

# QUINNIPIAC UNIVERSITY

SCHOOL OF LAW

Legal Clinics

## TESTIMONY OF THE CIVIL JUSTICE CLINIC QUINNIPIAC UNIVERSITY SCHOOL OF LAW

Judiciary Committee

March 23, 2012

### **H.B. 5546, An Act Concerning Sentence Modification of Juveniles S.B. 417, An Act Concerning Juvenile Matters and Permanent Guardianships**

Dear Senator Coleman, Representative Fox, and distinguished members of the Judiciary Committee:

My name is Daniel Scholfield. I am a third-year law student at Quinnipiac University School of Law in Hamden, and a student in the Law School's Civil Justice Clinic. The Civil Justice Clinic submits this testimony regarding H.B. 5546, An Act Concerning Sentence Modification of Juveniles and S.B. 417, An Act Concerning Juvenile Matters and Permanent Guardianships.

H.B. 5546 directs the Connecticut Sentencing Commission to examine the feasibility of creating a procedure to provide review of lengthy adult prison sentences imposed on juvenile offenders after a portion of the sentence is served. The Civil Justice Clinic urges the legislature to create such a procedure to allow a "second look" at these long sentences imposed on children. S.B. No. 417 would, among other things, prevent automatic transfer of juvenile offenders to adult court for Class B felonies. We support this change in Connecticut's juvenile transfer statute.

Under Connecticut law, children as young as 14 years old charged with certain crimes are automatically transferred to adult court and subject to adult penalties, including mandatory minimum sentences. There are Connecticut children serving sentences of 50 years or more for crimes they committed when they were only 14 years old. Many juvenile offenders serving long sentences are entirely ineligible for parole. Even when they have matured and changed in prison, these individuals have no hope of review and a second chance.

The idea that some children should be locked up for life is based on mistaken and outdated science, and myths about teenagers that have proved unfounded. There is now a

consensus among medical and mental health experts that the brains of adolescents are not fully formed, and teenagers act more impulsively and with less foresight than adults. The experts also tell us that children are capable of extraordinary change over time. We urge the legislature to allow a "second look" at these long sentences after children have a chance to grow and change. A second look is particularly warranted given the extreme racial disparities present in the population of juvenile offenders serving long sentences in Connecticut.

As a series of recent editorials and op-eds in major newspapers demonstrate, there is a great deal of public support for the idea of taking a second look at long sentences imposed on children. These opinion pieces are attached to this testimony.

## **I. Data Regarding Juvenile Offenders Serving Long Sentences**

There are 191 prisoners in Connecticut serving sentences longer than ten years based solely on crimes committed when they were under the age of 18.<sup>1</sup> Some individuals serving long prison sentences were very young when they committed their crimes: 21 people are serving sentences of 25 years or more for crimes committed at age 14 or 15. Thirty-two people are serving sentences of 50 years or more for crimes committed under the age of 18. More than half (51%) of the 191 prisoners are ineligible for parole. These parole-ineligible individuals are all serving sentences of 20 years or more.

## **II. The Legislature Should Allow a "Second Look" at Long Prison Sentences Imposed on Children**

### **A. A "Second Look" Procedure is Supported by Scientific Evidence and Modern Understandings of Adolescent Development.**

#### *1. "Adult time" for "adult crime" was based on mistaken and outdated science.*

In 1995, John DiIulio, Jr., Professor at Princeton University, warned of a new breed of juvenile super-predators, mostly young black men, reared by violent and abusive parents in crack-filled inner-cities, who were "remorseless" "stone-cold predators." DiIulio suggested that we were sitting on a "demographic crime-bomb." "By 2005," DiIulio predicted, "the number of males in this age group will have risen about 25 percent overall and 50 percent for blacks." He warned: "And make no mistake. While the trouble will be greatest in black inner-city neighborhoods, other places are also certain to have burgeoning youth-crime problems that will spill over into upscale central-city districts, inner-ring suburbs, and even the rural heartland."<sup>2</sup> The message in 1995, in

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<sup>1</sup> This data was received from the Connecticut Department of Correction on September 28, 2011. More details about the data is provided in the Connecticut Sentencing Commission's testimony to this Committee.

<sup>2</sup> *The Coming of the Super-Predators*, Weekly Standard, Nov. 27, 1995.

short, was that dangerous and amoral young black men were soon going to be rampaging through our suburbs, and we had to stop them.

Though Dilulio's proposed solution was to build more churches, not to build more jails, the public heard only the message of imminent doom. Many states reformed criminal sentencing to give "adult crime" "adult time," including Connecticut. In Connecticut, there was a particular concern about gangs and drug dealers using children to commit violent acts because they would escape harsh penalties.<sup>3</sup> Rather than helping these children escape these exploitive situations, we decided in the mid-1990s to subject them to automatic adult penalties.

The "demographic crime-bomb" never materialized. Frank Zimring, a criminologist at the University of California, Berkeley, argued in the late 1990's that Dilulio was just flat wrong to equate crime rates with demographics. And Zimring was proved right, as Dilulio himself now acknowledges.<sup>4</sup> As we now know, juvenile crime did not rise, despite the greater percentage of juveniles in the population, but youth crime instead fell, along with adult crime, as the crack epidemic receded and policing policies changed. In fact, the states with the greatest *decrease* in juvenile confinement between 1997 and 2007 saw the biggest declines in violent crime rates among juveniles.<sup>5</sup> Texas incarcerated more kids; California incarcerated fewer, but juvenile crime dropped at about the same rate in both.<sup>6</sup> In 2007, Texas changed course and cut its juvenile population by half. Juvenile crime has not increased.<sup>7</sup> There is also no correlation between the rate at which states incarcerate kids for life without parole and the crime rate. In other words, draconian sentencing laws did not affect the crime rate.<sup>8</sup> For kids that live in the present, long sentences don't deter. Police practices have a greater effect on the recidivism rates of this population than long sentences do.<sup>9</sup>

Now, not only do we know that we are not suffering from a "demographic crime bomb," we also know that adult time policies ignore the obvious fact that a kid who seems remorseless at 14 can change. Dilulio's "super-predators" were described as being "driven by two profound developmental defects" (1) "liv[ing] entirely in and for the

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<sup>3</sup> Julie Miller, *A Case of Murder by a Youngster*, N.Y. Times, Oct. 12, 1995.

<sup>4</sup> John J. Dilulio, Jr., *Rethinking Crime -- Again*, Democracy Journal, Spring 2010, at 46, 52-53; Rachel Aviv, *Annals of Justice: No Remorse: Should a Teen-Ager Be Given a Life Sentence?* New Yorker, Jan. 2, 2012, at 57; Elizabeth Becker, *As Ex-Theorist on Young 'Superpredators,' Bush Aide Has Regrets*, N.Y. Times, Feb. 9, 2001, A19. James Alan Fox, another supporter of the "superpredator" theory, has also recanted. See James Alan Fox, *A Too-Harsh Law on Juvenile Murder*, Boston Globe, January 25, 2007, A11.

<sup>5</sup> Richard A. Mendel, Annie E. Casey Foundation, *No Place for Kids: The Case for Reducing Juvenile Incarceration* 26 (2011), available at

[http://www.aecf.org/~media/Pubs/Topics/Juvenile%20Justice/Detention%20Reform/NoPlaceForKids/JJ\\_NoPlaceForKids\\_Full.pdf](http://www.aecf.org/~media/Pubs/Topics/Juvenile%20Justice/Detention%20Reform/NoPlaceForKids/JJ_NoPlaceForKids_Full.pdf).

<sup>6</sup> *Id.* at 26-27.

<sup>7</sup> *Id.* at 26.

<sup>8</sup> *Id.* at 26-27.

<sup>9</sup> Steven N. Durlauf & Daniel S. Nagin, *Imprisonment and Crime: Can Both Be Reduced?* 10 *Criminology & Pub. Pol'y* 8 (2011) (for youths, increase in risk of arrest deters more than long sentences).

present moment; they quite literally have no conception of the future” and (2) being “radically self-regarding.” He presumed that these “defects” were permanent and indelible – and unusual. But we know better. *All* teenagers’ brains are oriented to the present, rather than the future. They are biologically triggered to bind themselves to peer groups – take risks and leave home.<sup>10</sup> When teens have no one else to turn to, these *ordinary* teenage developmental characteristics (which are neither “defects” nor “indelible”) can lead to crime. But when teens get out of a violent environment, grow up and gain perspective, they can and do change.

2. *Youth crime is usually impulsive and peer-driven, not the product of sociopathy or a settled disposition to harm others.*

We also know that teen crime tends to be impulsive, peer-driven, drug-related and unpremeditated, *not* normally the result of an evil mind that is permanently damaged. Consider the following types of teenage criminal conduct (taken from actual cases in Connecticut and elsewhere):

- Two teenagers get into a fight; one has a gun, the other doesn't. The fight escalates and one of them is shot. Self-defense is not an option, because under existing law, you cannot use lethal force against someone who is using non-lethal force against you. So, the kid left standing is a murderer, perhaps even, and ironically, guilty of a capital felony for the intentional killing of a person under 16.
- A kid, frequently abandoned by a drug-addicted mother and beaten by his step-father, may look to an uncle for protection and support. The uncle asks the kid to ride along on a burglary or robbery or revenge mission. And if someone in the group is trigger-happy and shoots, the kid gets felony murder along with everyone else. The kid may even be more likely to be blamed for the shooting by other co-felons, because they believe he will get less time than they would have. But they are wrong. The kid is guilty of felony murder and the going rate is 40 years without parole.
- At a football game, a 13-year-old boy is knifed and nearly dies. His older 16-year-old brother shoots the assailant several days later. Now he has a murder conviction and a sentence of more than 40 years.
- Five teenagers are home alone, drinking and doing drugs. They are getting rowdy, egging each other on. They decide to call for Chinese delivery and rob the delivery person. As the delivery person is leaving, someone shoots off a gun and hits the pizza deliverer in the back, killing him. Everyone is guilty of felony murder.

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<sup>10</sup> For an extensive bibliography of juvenile brain research, see the amicus brief filed in *Jackson v. Hobbs*, [http://www.americanbar.org/content/dam/aba/publications/supreme\\_court\\_preview/briefs/10-9646\\_petitioner\\_amcu\\_aber\\_etal.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/10-9646_petitioner_amcu_aber_etal.authcheckdam.pdf).

- A young girl is raped and prostituted by a pimp and later, shoots him. Since there was no imminent danger, her act is murder and she gets life without parole.

3. *Criminal law designed for adults doesn't sift juvenile culpability well.*

Juveniles' options for escaping or avoiding situations like these are not the same as they might be for an adult. A fourteen or fifteen-year-old is too young to legally drive, get a job, or rent an apartment – in short, too young to get away from abusive or criminogenic environments. Mandatory minimum sentences designed for adults who have more control over their environment and their circumstances should not be applied to these sorts of cases, and legal categories like “felony murder” don't do a good job of distinguishing the more culpable youths from the less culpable. “Adult time” sentencing prevents mitigating circumstances peculiar to teenagers from being taken into account, except perhaps at the prosecutorial charging stage. But prosecutors around Connecticut do not have consistent charging practices and there is no review of those discretionary decisions.

4. *Kids grow up, atone, and reform, even in prison, if they have hope.*

Take a kid who was never safe and give him safety, and he can grow. Teach him self-control, give him drug treatment, education, stability, marriage, religious community, and a job, and recidivism statistics bear out that he will make better choices.<sup>11</sup> We all know that recidivism rates plummet after offenders “age out” of impulsive youth between ages 25 and 35. Those who work in prisons confirm that people who commit crimes as kids are not “cold blooded predators” 20 years later, but grow up to become compassionate and insightful peer mentors, hospice workers, hospital aides, students, educators, and role models – if they don't commit suicide first.

Suicide rates among juveniles who are incarcerated are already high – nearly 31% of confined youth report suicide attempts, as compared with estimates that .2% of youths not in prison attempt suicide.<sup>12</sup> Risk factors include solitary confinement, isolation, death of a family member, failure in a program, and “fear of waiver to adult system or transfer to a more secure facility”<sup>13</sup> Ashleigh,<sup>14</sup> incarcerated for 50 years without parole in Connecticut for a crime she committed at 14, wrote:

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<sup>11</sup> Magda Stouthamer-Loeber et al, *Desistance From Persistent Serious Delinquency in the Transition to Adulthood* 16 Development and Psychopathology 891 (2004); Robert J. Sampson & John H. Laub, *Life-Course Desisters? Trajectories of Crime Among Delinquent Boys Followed to Age 70*, 41 Criminology 301, 334 (2003) (cannot predict adult criminal behavior from childhood); Robert J. Sampson & John H. Laub, *Crime and Deviance over the Life Course: The Salience of Adult Social Bonds*, 55 Am. Soc. Rev. 609, 625 (1990) (youths change delinquent behavior when they get married and have stable jobs.)

<sup>12</sup> Rate of teen suicides in Connecticut is 8.6 per 100,000 in 2009. Estimates place suicide attempts at 25 times the suicide rate, or about 215 per 100,000. American Association of Suicidology, [http://www.suicidology.org/c/document\\_library/get\\_file?folderId=228&name=DLFE-496.pdf](http://www.suicidology.org/c/document_library/get_file?folderId=228&name=DLFE-496.pdf)

<sup>13</sup> Office of Juvenile Justice Detention Prevention, *Juvenile Suicide in Confinement* (Feb. 2009), Department of Justice.

Tears started running from my eyes thinking of that night [when I tried to hang myself in the prison shower]. It's not the first time I have tried to kill myself but again someone came in the nick of time. I am alive and I don't really want to be. I have nothing to live for. I have a life sentence. Well, a fifty-year sentence without the possibility of parole and that might as well be a life sentence. I will never leave this place and the thought of that forces any sliver of hope out of me. . . . I haven't ever lived and now I am supposed to *live* in jail for thirty-eight more years. I'll be sixty-eight years old when I get out, and what could I possibly do with my life then? All of my family will be dead.

A second chance statute allows incarcerated kids to hope.

**B. The harsh treatment of children in Connecticut disproportionately impacts youth of color.**

A "second look" at long sentences imposed on children is particularly appropriate given the racial disparities that exist in the population of juvenile offenders incarcerated in Connecticut.

Racial disparities in charging and sentencing are, if anything, more pronounced in juvenile sentencing than in adult sentencing. African-American children tend to bear the brunt of harsh adult punishments and are disproportionately likely to be transferred to adult court. For example, studies showed that African Americans in Connecticut accounted for 40% of juveniles transferred to adult court between 1997 and 2002.<sup>15</sup> A later study found racial imbalances in both transfer decisions and secure confinement decisions, even when controlling for risk factors.<sup>16</sup>

Connecticut has serious racial disparities in its overall prison population. As of 2007, our State had the fourth highest discrepancy in the nation between the incarceration rates of African American and White individuals.<sup>17</sup> Currently, although Connecticut's population as a whole is 71% White, the prison population is 68% African American or Hispanic.

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<sup>14</sup> This is not her real name.

<sup>15</sup> Spectrum Associates, Market Research Incorporated, *A Study of Juvenile Transfers in Connecticut, 1997 to 2002, Final Report*, Apr. 3, 2006, at 16, available at <http://www.housedems.ct.gov/jjpooc/JuvenileTransfersReport2006.pdf>.

<sup>16</sup> Spectrum Associates, *A Second Reassessment of Disproportionate Minority Contact in Connecticut's Juvenile Justice System, 2009*, at 39, available at [http://www.ct.gov/opm/lib/opm/cjppd/cjjyd/jjydpublishations/final\\_report\\_dmc\\_study\\_may\\_2009.pdf](http://www.ct.gov/opm/lib/opm/cjppd/cjjyd/jjydpublishations/final_report_dmc_study_may_2009.pdf) ("In 2006, Black and Hispanic juveniles charged with an SJO were more likely than similarly charged White juveniles to be transferred to adult court. While the multivariate analysis showed that factors other than race/ethnicity also played a significant role in the decision, race/ethnicity remained a significant factor. Due to the small number of transfers in the prior studies, it was not previously identified as an area of disparity.").

<sup>17</sup> Marc Maurer & Ryan S. King, *Sentencing Project, Uneven Justice: State Rates of Incarceration by Race and Ethnicity* (July 2007).

These disparities get much worse when the population of incarcerated juvenile offenders is examined. Eighty-five percent of individuals serving adult sentences of more than three years based on crimes committed under the age of 18 are African American or Hispanic.<sup>18</sup> The disparity increases still further as the sentence gets longer. African Americans and Hispanics represent 90% of juvenile offenders serving sentences of 10 years or more, and 94% of those serving sentences of 50 years or more. Moreover, on average, juvenile offenders in Connecticut receive longer sentences for crimes such as felony murder if they are African American or Hispanic.<sup>19</sup>

**C. Allowing a “Second Look” is consistent with recommendations contained in the most recent draft Model Penal Code.**

This idea of taking a “second look” at long sentences imposed on children is supported by the American Law Institute’s recommendations contained in its most recent draft of the Model Penal Code (“MPC”) on Sentencing.<sup>20</sup> A significant recommendation is the so-called “second look” provision. In particular, Section 305.6 of the MPC recommends that states create a sentence modification procedure to allow courts to modify lengthy sentences after a significant portion of the sentence is served.

The MPC recommends a second look procedure for *all* offenders, regardless of the age of the individual at the time of the crime.<sup>21</sup> However, because of the differences between adult and juvenile offenders, the MPC states that juvenile offenders should become eligible for sentence modification “substantially earlier” than adults because

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<sup>18</sup> Data received from the Connecticut Department of Correction (9/28/11). Nationwide, youth of color are disproportionately serving adult sentences. As of 2002, nearly three-quarters of youth admitted to adult prisons nationwide were youth of color; for every 10 youth admitted to adult prison, six were African-American. Hilary O. Shelton, Neelum Arya and Ian Augarten: Campaign for Youth Justice, *Critical Condition: African-American Youth in the Justice System*, Sept. 25, 2008, at 28 (citing The National Council on Crime and Delinquency, *And Justice for Some: Differential Treatment of Youth of Color in the Justice System* (Jan. 2007)).

<sup>19</sup> Data received from the Connecticut Department of Correction (9/28/11).

<sup>20</sup> Since 1999, the American Law Institute (“ALI”) has been working to develop a Model Penal Code (“MPC”) for sentencing. The original Model Penal Code, written by the ALI more than 40 years ago, was enormously influential around the country. Many states, including Connecticut, reformed their criminal codes using the MPC as a model. The American Law Institute also writes other influential documents including the Uniform Commercial Code, and the Restatements of Law. The most recent draft of the Model Penal Code on Sentencing was approved by the ALI membership at its 2011 Annual Meeting. American Law Institute, *Model Penal Code: Sentencing, Tentative Draft No. 2* (Draft of March 25, 2011) (approved at May 17, 2011 Annual Meeting, subject to the discussion at the meeting and to editorial prerogative), available at:

<http://www.ali.org/00021333/Model%20Penal%20Code%20TD%20No%202%20-%20online%20version.pdf>.

<sup>21</sup> *Id.* § 305.6. The MPC recommends that states create a procedure allowing at least those who have served 15 years in prison the opportunity to request sentence modification. The MPC states that 15 years should be the outer-limit of the time frame for an initial review, and an individual should have the right to re-petition for sentence review at intervals not exceeding 10 years. *Id.* § 305.6(1), (2). The goal of such review hearings is to determine “whether the purposes of sentencing . . . would better be served by a modified sentence than the prisoner’s completion of the original sentence.” *Id.* § 305.6(4). Sentences could be modified below mandatory minimum requirements. *Id.* at § 305.6(5).

“adolescents can generally be expected to change more rapidly in the immediate post-offense years, and to a greater absolute degree, than older offenders.”<sup>22</sup> Thus, while the MPC recommends an opportunity for sentence modification after 15 years for adult offenders, the draft states that review of juvenile sentences should come after no more than 10 years is served. The current MPC draft also recommends absolute caps on juvenile sentences that are below adult maximums.<sup>23</sup>

**D. Many other states allow more flexibility in the treatment of juvenile offenders.**

In Connecticut, children under the age of 18 charged with certain offenses are automatically transferred to adult court and subject to adult penalties, including mandatory minimum sentences. Children convicted of capital felony are subject to a mandatory sentence of life without the possibility of release.

Many states give judges greater discretion than Connecticut in determining whether a child’s case should proceed at all in adult court.<sup>24</sup> Several states have recently exempted juvenile offenders from mandatory minimum sentences.<sup>25</sup> Other states place caps on sentences that can be imposed on children. For example, in Louisiana, children who commit crimes at the age of 14, regardless of the seriousness of the crime, cannot be imprisoned past their 31<sup>st</sup> birthday.<sup>26</sup>

Some states prohibit sentences of life without parole (“LWOP”) for individuals who commit crimes under the age of 18. Currently, eight states and the District of Columbia prohibit LWOP sentences for juvenile offenders.<sup>27</sup> Five additional states do not explicitly prohibit LWOP sentences for juveniles, but no one in these states is actually serving a LWOP sentence for a crime committed under the age of 18.<sup>28</sup> Some states subject juvenile offenders to LWOP sentences, but do so only after they have reached the age of 16.<sup>29</sup>

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<sup>22</sup> *Model Penal Code: Sentencing*, 6.11, cmt. The current draft recommends the opportunity for modification of sentences imposed on juvenile offenders after no longer than 10 years. *Id.* 6.11A(h).

<sup>23</sup> *Id.*

<sup>24</sup> See, e.g., MO. ANN. STAT. § 211.071 (West 2004 and Supp. 2008) (requiring the court to consider factors such as whether a child can benefit from the treatment or rehabilitative programs available to the juvenile court before transferring a case to adult court); MICH. COMP. LAWS ANN. § 712A.4 (West 2009); MD. CODE ANN., CTS. AND JUD. PROC. § 3-8A-06 (West 2006); WYO. STAT. ANN § 14-6-237 (2007); HAW. REV. STAT. § 571-22(c)(5) (LexisNexis 2008 and Supp. 2010); DEL. CODE ANN. TIT. 10, § 1011(b) (West 1999); S.D. CODIFIED LAWS §§ 26-11-3.1 (1999).

<sup>25</sup> MONT. CODE ANN. § 46-18-222(1) (2007); WASH. REV. CODE ANN. § 9.94A.540 (West 2009).

<sup>26</sup> LA. CHILD. CODE ANN. art 857 (1992).

<sup>27</sup> These states are Colorado, Kentucky, Texas, Montana, Alaska, Kansas, New Mexico, Oregon, and the District of Columbia. See *Sentencing Juveniles*, N.Y. TIMES, Apr. 20, 2011, at <http://www.nytimes.com/interactive/2011/04/20/us/juveniles.html> (relying on 2008-10 reports by Human Rights Watch, Amnesty International, and Equal Justice Initiative). The prohibitions in at least Texas and Colorado apply prospectively only from the date of recent legislation (from 2009 in Texas and from 2006 in Colorado).

<sup>28</sup> These states are Maine, New Jersey, New York, Vermont, and West Virginia. *Id.*

<sup>29</sup> CAL PENAL CODE § 190.5 (2010); IND. CODE ANN. § 53-50-2-3(b)(2).

**E. Current Connecticut law does not provide adequate review.**

In *Graham v. Florida*, the United States Supreme Court held that states must give juvenile offenders “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” *Graham* concluded that a sentence of life without this “meaningful opportunity for release” violates the Eighth Amendment’s ban on cruel and unusual punishment – at least when the crime is a non-homicide crime.<sup>30</sup> The U.S. Supreme Court is currently considering two cases involving fourteen-year-olds serving sentences of life without the possibility of parole for homicide crimes.

Connecticut’s sentencing and parole system currently lacks a mechanism to guarantee juvenile offenders a meaningful opportunity to obtain release after they have the chance to grow up and change. Children convicted of certain crimes are subject to the same parole ineligibility rules as adults. More than half (51%) of the 191 prisoners serving sentences of more than 10 years based on crimes committed under age 18 are ineligible for parole. These parole-ineligible individuals are all serving sentences of 20 years or more.

There are two executive-discretion options that could theoretically reduce sentence length: sentence modification and clemency/sentence commutation. Sentence modification is currently available only with the permission of the state’s attorney. Clemency and sentence commutation is granted in only extremely rare circumstances by the Board of Pardons and Paroles. Sentence modification and clemency are purely discretionary mechanisms, and no standards govern the exercise of this discretion. They do not provide a meaningful opportunity for release for juvenile offenders serving long sentences. Indeed, *Graham* rejected executive-discretion options as not “meaningful” opportunities for release.

Finally, “Sentence Review” is available only shortly after the original sentencing and cannot take into account the consequences of maturity and rehabilitation.<sup>31</sup> Thus, the Sentence Review process serves a different purpose than what is contemplated by a “second look” procedure and by *Graham*. *Graham* requires, for at least some categories of juvenile offenders, a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.”<sup>32</sup> Thus, it is important that there be an opportunity to seek release after a significant period of time has passed. In addition, it is crucial that the reviewing body consider how the offender has changed and rehabilitated since the offense – rather than simply looking at whether the original sentence was appropriate at the time it was imposed, based on information existing at that time.

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<sup>30</sup> *Graham v. Florida*, 130 S. Ct. 2011 (2010).

<sup>31</sup> A defendant who was sentenced to more than three years may apply for review of a sentence in front of the Sentence Review Division, a panel of three judges. CONN. GEN. STAT. § 51-195. The application must be filed within 30 days of sentencing, and a defendant may not seek review more than once. The Review Division does not consider post-sentencing rehabilitation in reviewing the appropriateness of the sentence. See *State v. Harris*, 159 A.2d 188, 21 Conn. Supp. 448 (Conn. Sup. Ct. 1958); *Miller v. Warden*, No. 556724, 2002 WL 1724044, at \*11 (Conn. Sup. Ct. June 26, 2002).

<sup>32</sup> *Graham*, 130 S. Ct. at 2030.

**F. The Legislature should take affirmative action rather than leaving this to the courts to resolve.**

The Legislature should take affirmative action and create a mechanism for review of lengthy sentences imposed on juvenile offenders. Leaving this matter to the courts of our State to sort out would waste valuable resources. Following *Graham v. Florida*, at least 13 states have already been required to address the direct effect of the case on their juvenile sentencing structures through litigation in their highest courts. There has been even more litigation around the country in the lower courts, as courts try to resolve issues such as how long a sentence must be to violate the Eighth Amendment, and what kinds of crimes are covered by *Graham's* holding. The two cases pending before the Supreme Court now are likely to create still more questions for the lower courts to resolve. Connecticut can avoid costly and time-consuming litigation in its courts by affirmatively addressing this issue and creating a "second look" mechanism that applies to juvenile offenders serving lengthy sentences, regardless of the type of offense.

**G. A Second Look procedure is feasible and will not be costly**

H.B. 5546 directs the Sentencing Commission to consider the feasibility of creating a "second look" procedure, and asks the Commission to consider several issues regarding the scope of the mechanism.

A second look procedure is entirely feasible and will not be costly. There are only 191 individuals serving sentences of more than 10 years based only on crimes committed under the age of 18.<sup>33</sup> If review is permitted after someone serves 10 years, then only about half of these individuals would be immediately eligible for review. After the initial set of eligible cases is reviewed, there will be only a handful of cases each year to consider. Moreover, costs of incarceration are saved if an individual case be safely released into the community.

H.B. 5546 provides eight issues for consideration by the Sentencing Commission. Below, we offer our views on each of these issues.

*(1) Whether the proceedings should be before the superior court, the Board of Pardons and Paroles or other agency.*

In our view, either the court and the Board of Pardons and Paroles ("BOPP") could conduct meaningful proceedings. The Legislature could also consider creating a special panel of the BOPP to consider juvenile cases, in which members would have experience with juveniles.

*(2) Whether counsel should be appointed for the petitioner.*

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<sup>33</sup> Data from the Connecticut Department of Correction (9/28/11).

Appointed counsel is necessary to ensure a "meaningful opportunity" for review. Inmates serving sentences for crimes committed under the age of 18 are uniquely situated. Some of these individuals have been incarcerated since they were 14 years old. Rather than growing up in the care of loving and supportive parents, they grew up in an institutional and punitive environment. They often suffer from serious deficits in education and self-confidence. Worse, some of these children suffered from severe neglect, trauma, and abuse as young children before they committed their offenses. Some have mental illnesses.

Evaluation of the suitability of these individuals for release is complex. Although the crimes are all serious, there may have been mitigating circumstances present because of the young age of the offenders. There is the potential that some of these inmates have undergone remarkable rehabilitation in prison. An adequate presentation at a hearing would require an account of the inmate's background before the offense, an explanation of the offense and expression of remorse, an account of how the inmate has changed and rehabilitated, an explanation for why recidivism is unlikely, and a release plan that will provide supportive services necessary for successful integration into the community. Counsel for the inmate could greatly assist the court or the BOPP and any expert called upon to evaluate an inmate by providing a full picture of the inmate's background before the offense. Because all of these inmates have been incarcerated for long periods of time since they were children – and they do not often have reliable parents who keep files or scrapbooks – relevant documents like decades-old school records, archived DCF records, micro-fiched medical records or records of their parents' or guardian's activities during their youth will not be readily available or easy to locate. Nor will these documents be easily organized or their significance obvious. Counsel would play an extremely important role here in collecting this information, organizing it, and correlating documents from various agencies to a timeline and comprehensible narrative. Were the inmate to try to present this material in person, the presentation could well become confused and dilute the inmate's efforts to express remorse and will to change. Allowing counsel to summarize factual information at a hearing would increase efficiency and accuracy and allow inmates to focus on their own personal message to the court or BOPP.

Given all of these circumstances, appointed counsel is necessary to ensure the opportunity for review is meaningful.

*(3) Whether such release should be applicable to any offense committed by a person under the age of eighteen;*

Release should be available regardless of the offense of conviction. Even if a child commits a terrible act, it does not mean that he or she has a permanently bad character and is incapable of rehabilitation. We should not lock children up and throw away the key. Every child should get a "second look." A second look does *not* mean that every person will be released.

*(4) Whether parties should have a reasonable opportunity to present testimony.*

Allowing parties a reasonable opportunity to present testimony will help ensure that the decisionmaker has all relevant information relevant to the review.

*(5) Whether the petitioner should have more than one opportunity for a hearing.*

More than one opportunity at review should be permitted. This will avoid an all-or-nothing approach by the decisionmaker. In a case in which an individual has made substantial progress at rehabilitation, but it is a close call whether modification is warranted, the decisionmaker should have the option of simply denying the release and allowing the person to petition again for review at some particular date in the future. This would give the decisionmaker an opportunity to communicate to the inmate certain expectations about rehabilitation. At the time of the next hearing, the decisionmaker would be able to review how the person had conducted himself or herself and reconsider, based on this additional information, whether release or further review is warranted.

*(6) The scope of such hearings.*

The hearing must allow the decisionmaker to fully and accurately assess an offender's overall degree of rehabilitation. This assessment necessarily requires an understanding of the individual's background and criminal history. The decisionmaker must also assess progress at rehabilitation in prison and prospects for successful and crime-free life in the community.

*(7) The standard for granting sentence reduction;*

The decisionmaker should consider whether the person has demonstrated substantial rehabilitation since the time of the offense. We agree with the following language developed by the Sentencing Commission: "In assessing rehabilitation, the [decisionmaker] shall consider whether the person has demonstrated increased maturity since the time of the offense; remorse for the offense of which the person was convicted; efforts to atone for that offense; efforts to overcome substance abuse addiction, trauma, lack of education, or other obstacles; and overall degree of rehabilitation. In addition, the [decisionmaker] shall consider the person's background, obstacles the person may have faced as a youth in an adult prison environment, and the opportunities for rehabilitation available to the person during the course of the confinement."

*(8) The period of imprisonment such person should serve before being eligible to petition for sentence reduction.*

In our view, the initial review should come no later than after the individual has served 10 years in prison. After this period of time, we can expect – based on brain science – that the person may have matured and changed.

In sum, the creating a "second look" procedure is entirely feasible and will not be costly.

## II. The Legislature Should Reform Connecticut's Transfer Statute, as Provided in S.B. 417.

For many of the reasons articulated above, we support the change in Connecticut's transfer statute as provided in S.B. 417. Judges should be permitted to assess in individual cases whether a child should be tried and sentenced as an adult. Moreover, as noted above, youth of color have been disproportionately impacted by Connecticut's mandatory transfer law.

We should have particular concern about automatically placing vulnerable children in adult prisons. More than 10 years ago, a major study by the National Council on Crime and Delinquency warned that "[r]esearch has shown that juveniles in adult facilities are at much greater risk of harm than youth housed in juvenile facilities."<sup>34</sup>

This research has been confirmed more recently by the Human Rights Watch, which reports that "[y]outh offenders who enter adult prison while they are still below the age of 18 are 'twice as likely to be beaten by staff and fifty percent more likely to be attacked with a weapon than minors in juvenile facilities.'"<sup>35</sup> None of the individuals contacted by the Human Rights Watch during the course of its most recent report on the issue had been able to avoid violence in adult prison.<sup>36</sup>

In addition, "Department of Justice data suggest that between one-third and one-half of victims of inmate-to-inmate sexual abuse in prisons in the United States are under 25."<sup>37</sup> The Human Rights Watch Report adds "Almost every male inmate we interviewed described having been approached by other prisoners for sexual favors, or having to fight to protect themselves from rape." Female youthful offenders also face a high risk of sexual assault – though in the more horrific form of assault by prison staff – because female youth offenders are "particularly vulnerable to violent or otherwise coercive sexual relationships with corrections personnel."<sup>38</sup>

Thus, we strongly urge a change to the transfer statute in addition to providing a "second look" at long sentences imposed on juvenile offenders who are tried and sentenced as adults.

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<sup>34</sup> James Austin, Kelly Dedel Johnson, Maria Gregoriou, Institute on Crime, Justice and Corrections and the National Council on Crime and Delinquency, *Juveniles in Adult Prisons and Jails: A National Assessment* 18 (2000).

<sup>35</sup> Human Rights Watch, *Against All Odds: Prison Conditions for Youth Offenders Serving Life Without Parole Sentences in the United States*, 14 (January 2012) (citation omitted) available at [http://www.hrw.org/sites/default/files/reports/us0112ForUpload\\_1.pdf](http://www.hrw.org/sites/default/files/reports/us0112ForUpload_1.pdf) (last accessed March 21, 2012).

<sup>36</sup> *Id.* at 21.

<sup>37</sup> *Id.* at 14 (citation omitted).

<sup>38</sup> *Id.* at 17.

Respectfully Submitted,

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March 20, 2012

## Cruel and Unusual Punishment for 14-Year-Olds

The Supreme Court in 2005 justly banned the death penalty for minors convicted of murder. In 2010, it banned life without parole for youths convicted of crimes other than murder. In two cases argued before the court on Tuesday, the justices should take the next step and ban life without parole for youths convicted of murder.

In an Alabama case, Evan Miller, a 14-year-old, and a friend stole a collection of baseball cards and \$300 from a neighbor. They attacked the man with a baseball bat, and killed him when they set fire to his home. In an Arkansas case, Kuntrell Jackson, also 14, tried to rob a video store with two friends. When the clerk said she was going to call the police, one of the other youths shot and killed her with a shotgun. Both Mr. Miller and Mr. Jackson received mandatory sentences of life without parole for murder.

Alabama and Arkansas asked the court to allow them to continue to impose a sentence of life without parole for a juvenile who has committed murder. But the Supreme Court has found that there are critical differences between adolescents and adults in maturity and susceptibility to peer pressure and other forces. Relying on that insight in its 2005 and 2010 cases, the court concluded both times "it would be misguided to equate the failings of a minor with those of an adult." It would be as misguided to equate young adolescents with adults in cases of murder.

Since 1971, only 79 people have been sentenced to life without parole at the age of 13 or 14. Thirty-two states have never sentenced anyone that young to that penalty.

Such a sentence for 14-year-olds, whose judgment and understanding have not been fully formed, takes away hope of reform and punishes them as adults, which they are not. The Supreme Court should abolish this sentence for these young offenders and for all minors under 18 because it is cruel and unusual punishment.

## Don't put juveniles in jail for life - CNN.com

By Laurence Steinberg, Special to CNN  
2012-03-19T12:08:26Z

CNN.com



Laurence Steinberg is a professor of psychology at Temple University and former director of the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. He is the author of "You and Your Adolescent: The Essential Guide

for Ages 10 to 25."

(CNN) -- There are more than 2,500 people serving life sentences without the possibility of parole for crimes they committed when they were juveniles. Some were as young as 13 when they were sent to prison.

In 2010, the U.S. Supreme Court ruled that life without parole for juveniles convicted of crimes other than homicide violated the Constitution's prohibition against cruel and unusual punishment, a ruling that extended the court's logic in its 2005 decision to abolish the juvenile death penalty. In both of these cases, the court held that because adolescents are not as responsible for their actions as adults, they should not be punished as harshly, even for the same crimes.

The court relied in part on the research my colleagues and I conducted for the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice showing that adolescents are less mature than adults in ways that make them more impulsive, more short-sighted and more susceptible to peer influence, all factors that make them less culpable.

On Tuesday, the court will hear appeals of two cases that ask whether life without parole is an appropriate sentence for juveniles convicted of homicide. Both cases involve people who were 14 at the time of their offense, but their crimes were very different. Kuntrell Jackson was part of a group of boys who shot a store clerk during a robbery of a video store in Arkansas; although Jackson did not do the shooting, he was found guilty of "felony murder," because he was part of the group that committed a felony during which someone was killed.

The other plaintiff, Evan Miller, carried out a brutal murder of a neighbor in Alabama whom he and another teenager robbed, beating the victim to death and later returning to the crime scene and setting the victim's trailer on fire to cover up the crime.

The contrast between the crimes, as well as the youthfulness of the juveniles in question, creates many possible alternatives for the justices to contemplate. The court could extend the logic of its previous decisions and ban life without parole for juveniles unequivocally, on the grounds that even the most heinous crime doesn't magically turn a 14-year-old into an adult.

On the other hand, the court could decide that "death is different" and rule that life in prison is an appropriate punishment for someone who has committed murder, regardless of his age. In between these two extremes are numerous middle grounds.

They include banning life without parole for juveniles convicted of felony murder but not other types of murder; banning life without parole for youths 14 and younger, but leaving undecided the constitutionality of this sentence for older teens; permitting life without parole for juveniles as an option but prohibiting it as a mandatory sentence, as it now is in about two-thirds of states that permit it; and various combinations of these alternatives.

#### Opinion: Why are millions of Americans locked up?

The argument in favor of life without parole for people convicted of murder is that the sentence is necessary to deter crime, protect public safety and remove from society those who are thought to be incorrigible.

It is hard to see how this logic applies to Kuntrell Jackson, who had no history of violent crime, who was serving as a lookout during the robbery, and who did not personally murder anyone. A 14-year-old boy in the presence of his peers will often do foolish and dangerous things, and the sort of behavior Jackson exhibited is far more likely to be indicative of transient adolescent immaturity than deep-seated depravity.

It is harder to generate sympathy for Evan Miller, given the heinousness of his crime, but there are ways to punish him and protect the public without precluding the possibility of his rehabilitation.

There is no scientific evidence that sentencing juveniles to long prison sentences deters other adolescents from committing crimes, because the same immaturity that leads teenagers to do impulsive and reckless things makes them unlikely to think far enough ahead to be deterred by the prospect of a serious punishment.

More importantly, we are simply not good enough at predicting the behavior of a 14-year-old, even one who has committed a grisly, violent offense, to say with any certainty that he is beyond redemption.

Rather than commit now to spending millions of dollars keeping Miller locked up for life, a parole board can evaluate Miller after he has matured into adulthood and decide whether and when it is appropriate to return him to the community.

Ending life without parole for all juvenile offenders is the sensible thing to do.

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The opinions expressed in this commentary are solely those of Laurence Steinberg.

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**latimes.com**

Op-Ed

## Too young for life without parole

**It's time for the United States to take a new look at imposing this too-harsh sentence on children who commit major crimes.**

By Katherine Ellison

4:15 PM PDT, March 15, 2012

In 1646, the General Court of Massachusetts Bay Colony passed the Stubborn Child Law, decreeing that teenage boys who disobeyed their parents could be put to death.

What a difference 3 1/2 centuries make. In our enlightened age, mothers and fathers study manuals for techniques to make children more compliant. And many of us are well acquainted with the critical mass of neuroscience establishing that adolescence constitutes a time of diminished responsibility, when the brain's frontal lobes — the seat of judgment and impulse control — are still developing.

All too many U.S. criminal courts and state legislatures, however, have yet to get this memo.

Today, according to Human Rights Watch, 2,570 U.S. prisoners convicted of major crimes committed when they were 14 to 17 years old are serving sentences of life without parole. (Some 300 of them are in California.) In recent years, as other industrialized nations have adhered to international human rights conventions, the United States has become the world's only nation to impose such sentences for minors, say researchers at the University of San Francisco School of Law.

To understand why U.S. courts are doling out such harsh treatment to young lawbreakers, you need to appreciate the Old Testament influences behind the Stubborn Child Law. But it's also worth considering some recent history: specifically, the panic following the crack-cocaine-fueled crime wave of the 1980s.

Violent juvenile crimes, particularly gang-related assaults, surged in the 1980s and early 1990s, and the reaction verged on hysteria. In 1996, for instance, John J. DiIulio Jr., then a Princeton professor, predicted that 270,000 "radically impulsive, brutally remorseless ... juvenile superpredators" would foment even more crime by 2010. Five years later, as juvenile crime plummeted, DiIulio apologized for his hyperbole. Yet the damage had been done, via a legal backlash undermining nearly a century of popular faith in a rehabilitative approach to youthful offenders, originating with the first juvenile court, established in Chicago in 1899.

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Most of the draconian laws passed more than a decade ago remain in effect. Today, 29 states, including California, require minors to be tried as adults for major crimes such as murder and some sex offenses, and to face sentences such as life without parole with no opportunity for a judge to intervene.

This is so even as cultural attitudes have been changing because of falling crime rates and the wealth of recent studies demonstrating that brains don't fully mature until well past adolescence. The evidence clearly shows what most exhausted parents already know: Teenagers often simply can't imagine the consequences of their actions.

Fortunately, in recent years, the U.S. Supreme Court has set some cautious limits on punishments for youthful offenders. In 2005, the high court ruled it unconstitutional to impose capital punishment for crimes committed while under the age of 18. In 2009, another Supreme Court ruling banned life sentences without parole for juveniles who committed crimes other than murder.

On Tuesday, the court is scheduled to hear arguments as to whether sentencing a 14-year-old to spend the rest of his or her life in prison, even for murder, violates the Constitution's ban on cruel and unusual punishment.

Here in California, meanwhile, the Legislature is expected to vote in the coming weeks on a bill by Sen. Leland Yee (D-San Francisco) that would allow reviews of life sentences for all inmates who committed their crimes when they were teenagers. Yee, a child psychologist, calls his bill "an incredibly modest proposal." Defendants would only be eligible for review after serving 15 years and would at best win the possibility of parole after serving a total of 25.

The two cases up for Supreme Court review are *Miller vs. Alabama* and *Jackson vs. Hobbs*. Both defendants are among 73 inmates throughout the United States who have been sentenced to life without parole for crimes committed at the age of 14.

In the first, Evan Miller was convicted, with a 16-year-old friend, of killing a neighbor by beating him and setting his house on fire, while high on drugs and alcohol the man had given them. Miller, the child of alcoholic parents, had been violently beaten by his father for several years, and tried to kill himself six times, beginning at age 5.

In the second case, from Arkansas, Kuntrell Jackson accompanied two older boys as they robbed a video store. When a clerk threatened to call police, one of the older boys shot and killed her.

The attorneys for Miller and Jackson are arguing for leniency mainly on two grounds: First, that young offenders are neurologically less culpable than adults, due to their impulsive tendencies and extra susceptibility to peer pressure, making such sentences cruel; and second, that courts have applied such sentences to children 14 and younger relatively rarely, making them unusual.

Evidence suggests that conditions in prison for juveniles are also exceptionally cruel and unusual. Federal data suggest that as many as half of all victims of inmate sexual abuse are under age 25. Human Rights Watch has found that youth in adult prisons are twice as likely to be beaten by staff and 50% more likely to be attacked with a weapon than minors in juvenile facilities.

Nearly as troublesome is the lost possibility of rehabilitation. One 24-year-old, who had already served nine years for murdering his abusive father, begged for a second chance in a letter to Human Rights Watch. "I would go to the most dangerous parts of Afghanistan or Israel, or jump on the first manned mission to Mars," he wrote, "if the state were to offer me some opportunity to end my life doing some

good, rather than a slow-wasting plague to the world."

The Supreme Court justices would be wise as well as compassionate to strike a balance: Make juvenile offenders responsible for their actions but don't completely rob them of hope. And this should apply not only to the inmates who were 14 at the time of their crimes but to the remaining 2,497 who were 15 to 18 years old.

Even the Stubborn Child Law, after all, set a minimum age of 16: the death penalty could only apply to rebelliousness by a son of "sufficient years and understanding."

*Katherine Ellison is the author, most recently, of "Buzz: A Year of Paying Attention," and writes frequently on adolescence and learning differences. <http://www.katherineellison.com>*

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March 14, 2012

# Juveniles Don't Deserve Life Sentences

By GAIL GARINGER

Boston

IN the late 1980s, a small but influential group of criminologists predicted a coming wave of violent juvenile crime: "superpredators," as young as 11, committing crimes in "wolf packs." Politicians soon responded to those fears, and to concerns about the perceived inadequacies of state juvenile justice systems, by lowering the age at which children could be transferred to adult courts. The concern was that offenders prosecuted as juveniles would have to be released at age 18 or 21.

At the same time, "tough on crime" rhetoric led some states to enact laws making it easier to impose life without parole sentences on adults. The unintended consequence of these laws was that children as young as 13 and 14 who were charged as adults became subject to life without parole sentences.

Nationwide, 79 young adolescents have been sentenced to die in prison — a sentence not imposed on children anywhere else in the world. These children were told that they could never change and that no one cared what became of them. They were denied access to education and rehabilitation programs and left without help or hope.

But the prediction of a generation of superpredators never came to pass. Beginning in the mid-1990s, violent juvenile crime declined, and it has continued to decline through the present day. The laws that were passed to deal with them, however, continue to exist. This month, the United States Supreme Court will hear oral arguments in two cases, *Jackson v. Hobbs* and *Miller v. Alabama*, which will decide whether children can be sentenced to life without parole after being convicted of homicide.

The court has already struck down the death penalty for juveniles and life without parole for young offenders convicted in nonhomicide cases. The rationale for these earlier decisions is simple and equally applicable to the cases to be heard: Young people are biologically different from adults. Brain imaging studies reveal that the regions of the adolescent brain

responsible for controlling thoughts, actions and emotions are not fully developed. They cannot be held to the same standards when they commit terrible wrongs.

Homicide is the worst crime, but in striking down the juvenile death penalty in 2005, the Supreme Court recognized that even in the most serious murder cases, "juvenile offenders cannot with reliability be classified among the worst offenders": they are less mature, more vulnerable to peer pressure, cannot escape from dangerous environments, and their characters are still in formation. And because they remain unformed, it is impossible to assume that they will always present an unacceptable risk to public safety.

The most disturbing part of the superpredator myth is that it presupposed that certain children were hopelessly defective, perhaps genetically so. Today, few believe that criminal genes are inherited, except in the sense that parental abuse and negative home lives can leave children with little hope and limited choices.

As a former juvenile court judge, I have seen firsthand the enormous capacity of children to change and turn themselves around. The same malleability that makes them vulnerable to peer pressure also makes them promising candidates for rehabilitation.

An overwhelming majority of young offenders grow out of crime. But it is impossible at the time of sentencing for mental health professionals to predict which youngsters will fall within that majority and grow up to be productive, law-abiding citizens and which will fall into the small minority that continue to commit crimes. For this reason, the court has previously recognized that children should not be condemned to die in prison without being given a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."

The criminologists who promoted the superpredator theory have acknowledged that their prediction never came to pass, repudiated the theory and expressed regret. They have joined several dozen other criminologists in an amicus brief to the court asking it to strike down life without parole sentences for children convicted of murder. I urge the justices to apply the logic and the wisdom of their earlier decisions and affirm that the best time to decide whether someone should spend his entire life in prison is when he has grown to be an adult, not when he is still a child.

*Gail Garinger, a juvenile court judge in Massachusetts from 1995 to 2008, is the state's child advocate, appointed by the governor.*

## Supreme Court to review juvenile injustice

Posted by James Alan Fox, Crime and Punishment March 19, 2012 09:00 AM

Tomorrow morning, the justices of the U.S. Supreme Court will hear oral arguments in two cases, *Jackson v. Hobbs* and *Miller v. Alabama*, challenging the controversial practice of sentencing juvenile offenders to life imprisonment without the possibility of parole. Hopefully, the Court will resist the common visceral response to youth violence and consider the scientific evidence that, as compared with adults, adolescents are less equipped to contemplate the consequences of their crimes, are more susceptible to pressure from peers to engage in behaviors they would not ordinarily commit on their own, and may, therefore, someday earn a second chance.

It has been decades since state legislatures around the country overreacted to the late-1980s surge in youth violence by expanding the pool of juveniles who could be tried and punished as if they were adults. Several criminologists (with me among them) had warned that juvenile crime rates could continue to surge if there were not a deep and determined investment in youth development. Unfortunately, most politicians took an alternative approach, emphasizing punishment rather than prevention.

The wholesale transfer of juveniles to the jurisdiction of the criminal court was supported by the catchy, yet illogical slogan, "adult time for adult crime." Juveniles may look like adults, talk like adults, and even kill like adults, but they reason like the immature kids they are really are. Adolescents are not just a smaller version of adults.

Even without the large body of research on adolescent development, we see the immature nature of young people every day. They tend to be impulsive, imprudent and impatient. Severe penalties will not make them think twice when they act without thinking even once.

And if actually weighing the risks and rewards, adolescents frequently place much greater importance on short-term benefits, especially peer approval, while minimizing or ignoring the potential long-term consequences. They have yet to develop fully the kind of cognitive skills needed to make the right decision when standing in the wrong place at the wrong time. Punishments as severe as life imprisonment tend not to deter those who have yet to live long enough to appreciate fully the unparalleled preciousness of life.

To the homicide victim and his or her family, of course, the fact that the offender may be young and misguided is of no consolation. The victim is dead, whether the assailant is 16 or 66. Some surviving victims argue that there is no reprieve for their murdered loved one, and so there should be no second chance for the perpetrator. That is true, but the victim is dead whether or not the young offender spends life behind bars. Moreover, there are many families who mourn the loss of a loved one, yet do not wish to see the life of another child destroyed in the pursuit of justice.

In thinking about youngsters involved in serious crimes, we typically view immaturity only as a bad thing. But immaturity and impulsivity tend to change with age and experience, even when that comes while growing up in prison. The immaturity of juvenile offenders, as compared to their adult counterparts, can ultimately provide a greater opportunity for reformation.

Ending life without parole for young people does not mean that we should immediately open wide the prison gates and cease holding them accountable for harm they have caused. What it does mean is that we should revisit the sentence sometime in the future once they have had a chance to grow, mature and change. No matter how heinous the crime, we should resist the temptation to pass irreversible judgment by condemning young offenders when they are teenagers.

With murder rates at a 40-year low and hundreds of prisoners locked away for senseless and thoughtless acts committed when they were young and stupid, a national campaign to reform and rationalize juvenile sentencing practices has gathered steam. Yet, progress toward rethinking the wisdom of sentencing juveniles to life without the possibility of parole has been slow amidst a social and political climate in which such reforms are summarily dismissed as being soft on crime. It is precisely in situations like this that we should count on justices with lifetime appointments to do the right thing, no matter what the political fallout.

In the past several years, the U.S. Supreme Court has recognized on multiple occasions the significant differences between kids and adults when it comes to criminal responsibility. In 2005, the Court determined that it is unconstitutional to sentence juveniles to death; and then in 2010, it prohibited sentencing youth to life without the possibility of parole for non-homicide crimes. It is time for the justices to take the final step by eliminating the absolute “throw away the key” approach for all juveniles.

*Author's note: You can follow me on twitter at @jamesalanfox or Facebook at Professor James Alan Fox for notifications of new blog postings. Also, you can find me on the Web at [www.jamesalanfox.com](http://www.jamesalanfox.com) or contact me by e-mail at [j.fox@neu.edu](mailto:j.fox@neu.edu).*

# THE Nation.

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By Randy Hertz

Randy Hertz is the Vice Dean of the NYU School of Law and Director of the law school's clinical program.

## Why Life Without Parole Is Wrong for Juveniles

| March 13, 2012

Those of us who haven't blocked out our memories of middle school probably recall agonizing over things like what to wear or feeling inexplicably moody or depressed. And with good reason. The emotional instability and intense pressures that characterize adolescence are so significant that the US Supreme Court has said children require different treatment under the Constitution when they are convicted of even the most serious crimes.

In *Roper v. Simmons*, which ruled out the death penalty for under-age offenders in 2005, the Court reasoned that "juvenile offenders cannot with reliability be classified among the worst offenders" because they are less mature and their sense of responsibility has not fully developed. They are more vulnerable to negative internal and external influences, including peer pressure. Unlike adults, they can't control or escape dysfunctional homes and dangerous neighborhoods—two major contributing factors to youth crime. They also have a greater chance for rehabilitation. Thus, as the Court said, "from a moral standpoint it would be misguided to equate the failings of a minor with those of an adult."

In 2010, the Court applied the same guiding logic in its decision in *Graham v. Florida*, concluding that children convicted of non-homicide crimes cannot be sentenced to life imprisonment without parole. As Justice Kennedy wrote for the majority, "Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of 'irretrievably depraved character' than are the actions of adults."

On March 20, the Court will hear oral arguments in two cases, *Jackson v. Hobbs* and *Miller v. Alabama*, that ask whether it's ever constitutional to condemn a child to die in prison. The petitioners, Evan Miller and Kuntrell Jackson, both of whom were convicted of murders committed when they were just 14, argue that, by the Court's own logic, it is not. As attorney Bryan Stevenson argues in a summary of the *Miller* argument: "To wholly disregard a 14-year-old offender's age and age-related characteristics in sentencing him to be imprisoned for the

remainder of his existence makes a mockery” of the precedent set by the Court in *Roper* and *Graham*.

The recognition that children are different is supported by recent neuroscience and psychosocial studies that have shown adolescence to be a period of intense change in the brain. We now know that the parts of the brain that drive emotional reactions, impulses and reactivity to peers develop before those that control impulses and imagine consequences, and which enable adults to resist pressures, delay gratification and weigh risk and reward. Scientists who study the teenage brain describe it as akin to a car with a fully functioning gas pedal but no brakes.

The law recognizes the developmental and biological factors that differentiate children as a class in literally hundreds of areas. State and federal laws recognize that kids are especially vulnerable by punishing adults who victimize them, expose them to illegal activities, force them to work in dangerous or exploitive conditions, or fail to make sure they wear helmets and seatbelts. Dozens of laws acknowledge that children are too immature and irresponsible to vote, serve on juries or drink alcohol. And a whole body of law prevents children from engaging in activities with consequences considered to be beyond their comprehension, such as entering into contracts, marrying, quitting school—even getting tattoos.

A criminal justice system that allows children to be tried and sentenced as adults stands in stark contrast to such well-established laws. Rather than a research-based response to serious juvenile crime, the laws and provisions that have led children to be sentenced to die behind bars are an accident of two overlapping trends, both based more on rhetoric than reality.

In the rush to prove that they were “tough on crime,” state legislators over the past several decades have made life-without-parole sentences more widely available for adults than ever before in our nation’s history (and prison populations nationwide have skyrocketed as a result). In the 1990s, a small group of academics capitalized on and galvanized a growing hysteria about violent crime by youths, speculating that an anticipated rise in the youth population, coupled with spurious theories about the exceptional deviance of children of color growing up poor, would lead to a new generation of “severely morally impoverished juvenile super-predators...capable of committing the most heinous acts of physical violence for the most trivial reasons.” Fearing that the rehabilitation-focused juvenile justice system would be inadequate to protect society from this impending menace, lawmakers passed laws that circumvented juvenile court and sent kids to criminal court for prosecution as adults.

The same expert who coined the term “super-predator” now acknowledges that it was nothing but a ghost story, a terrifying myth with disastrous consequences. In an amicus brief to the Supreme Court in support of Miller and Jackson, this expert—and others—note that the juvenile crime rates actually dropped from 1994 to 2000. But a relative handful of children accused of serious crimes—a grossly disproportionate number of them children of color—found themselves caught permanently in the web spun by academics and politicians, sentenced to die in prison with no hope of release no matter how they might transform and reform themselves. Once we give up on these children, many prisons compound the hopelessness by failing to provide access to educational programs.