require the perpetrator to check-in more frequently to underscore the severity of the charges. If available, judges should consider using special intervention programs which include assignment to specialized courts with regular reviews and heightened supervision.¹⁷ Electronic monitoring is also an option.
- Set detailed conditions for probation. For example, require the perpetrator to attend school regularly, submit to warrantless search and seizure, comply with curfews, abstain from alcohol and drug use, refrain from contacting the victim or the victim's family, and participate in individual counseling or domestic violence programs.¹⁸ Teens also require special probation conditions, such as, obeying parents, not joining gangs, no tattoos, no drugs or alcohol, and mandated drug testing.
- Place the perpetrator in a batterer intervention program for teens that requires close supervision. Encourage the community to have these resources available for the younger age groups, the more culturally specific the better, so the court has program options appropriate for the perpetrator.
- Domestic violence intervention programs for teens are very difficult to find or develop. They require group leaders who are specialists in working with juveniles. Judicial leadership on this issue is crucial to the development and use of resources tailored to teens.

- Ensure the court and juvenile probation officers remain in contact with the victims, their parents, and the batterers' parents to make sure the teen is attending the program and learning from it, and that victims have the information they need regarding the batterers' behavior toward them, their mutual children, if any, parenting classes, and school.

Courts can capitalize on teen offenders' potential for rehabilitation by focusing on victim-centered approaches and interventions with perpetrators that create both accountability and opportunity. Below are two examples of systems implementing such an approach.

- The Santa Clara County Juvenile Domestic and Family Violence Court (JDFVC) holds adolescent perpetrators accountable, in part by incorporating and adapting a number of laws applicable to adults into its procedures, such as mandating that the judge issue a protection order in all teen partner violence related offenses as a condition of probation, which is a requirement in adult cases.¹⁹
- The New York State Unified Court System has the Youth Offender Domestic Violence Court (YODVC) which is dedicated exclusively to misdemeanor cases involving teen dating violence.²⁰ YODVC addresses perpetrators between the ages of 16 and 19, so some perpetrators are adults under the criminal law. However, YODVC may apply some special sentencing provisions. Additionally, because the YODVC is part of a Family Justice Center, there is a completely confidential civil track that an adolescent can pursue which might help victims feel more comfortable with full disclosure.

Endnotes

1. Shannon C. Parker, *Branded for Life: The Unconstitutionality of Mandatory and Lifetime Juvenile Sex Offender Registration and Notification*, 21 VIRGINIA JOURNAL SOCIAL POLICY & LAW 167 (2014), available at http://www.vjspl.org/wp-content/uploads/2012/06/2.20.14-FINAL-LAYOUT-Branded-for-Life_Parker.pdf.
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3. *Parker*, *supra* note 1, at 180 (footnotes omitted).
4. National Council of Juvenile and Family Court Judges, THE JUDICIAL INSTITUTE ON ADOLESCENT RELATIONSHIP ABUSE CURRICULUM EXCERPTS AND EXERCISES, (2014), available for purchase at <http://www.ncjfcj.org/resource-library/publications/judicial-institute-adolescent-relationship-abuse-curriculum-excerpts-0>.
5. MacArthur Foundation Research Institute on Adolescent Development & Juvenile Justice, *Less Guilty by Reason of Adolescence*, NETWORK ISSUE BRIEF 3, available at http://www.adjj.org/downloads/6093issue_brief_3.pdf. (The brief also references that there is "emerging evidence that the brain systems that govern the processing of emotional and social information are affected by the hormonal changes of puberty in

ways that make people more sensitive to the reactions of those around them—and thus more susceptible to the influence of peers.”)

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8. BRENDA UEKERT, ET AL., JUVENILE DOMESTIC AND FAMILY VIOLENCE: THE EFFECTS OF COURT-BASED INTERVENTION PROGRAMS ON RECIDIVISM, (2006) available at <https://www.ncjrs.gov/pdffiles1/nij/grants/216614.pdf>.
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10. Inger Sagatun-Edwards et al., *The Santa Clara County Juvenile Domestic and Family Violence Court*, 4 CENTER FOR FAMILIES, CHILDREN AND THE COURTS 91 (2003), available at <http://www.courts.ca.gov/documents/CFCCJournal03.pdf>.
11. Eugene Hyman, Wanda Lucibello & Emilie Meyer, *Responding to Adolescent Partner Violence*, THE JUDGES’ PAGE NEWSLETTER (Court Appointed Special Advocates for Children, Washington, D.C.) Oct. 2010, available at http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.6279691/k.1D4B/Hon_E_Hyman_Wanda_Lucibello_and_Emilie_Meyer.htm.
12. SHERMAN & BALCK, *supra* note 6, at 37.
13. National Research Council, IMPLEMENTING JUVENILE JUSTICE REFORM: THE FEDERAL ROLE (The National Academies Press) 2014, available at <http://www.nap.edu/read/18753/chapter/1>.
14. See AMANDA B. CISSNER, PROCESS EVALUATION OF THE BROOKLYN YOUTHFUL OFFENDER DOMESTIC VIOLENCE COURT (2005), available at http://www.courtinnovation.org/sites/default/files/YODVC_evaluation1.pdf.
15. See Hyman, Lucibello & Meyer, *supra* note 10. See also, UEKERT, ET AL., *supra* note 8.
16. See Peacock & Rothman, *supra* note 7, at 4 (explaining that in order "to offer victims of abuse consistent and comprehensive protection, and in order to provide young perpetrators with the services and intervention that they need, adults may be required to alter their own definitions of ‘dating’”).
17. See UEKERT, ET AL., *supra* note 8, at 60.
18. *Id.* at 64. 65.
19. See Peacock & Rothman, *supra* note 7, at 4.
20. Khadijah Rentas, *Trying to Keep Abusive Teens from Becoming Abusive Adults*, GOTHAM GAZETTE (March 2, 2009), <http://www.gothamgazette.com/index.php/city/150-trying-to-keep-abusive-teens-from-becoming-abusive-adults>.