

**LOOKING TO THE FUTURE**  
for X&Y Chromosome Variations

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GENETIC.ORG KSA ARKIS

**Legal and Law Enforcement Issues**

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Introduction

***Criminal Justice System and XXY***



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Intro Caveats

**Discussion today will use the following constructs:**

1. Focus on XXY but any SCA individual may experience similar issues and may benefit from the information provided
2. All XXY individuals are unique. Our discussion is intended to provide information for people that may be having problems with the legal system. This does not imply all XXY people will have these problems
3. XXY brain research studies have shown patterns of neurobiology and neuroanatomical differences but they are not absolutes.

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## Brain,Biology & the Law

- Concept of blameworthiness
  - responsibility for your actions parallels volitional control (free will)
- Relationship between the brain and behavior
  - tendency to blame someone if we cannot detect a biological problem
  - look at the treatment history of schizophrenia, epilepsy, depression and mania

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## Brain Transition – Teen to 20

- What is involved with the brain maturation process?
  - biological and chemical changes
  - emotion and motivation centers become more active
  - control center (Exec Function) often lags behind
  - new views of adolescent brain show frontal lobe development is closely tied to learning from experience
- What happens in delayed maturity?
  - Neurological systems don't develop on schedule
  - Decision making may not be consistent
  - Physical/chronological age not in synch with behavior

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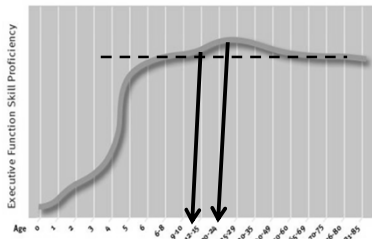
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### Executive Function Skills Build Throughout Childhood and Adolescence



A range of tests measuring different forms of executive function skills indicates that they begin to develop shortly after birth, with ages 3 to 5 providing a window of opportunity for dramatic growth in these skills. Growth continues throughout adolescence and early adulthood; proficiency begins to decline in later life.

Source: Weinstaub et al. (In Press)<sup>10</sup>

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# XXY Neurobiology

Various research studies have shown:

- Decreased Total Brain Volume
- Decreased and increased grey matter
- Smaller frontal and temporal lobes
- Smaller cerebellar hemispheres
- Decreased volume and activity in the Amygdala-Hippocampal Complex (AHC)
- Smaller Superior Temporal Gyrus (STG)
- Decreased Caudate Nucleus volume
- Thinning in cerebral cortex (temporal and frontal lobes)

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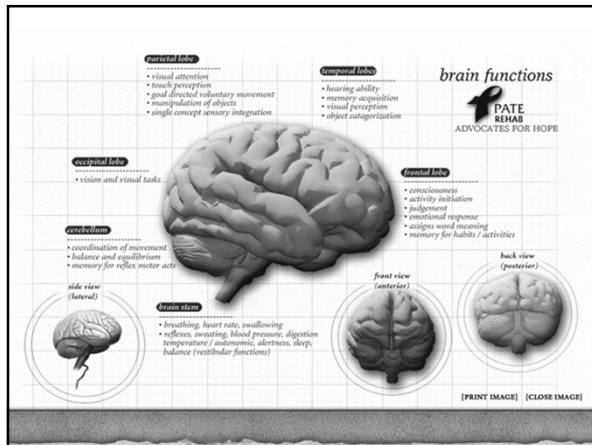
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# XXY Neurobiology

What can those differences produce?

- Executive functioning challenges – inconsistent judgment, decision-making, inhibitory control
- Language processing, reading, and learning difficulties
- Mood and emotional modulation problems
- Difficulty interpreting and reacting to social cues
- Difficulty with communication and verbal expression
- Blunted affect
- Motor difficulties (strength, coordination, stamina)

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Some XXY Individuals Can Have...

- Delayed maturity
- Executive function problems
- Communication challenges
- Emotional fluctuations
- Difficulty reading social cues and verbalizing emotions
- Vulnerability to bullying and peer pressure

Combined, these can all add up to high risk for encounters with the criminal justice system

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**Brain Function Analysis**

- **How can you "prove" brain function differences?**
  - Neuroimaging (this is still a young science)
  - Neuropsychological Exams (testing limitations)
  - Behavior (but that's not proof)
- **Challenge:** Relating brain differences to behavior when those differences may be subtle, not easily measured or inconsistent.
- **Translation:** can be difficult and expensive to prove

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**Criminal Justice System = AVOID IT!**

- **FOLLOW A [GOOD] LEADER!**
- **XXY folks have trouble making decisions, so they FOLLOW decision-makers.**
- **SO, WHO YOU FOLLOW MATTERS!!**
- **DON'T FOLLOW THOSE USING DRUGS, ALCOHOL, OR WHO HAVE SEX WITH MINORS, EVEN IF YOU ARE A MINOR.**

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## Communicating with Authority

- XXYs tend to smile and agree with authority figures when, in reality, they DON'T UNDERSTAND THE QUESTION. (Talking heads and compound Qs)
- XXYs: Learn the magic words that can save you from criminal arrest and conviction which are:
- "I DON'T UNDERSTAND WHAT YOU'RE ASKING!"
- \*Jesse - Confession, Smiling, and Reading The Hobbit\*

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## How did this XXY land in prison?



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## He followed the Wrong Guy



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## For what crime? Murder!



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## Brothers, 19, 18 - 100 yrs Prison

- First, they stole real estate signs from yards
- Next, garage items (shovels, toasters)
- Next, break-ins to empty summer homes
- In 3 months, misdemeanor petty theft went to burglary and then to murder
- *State of Montana v. Jesse Kyle Ernst (2001)*

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## Legal Issues for XXYs

- Prosecution must prove, in EVERY CRIME, that the accused acted:
- WITH KNOWLEDGE = Did you understand and foresee the consequences of your conduct?
- VOLUNTARILY = Were you forced to do what you did?
- WITH INTENT = Did you PLAN the crime?

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### Jesse = No Knowledge

- **XXYs have trouble predicting future consequences, i.e., if I break into an empty home just to steal, someone still might get hurt or killed.**
- **Evidence: Jesse never imagined a neighbor might investigate their headlights at the house, nor that Ted would shoot and kill the man.**
- **Jesse acted as Ted's legs, not able to plan out crimes, but FOLLOWED TED and did whatever Ted told him to do.**

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### Poor Planning Examples – Leaving behind the loot



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### The “Cool” Loot = a painted saw, duck decoy, quarters



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Wearing the wrong shoes for size and snow



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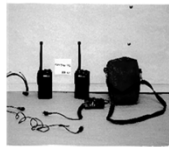
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Headset needed to follow orders



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Evidence of Planning - Ted



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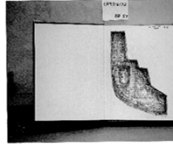
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### Hide Murder Weapon in Book - Cut Out to Fit



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### Jesse = No Voluntary Conduct

- History of Ted controlling Jesse's EVERY MOVE, what to eat, drink, how to laugh
- Shot at Jesse, used him as Target Practice using Guns and Knives
- Ted threatened to kill Jesse many times, turn Jesse into the police for thefts, burglary.
- JESSE TERRIFIED OF TED – DID WHAT TED ORDERED

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### Jesse = No Intent to Kill

- Untreated and undiagnosed, Jesse's brain, his executive functioning, was VERY DAMAGED.
- NEUROPSYCH TESTING RESULTS PROVED THIS AT TRIAL
- BEHAVIORAL TESTIMONY SUPPORTED HIS INABILITY TO PLAN, FORESEE CONSEQUENCES, FORM INTENT
- Forensic psychologist explained XXY + Abuse

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### “Mental Disease or Defect”

- Don't get Mad at this Legal Defense = Go FREE!
- XXY can be an ORGANIC BASIS FOR A NOT GUILTY VERDICT.
- GENETIC CONDITION THAT LIMITS KNOWLEDGE, VOLUNTARINESS, AND INTENT
- PROOF = Evidence from Doctor, Neuropsychologist, Behavioral Specialist in XXY, Forensic Psychologist

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### What do I do if I'm arrested?

- Don't talk to the police, for ANY REASON, and TELL POLICE YOU WANT A LAWYER. Minor, want parent!
- **\*\*TELL YOUR LAWYER YOU HAVE XXY AND/OR KS\*\***
- Make sure your lawyer knows that this MATTERS TO YOUR DEFENSE!
- Contact KS&A for resources

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### Sentencing

- Misdemeanors = Probation or jail up to a year
- Felonies = Probation, Parole, Prison up to life, or receive the Death Penalty if Murder
- Accountability, Aiding and Abetting, Felony Murder will get you the SAME SENTENCE as if you committed the actual crime.
- XXY CAN MITIGATE SENTENCING = LIGHTER SENTENCE!!

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**Possible Custodial Places**

- 1. Juvenile Hall
- 2. County Jail
- 3. State Prison
- 4. Federal Prison
- 5. State Mental Hospital

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**HAPPY ENDING**

- The jury found Jesse NOT GUILTY of 23 counts of Burglary and 1 Count of Deliberate Homicide.
- XXY saved his life, thanks to many Experts who testified.
- He went to the STATE HOSPITAL for 18 months where they helped him recover from trauma
- 2004 – he married and now lives a happy, crime-free life somewhere in Montana

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**Resources**

- School: Teachers, Counselors, School Psychologist, Resource Officer can help you
- Church: Maybe your pastor or youth leader can help you make smart choices/decisions
- Sports: Coaches
- Lawyer, if arrested, or Probation Officer
- Doctors, nurses, medical community

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### Resources, cont.

- At KS&A, we commit to develop together.....
- A 50 State Legal Strike Force with at least one lawyer in each state educated about XXY legal issues.
- A DVD presentation to educate lawyers and others about XXY.
- A Webinar for the website that everyone can access to learn about legal issues with XXY

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### Books to Help

- *Incognito: The Secret Lives of Brains*, by Dr. David Eagleman
- *Living with Klinefelter Syndrome, Trisomy X, and 47, XYY*, by Virginia Isaacs Cover
- *Courthouse Cowboys: A Modern Tale of Murder in Montana*, by P.A. Moore (aka, Phyllis Quatman)
- All available online as e-books or in paperback

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