



WHY THE AGE OF THE YCJA SHOULD BE 25 AND UNDER

With advancements in neuroscience and sociology, we now know that the brain develops until the mid-twenties. While the brain develops, people's thought processes and actions are more easily influenced. This leads to increased risk-taking behaviour and crime.



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ANALYSIS

The risk-taking behaviour coupled with an underdeveloped brain greatly impacts how the criminal justice system should interact with emerging adults. If it is understood that emerging adults are different from adults, just like youths are different from adults, the reasoning behind wanting a separate justice system should be afforded to them. In the book *Prosecution and Defending Youth Criminal Justice Cases*, the author urges the justice system to remember why there is a separate system saying, "it is because we accept that children are in fact different than adults."

Risk-taking between youth and emerging adults is not the only similarity between youth and emerging adults, "Many emerging adults offend similarly to adolescents, committing low level, non-violent crimes." There are also differences between youths and emerging adults, particularly when looking at vulnerabilities such as less supervision and support. For example, at sixteen a youth may have support through parents, teachers, & social workers; however, at nineteen, society expects people to move out and start being adults in the public eye, without the same support they had at the age of sixteen.

R v DB explicitly states the reasoning for the presumption of diminished moral culpability is because their age and maturity make them particularly vulnerable. Development is further recognized in the principles of the YCJA. Looking first at understanding how development plays a part in the purpose of YCJA the balance is to understand the protection of society as well as the protection of the young person. This responsibility to recognize development is clearly set out in the Preamble of the YCJA with the first principle saying "WHEREAS members of society share a responsibility to address the developmental challenges and the needs of young persons and to guide them into adulthood." Due to the vulnerabilities of emerging adults, it would be reasonable to say that it is important to balance the same things as a youth. Emerging adults do not have the same cognitive abilities as adults and should therefore have additional protections. DB mentions that the age of eighteen is fairly arbitrary, it suggests that this arbitrariness is reasonable due to developmental factors; however, based on the research set out prior there is proof that the brain doesn't finish developing until mid-twenties.

This paper is not arguing that no young person could be charged as an adult, rather than the presumption should be that young persons should be charged under the YCJA unless otherwise proven by the Crown. The ability to rebut the presumption would stay the same. When balancing the protection of society and the rights of emerging adults, a more difficult onus on the Crown is not a bad thing. Emerging adults are a part of society therefore the protection of them coupled with the rights of young people shows that there is room to increase the age to include emerging adults. In future cases, it will become more difficult to prove that a young person nearing their eighteenth birthday has the moral culpability of an adult which coincides with the developmental understanding that they do not have the brain of an adult until the age of twenty-five. This increased protection is important to ensure that as young people enter into adulthood they are not blindsided; rather that society shows them what is expected and there is room to develop their minds without sacrificing their potential.

HISTORY OF THE YCJA

The Youth Criminal Justice Act (YCJA) replaced the Young Offenders Act in 2003. There are many notable differences between the two acts. Under the YCJA there has been a significant decrease in youth being officially charged, a change in the way that police are expected to interact with youth and less pre-trial detention for youths.

PURPOSE

"WHEREAS members of society share a responsibility to address the developmental challenges and the needs of young persons and to guide them into adulthood;"



DEVELOPMENT

Emerging adults is a term that has been used to explore the development of 18 to 25-year-olds. During this developmental time, emerging adults exhibit:

- Pruning of grey matter and
- Increased risk-taking behaviour

This can lead to:

- Low level, non-violent crimes and
- Increased vulnerability due to little societal support

RESULTS/FINDINGS

Allowing emerging adults to come under the auspice of the YCJA is one way to help ensure the transition between adulthood and youth. The life stage of emerging adults is marked with the difficulties of transitioning without additional supports while still struggling with the impacts of a developing mind.

CLARIFICATION

There is some discussion on if 25 is the age that the brain stops developing

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CONCLUSION

When the YCJA was implemented, the rate of incarceration for youth went down, especially regarding non-violent crimes. Since most crimes committed by emerging adults are non-violent crimes, the YCJA can impact emerging adults in the same way. In R v P (BW) it is expressly explained that parliament's goal when enacting the YCJA was to ensure that young persons who are non-violent would not be incarcerated as a first option but that rehabilitation, not deterrence should be considered; the case also addresses the importance of using the preamble. This understanding should be afforded to emerging adults due to development understanding of brain development and socialization.

