STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney
Governor

John McNeal
SCPD Director

MEMORANDUM

DATE: March 7, 2018

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

RE: HB 305 - HB 306 - HB 307- HB 308 - SB 146 (Juvenile Crime)

There are series of bills related to sentencing and other criminal justice issues for juveniles. All appear to relate to the idea that juvenile offenders should not be treated as adult offenders, and that judges should have more discretion in formulating sentences.

HB 305. This bill amends 16 Del. Code §4751B by removing juvenile adjudications from the list of "prior qualifying Title 16 convictions" that can lead to vastly increased sentences for subsequent drug offenses as an adult. Judges can continue to use juvenile sentences as a factor in adult sentences, but the juvenile convictions will no longer automatically trigger enhanced penalties.

HB 306. Currently, every person over the age of 15 who is in possession of a firearm during the commission of a Class B felony must be tried as an adult in the adult court system. HB 306 seeks to amend 11 Del. Code §1447A by leaving the decision to try a minor as an adult under these circumstances to the judge and also raises the age to over 16. Superior Court could choose under the proposed revision to send a case back to Family Court. It is worth noting that this discretion was given back to Superior Court last year for other felonies that were previously non-discretionary. (HB 9).

HB 307. This bill repeals 10 Del. Code §1009 and 11 Del Code §1448 to remove all mandatory minimum sentencing schemes for juveniles adjudicated delinquent in Family Court.

HB 308. This bill removed the sunset provision in HB 405 of the 148th General Assembly to allow

the continuation of a program allowing the issuance of civil citations to juveniles who have committee minor misdemeanors as an alternative to arrest and the introduction of the criminal justice system. This bill has already passed both houses and is awaiting signature.

SB 146. This bill seeks to amend 10 Del. Code §1017 to require the mandatory expungement of felony cases that were terminated in favor of the child.

All of these bills are efforts to have the criminal code to allow judges more discretion in crafting appropriate sentences for juvenile offenders. The philosophy underpinning the proposed changes is the recognition that juveniles should not be viewed as, and treated like, adults in the criminal justice system. The bills also reflect the understanding that juveniles are not yet fully developed and do not have the same ability to control impulses and make good decisions that we expect from adults.

There are a myriad of reasons why it is good public policy to enable juvenile offenders to stay in the Family Court and juvenile justice system. Exposing juveniles to adult jails is dangerous and undermines rehabilitation efforts. The adult corrections system will not address the underlying issues that may have led to the offender's criminal behavior, setting the juvenile offender up for a lifetime of criminal behavior when targeted treatment may lead to a better outcome. These measures will also help to address the disproportionate representation of minority children and children with disabilities in the correctional system by diverting young offenders to treatment or other more appropriate settings. Please see attached articles.

The SCPD is endorsing these bills as advancing a more nuanced approach to juvenile justice in Delaware that will lead to better long term outcomes.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or observations on the proposed legislation.

cc: Ms. Laura Waterland, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

HB 305-306-307-308-SB 146 juvenile crime 2-21-18

SPLC
Southern Poverty
Law Center

NEWS

CHILDREN TRIED AS ADULTS FACE DANGER, LESS CHANCE FOR REHABILITATION

October 30, 2014

Research shows that children prosecuted in the adult criminal justice system are more likely to reoffend than those held in the juvenile justice system. But thousands continue to be sent into adult courts every year in the Deep South. The SPLC is working to reform this practice.

Patrick* entered an Alabama prison at the age of 16.

In a little more than a year behind bars, he has witnessed more than 30 stabbings. He learned some lessons: Failing to turn over his property when a prisoner demands it puts him at risk of being stabbed, as does refusing a sexual overture. This thought hangs over him constantly.

He is always on guard, ready to fight for his survival.

Patrick is one of about 1,200 children under the age of 18 who are being held in adult prisons across the country. The number is about 10,000 when local adult jails are included.

In Alabama, children as young as 14 can be charged and convicted as adults for any alleged offense. Neighboring Florida sends more children into adult criminal court – and into adult prisons – than any other state.

"[I]n adult court, they want to lock us up," Sander A., a Florida youth, told Human Rights Watch for a recent report. "In juvenile court they want to help us make better choices."

That, in a nutshell, is why children should not be tried as adults. The research is clear that children in the adult criminal justice system are more

likely to reoffend than if they are held in the juvenile justice system. Still, thousands are sent into the adult system every year in the Deep South.

This month, the Southern Poverty Law Center hosted or sponsored events in Alabama, Mississippi, Louisiana and Florida as part of National Youth Justice Awareness Month, a national campaign organized by the Campaign for Youth Justice to highlight the serious and devastating consequences of sending children into adult courts, jails and prisons.

"It is time to recognize the toll that misguided 'tough-on-crime' policies have taken on youths across this country," said Jerri Katzerman, SPLC deputy legal director. "These policies have not only failed to make our communities safer, but have endangered children and needlessly derailed young lives."

Research has shown that children in the adult criminal justice system are 34 percent more likely to be arrested again than those convicted of similar offenses in juvenile court. They also are 36 times more likely to commit suicide than youth in juvenile facilities.

During their time in adult lock-ups, prisoners such as Patrick often witness brutal inmate-on-inmate violence. And they are more likely to be victimized sexually.

Derrick* has been fending off sexual advances and assaults since arriving at a prison in Alabama at age 16. Many young inmates simply submit to older inmates because they know the guards probably won't help them.

A number of professional organizations have opposed or condemned the practice of housing young people in adult lock-ups, including the American Jail Association, the American Correctional Association, the Council of Juvenile Correctional Administrators, the Association of State Correctional Administrators and the National Association of Counties.

'Lost in the system'

Research also has shown that children have a unique propensity for rehabilitation. The human brain does not fully develop until the mid-20s and the portion of the brain that governs rational decision-making is the last to develop. This means a child may engage in dangerous behavior without fully realizing the risks and consequences for themselves and others.

"I was impulsive. I wouldn't think about the consequences," said Luke R., a Florida youth serving a prison sentence for robbery.

It's a refrain heard over and over.

"I don't do the same things I was doing," said 22-year-old Thomas G., who is on probation for a crime he committed at age 17. "I think about things before I do them."

After presiding over juvenile court for 14 years, one Florida judge summed up the young people this way: "I've been here long enough to understand that when someone is 16 and I ask them why they did it and they say 'I don't know,' I believe them."

Unfortunately, the adult system fails to recognize the potential for rehabilitation in children. This can be particularly damaging for children without a strong support system of family, friends and community.

"They really get lost in the system," said Michelle Stephens, whose son was prosecuted as an adult and incarcerated in Florida five years ago after accepting a plea agreement. "And all their inmate peers become their family. They join gangs in prison. They're worse off than they were before they went in prison. You think they were bad before they went in prison, now you've just put them with hardened, lifetime criminals."

The distance between a youth and his family can be especially difficult. Langston T. is serving a three-year prison sentence almost four hours from his hometown. After nine months, he's yet to have a visit from his family.

"It's a long trip," he said.

It's just one of the harsh realities Langston and other youths in adult prisons must face.

"Adult prison? It ain't a place to be," he said. "It's just breathing and eating. You just a number in here."

Once a young person is out of prison, it can be difficult turning a life around with a felony record. Thomas G. has found this out after serving a three-year sentence.

"What I did when I was 16, that's still following me and will follow me for the rest of my life," he said. "I get a job, and they find out I was convicted of a felony, and they've got to let me go."

He understands that people must be punished for wrongdoing but questions why one mistake must follow him forever.

"[D]on't keep it held over me for the rest of my life," he said.

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*Name changed to protect his identity.

The quotes and stories of Sander A., Luke R., Thomas G., and Langston T. are from *Branded for Life: Florida's Prosecution of Children as Adults under its "Direct File" Statute*, a Human Rights Watch report released in April 2014.

FACTS ABOUT INCARCERATED YOUTH

70K+

The number of U.S. juvenile offenders kept from their families every week.

2/3

Portion of youths held for nonviolent charges — some of which wouldn't be illegal if they weren't minors.

10K

The number of children held in adult jails and prisons.

30% v. 17%

Black youths are over-represented at all levels; figures show percentage of those arrested who are black versus black youths' percentage of the general population.

#YJAM #YOUTHJUSTICE

SOURCE: CAMPAIGN FOR YOUTH JUSTICE

SPLCENTER.ORG

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PURSUING JUSTICE
A JUVENILE LAW CENTER BLOG

AUGUST 16, 2017

Mandatory Minimums, Maximum Consequences

posted by Emily Steiner, Legal Intern, Juvenile Law Center

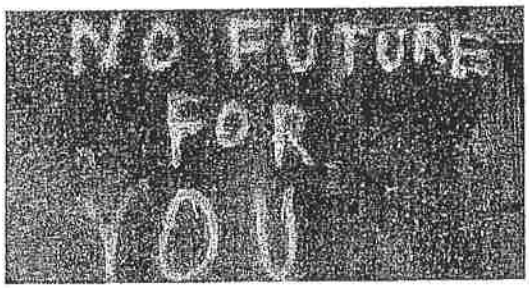

Image credit: https://www.flickr.com/photos/donshall/1858459388/

Over twenty years ago, academics and lawmakers promoted the idea that some children were "so impulsive, so remorseless" that they would "kill, rape, maim, without giving it a second thought." The theory behind these "juvenile superpredators" has since been entirely disavowed, but the "tough on crime" laws enacted in response, which led to harsh mandatory sentences imposed on youth, still impact individuals who remain behind bars today.

Recently, United States Attorney General Jeff Sessions reversed an Obama administration directive that gave federal prosecutors and judges flexibility to sentence offenders below statutorily mandated minimums. In Pennsylvania, a similar bill has been referred to the state Senate Judiciary Committee that would revitalize mandatory minimum sentences in the state. Mandatory minimum sentences have not been enforced in Pennsylvania since 2015 per a state supreme court ruling that the process used to impose the sentences were unconstitutional.

The revival of strong mandatory sentencing schemes matches the "tough on crime" approach touted by the Trump administration. While mandatory minimums negatively impact all individuals involved in the criminal justice system, youth particularly face long-term consequences. The imposition of mandatory minimums exacerbates the harms that youth face in the adult criminal justice system and forces children to grow up within a system that lacks age-appropriate education and treatment to address their rehabilitative potential.

Juvenile Law Center recently advocated for youth when the state of Washington grappled with the issue of mandatory minimums imposed on children tried as adults. On Halloween night, 2012, friends Zyion Houston-Sconiers, 17-years-old, and Treson Roberts, 16-years-old, were arrested for stealing candy and cell phones from trick or treaters. Both boys were charged with multiple counts of robbery, other felonies, and - because Zyion was armed with a revolver- a number of firearm enhancements.

Due to a Washington statute requiring automatic transfer to adult court for juveniles charged with robbery, the boys were tried and convicted in the adult criminal system. Zyion faced a sentence range of 42-45 years, 31 of them required by mandatory firearm enhancements. Treson was facing 37-40 years. At sentencing, the State of Washington recognized the "perhaps excessive" sentence length required for the boys, requesting a departure from the mandatory requirement. The trial judge complied, noting he "wished he could have done more to reduce their sentences," but Washington's mandatory sentencing laws prevented him from doing so. As a result, Zyion was sentenced to 31 years and Treson was sentenced to 26 years, both without an opportunity for parole. On appeal, the Washington Supreme Court affirmed the convictions of Zyion and Treson, but effectively forbid mandatory minimum sentencing for juveniles by holding that the trial court must have "full discretion to depart from the sentencing guidelines and any otherwise mandatory sentence enhancements," and must take the defendant's youth into consideration during sentencing.

In 2014, the Iowa Supreme Court delivered a similar ruling holding mandatory minimum sentences unconstitutional as applied to juvenile offenders, finding such schemes "cannot satisfy the standards of decency and fairness embedded in article I, section 17 of the Iowa Constitution."

While the Washington and Iowa Supreme Court decisions were considered major victories, they do not reach beyond their states. Many other states have enacted or are enacting mandatory sentencing laws that will affect the estimated 200,000 youth tried and sentenced as adults each year. When children convicted in the adult system are subjected to mandatory sentences, the court cannot consider whether a child may be reformed through rehabilitative treatment or if their age may have played a part in their offense. Instead, courts are bound by the sentences mandated by the law. This practice undermines the determination that "children cannot be viewed simply as miniature adults." The United States Supreme Court has explicitly recognized that children have "diminished culpability and greater prospects for reform" and are therefore "less deserving of the most severe punishments."

When sentencing youth, it is important to make individualized determinations of culpability that not only look to the age of a minor, but the "background and mental and emotional development of a youthful defendant." The Court has consistently recognized that youth possess levels of maturity, decision-making ability, culpability, and capacity for change and growth that differs substantially from adults. Automatic sentencing denies these and other individual characteristics of youth from being taken into account and can have long-lasting detrimental effects on children.

Subjecting youth to prosecution in the adult system in the first place deprives youth of the rehabilitative nature of the juvenile justice system and its programs, classes and activities specific to the needs of youth. Compared to youth in the juvenile system, youth in the adult system are five times more likely to be sexually assaulted during their incarceration, and two times more likely to be assaulted with a weapon. These youth are also more likely to be psychologically affected by the conditions of confinement and more likely to commit suicide. Research has shown that youth who have served sentences in the adult system reoffend more quickly and violently after release than those who served their time in the juvenile system. Each of these consequences are further exasperated by mandatory minimums that subject youth to lengthy prison stays that far surpass their culpability.

The juvenile system was modeled on the belief that children should be rehabilitated rather than punished. This ideology is undermined by the enforcement of mandatory minimum sentences for youth offenders. The juvenile "superpredator" misconception is widely recognized to have caused immeasurable harm to families and communities. So, too, should be the laws that emerged from this fallacy. Mandatory minimum sentences are harmful for youth. We should move away from these schemes rather than revitalizing them into present day law.

Tags: JUVENILE AND CRIMINAL JUSTICE | JUVENILE LIFE WITHOUT PAROLE (JLWOP)

Share:

Why Does the U.S. Sentence Children to Life in Prison?

daily.jstor.org/u-s-sentence-children-life-prison/

January 31, 2018

In 2006, Cyntoia Brown was convicted of murdering a man who hired her for sex and sentenced to life in prison. She was sixteen years old. Brown testified that she killed the man in self defense, that she was forced into prostitution by an abusive boyfriend after escaping an abusive home. None of that mattered in the Tennessee court where she was tried as an adult.

Brown is far from alone. She is one of about 10,000 Americans serving life sentences for offenses committed as a child, meaning under the age of eighteen. Of them, approximately 2,500 are serving an even more dire sentence—life without the possibility of parole (LWOP). The United States is the only country in the world that sentences people to die in prison for offenses committed as children.

The U.S. has been grappling with how to address crimes committed by children for centuries. As early as 1899, U.S. jurisdictions began creating the world's first juvenile courts, which held children less culpable for their crimes, diverting many away from adult prisons. Within decades, however, these courts found themselves under attack by prosecutors and others who feared they were too lenient on dangerous underage murderers. During the 1980s and 90s, the power of juvenile court judges was greatly reduced, with a corresponding increase in power for prosecutors and criminal trial courts, allowing thousands of teenagers like Cyntoia Brown to receive life sentences.

Since 2005, several key Supreme Court decisions and individual state laws have sought to protect children from the most extreme sentences, but even these reforms have faced significant resistance from prosecutors and lawmakers.

* * *

"The past decade marks a revolution in the attitude of the state toward its offending children," proclaimed a 1909 *Harvard Law Review* article by Julian W. Mack. Until then, Mack wrote, "our common criminal law did not differentiate between the adult and the minor who had reached the age of criminal responsibility," leaving child offenders "huddled together" with adults in jails and workhouses. Before the juvenile justice "revolution" he described, the age of criminal responsibility in U.S. states ranged from 7 to 12.

In the second half of the nineteenth century, reformers pushed for the creation of juvenile court systems that would seek to rehabilitate child offenders.

This harshness toward children derived from traditional English common law, which convicted and punished 7- to 14-year-old children as long as they appeared to understand the difference between right and wrong. There are records of children as young as 10 put to death in eighteenth century England.

In the second half of the nineteenth century, U.S. reformers pushed for the creation of juvenile court systems that would seek to rehabilitate—not just punish—child offenders. As the legal scholars David S. Tanenhaus and Steven A. Drizin outline in a 2002 paper in the *Journal of Criminal Law and Criminology*, the first juvenile court opened in 1899 in Cook County, IL (home of Chicago), thanks to reformers Lucy Flower and Julia Lathrop. By 1909, more than 30 American jurisdictions adopted similar legislation, as did Great Britain, Ireland, Canada, and Australia.

Writing in 1909, Mack captured the prevailing view toward reform over punishment: "the child who has begun to go wrong, who is incorrigible, who has broken a law or an ordinance, is to be taken in hand by the state, not as an enemy but as a protector, as the ultimate guardian." Ideally, he wrote, convicted children should be placed on probation, assigned a guardian, and allowed to remain in their own homes and communities. In cases where removal from the home was deemed necessary, the Supreme Court of Illinois ordered that "a real school, not a prison in disguise, must be provided."

"What they need, more than anything else, is kindly assistance," wrote Mack. "The aim of the court in appointing a probation officer for the child, is to have the child and the parents feel, not so much the power, as the friendly interest of the state." He quoted a Supreme Court of Utah decision, which declared that a juvenile judge must be "a man of broad mind, of almost infinite patience, and one who is the possessor of great faith in humanity."

As the movement toward mercy and reduced culpability for children swept the nation, in 1920 criminal law journal article, Arthur Towne, the superintendent of the Brooklyn Society for the Prevention of Cruelty to Children, considered whether New York State should follow other states in increasing its age of criminal responsibility from 16 to 18, asking:

> Does he go to bed the night before his sixteenth birthday, a tender boy in need of the state's solicitude, and awaken the next morning a bearded man, full-fledged in experience and self-control, and in ability to fulfill his obligations as a citizen? Upon donning his long trousers does he forthwith become a man; or in spite of his somewhat lengthened years and clothes, may he still be in his short "pants" mentally and morally?

Writing in 1920, Towne said adolescence continues through age 25, and that treating 14- or 16-year olds as functioning adults "simply flies in the face of present-day psychology and the hard facts."

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Despite Towne's advocacy, New York State did not stop automatically charging 16- and 17-year-olds as adults until April 2017. Juvenile courts faced decades of backlash, as prosecutors argued for discretion over whether individual cases should be heard in juvenile or criminal court. In a series of decisions, the Illinois Supreme Court stripped power from the juvenile courts, granting the state's attorney the authority to decide in which court a child would be tried.

Beginning in the 1930s, prosecutors pushed for more power, claiming that the nation faced a dangerous new class of child murderers. In 1935, the Chief Justice of the Illinois Supreme Court declared that juvenile courts were intended for "bad boys and girls who have committed no serious crime," but were being used to protect "highly dangerous gunmen and thieves, or even murderers."

But even as juvenile courts were being undermined, they were simultaneously legitimized. In the 1960s, U.S. Supreme Court decisions guaranteed due process protections in juvenile court, including the right to counsel.

In 1978, the "automatic transfer law" was born. A 15-year-old New Yorker named Willie Bosket was convicted of killing two men on the subway. He was tried in juvenile court and received the maximum juvenile sentence of five years. Two days later, New York Governor Hugh Carey (in the middle of a tight re-election battle) called a special session of the legislature to produce the Juvenile Offender Act. This "automatic transfer law" required children as young as 13 to be tried as adults for murder.

Attacks on the power of the juvenile court intensified in the 1980s and 90s. "These cries grew to a fever pitch with the birth of the 'superpredator' myth in late 1995," wrote Tanenhaus and Drizin. Academics, prosecutors, and lawmakers criticized juvenile courts, using "the sound bite 'adult time for adult crime' as their mantra."

Between 1990 and 1996, forty states passed laws making it easier for juveniles to be prosecuted as adults, often by transferring power from juvenile judges to prosecutors. Other new laws prevented the sealing of juvenile records, set mandatory minimum sentences, or removed phrases like "rehabilitation" and "the best interests of the child" from statutes, replacing them with "punishment" and "the protection of the public."

While attorneys and politicians panicked about the rise of the "superpredator," juvenile crime actually declined between 1994 and 2000.

The new laws kept coming, with 43 states passing similar changes between 1996 and 1999. A 1999 report found that when juveniles were transferred to adult court and convicted of murder, they received, on average, longer sentences than adults convicted of the same crime. In 1998, close to 200,000 kids were tried as adults and 18,000 were housed in adult prisons.

"Teenagers account for the largest portion of all violent crime in America," declared then-Florida representative Bill McCollum in 1996. "They're the most violent criminals on the face of the earth." He was arguing in support of an ultimately failed federal bill that would have required some 13-year-olds to be tried as adults.

As children were increasingly tried as adults, racial minorities suffered the most. In 1997, white children made up 57 percent of juvenile cases involving offenses against others, but just 45 percent of the cases transferred to adult court. And while white youth constituted 59 percent of juvenile drug cases, they made up just 35 percent of the cases transferred to adult court.

Clinging to the "superpredator" myth, prosecutors parroted colorful claims about the nineteenth century mischief-makers that juvenile courts had been created for. According to various District Attorney's offices, the courts were created "when kids were throwing spitballs," "when kids were knocking over outhouses," and "at a time of more 'Leave it to Beaver' type crimes."

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While attorneys and politicians panicked about the rise of the "superpredator," juvenile crime actually declined between 1994 and 2000. A 2001 U.S. Surgeon General's report found that "there is not evidence that the young people involved in violence during the peak years of the early 1990s were more frequent or more vicious offenders than youth in earlier years."

As it turns out, there have always been murders by children. Using the Chicago Homicide Database, Tanenhaus and Drizin located the cases of 24 children tried for homicide by juvenile courts in the early 1900s. They wrote that these cases "reveal that the juvenile court was created at a time when kids were not only throwing spitballs and knocking over outhouses, but they were also killing people." These cases show how children were protected from the adult criminal system, thanks to multiple checks on the power of prosecutors.

In one 1910 case, a 12- or 14-year-old girl (accounts differ) was accused of beating an 8-year-old girl to death with a baseball. A "coroner's jury" was summoned: a group of citizens convened to determine cause of death. "Owing to the extreme youth of the accused," declared the coroner's jury, "the Jury recommend that she be permitted to remain in the custody of her parents for the present until the case is taken up by the Juvenile Court." The authors note that coroner's juries were rife with corruption and graft. Yet in this case and others, they did serve as a check on prosecutors, helping keep children out of adult court.

In a 1908 case, twin 13-year-old boys were tried for stabbing a schoolmate to death with a letter opener. Although the coroner's jury recommended the boys go before an adult court, they were protected by other checks on the system: The grand jury ruled there was insufficient evidence to prosecute one twin, and the state officially declined to prosecute the other.

In a third case, in 1926, four 15- and 16-year-old boys were arrested in a shooting death. They took various paths through the court system, with some starting in the adult criminal system and some in the juvenile—yet ultimately, none were prosecuted as adults.

The 24 cases studied by Tanenhaus and Drizin are a small sample, but demonstrate that murders by children were far from new in the 1980s and 90s. What *was* new was the state's harsh punishments.

* * *

In the 2000s, criminal justice reform gained traction. According to the ACLU, "after decades of punitive 'tough-on-crime' responses to youth crime and misbehavior, there has been a perceptible shift in recent years surrounding juvenile justice issues in the United States. Policymakers are slowly returning to the first principles of juvenile justice by recognizing that young people are still developing and should be given opportunities for treatment, rehabilitation, and positive reinforcement."

An early turning point came in 2005, when the U.S. Supreme Court determined that death sentences for children violate the 8th amendment's prohibition on cruel and unusual punishment in *Roper v. Simmons*. Over the next 10 years, the Court expanded on *Roper*, chipping away at the sentences that children may receive. First, in 2010, *Graham v. Florida* made it unconstitutional to sentence a child to LWOP for any crime other than murder. Two years later, *Miller v. Alabama* made

it illegal for states to impose mandatory sentences of LWOP for juveniles (judges may still use their discretion to give the sentence in rare cases of "irreparable corruption," but the sentence cannot be mandated).

The Supreme Court based these decisions on fundamental scientific differences between adult and child brains. The Court's *Miller* decision quoted a brief from the American Psychological Association: "It is increasingly clear that adolescent brains are not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning ahead, and risk avoidance."

In yet another groundbreaking case, the Supreme Court made the Miller decision retroactive in 2016's *Montgomery v. Louisiana*. As a result, the roughly 2,500 people serving LWOP for crimes they committed as children are eligible for resentencing hearings.

Montgomery does not reduce anyone's sentence automatically. Each county is responsible for its own resentencing, and District Attorneys around the U.S. have interpreted the Supreme Court's order differently. In Philadelphia County, which previously held the record for the most people serving juvenile LWOP, resentencing hearings are moving relatively quickly. At least seventy people have already been resentenced, paroled, and released. In Michigan, meanwhile, county prosecutors have announced their intentions to re-seek LWOP in 247 out of 363 juvenile cases, essentially claiming that 68 percent of kids sentenced to life without parole fit the "rare" label of "irreparable corruption." And in Louisiana, 71-year-old Henry Montgomery, the man for whom the case was named, remains incarcerated after getting a new sentence of life *with* the possibility of parole.

Miller and *Montgomery* do nothing for children serving other extreme sentences. Cyntoia Brown, who is unaffected by *Montgomery* because she is serving a regular life sentence, recently applied for clemency to Tennessee Governor Bill Haslam. She could become immediately parole-eligible if the governor commutes her sentence to time served. Without clemency, Brown will have her first shot at parole in 2055, when she will be 67 years old.

JSTOR Citations

The Juvenile Court

By: Julian W. Mack

Harvard Law Review, Vol. 23, No. 2 (Dec., 1909), pp. 104-122

The Harvard Law Review Association

"Owing to the Extreme Youth of the Accused": The Changing Legal Response to Juvenile Homicide

By: David S. Tanenhaus and Steven A. Drizin

The Journal of Criminal Law and Criminology (1973-), Vol. 92, No. 3/4 (Spring - Summer, 2002), pp. 641-706

Shall the Age Jurisdiction of Juvenile Courts Be Increased?

By: Arthur W. Towne

Journal of the American Institute of Criminal Law and Criminology, Vol. 10, No. 4 (Feb., 1920), pp. 493-515

Northwestern University School of Law

The New York Times | https://nyti.ms/2ifRIBs

SCIENCE

You're an Adult. Your Brain, Not So Much.

Carl Zimmer

MATTER DEC. 21, 2016

Leah H. Somerville, a Harvard neuroscientist, sometimes finds herself in front of an audience of judges. They come to hear her speak about how the brain develops.

It's a subject on which many legal questions depend. How old does someone have to be to be sentenced to death? When should someone get to vote? Can an 18-year-old give informed consent?

Scientists like Dr. Somerville have learned a great deal in recent years. But the complex picture that's emerging lacks the bright lines that policy makers would like.

"Oftentimes, the very first question I get at the end of a presentation is, 'O.K., that's all very nice, but when is the brain finished? When is it done developing?'" Dr. Somerville said. "And I give a very nonsatisfying answer."

Dr. Somerville laid out the conundrum in detail in a commentary published on Wednesday in the journal Neuron.

The human brain reaches its adult volume by age 10, but the neurons that make it up continue to change for years after that. The connections between neighboring neurons get pruned back, as new links emerge between more widely separated areas of the brain.

Eventually this reshaping slows, a sign that the brain is maturing. But it happens at different rates in different parts of the brain.

The pruning in the occipital lobe, at the back of the brain, tapers off by age 20. In the frontal lobe, in the front of the brain, new links are still forming at age 30, if not beyond.

"It challenges the notion of what 'done' really means," Dr. Somerville said.

As the anatomy of the brain changes, its activity changes as well. In a child's brain, neighboring regions tend to work together. By adulthood, distant regions start acting in concert. Neuroscientists have speculated that this long-distance harmony lets the adult brain work more efficiently and process more information.

But the development of these networks is still mysterious, and it's not yet clear how they influence behavior. Some children, researchers have found, have neural networks that look as if they belong to an adult. But they're still just children.

Dr. Somerville's own research focuses on how the changes in the maturing brain affect how people think.

Adolescents do about as well as adults on cognition tests, for instance. But if they're feeling strong emotions, those scores can plummet. The problem seems to be that teenagers have not yet developed a strong brain system that keeps emotions under control.

That system may take a surprisingly long time to mature, according to a study published this year in Psychological Science.

The authors asked a group of 18- to 21-year-olds to lie in an fMRI scanner and look at a monitor. They were instructed to press a button each time they were shown

faces with a certain expression on them — happy in some trials, scared or neutral in others.

And in some cases, the participants knew that they might hear a loud, jarring noise at the end of the trial.

In the trials without the noise, the subjects did just as well as people in their mid-20s. But when they were expecting the noise, they did worse on the test.

Brain scans revealed that the regions of their brains in which emotion is processed were unusually active, while areas dedicated to keeping those emotions under control were weak.

"The young adults looked like teenagers," said Laurence Steinberg, a psychologist at Temple University and an author of the study.

Dr. Steinberg agreed with Dr. Somerville that the maturing of the brain was proving to be a long, complicated process without obvious milestones. Nevertheless, he thinks recent studies hold some important lessons for policy makers.

He has proposed, for example, that the voting age be lowered to 16. "Sixteen-year-olds are just as good at logical reasoning as older people are," Dr. Steinberg said.

Courts, too, may need to take into account the powerful influence of emotions, even on people in their early 20s.

"Most crime situations that young people are involved in are emotionally arousing situations — they're scared, or they're angry, intoxicated or whatever," Dr. Steinberg said.

Dr. Somerville, on the other hand, said she was reluctant to offer specific policy suggestions based on her brain research. "I'm still in the learning stage, so I'd hesitate to call out any particular thing," she said.

But she does think it is important for the scientists to get a fuller picture of how the brain matures. Researchers need to do large-scale studies to track its

development from year to year, she said, well into the 20s or beyond.

It's not enough to compare people using simple categories, such as labeling people below age 18 as children and those older as adults. "Nothing magical occurs at that age," Dr. Somerville said.

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