

Children, Capacity and Justice

Comparative placement: Türkiye & Scotland

Dr.Kemal Saruhan

Why compare Türkiye and Scotland?

- Same international baseline (UNCRC), different institutional design
- Türkiye: court-based juvenile justice reforms (2005) + capacity assessments
- Scotland: welfare-led Children's Hearings System

Aim

- To identify the design choices that make a child justice system more rights-consistent
- To connect law with developmental science (adolescent maturity is gradual and uneven)
- To examine how capacity assessments can be used from mid-adolescence to support fair and developmentally appropriate responsibility

UNCRC and related international standards

- Art. 40: children alleged/accused/recognised must be treated with dignity, fairness, and reintegration as the goal.
- Art. 37: deprivation of liberty is a last resort and for the shortest appropriate period (including pre-trial).
- Beijing Rules: MACR should not be set “too low”; promote diversion and proportionality to the child.
- Havana Rules: custody should be exceptional; conditions must protect wellbeing and development.

WELFARE MODEL (Scotland / CHS)

- Primary question: “What does this child need?”
- Setting: meeting-room style, multi-agency discussion.
- Offence and welfare concerns overlap (“needs, not deeds”).
- Lower stigma: fewer criminal labels; more emphasis on support.
- Risk: complex cases require strong professional input and resources.

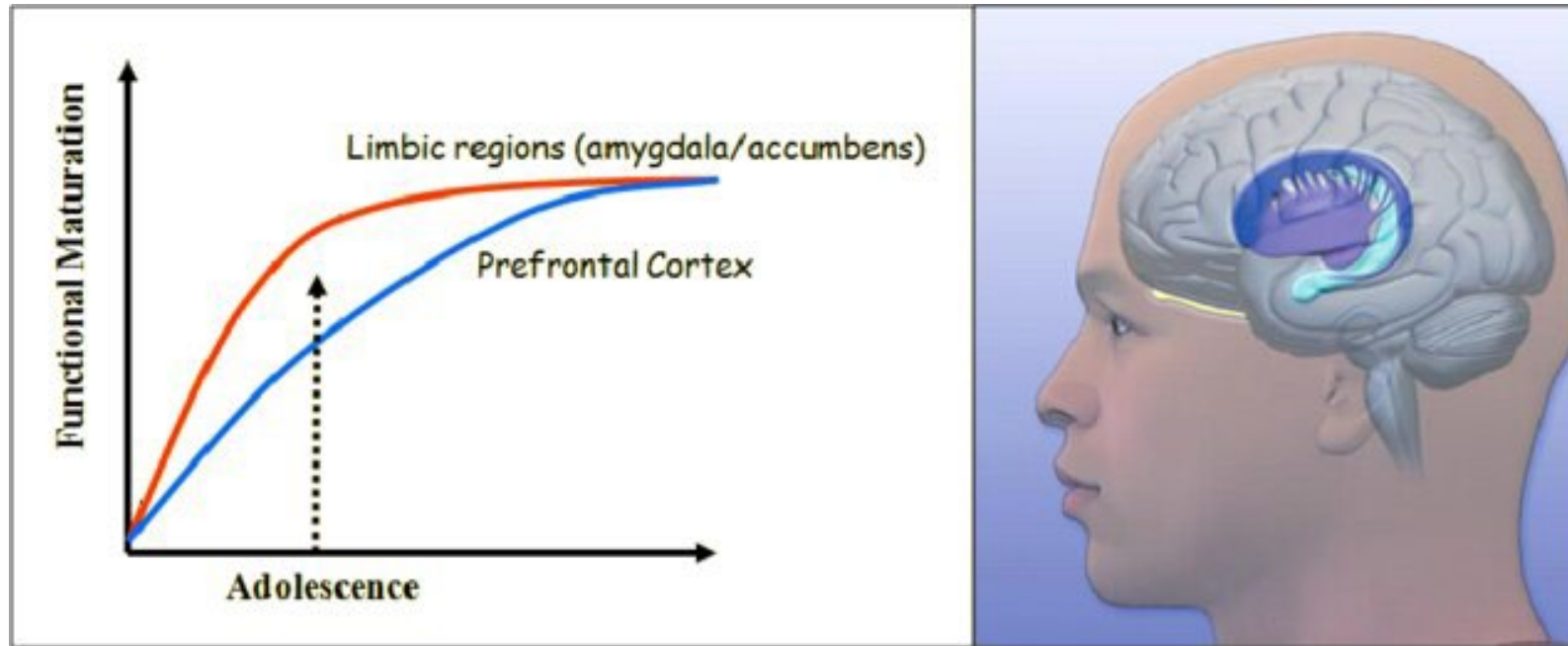
JUSTICE MODEL (Türkiye / juvenile courts)

- Primary question: “Was the offence proven, and what is proportionate?”
- Setting: court hearings; strong procedural safeguards.
- Specialisation exists, but geography/capacity can be uneven.
- Mitigation + measures aim to reduce harm of punishment.
- Risk: formal processing can increase stigma and system contact.

Adolescent development and maturity

- WHO defines adolescence roughly as ages 10-19
- Early adolescence (10-13);
 - Concrete thinking
 - Limited impulse control
 - Cognitive capacity for criminal responsibility is restricted
- Middle adolescence begins around ages 14-15;
 - Abstract thinking improves
 - Executive functions are still immature
 - Capacity is emerging but unstable
- Executive functions (planning, impulse control) continue to mature into the 20s
- Capacity varies by context: a child may look “mature” in familiar settings and immature under stress
- Can be delayed with Neurodevelopmental disorders

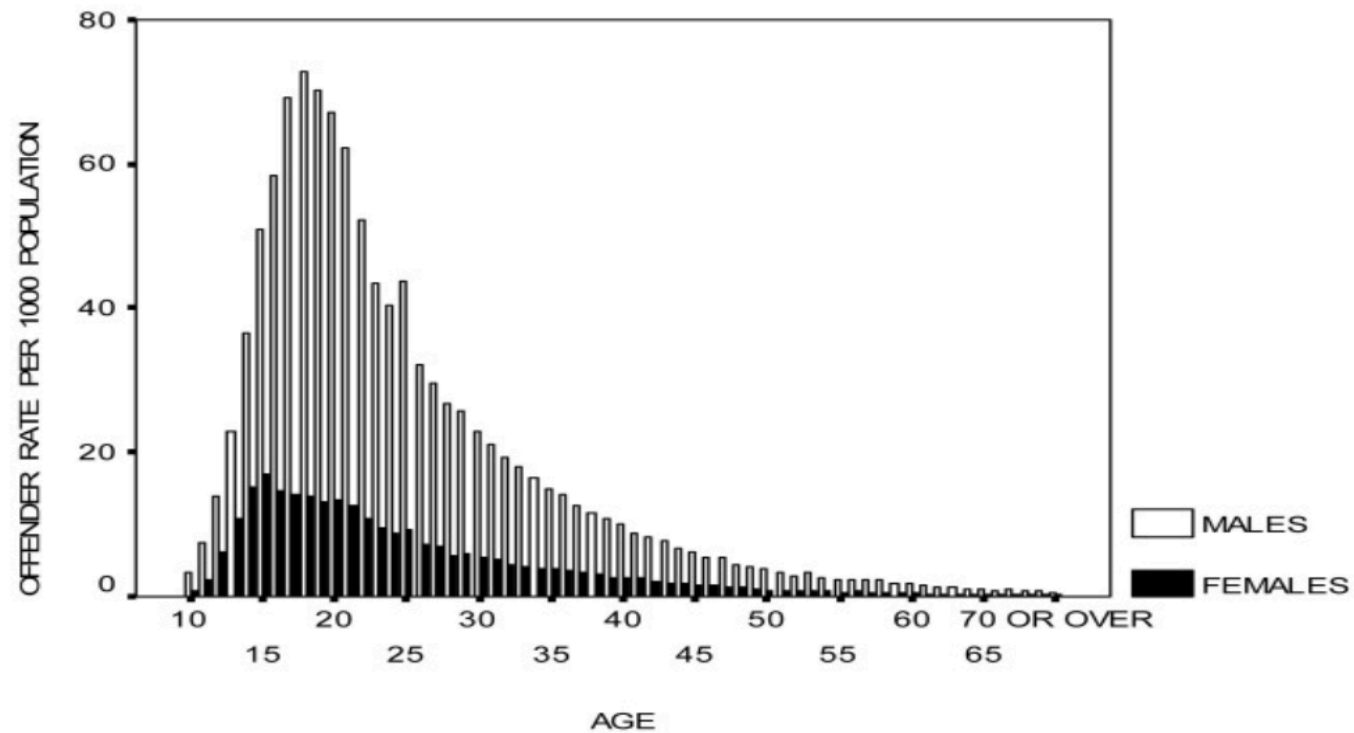
Neurobiological Foundations



Moe, D. and a. Nordtømme, *Brain development and risky driver behavior during adolescence*. 2015.

The Age-Crime Curve

Figure 1: An Offender-based Age-Crime Curve
(Recorded Offender Rates per 1,000 Relevant Population by Age-year and Sex, England and Wales, 2000)



Why early justice system contact can do harm

- Formal system contact can increase stigma and labelling
- Disruption to education, family, and social development
- Higher risk of repeated system contact
- Evidence supports diversion and holistic responses

GC24 points to 14+

- UN Committee encourages MACR ≥ 14 (preferably 15-16)
- Arguments for raising: developmental maturity, stigma, and the availability of welfare responses
- Arguments for caution: public confidence, serious harm cases, and system capacity in secure care

Minimum Age of Criminal Responsibility (MACR)

- Criminal responsibility varies across legal systems
- Below a certain age: no criminal responsibility
- MACR differs between countries
- In some systems, a grey zone above the MACR
- Doli incapax

How capacity should be assessed in practice

- Legal concept>> child's development
- Developing objective and standardised criteria
- Assessments mainly focus on:
 - ability to understand the act and its consequences
 - capacity to control behaviour
- A comprehensive assessment requires:
 - the child's family, school, and peer environment
 - evaluation of cognitive functioning
 - identification of psychiatric factors

Türkiye: MACR structure in Turkish Criminal Code (TCK Art. 31)

- Under 12: no criminal responsibility (protective/safety measures may apply).
- Ages 12-15: individual criminal capacity assessment;
inability to understand the legal meaning and consequences of the act
or insufficient capacity to direct one's behaviour
- 15-18: criminal responsibility exists, but penalties are reduced compared to adults.

Türkiye: how capacity is assessed in practice (12-15)

- Marked variation between disciplines
- Forensic medicine assessments ; Criminal capacity found in~90% of cases
- Child and Adolescent Psychiatry assessment; Criminal capacity found in~20% of cases

Why who assesses capacity matters in Türkiye

- Referral to forensic medicine or psychiatry may vary by court
- Outcomes may depend on who conducts the assessment
- Risk to legal certainty and equality before the law

High needs, not just “bad behaviour”

- Children in conflict with the law have much higher rates of mental health disorders than the general population
- Trauma and adverse childhood experiences can affect impulse control, trust, and understanding
- Many children in conflict with the law come from lower socio-economic backgrounds
- Systems that rely on courtroom behaviour/cross-sectional assessment risk punishing the effects of adversity

Table 1: Developmental phases, risk-factors and developing delinquent behaviours of the child

Developmental phase	Risk-factors	Delinquent behavior
During pregnancy to infancy period (initial phase)	The child	Complications during pregnancy and delivery of the child; exposure to neurotoxins or any early childhood serious diseases after birth; difficult temperament; impulsivity/hyperactivity; poor attention/concentration; below intellectual ability; male gender
	Family	Alcohol/any substance/drug/smoking by mother during pregnancy; teenage mother; parents poor education; maternal clinical depression; parent's involvement in drugs/substance abuse and antisocial/criminal activities; poor parent-child communication; poor socioeconomical conditions; serious marital conflicts; large family size
Toddler phase	Child	Aggressive/impulsive/disruptive behavior; persistent lying; attention seeking/risk-taking behavior; lack of guilt/empathy
	Family	Harsh/abusive/erratic discipline in the family or member's behaviors; lack of supervision/neglect/maltreatment; parental separation with child
	Community	Violence television shows; violent/abusive neighbors
Middle childhood period	Child	Disruptive behaviors; involving in criminal activities like stealing, pocketing, etc.; early-onset of substance abusing and or sexual activities or as victims of early sexual and physical abuses; mood swings as high or low (manic/depressive); withdrawal behavior; positive attitude towards disruptive behaviors; exposure and victimization to any violence or abusive acts; hyperactivity, poor attention and concentration, restlessness, and/or risk-taking behaviors; violent behavior; involvement of antisocial activities; favorable beliefs and attitude of the individual to deviant/antisocial behavior
	Family	Lack of parental supervision; parental conflict; deprivation of basic need in the family
	School	Poor academic performance; negative attitude towards schools; lack of supervision by teachers and school staffs; truancy; poor organizational and management functioning of the school
	Peer groups	Rejection by peers; association with gang members or deviant peers and siblings; sibling's involvement in criminal activities; Peer's involvement in criminal activities; beliefs and attitude of peers to deviant/antisocial behavior
	Community	Residence in a disorganized/disadvantaged neighborhood; availability of arms/weapons; availability of drugs/substances; poverty/poor neighborhood; neighbor's involvements in criminal acts
Adolescent period	Adolescents	Psychological conditions - emotional, cognitive and intellectual ability, personality; physical disabilities; involvement in any drug or substance dealing activities; carrying arms or weapons; belief and attitude of the individual to deviant/antisocial behavior
	Family	Poor family management; low levels of parental supervision; family conflict or poor bonding of family members; parental involvement in any antisocial or criminal activities; child misbehave or maltreatment; parental separation with a child; socioeconomical condition of family and members
	School	School dropout; frequent school transitions; low attachment with teachers, school staffs, and mates
	Peer groups	Involving in a gang; peer groups engaged in criminal acts; peer's beliefs and attitude to antisocial behavior
	Community	Community and neighborhood disorganization; poverty; drugs, alcohol, etc., substances availability; neighborhood involvement in criminal acts; exposure to racial and violent prejudice and stigmas

Türkiye: a court-centred juvenile justice structure

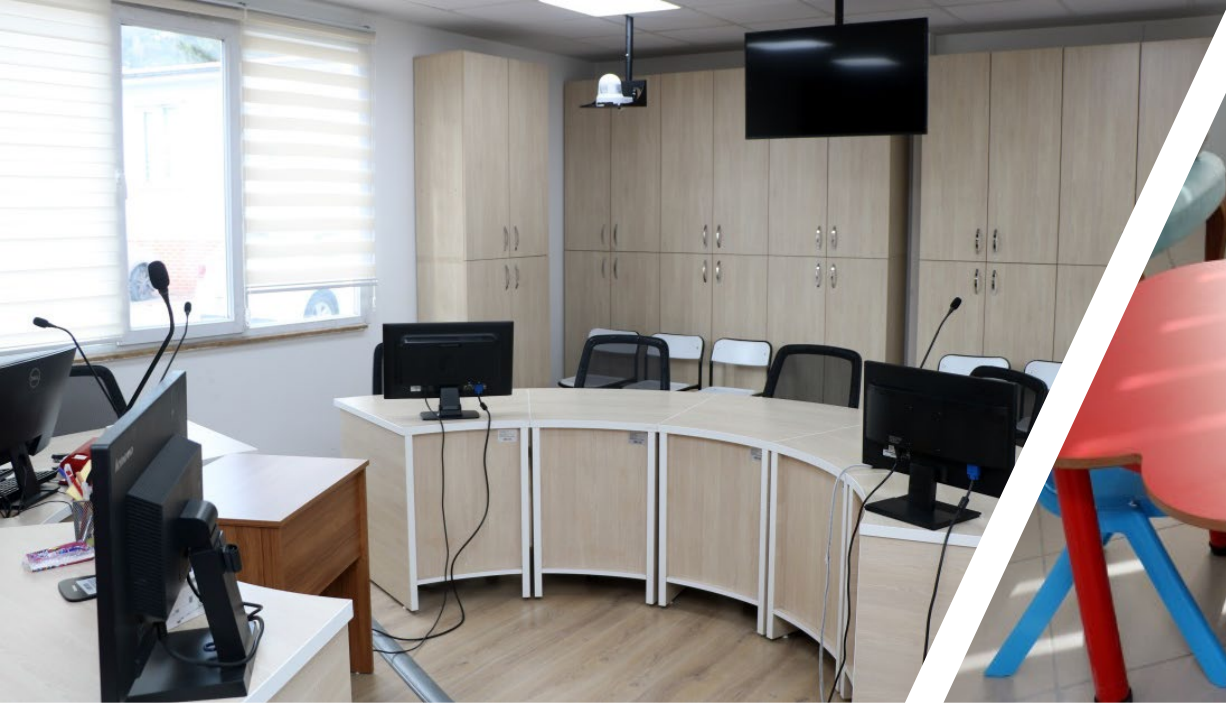
- Juvenile justice is organised within specialised criminal courts.
- Two types of juvenile courts exist:
 - Juvenile Criminal Courts (less serious offences)
 - Juvenile High Criminal Courts (more serious offences)
- Children are tried in different courts depending on offence severity.
- Judges are the central decision-makers (without lay persons)

Türkiye: a court-centred juvenile justice structure

- Specialist expertise is provided through written expert reports
- Strengths: Procedural structures, formal safeguards, and judicial experience
- Developmental complexity is translated into legal questions.

Practical features of the Turkish juvenile court system

- Juvenile courts are not available in all regions. Where absent, children are tried in adult criminal courts
- In Juvenile Criminal Courts, the prosecutor does not attend hearings
 - This limits adversarial confrontation
- Social workers or psychologists may be present, but their presence is not mandatory and varies in practice
- Child Justice Centres have been introduced as pilot projects
 - They aim to create a more child-centred structure, without changing the formal legal framework



Türkiye: protection measures and limits of current practice

- Under the Child Protection Law (Law No. 5395), protective and supportive measures are available for:
 - children without criminal responsibility
 - children identified as being in need of protection
- These measures include education, care, health, and accommodation.
- However, once a child is found to have criminal responsibility, responses mainly rely on liberty-restricting measures.
 - Protective and supportive child-specific measures are not routinely applied alongside custodial or restrictive responses.
- Significant challenges in the implementation and follow-up of protective measures.

Core Recommendations

- Raise the minimum age of criminal responsibility to the beginning of middle adolescence (ages 14-15).
- Above this threshold, criminal responsibility should not be presumed.
- Criminal capacity should be assessed through:
 - detailed social inquiry reports
 - evaluations by mental health professionals
- The aim should be understanding developmental capacity, not simply meeting legal thresholds.

Core Recommendations

- •There is currently no equivalent of lay person involvement in the Turkish child justice system.
- Given its roots in the Kilbrandon philosophy, a direct transfer of this model to Türkiye appears unlikely.
- However, diversion can still be strengthened through alternative, needs-based and community-informed pathways.
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Core Recommendations

- In Türkiye, develop protective and supportive measures as real alternatives to liberty-restricting sanctions for children with criminal responsibility.
- Avoid punitive responses to children in conflict with the law.
- Adopt systematic, preventive, and needs-based approaches to reduce reoffending and support healthy development.

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Thank you for your attention