

Creating More Fair and Age-Appropriate Sentencing of Children in New Mexico

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Joint CCJ and HHS Interim Committee Hearing

UNM Science and Technology Park Rotunda

ADOLESCENT BRAIN DEVELOPMENT

A teenage boy is driving home in traffic and gets a text from the girlfriend who has been trying to break up with him all week...does he read it and answer while driving?

A teenage boy learns that another kid at school has been talking trash about his sister. His friends encourage him to take a gun to a party that weekend just to scare the other kid. They will all be there to “have his back....”

WHAT WE KNOW BY SIMPLE OBSERVATION

- **ADOLESCENTS TEND TO BE:**
 - Impulsive in their speech, decisions and actions
 - Emotionally changeable and emotionally driven
 - Reward dependent
 - Thrill and sensation seeking
 - Peer focused and peer influenced

EPIDEMIOLOGY

- Increase in mortality rates of 200% from early school age to young adulthood
- Three quarters of these deaths due to completely preventable accidents
- Accidents, suicide, homicide, depression, alcohol and substance use, violence, and risky sexual practices are all higher
- ***Criminal behavior*** is higher in adolescents than any other age group

TEEN BRAINS ARE DIFFERENT

- **WE LEARN THIS BY:**
 - Developmental neuroscience
 - Neuropsychological testing
 - Brain imaging
 - Functional brain imaging
- **PROMINENT DIFFERENCES UNTIL THE MID TWENTIES**

ADOLESCENT BRAINS ARE UNSTABLE AND UNBALANCED—*developmentally, normally and by design*

- **SOME AREAS ARE IN OVERDRIVE:**
 - Social
 - Emotional
 - Reward
- While others are both **UNFINISHED** and **UNCONNECTED**
 - prefrontal cortex
 - executive functions
 - inhibitory functions

ADOLESCENT BRAINS ARE NOT FINISHED— *but they will be*

- INSTABILITY IS TRANSIENT
 - ALTHOUGH IT DOES LAST AT LEAST UNTIL AGE 25
- PART OF THE OVERALL PLAN OF BRAIN DEVELOPMENT
 - RISK AND PROMISE
- UNPREDICTABLE
 - ESPECIALLY WITH REGARD TO CRIMINALITY—
EVEN SERIOUS CRIME

SETTLED SCIENCE and ESTABLISHED LAW

- RESEARCH AND CLINICAL FIELDS ARE NOT IN DEBATE
 - Appendix A
- THE SUPREME COURT HAS DECIDED
 - *Roper v. Simmons*, 543 U.S. 551 (2005)
 - *Graham v. Florida*, 130 S. Ct. 2011 (2010)
 - *Miller v. Alabama*, 567 U.S. 460 (2012)
 - *Appendix B*

Children Sentenced as Adults in New Mexico:

- There are a total of 87 people serving sentences longer than 10 years for crimes they committed as children.
- Many of them are serving sentences that present the very real prospect that they will die in prison.
- 39 people are serving sentences longer than 30 years.
- 15 people have already served more than 20 years in prison.

Sentencing children to spend the rest of their lives in prison violates the Eighth Amendment protection against cruel and unusual punishment.

- In 2012, the U.S. Supreme Court held in *Miller v. Alabama* that it is unconstitutional to sentence a juvenile to life without parole, except in the rarest of cases.
- In 2016, the U.S. Supreme Court held in *Montgomery v. Louisiana* that *Miller* had to be applied retroactively.

In the words of the U.S. Supreme Court:

“Incorrigibility is inconsistent with youth.”¹

“...transient rashness, proclivity of risk, and inability to assess consequences...both lessened a child’s moral culpability and enhanced the prospect that, as the years go by and neurological development occurs, his ‘deficiencies will reform.’”²

“A life without parole sentence improperly denied the juvenile offender a chance to demonstrate growth and maturity.”³

¹ *Graham v. Florida*, 560 U.S. 48, 73 (2010), quoting *Workman v. Commonwealth*, 429 S.W. 2d 374, 378 (1968).

² *Miller v. Alabama*, 567 U.S. 460, 472 (2012), quoting *Roper v. Simmons*, 543 U.S. 551, 570 (2005).

³ *Graham*, at 73.

The New Mexico Judiciary:

In 2018 in *Ira v. Janecka*, our New Mexico Supreme Court followed federal precedent and held that children sentenced as adults must be afforded a “**meaningful opportunity** to obtain release by demonstrating maturity and rehabilitation.”

The Court said, “although the Eighth Amendment does not require a state to release juveniles during their natural life, it prohibits states from making the judgement at the outset that juveniles will never be fit to reenter society.”

States Across the Nation Have Responded:

- Since *Miller v. Alabama*, 22 states and the District of Columbia have changed their juvenile sentencing.
- States have created the “meaningful opportunities” for review required by the Constitution by establishing either **judicial review** or **parole eligibility** after the child has served a certain number of years.

Models of State Reform:

West Virginia

Eliminated life without parole for juveniles and establishes parole eligibility for all juveniles after serving 15 years; requires consideration of youth-specific factors at the time of sentencing; requires consideration of youth-specific factors at the time of parole hearing. *HB 4210, 81st Legislature, 1st Sess. (W. Virg. 2014)*

Nevada

Eliminated life without parole for juveniles and establishes parole eligibility for juvenile after 15 years for non-homicide crimes and after 20 years for homicide crimes. *AB 267, 78th Leg., Gen. Sess. (Nv. 2015)*

District of Columbia

Made all juveniles eligible to petition court for sentence modification after 15 years. *DC Bill 21-683 (D.C. 2015), DC Bill 22-255 (D.C. 2018)*

State Reforms Have Been Successful:

Across the country, 520 individuals have been released from serving juvenile life without parole sentences. These individuals have been successful. **None of them** have been returned to prison for more than a technical parole violation.

Formerly incarcerated youth in New Mexico are now leaders in our community.

Appendix A—ADOLESCENT BRAIN SCIENCE

- Steinberg, Laurence & Robert G. Schwartz, *Developmental Psychology Goes to Court*, in *Youth on Trial: A Developmental Perspective on Juvenile Justice* 9 (Thomas Grisso & Robert G. Schwartz eds., 2000)
- Steinberg, Laurence, *A Behavioral Scientist Looks At the Science Of Adolescent Brain Development*, 72 *Brain & Cognition* 160(2010)
- Piquero, Alex, et al., *Violence in Criminal Careers: A Review of the Literature from a Developmental Life-Course Perspective*, *Aggression & Violent Behavior* (2012)
- Mulvey, Edward P., et al., *Trajectories of Desistance and Continuity in Antisocial Behavior Following Court Adjudication Among Serious Adolescent Offenders*, 22 *Dev. & Psychopathology* 453 (2010)

Appendix A—ADOLESCENT BRAIN SCIENCE

- Moffitt, Terrie E., *Adolescent-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy*, 100 *Psychol. Rev.* 674 (1993)
- Grisso, Thomas, et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 *Law & Hum. Behav.* 333 (2003)
- Cauffman, Elizabeth & Laurence Steinberg, *(Im)Maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 *Behav. Sci. & L.* 741 (2000)

Appendix A—ADOLESCENT BRAIN SCIENCE

- Steinberg, Laurence & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *Am. Psychologist* 1009 (2003)
- Steinberg, Laurence, et al., *Are Adolescents Less Mature Than Adults? Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip-Flop,"* 64 *Am. Psychologist* 583 (2009)
- Zimring, Franklin E., *Penal Proportionality for the Young Offender*, in *Youth on Trial: A Developmental Perspective on Juvenile Justice* 271 (Thomas Grisso & Robert G. Schwartz eds., 2000)

Appendix B—SUPREME COURT OPINION

- “juveniles are more capable of change than are adults,” meaning that “their actions are less likely to be evidence of ‘irretrievably depraved character,’” even in the case of very serious crimes. *Graham*, 130 S. Ct. at 2026-2027
- Accordingly, “[t]he juvenile should not be deprived of the opportunity to achieve maturity of judgment and self recognition of human worth and potential”—with “no chance to leave prison before life’s end”—because “maturity can lead to that considered reflection which is the foundation for remorse, renewal, and rehabilitation.” *Graham*, 130 S. Ct. at 2032.

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- Research also continues to demonstrate that “juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure,” while at the same time they lack the freedom and autonomy that adults possess to escape such pressures. *Roper*, 543 U.S. at 569.
- “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds.” *Graham*, 130 S. Ct. at 2026.
- Juveniles’ profound differences from adults undermine the possible penological justifications for punishing a juvenile offender with a sentence that “guarantees he will die in prison without any meaningful opportunity to obtain release.” *Graham*, 130 S. Ct. at 2033.

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- In *Roper* and *Graham*, this Court concluded that “marked and well understood” developmental differences between juveniles and adults both diminish juveniles’ blameworthiness for their criminal acts and enhance their prospects of change and reform *Roper*, 543 U.S. at 572.
- Not surprisingly, juvenile crime is significantly, correlated with exposure to delinquent peers, and adolescents are “far more likely than adults to commit” crimes in groups. “No matter the crime, if a teenager is the offender, he is usually not committing the”⁴¹ offense alone. Indeed, “[m]ost adolescent decisions to break the law take place on a social stage where the immediate pressure of peers is the real motive.”

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- In fact, juveniles do typically outgrow their antisocial behavior as the ‘impetuousness and recklessness’ of youth subside in adulthood. For most juveniles, therefore, antisocial behavior will ‘cease with maturity as individual identity becomes settled.’ Only a small proportion of adolescents who experiment with illegal activities will develop an entrenched pattern of criminal behavior that persists into adulthood; “the vast majority of adolescents who engage in criminal or delinquent behavior desist from crime as they mature.” *Roper*, 543 U.S. at 570.