Immature Minds in a "Maturing Society"

Death Penalty Information Center

Roper v. Simmons at 20

Acknowledgements

The Death Penalty Information Center (DPI) is a national non-profit organization whose mission is to serve the media, policymakers, and the general public with data and analysis on issues concerning capital punishment and the people it affects. DPI does not take a position on the death penalty itself but is critical of problems in its application. This report was written and produced by DPI staff.

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We would like to thank Frank Baumgartner for sharing his data, which helped verify the age of an individual at the time of the crime for purposes of this report. Thank you to DPI Board Members for their support.

DPI is funded through the generosity of individual donors and foundations, including the Roderick and Solange MacArthur Justice Center; the Fund for Nonviolence; M. Quinn Delaney; and the Tides Foundation. The views expressed in this report are those of DPI and do not necessarily reflect the opinions of its donors.

Introduction

Twenty years ago, in *Roper v. Simmons*,[1] the United States Supreme Court held that the "Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of eighteen when their crimes were committed."[2] The decision, after the execution of twenty-two[3] people who committed crimes under the age of 18 during the modern death penalty era, marked the end of the juvenile death penalty in the United States.

In *Roper*, United States Supreme Court Justice Anthony Kennedy drew on state trends in the treatment of young people, scientific and medical studies, and the penological justifications underpinning capital punishment to support the Court's decision that "today our society views juveniles . . . as categorically less culpable"[4] than other defendants. In doing so, Justice Kennedy acknowledged the inherent arbitrariness in selecting an age cutoff: "The qualities that distinguish juveniles from adults do not disappear when an individual turns 18," he wrote, "however, a line must be drawn."[5]

Twenty years later, the scientific, public policy, legal, and common-sense rationale that supported the *Roper* decision has become stronger in almost every respect—with one exception. The *Roper* Court said age 18 was "the point where society draws the line for many purposes between childhood and adulthood."[6] **Today, a growing body of evidence now suggests that the line has been redrawn.**

Chapter One details the factors that led the Supreme Court to find a societal consensus against the execution of juveniles. **Chapter Two** updates and expands the data used by the *Roper* Court. **Chapter Three** examines how racial bias affects determinations of youth and culpability, with original research and analysis by DPI. **Chapter Four** provides an overview of the recent science about juvenile brains and behavior and then examines why many experts have concluded that this scientific understanding applies equally to those ages 18, 19, and 20. **Chapter Five** explains how society views youth ages 18, 19, and 20 as more similar to juveniles than adults.

Note: Throughout this report, references to 18- to 20-year-olds in a criminal context should be understood to mean individuals who were 18-, 19-, or 20-years-old at the time of the crime.

"To implement this framework we have established the propriety and affirmed the necessity of referring to 'the evolving standards of decency that mark the progress of a maturing society' to determine which punishments are so disproportionate as to be cruel and unusual."

Justice Kennedy, writing for the majority in *Roper*[7]

American Psychological Association Resolution

In 2022, the American Psychological Association's Council of Representatives overwhelmingly voted in favor of a resolution opposing the death penalty for individuals who committed crimes at ages 18-20.[8] The resolution noted, "it is clear the brains of 18- to 20-year-olds are continuing to develop in key brain systems related to higher-order executive functions and self-control, such as planning ahead, weighing consequences of behavior, and emotional regulation" and that 18- to 20-year old "brain development cannot be distinguished reliably from that of 17-year-olds with regard to these key brain systems."[9]

American Bar Association Resolution

In 2018, the American Bar Association House of Delegates overwhelmingly adopted a resolution calling for the end of the death penalty for defendants who were 21 or younger at the time of the crime.[10] In a report accompanying the resolution, the ABA noted that "there is growing medical consensus that key areas of the brain relevant to decision-making and judgment continue to develop into the early twenties."[11]

Executive Summary

- The U.S. Supreme Court's jurisprudence has steadily moved toward expansion of legal protections for young people in line with society's enlightened understanding of human development and behavior. During the past twenty years, the Court has held children under age 18 ineligible for: the death penalty (2005); life without parole sentences for non-homicide crimes (2010); and mandatory life without parole sentences for homicide crimes (2012 and 2016).
- New death sentences for 18- to 20-year-olds have diminished both in absolute terms and as a percentage of all new death sentences over the last twenty years. During the past five years, juries have sentenced just five such individuals to death.
- Seventy percent of 18- to 20-year-olds currently on death row were sentenced before *Roper* was decided. Almost a third of 18- to 20-year-olds sentenced after *Roper* have been removed from death row because of judicial or executive action.
- There are fewer jurisdictions sentencing 18- to 20-year-olds to death. Since 2020, only three of the eighteen states that imposed new death sentences imposed a death sentence on this age group.
- Since the *Roper* decision, more than three-quarters of the death sentences given to 18- to 20-year-olds have been imposed on people of color. This is higher than the rate found in older defendants: half of the death sentences imposed on adults 21 and older were imposed on people of color during this same time frame.
- California is an outlier. In the twenty years since *Roper*, nine out of ten death sentences given to 18- to 20-year-olds were imposed on people of color.
- Studies suggest that Black youth are held to different standards than their white peers as it concerns guilt and punishment. Juries and other decision makers are more likely to perceive Black youth as older than their actual age, "less innocent" and more "angry."
- Since *Roper*, people of color who are 18 to 20 years old are twice as likely as white defendants in the same age range to be executed.
- The average age at the time of crime for people sentenced to death is 34.3 for white people and 29.7 for people of color, a nearly five-year gap; the gap is as large as 15 years in some individual states.
- Texas alone accounts for half of all executions of 18- to 20-year-olds since *Roper*—80 percent of whom were people of color.
- Studies of brain development and juvenile behavior show that key factors cited by the Court in *Roper* (poor impulse control and unnecessary risk-taking) are not only present in adolescence, but also in 18- to 20-year-olds.
- Like adolescents, 18- to 20-year-olds are prone to greater risk-taking when in a group. A DPI analysis of executions in Texas found that almost two-thirds of defendants in this age range were tried for crimes committed alongside one or more other people, compared to just one-third of older defendants.

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1 . *Roper v. Simmons*, 534 U.S. 551 (2005).

2. *Id.* at 578.

3. Victor L. Streib, "*The Juvenile Death Penalty Today: Death Sentence and Executions for Juvenile Crimes, January 1, 1973 – February 28, 2005*".

4. *Roper* at 567.

5. *Id.* at 574.

6. *Id*.

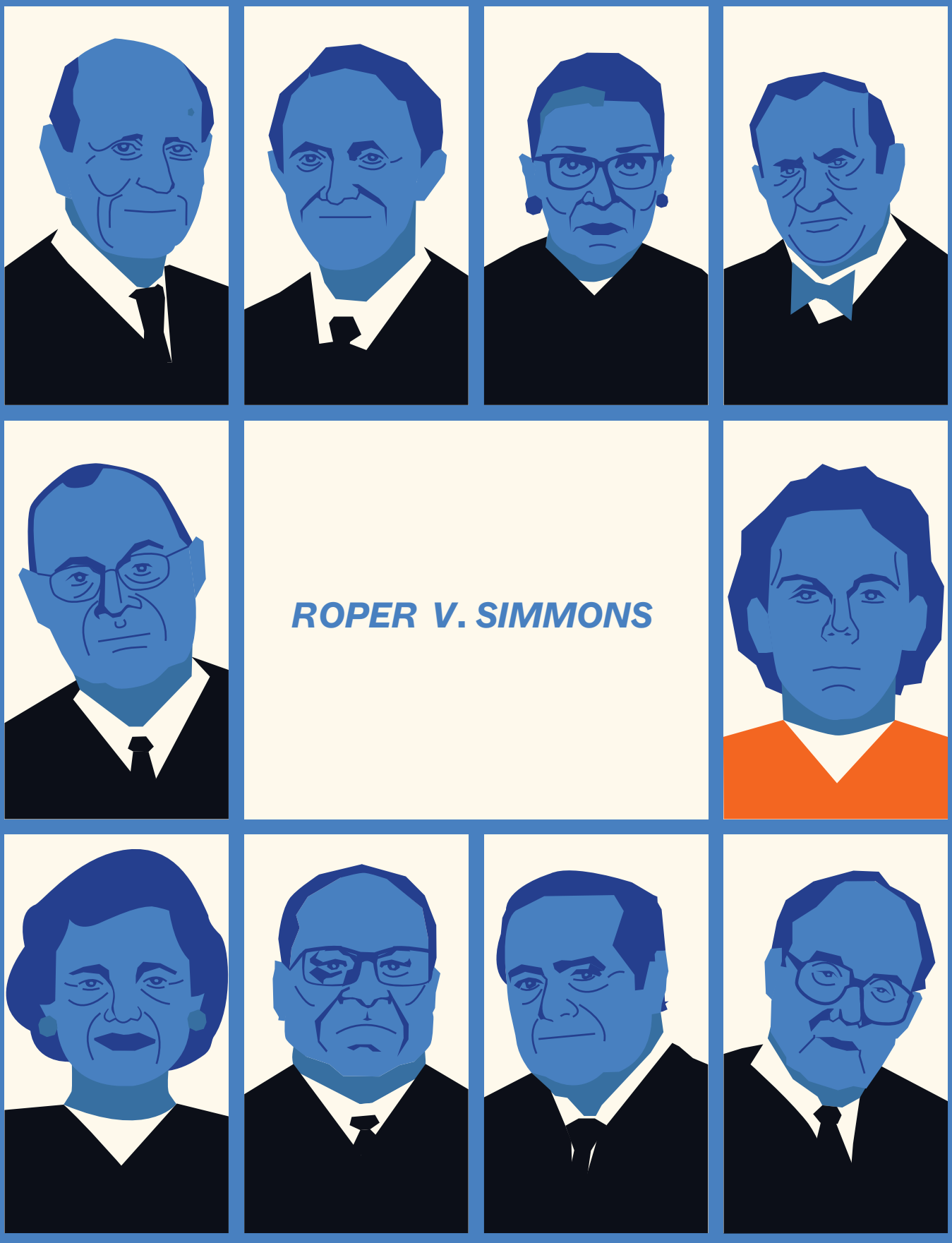
7. *Id.* at 560-61.

8. American Psychological Association, *APA call for extending ineligibility for the death penalty to adolescent offenders younger than 21,* Aug. 4, 2022.

9. *Id.*

10. American Bar Association, Late Adolescent Death Penalty Resolution, Feb. 25, 2018.

11. *Id.*


ROPER V. SIMMONS

Chapter One:
How the United States Supreme Court Found Societal Consensus Against the Execution of Juveniles

For more than sixty years, the Supreme Court has decided what constitutes "cruel and unusual punishments" under the Eighth Amendment while being guided by the "evolving standards of decency that mark the progress of a maturing society."[1] The Court's application of this "progressive" and "flexible" standard has resulted in an expansion of legal protections for young people in line with society's new understanding of human development and behavior.[2] The Court first held children under the age of 16 ineligible for the death penalty (1988) and then excluded 16- and 17-year-olds (2005); declared children under the age of 18 ineligible for life without parole sentences for non-homicide crimes (2010); and then exempted them from mandatory life without parole sentences for homicide crimes (2012 and 2016).

Cases Leading to *Roper v. Simmons*

In 1988, the Court found a societal consensus prohibiting the execution of children who committed crimes under the age of 16 in *Thompson v. Oklahoma*.[3] The Court considered laws and norms,[4] Department of Justice statistics showing the rarity of death sentences for those under 16[5] and evidence about the lack of deterrent effect for this age group, and developmental psychological research[6] to reach its conclusion. But the next year, by a 5-4 vote in the consolidated cases of *Wilkins v. Missouri* and *Stanford v. Kentucky*,[7] the Court held that there was insufficient evidence of a consensus against executing juveniles who were just a year or two older, ages 16 or 17.

Writing for the majority in *Stanford*, Justice Scalia opined that it would not have been considered cruel and unusual to execute a 16- or 17-year-old at the time of the Bill of Rights. [20] He also found no national consensus opposing the current practice, noting that a majority of death penalty states authorized the punishment for crimes committed at age 16 or older.[21]

"Petitioners have not alleged that their sentences would have been considered cruel and unusual in the 18th century, and could not support such a contention."[8]

Justice Antonin Scalia, *Stanford*

Judges and scholars who consider legal questions based on an originalist approach contemplate the Framers' views at the time of the nation's founding,[9] which often entails an inquiry into English common law and practices.[10] Capital punishment in 17th and 18th century England was governed by the so-called "Bloody Code," a period when most property offenses were death-eligible offenses, including minor transgressions such as stealing a handkerchief.[11]

Even during this period when harsh punishments were common, executions of juveniles or those 18 to 20 were relatively unusual. Records show that from 1780 to 1789, about the same time the American Bill of Rights was being drafted, 552 individuals were executed in London. Of these, only 11 were under the age of 18 (2%) and only 3 were ages 18 to 20 (0.5%).[12]

Around the time of America's founding and during its early years, English courts also considered youth as a mitigating factor when deciding punishment.[13] English judges would have been aware that hundreds of years of legal and social practice reinforced the notion that individuals under twenty-one were not recognized as adults in the eyes of the law, including English statutes on family law,[14] marriage,[15] and wills[16] that cited to the age of twenty-one as the age of majority.

Within the United States, courts also struggled with how to treat children who committed criminal acts even as they appeared willing to impose harsh sentences. Courts noted the "tender years" of children and questioned the child's ability to fully understand the consequences of his actions.[17] Courts also questioned whether these defendants—"young, without education, decorum, a sense of religion, or the benefit of social intercourse"—could discern right from wrong,[18] or voluntarily confess to crimes.[19]

"[18 is] a conservative estimate of the dividing line between adolescents and adulthood. Many of the psychological and emotional changes that an adolescent experiences in maturing do not actually occur until the early 20s."[25]

American Society for Adolescent Psychiatry's amicus brief in *Stanford*

The five justices in the majority were unpersuaded by statistics showing a reluctance by juries to impose, prosecutors to seek, and states to carry out death sentences for 16- and 17-year olds,[22] and they rejected the catalogue of laws setting the minimum age at 18 or older for engaging in various activities.[23] Polling data and the views of "interest groups" and "various professional associations" were soundly rejected, with the Court declining "the invitation to rest constitutional law on such uncertain foundations."[24]

In 2002, in *Atkins v. Virginia*,[28] the Court categorically excluded people with intellectual disability[29] from the death penalty, finding them less culpable generally[30] and citing the heightened risk of false confessions as well as other vulnerabilities that increased the chances of wrongful conviction.[31] The Court's decision, applying its evolving standards of decency analysis, (1) reflected increasingly sophisticated engagement with clinical definitions of intellectual disability and the scientific community's emerging understanding of culpability;[32] (2) acknowledged trends in state legislative initiatives;[33] and (3) noted the absence of valid penological justifications for subjecting those with intellectual disability to capital punishment.[34]

The criteria and analysis used by the Court in *Thompson*, *Stanford*, and *Atkins* created a blueprint for determining whether a societal consensus against a practice existed. Just a year after *Atkins* was decided, the Supreme Court of Missouri applied that blueprint to remove 17-year-old Christopher Simmons from death row.

Jeb Harris-USA TODAY NETWORK
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Kevin Stanford of *Stanford v. Kentucky*

On June 22, 2003, Kentucky Governor Paul Patton commuted the death sentence of Kevin Stanford, whose 1989 case before the U.S. Supreme Court resulted in a ruling allowing the execution of people who were at least 16 years old at the time of their crime.[26]

In issuing his decision to commute Kevin's death sentence to life without parole, Governor Patton said that the legal system had "perpetuated an injustice" in Kevin's case and "[w]e ought not be executing people who, legally, were children."[27] At the time of his commutation, Kevin had been on Kentucky's death row for two decades for a crime he committed in 1981 when he was 17.

Kevin had an impoverished childhood and was addicted to drugs by the time he was twelve. He was one of three 16- and 17-year-olds involved in the robbery-rape-murder of Baerbel Poore, the night attendant at a service station. Kevin was sentenced to death by an all-white jury in 1982. His trial lawyer failed to present available mitigating evidence at his sentencing, including childhood physical and sexual abuse, drug and alcohol abuse, parental neglect, and poverty.

Kevin's two codefendants were also convicted, with the 17-year-old receiving a sentence of nine months in a juvenile facility, and the 16-year-old receiving a sentence of life with the possibility of parole.

Roper v. Simmons

"Since the U.S. Supreme Court's decision in *Roper v. Simmons*, it has been settled constitutional law that children are developmentally different from adults and thus require individualized consideration of their youthful characteristics before receiving harsh adult punishments."

Sentencing Project Amicus Brief in *Commonwealth v. Mattis*[35]

In 2003, Christopher Simmons argued that a new national consensus had evolved since the Supreme Court's decision in *Stanford* and that executing him for a crime he committed at age 17 would be cruel and unusual punishment.[36] The Supreme Court of Missouri, applying the criteria used by the U.S. Supreme Court, agreed. The state of Missouri appealed the decision, the United States Supreme Court granted certiorari, and on March 1, 2005, the Court announced the end of the juvenile death penalty nationwide.[37]

Justice Anthony Kennedy's evolving standards of decency analysis cited state trends in the treatment of young defendants, scientific studies, and the penological justifications underpinning capital punishment to conclude that "today our society views juveniles . . . as categorically less culpable"[38] and therefore the "Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of eighteen when their crimes were committed."[39]

The Court's analysis of the "objective indicia of society's standards" began with legislative enactments and state practice.[40] Despite finding less evidence of legislative intent than was found in *Atkins,* the Court nevertheless found significance in the "consistency of the direction of change" towards the banning of capital punishment for juvenile defendants, noting that "no State that previously prohibited capital punishment for juveniles has reinstated it."[41]

The Legal Landscape at the Time of *Roper*

Before *Roper* was decided in 2005, the minimum age for death penalty eligibility differed among the states. Of the 38 states that allowed capital punishment at the time of *Roper*, 19 states and the federal government had already set the minimum age for death penalty eligibility at 18; 5 states set the minimum age at 17; and 14 states either explicitly set the age at 16 or were subject to the Supreme Court's imposition of that minimum age.[52] In the three decades prior, 22 individuals under the age of 18 were executed in the United States. All but one of those executions occurred in the South. Half of the juveniles executed were Black. More than 75% of the victims in the crimes that resulted in those executions were white.[53]

Roper Amicus Briefs

Amicus briefs were filed in support of Christopher Simmons by numerous individuals and organizations including experts represented by: the American Bar Association, the American Psychological Association, the American Medical Association, the American Psychiatric Association, the American Society for Adolescent Psychiatry, the American Academy of Psychiatry and the Law, the National Association of Social Workers, the Missouri Chapter of the National Association of Social Workers, and the National Mental Health Association.

"The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character . . . Indeed, '[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside.' "[51]

Justice Kennedy, writing for the majority in *Roper*

To find that "society views juveniles as categorically less culpable than adults"[42] the Court noted: (1) the majority of states had rejected the death penalty for juveniles;[43] (2) the punishment was infrequently used in states where it remained legal;[44] and (3) the consistency of the general trend towards abolition of the practice.[45]

The Court then turned to other indicia of consensus.[46] Acknowledging several scientific studies, the Court noted a number of characteristics of juvenile defendants: a lack of maturity and an underdeveloped sense of responsibility; a tendency towards risk taking; vulnerability to negative influences and outside pressures (including pressure to give false confessions); and the many ways that a juvenile's character is less formed than that of an adult.[47] The Court found that the collective effect of these characteristics meant that juveniles were both less culpable and, in general, that the social purposes of retribution and deterrence intended to be served by the death penalty were inapplicable to juveniles.[48]

Because of their developmental immaturity, the Court also found that children have greater potential for rehabilitation: "From a moral standpoint, it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed."[49] Finally, the Court took into consideration international law, including the United Nations Conventions on the Rights of the Child, noting that when it executes children, the United States "stand[s] alone in a world that has turned its face against the juvenile death penalty."[50]

In the Wake of *Roper*

Roper resulted in the removal of 71 people from death row in 12 states who were 16 or 17 years old at the time of the crimes for which they were sentenced to death.[54] In 2005, their ages ranged from 18 to 43; they had been on death row from 6 months to 24 years. More than three-quarters of them were 17 years old at the time of their crime; two-thirds were people of color. Two-thirds of the victims for which these 71 death sentences were given were white. Texas had the largest number of death-sentenced juveniles, with 29 (41%).

After *Roper*, the Court expanded its Eighth Amendment jurisprudence acknowledging the reduced culpability of youthful defendants. In *Graham v. Florida* in 2010,[55] the Court prohibited life without parole sentences for juveniles convicted of non-homicide crimes. The Court's evolving standards of decency analysis examined the infrequency of juvenile life-without-parole sentences for non-homicide cases across jurisdictions, finding such sentences rare even in the 26 states where they were statutorily authorized.[56] The Court drew on its approach in *Roper* to support its conclusion that juveniles cannot be classified "among the worst offenders" and that the penological justifications for life without parole are diminished for juveniles.[57] As in *Roper*, the *Graham* Court also found support and guidance from international law and practice.[58]

Two years later in 2012, in *Miller v. Alabama*, the Court forbade mandatory sentencing of life without parole (LWOP) for juvenile homicide defendants.[59] In reviewing the state statutory landscape, the Court found that while juveniles remained eligible for LWOP in 28 states and the federal government, most states had not explicitly made LWOP sentences mandatory.[60]

The Court again cited research on juvenile immaturity, impulsiveness, and risk-taking,[61] their vulnerability to outside pressure, and their unique capacity for change and reform.[62]

In 2017, in Kentucky, a trial judge declared the death penalty unconstitutional when applied to defendants charged with offenses committed while they were younger than age 21.[63] The Kentucky Supreme Court subsequently dismissed the case on other grounds.[64]

In 2020, the U.S. Supreme Court declined to stop Texas death-row prisoner Billy Joe Wardlow's execution and hear his argument that recent advances in neuroscientific research supported a finding that "there can be no reliable prediction concerning future dangerousness for a person who has committed a capital murder prior to the age of 21."[65] Billy was 18 years old at the time of his crime. Neuroscientists and a group of Texas lawmakers also raised concerns in his case around death sentences for individuals who had committed crimes under 21, citing their brain immaturity. In his final letter to the Texas Board of Pardons and Paroles, Billy wrote, "I came to death row a scared boy who made poor choices; I will leave death row a man that others admire because I weathered the storms of life with the help of people that loved me . . . We should all be so fortunate."[66]

Napoleon Beazley:
Among the Last Juveniles Executed

Napoleon Beazley was 17 years old when he killed a white 63-year-old businessman named John Luttig in the course of a carjacking in April 1994. Napoleon was an honor student, president of his senior class and a star athlete. He didn't drink or smoke, and he attended church. He aspired to attend Stanford Law School. His crime was inexplicable to those who knew him.

At the time his execution was scheduled, the juvenile death penalty was facing mounting domestic and international opposition. The district judge who oversaw his trial asked the Governor of Texas to commute Napoleon's sentence to life in prison, citing his youth at the time of the crime. The Houston County District Attorney also petitioned the governor for leniency, citing Napoleon's prior good character and lack of a criminal record.

Despite these and other efforts by human rights groups to spare Napoleon's life, the state of Texas executed him on May 28, 2002. T.J. Jones and Toronto Patterson, also convicted as Black teenagers, were also executed by Texas during a three-month period in 2002. They were among the last juvenile defendants to be executed in the U.S. before the Supreme Court abolished the juvenile death penalty.

Endnotes

1 . *Trop v. Dulles*, 356 U.S. 86, 100 (1958) ("the [Eighth] Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society").

2 . As early as 1910, the Court acknowledged that the meaning of the Eighth Amendment was "progressive," "not fastened to the obsolete" and changing "as public opinion becomes enlightened by a humane justice." *Weems v. United States*, 217 U.S 349, 378 (1910) (cited in *Furman v. Georgia*, 408 U.S. 238, 270 (1972). (Justice Brennan, concurring). See also *Stanford v. Kentucky*, 492 U.S. 361,369 (1989) (Referring to the standard as "flexible").

3 . *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

4 . *Id*. at 823-25. (The court noted that as a general proposition, individuals under the age of 16 were not eligible to vote, sit on a jury, drive, marry or gamble without parental consent, purchase alcohol or cigarettes, or purchase pornographic materials and concluded this supported that "the normal 15-year-old is not prepared to assume the full responsibilities of an adult." The Court also noted that "all States have enacted legislation designating the maximum age for juvenile court jurisdiction at no less than 16").

5. *Id*. at 833, 838. ("Of that group of 82,094 persons, 1,393 were sentenced to death. Only 5 of them, including the petitioner in this case, were less than 16 years old at the time of the offense... suggest[ing] that these five young offenders have received sentences that are "cruel and unusual in the same way that being struck by lightning is cruel and unusual"); "Department of Justice statistics indicate that about 98% of the arrests for willful homicide involved persons who were over 16 at the time of the offense. Thus, excluding younger persons from the class that is eligible for the death penalty will not diminish the deterrent value of capital punishment for the vast majority of potential offenders") (footnote omitted) (Justice O'Connor, concurring); *id.* at 871-72 (Justices Scalia, Rehnquist, and White, dissenting). Justice O'Connor, in her separate concurrence, as well as the three dissenting Justices (Scalia, Rehnquist and White), disagreed with the majority opinion's interpretation of these statistics, but none of them contended that this data should have no role in the Court's Eighth Amendment analysis. Somewhat presciently (in light of later decisions), the dissenting Justices asserted, "If one believes that the data the plurality relies upon are effective to establish, with the requisite degree of certainty, a constitutional consensus in this society that no person can ever be executed for a crime committed under the age of 16, it is difficult to see why the same judgment should not extend to crimes committed under the age of 17, or of 18." *Id*. at 871.

6 . *Id* at n. 42 (citing to a report on a professional evaluation of 14 juveniles condemned to death in the United States, which was accepted for presentation to the American Academy of Child and Adolescent Psychiatry, that concluded: "Adolescence is well recognized as a time of great physiological and psychological stress. Our data indicate that, above and beyond these maturational stresses, homicidal adolescents must cope with brain dysfunction, cognitive limitations, and severe psychopathology. Moreover, they must function in families that are not merely non-supportive but also violent and brutally abusive. These findings raise questions about the American tradition of considering adolescents to be as responsible as adults for their offenses and of sentencing them to death." Lewis, Pincus, Bard, Richardson, Prichep, Feldman, & Yeager, *Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States,* 11 (1987)).

7 . *Stanford v. Kentucky*, 492 U.S. 361 (1989).

8 . *Id*. at 362.

9 . *Original Meaning and Constitutional Interpretation*, Constitution Annotated, https://constitution.congress.gov/browse/essay/intro.8-3/ALDE_00001304/; *see also* Michael L. Smith and Alexander S. Hiland, *Originalism's Implementation Problem*, 30 Wm. & Mary Bill Rts. J. 1063, 1064 (2022), https://scholarship.law.wm.edu/wmborj/vol30/iss4/6 (suggesting that the predominant form of originalism, "new originalism," is based on the "original public meaning" of a law when it was enacted, rather than focusing solely on the Framer's legislative intent).

10 . *Original Meaning and Constitutional Interpretation*, Constitution Annotated, https://constitution.congress.gov/browse/essay/intro.8-3/ALDE_00001304/ (discussing how the Supreme Court looked to English common law, records from the Constitutional Convention, and early acts of Congress when conducting an originalism analysis).

11 . *Punishment Sentences at the Old Bailey*, The Proceedings of the Old Bailey, https://www.oldbaileyonline.org/about/punishment.

12 . Museum of London records indicate that between 1668 and 1776, 2,741 people were executed in London, according to statistics provided by a curator at the Museum of London, collated for an exhibition at the museum based on a comprehensive dataset of people executed in London from 1196 to 1868. Many sentenced to death in England between 1718 and 1776 were transported instead of executed, with transport to America "the dominant sentence."

13 . Old Bailey historians note that the age of a defendant "substantially affected" whether they would be released, imprisoned or executed. *Old Bailey Mitigating Factors*, The Proceedings of the Old Bailey, https://www.oldbaileyonline.org/about/punishment#mitigating.

14 . The Tenures Abolition Act of 1660 and The English Poor Law Act of 1601 codified a father's responsibility to support his child until reaching the age of majority, then twenty-one years old. *See* Sarah Abramowicz, *Note: English Child Custody Law, 1660-1839: The Origins of Judicial Intervention in Parental Custody*, 99 Colum. L. Rev. 1344, 1354 (1999). http://digitalcommons.wayne.edu/lawfrp/37 (discussing the Tenures Abolition Act); *From Father's Property To Children's Rights: A History of Child Custody Preview*, UC Berkley Law, https://www.law.berkeley.edu/our-faculty/faculty-sites/mary-ann-mason/books/from-fathers-property-to-childrens-rights-a-history-of-child-custody-preview/ (highlighting the English Poor Law Act).

15 . The Marriage Act of 1753 required parental consent for people under the age of twenty-one to marry. *The Law of Marriage*, UK Parliament, https://www.parliament.uk/about/living-heritage/transformingsociety/private-lives/relationships/overview/lawofmarriage-/ (summarizing the Marriage Act of 1753: "[n]o marriage of a person under the age of 21 was valid without the consent of parents or guardians. Clergymen who disobeyed the law were liable for 14 years transportation").

16 . The Wills Act of 1731 also stated that "[n]o will made by any person under the age of twenty-one years shall be valid." *Wills Act 1837*, https://faolex.fao.org/docs/pdf/ton74661.pdf; *see also The 1837 Wills Act*, https://www.collegewillwriting.co.uk/wp-content/uploads/2016/03/The-Wills-Act-1837.pdf (explaining that "[b]efore 1 January 1970 wills governed by Wills Act 1837 could be not be executed by a person under the age of 21 (except for privileged wills, see s11 below). The age was amended to 18 by the Family Law Reform Act 1969, s3(1)").

17 . *See State v. Doherty*, 2 Tenn. 80 (1806) (noting the "tender years of the prisoner"); *State v. Aaron*, 4 N.J.L. 231 (N.J. 1818) (finding that, at an "age so tender," whether one could properly assess the consequences of their conduct).

18 . *See State v. Aaron*, 4 N.J.L. 231 (N.J. 1818) ("Infants of nine years of age have more than once been executed for crimes" if they devised a plan or tried to hide evidence of their offense).

19 . *State v. Aaron*, 4 N.J.L. 231 (N.J. 1818) (Ruling Aaron's confession at age eleven when initially sentenced for murder indamissible). Aaron, a Black servant in New Jersey, had confessed to the murder of an infant after significant interrogation by a group of white men and the trial court had admitted the confession. In overturning the trial court ruling, the New Jersey Supreme Court noted that "confessions of any one, especially of one so very young, and in an offence so highly penal, ought to be received with the strictest caution."

20 . *Stanford* at 361-62. ("at the time, the common law set the rebuttable presumption of incapacity to commit felonies (which were punishable by death) at the age of 14").

21 . *Id.* at 362 ("The primary and most reliable evidence of national consensus -- the pattern of federal and state laws -- fails to meet petitioner's heavy burden of proving a settled consensus against the execution of 16- and 17-year-old offenders. Of the 37 States that permit capital punishment, 15 decline to impose it on 16-year-olds and 12 on 17-year-olds").

22 . *Id.* at 374-75.

23 . *Id.* (The laws were, the Court wrote, "at most a judgment that the vast majority" of individuals under 18 are "not responsible enough to drive, to drink or to vote").

24 . *Id.* at 377. In the wake of *Stanford*, two state supreme courts subsequently held that their state constitutions required a higher minimum age for death penalty eligibility: age 18 for Washington and age 17 for Florida *See State v. Furman*, 858 P.2d 1092 (Wash. 1993) and *Brennan v. State,* 754 So.2d 1 (Fla. 1999) (Justice Brennan, with whom Justices Marshall, Blackmun, and Stevens join, dissenting).

25 . *Stanford* at 396

26 . See Henry Weinstein, *Death Sentence Commuted for Kentucky Man Who Killed at 17*, Los Angelos Times, June 22, 2003.

27 . *Roper v. Simmons*, 543 U.S. 551, 564 (2005) (citing to Lexington Herald Leader, Dec. 9, 2003, p. B3, 2003 WL 65043346).

28 . *Atkins v. Virginia*, 536 U.S. 304 (2002).

29 . At the time, the Supreme Court used the term "mental retardation" instead of "intellectual disability."

30 . *Atkins* at 321. ("Construing and applying the Eighth Amendment in the light of our 'evolving standards of decency,' we therefore conclude that such punishment is excessive and that the Constitution 'places a substantive restriction on the State's power to take the life' of a mentally retarded offender").

31 . *Id.* at 320. (The Court specifically noted the difficulties individuals with intellectual disabilities face in giving their counsel meaningful assistance and in acting as a witness, and the unwarranted impression of lack of remorse for their crimes their general demeanor may suggest to a jury).

32 . *Id* at 317-18.

33 . *Id*. at 315. ("It is not so much the number of these States that is significant, but the consistency of the direction of change[,]" noting that 18 states introduced prohibitions on such executions in just 13 years).

34 . *Id.* at 318-21.

35 . *See Diatchenko v. Dist. Att'y,* 466 Mass. 655, 673 (2013) (banning discretionary life without parole sentences for juveniles convicted of homicide offenses). This case was followed by *Commonwealth v. Mattis*, Docket number SJC-11693, January 11, 2024 (extending *Diatchenko* to 18-, 19- and 20-year-olds).

36 . *Simmons v. Roper*, 112 S.W.3d 397 (Mo. 2003).

37 . *Roper v. Simmons*, 543 U.S. 551 (2005).

38 . *Id*. at 567.

39 . *Id.* at 578.

40 . *Id.* at 565.

41 . *Id.* at 566.

42 . *Id.* at 567.

43 . *Id.* at 564. ("30 States prohibit the juvenile death penalty, comprising 12 that have rejected the death penalty altogether and 18 that maintain it but, by express provision or judicial interpretation, exclude juveniles from its reach").

44 . *Id.* at 564-65. ("[S]ince *Stanford*, six states have executed prisoners for crimes committed as juveniles . . . and only three have done so" in the ten years prior to *Roper*, Oklahoma, Texas, and Virginia).

45 . *Id. a*t 565. ("Five States that allowed the juvenile death penalty at the time of *Stanford* have abandoned it in the intervening 15 years—four through legislative enactments and one through judicial decision").

46 . *Id* at 568.

47 . *Id*. at 569.

48 . *Id*. at 571.

49 . *Id.* at 570.

50 . *Id*. at 577-78. ("The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions.") When *Rope*r was decided in 2005, imposing the death penalty on children who were younger than age 18 at the time of their crimes was prohibited by international law as expressed in the International Covenant on Civil and Political Rights (ICCPR), the U.N. Convention on the Rights of the Child, and the American Convention on Human Rights. The prohibition is so universally accepted that it is widely recognized as a peremptory norm of customary international law.

51 . *Roper* at 570, citing to *Johnson v. Texas*, 509 U.S. 350, 368 (1993).

52 . Death Penalty Information Center. "The Juvenile Death Penalty Prior to Roper v. Simmons" at https://deathpenaltyinfo.org/policy-issues/biases-and-vulnerabilities/juveniles/prior-to-roper-v-simmons.

53. *Id.*

54. *Id.,* with credit for excerpts to Professor Victor L. Strieb, "*The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes January 1973 — February 28, 2005*".

55 . *Graham v. Florida*, 560 U.S. 48 (2010).

56. *Id.* at 62-64. ("Only 11 jurisdictions nationwide in fact impose life without parole sentences on juvenile nonhomicide offenders—most of those do so quite rarely—while 26 States, the District of Columbia, and the Federal Government do not impose them despite statutory authorization").

57. *Id*. at 71-72. ("The case becomes even weaker with respect to a juvenile who did not commit homicide. *Roper* found that '[r]etribution is not proportional if the law's most severe penalty is imposed' on the juvenile murderer. The consideration underlying that holding support as well the conclusion that retribution does not justify imposing the second most severe penalty on the less culpable juvenile nonhomicide offender").

58. *Id*. at 80. (The Court "looked beyond our Nation's borders for support for its independent conclusion that a particular punishment is cruel and unusual.") *See also Roper* at 575-578.

59. *Miller v. Alabama*, 567 U.S. 460 (2012).

60. *Id*. at 486-87. The Court noted that most States do not have separate penalty provisions for juvenile defendants tried in adult court for homicide, a fact that "underscores that the statutory eligibility of a juvenile offender for life without parole [but] does not indicate that the penalty has been endorsed through deliberate, express, and full legislative consideration." *See*, *e.g.*, *Graham* at 67 (citation omitted).

61. *Id.* at 471-2. ("In *Roper*, we cited studies showing that 'only a relatively small proportion of adolescents' who engage in illegal activity 'develop entrenched patterns of problem behavior.' And in *Graham*, we noted that 'developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds—for example, in 'parts of the brain involved in behavior control.' We reasoned that those findings—of transient rashness, proclivity for 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 be reformed.") (Internal citations omitted).

62. *Id.* at 471. ("Those cases [*Roper* and *Graham*] relied on three significant gaps between juveniles and adults. First, children have a 'lack of maturity and an underdeveloped sense of responsibility,' leading to recklessness, impulsivity, and heedless risk-taking. Second, children 'are more vulnerable . . . to negative influences and outside pressures,' including from their family and peers; they have limited 'contro[l] over their own environment' and lack the ability to extricate themselves from horrific, crime-producing settings. And third, a child's character is not as 'well formed' as an adult's; his traits are "less fixed" and his actions less likely to be 'evidence of irretrievabl[e] deprav[ity].") (Internal citations omitted).

63. Fayette County Circuit Judge Ernesto Scorsone's ruling barred the prosecutors from seeking the death penalty against Travis Bredhold, who was age 18 years and five months at the time of the 2013 murder and robbery of a gas station attendant. The ruling was subsequently overturned on standing grounds.

64. *See* Death Penalty Information Center, "Kentucky Supreme Court Issues Opinions in Cases Involving Applicability of Death Penalty Based on Intellectual Disability, Age of Defendants," Mar. 26, 2020, at https://deathpenaltyinfo.org/news-developments-kentucky-supreme-court-issues-opinions-in-cases-involving-applicability-of-death-penalty-based-on-intellectual-disability-age-of-defendants.

65. Mr. Wardlow submitted three cert petitions in July 2020, challenging: (1) a procedural bar raised in his case; (2) the procedural dismissal of his ineffective assistance of counsel claim; and (3) Texas' "future dangerousness" death-eligibility statute as applied to defendants under 21 years of age. The Court rejected all three.

66. Jolie McCullough, "*Texas Executes Billy Wardlow, Who Was 18 When He Killed a Man. Experts Argued That's Too Young for a Death Sentence,*" The Texas Tribune, July 8, 2020, https://www.texastribune.org/2020/07/08/texas-execution-billy-wardlow/.

Palm Beach Post-USA TODAY NETWORK via Imagn Images

Cleo LeCroy: "Immature 17-Year-Old Juvenile to a Mature Middle-Aged Man"

By the time he walked out of prison in 2018, Cleo LeCroy had served 37 years, including two decades on death row. In 1981, while hunting and camping with his family in a remote area of Florida, 17-year-old Cleo shot a newlywed couple to death and stole their hunting guns. He immediately confessed to the police when the bodies were found. He was sentenced to death in 1986 with the bare minimum of seven jury votes, which today would result in a life sentence in every death penalty state.[1] In 2005, Cleo became one of the 71 people removed from death row following the decision in *Roper.*

According to Judge Laura Johnson, who authorized Cleo's release, "The evidence has established that at the time of the offense [Cleo] was an immature and impulsive juvenile, the victim of a horrific childhood filled with neglect and abuse." He was sexually abused and beaten by his older brothers and his sister's boyfriends and suffered "severe brain damage" and "chronic brain syndrome" which stunted his impulse control. He was once "hung by a rope from a tree until a police officer intervened," and on another occasion "locked in a Coleman cooler for an extended period of time."[2]

Judge Johnson also found that "[d]uring his lengthy time in prison, Cleo displayed maturity and growth, and availed himself of every opportunity to better himself." He received a high school diploma and completed all 27 classes the prison system offered. In nearly four decades, he had just two minor disciplinary reports, and none since 2007. Ron McAndrew, a retired warden who oversaw Florida executions, testified that Cleo was in the "top 1%" of prisoners in terms of his behavioral record, and his "total lack of serious disciplinary issues while in prison was an accomplishment rarely seen in a corrections setting." Judge Johnson found that Cleo was "a deeply remorseful religious man and has been for many years."

"The evidence is undisputed that while in prison Defendant grew from an immature seventeen-year-old juvenile to a mature middle-aged man capable of following all rules in a difficult prison environment. Defendant's veritable total lack of disciplinary history . . . is remarkable. [ ] The evidence shows that Defendant is clearly not at the same level of risk to society as when he was an immature juvenile thirty-seven (37) years ago. [The testimony] points toward a showing that Defendant has evolved into a person who is capable of following society's rules and is not likely to reoffend." –Judge Laura Johnson

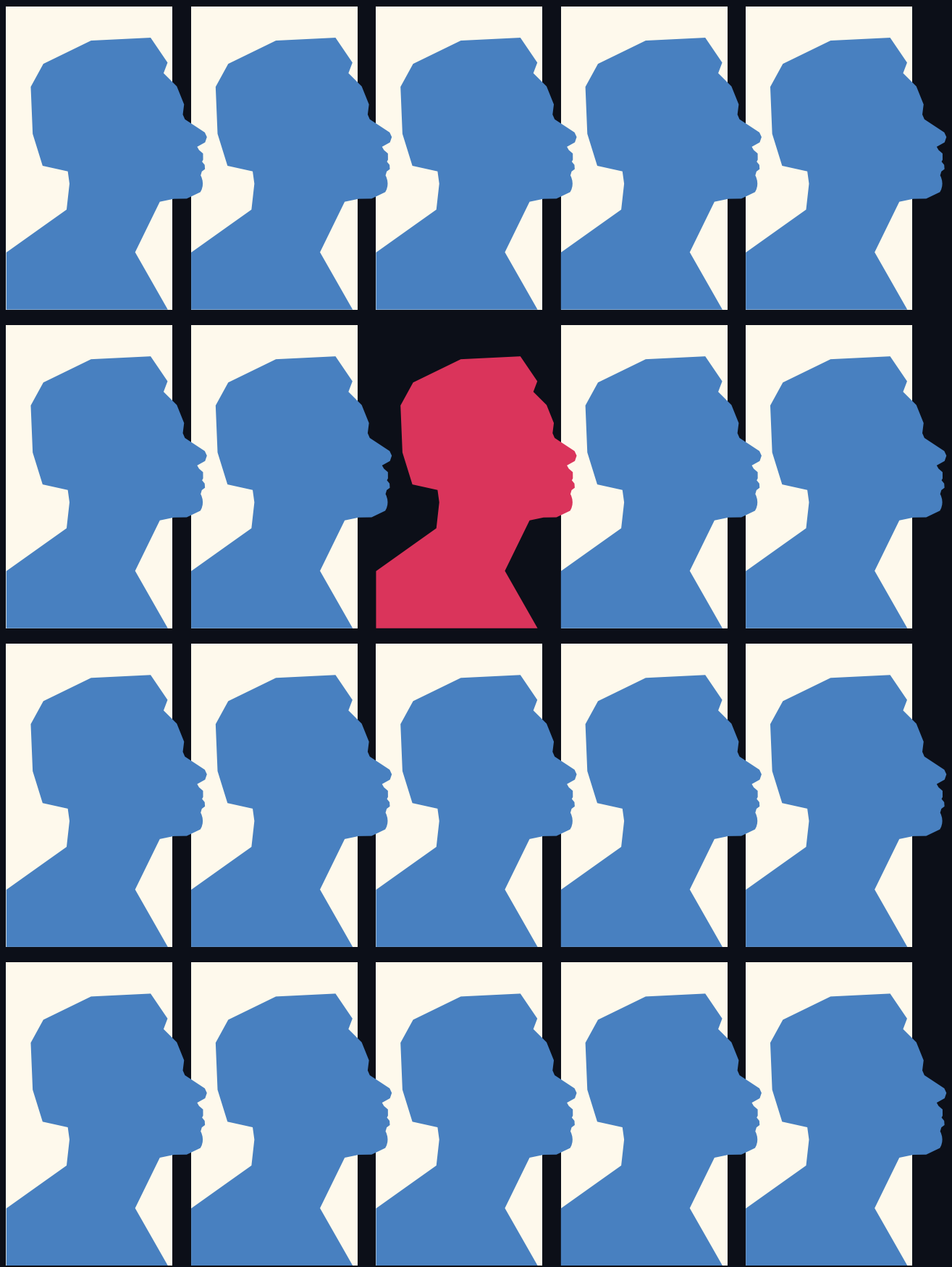
Upon his release, Cleo said that he planned to move near family, work in construction, and volunteer in a prison ministry to help save troubled young men like he once was. His attorney James Eisenberg said that Cleo had been his first client when he opened his own law practice in 1981 and was his last case before retirement. "Now I can be happy and retired without any unfinished business," Mr. Eisenberg told the *Palm Beach Post*.[3] In October 2023, Cleo successfully completed supervised release at the age of 60.

Endnotes

1. *LeCroy v. State*, 533 So. 2d 750 (Fla. 1988).

2. Juvenile Sentence Review Order, *State v. LeCroy,* No. 1981CF000219AMB (Palm Beach Cty. Cir. Ct. Oct. 20, 2018) (on file with Death Penalty Information Center).

3. Jane Musgrave, *Cleo LeCroy to be freed from prison for 1981 murders of newlyweds*, The Palm Beach Post, Oct. 16, 2018.



Chapter Two: Objective Indicia of Societal Consensus Around 18- to 20-Year-Olds

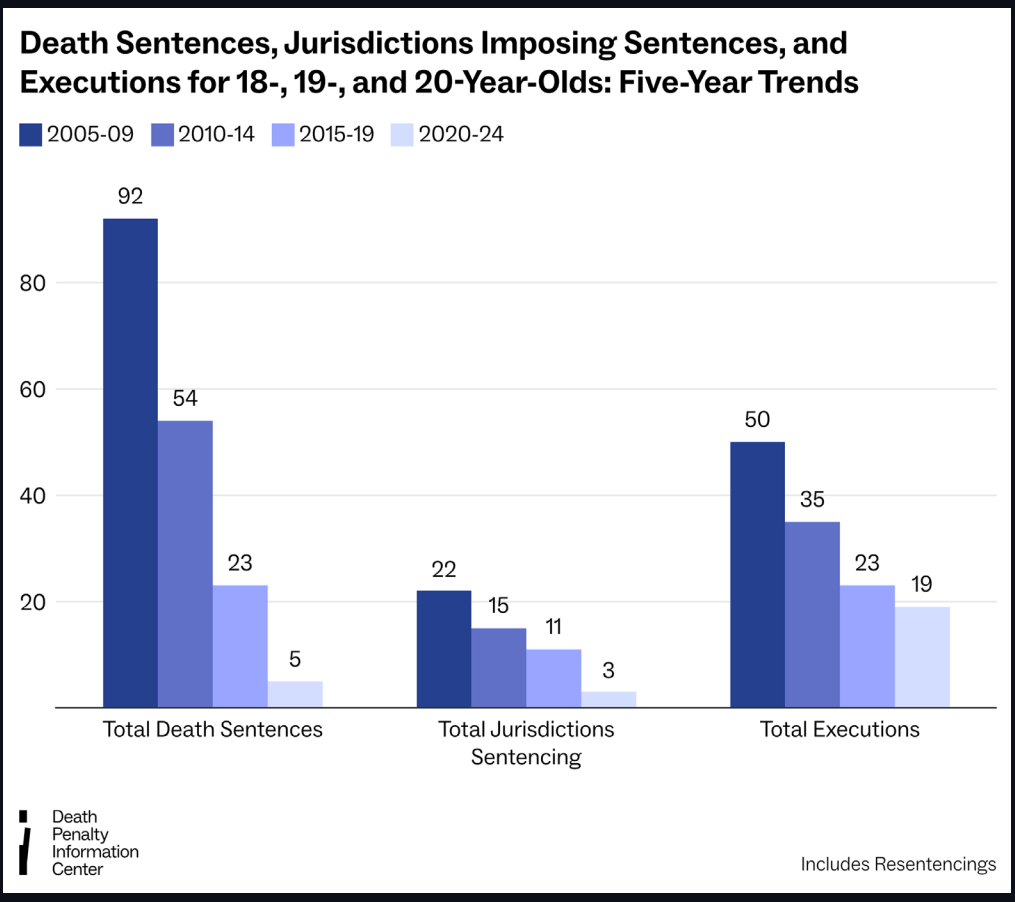
In *Roper*, the Supreme Court found that the juvenile death penalty was disproportionate based on "objective indicia of consensus,"[1] including: (1) legislative trends[2] and analysis showing that many states had abandoned the practice, (2) analysis showing the infrequency of its use even where it remained legal,[3] and (3) a consistent trend in the country away from the practice.[4] Together, the Court said that this evidence showed that "today society views juveniles . . . as categorically less culpable."[5]

Since *Roper*, the Court has indicated that legislative trends alone are an "incomplete and unavailing" assessment of society's current standards, explaining that "[a]ctual sentencing practices are an important part of the Court's inquiry into consensus."[6] A key indicator of society's views is the "infrequency of its use even where it remains on the books"[7] and the "consistency of the direction of change."[8]

For example, the Court in *Roper* noted that only three states had executed a juvenile in the previous decade, and only seven states had done so in the past 30 years. In *Graham*, where the Court held life without parole unconstitutional for juveniles convicted of non-homicide crimes, the Court noted that although the practice was authorized in 39 jurisdictions, only 11 states had sentenced juveniles to life with out parole (LWOP) for non-homicide crimes.[9] The Court in *Graham* also looked at geographic concentration as a measure of its infrequency (or rarity), finding that of the 129 juveniles serving an LWOP sentence, 77 (62.6%) were in Florida alone.[10]

Trends in Capital Punishment for Youth 18 to 20 in the U.S.

The Death Penalty Information Center (DPI) analyzed age-at-crime data, case characteristics, and sentencing data for people sentenced to death since the *Roper* decision. New death sentences for 18-, 19-, and 20-year-olds have declined in number and as a proportion of the total number of new death sentences every year. New death sentences for those in this age range are also increasingly concentrated in only a few counties within a few states. Executions of those convicted for crimes committed at 18, 19, or 20 are on a twenty-year downward trajectory. These executions are also highly concentrated geographically, with eighty percent of executions occurring in just five states.

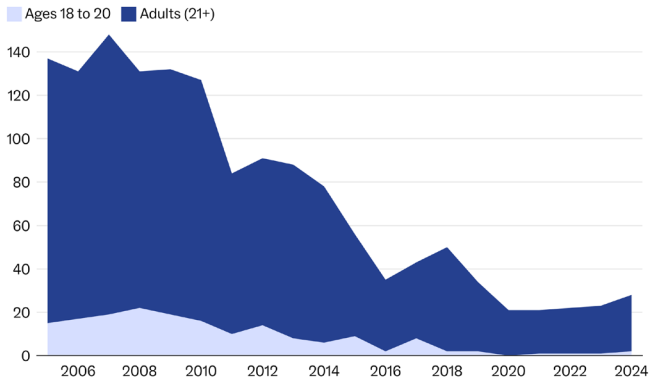


Trends in Death Sentencing

New death sentences for 18-, 19-, and 20-year-olds have diminished both in absolute terms and as a percentage of all new death sentences over the last twenty years, and in recent years have become vanishingly rare. In the past five years, juries have sentenced just five such defendants to death.

While the total number of new death sentences has declined significantly for all age groups in the past two decades, 18-, 19-, and 20-year-olds make up a shrinking share of the total. They represent just over thirteen percent of new death sentences from 2005-2009, but only eight percent of new death sentences since 2015 and just four percent of new death sentences since 2020.[11]

Death Sentences Since *Roper* by Age Group



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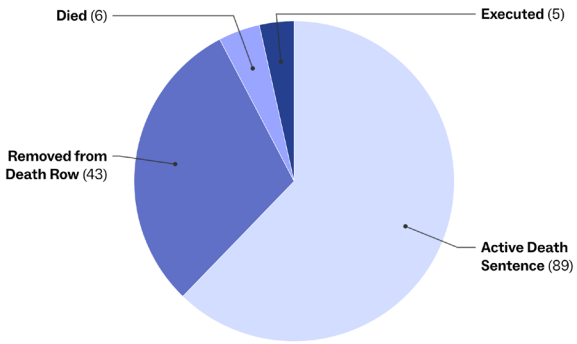
Note: Includes resentencings.

Seventy percent[12] of individuals on death row today for crimes committed while they were 18, 19, or 20 were sentenced before *Roper*. Almost a third[13] of all those sentenced to death after *Roper* for crimes committed when they were this age have been removed from death row because of judicial or executive actions.[14]

Outcomes of 18- to 20-Year-Olds Sentenced to Death Since *Roper*

3/1/2005 - 12/31/2024



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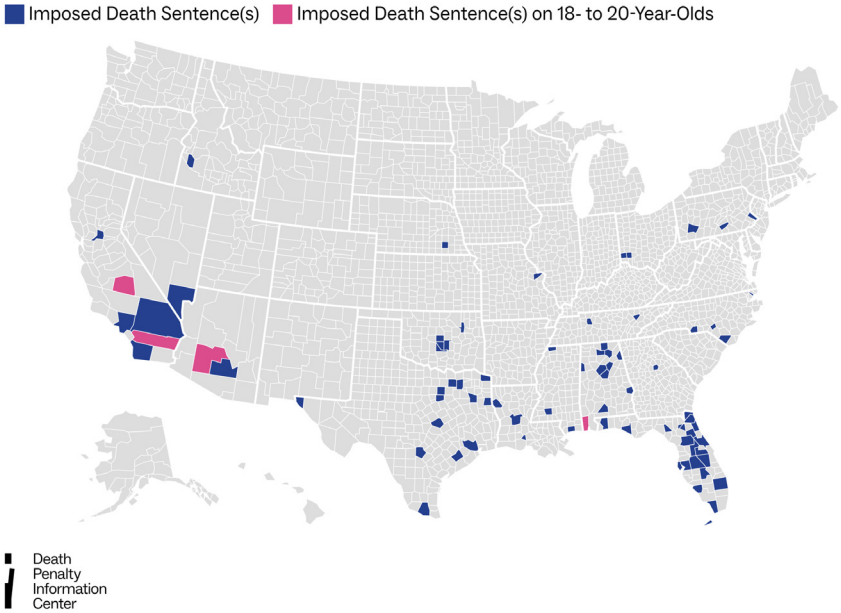
One of them, Kareem Johnson, was exonerated in Pennsylvania after prosecutors withheld and misrepresented critical physical evidence at trial.[15] A further six people have died and five have been executed, leaving eighty-nine individuals on death row who were sentenced since *Roper* for crimes committed when they were 18-, 19-, or 20-years-old.

Since 2020, Which Counties Have Sentenced 18- to 20-Year-Olds to Death?

1/1/2020-12/31/2024



Fewer jurisdictions are sentencing defendants who were 18, 19, or 20 at the time of the crime to death. Since 2020, only three of the eighteen states that imposed new death sentences did so for 18- to 20-year-olds. Twenty-one states and the federal government imposed death sentences on this age group from 2005 to 2009; fourteen states and the federal government[16] did so from 2010 to 2014; and ten states from 2015 to 2019.

As in *Roper* and *Graham*, death sentences for those convicted of committing crimes at ages 18 to 20 occur in a small minority of jurisdictions—and the practice is becoming more geographically concentrated. California, the leader in new death sentences in the modern death penalty era, has sentenced forty-three defendants in this age range to death since *Roper*, more than any other state and comprising about one-quarter of the total.[17]

California accounts for one-third of the 18- to 20-year-olds currently on death row in the United States and its share is growing: California juries have imposed forty-two percent of all new death sentences on defendants 18, 19, or 20 years old since 2015 and sixty percent since 2020.[18] Nearly two-thirds of those in this age group[19] currently facing death are in just four states (California, Florida, Texas, and Alabama).

Even within states, death sentences for defendants in this age group are becoming increasingly concentrated in very few counties. Since 2020, only four counties have sentenced an 18-, 19-, or 20-year-old to death, representing five percent of all counties sentencing anyone to death, and one-tenth of one percent of all counties nationwide.[20] Two adjacent Southern California counties, Los Angeles and Riverside, account for just over seventeen percent of the total non-federal death sentences of defendants in this age group since *Roper*.[21]

Trends in Executions

The number of individuals executed for crimes committed while 18, 19, or 20 has fallen significantly in the years since *Roper.* Almost one out of five people executed in the twenty years since *Roper*[22] committed their crime when they were under 21 years old, but with every year, the number of executions of individuals in this age group has declined. From 2005 to 2009, fifty people convicted of crimes committed when they were 18, 19, or 20 years old were executed; from 2010 to 2014, the number was 35; from 2015 to 2019, the number was 23; and over the past five years, that number has declined to 19.

As with new death sentences, executions of defendants in the 18 to 20 age range have become increasingly geographically concentrated. Since 2005, twenty-nine jurisdictions (twenty-eight states plus the federal government) conducted executions, but only sixteen of them executed defendants 18, 19, or 20 years old at the time of the crime. Since 2015, only eleven jurisdictions have executed individuals in this cohort; since 2020, just seven.

In 2016, researcher Brian Eschels found executions of defendants ages 18 to 20 disproportionately concentrated in a handful of states.[23] Replicating his method with data through the end of 2024, DPI found that just five states (Texas, Alabama, Georgia, Ohio, and Oklahoma) account for almost eighty percent of such executions.

"[E]xecutions of emerging adults are rare and occur in just a few states, especially in comparison to the prolific homicide rate among emerging adults."

"If there were no national consensus against executing emerging adults, one would expect that the practice of executing members of this high-violence group would be common. It is not."

Brian Eschels, "Data & the Death Penalty: Exploring the Question of National Consensus Against Executing Emerging Adults in Conversation with Andrew Michaels's A Decent Proposal: Exempting Eighteen- to Twenty-Year-Olds From the Death Penalty"

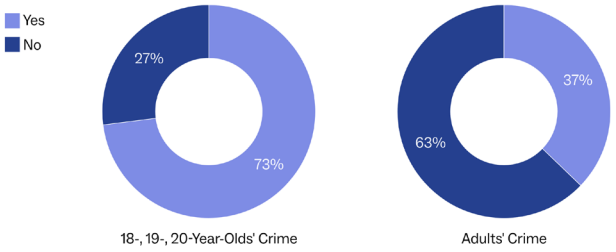
Texas has executed the largest number of defendants who were 18, 19, or 20 at the time of the crime, accounting for half of all such executions[24] since *Roper.* The next-highest state is Alabama, with almost nine percent.[25]

Trends in Texas Crime Characteristics

The *Roper* Court, in describing the traits that differentiate juveniles, noted that "juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure."[26] With this in mind, DPI analyzed case records for people executed in Texas since *Roper* and found a clear majority of those in the 18 to 20 age range 1) had codefendants, and 2) committed robbery as a feature of their case. Older offenders were much less likely to be executed for a crime that involved codefendants or robbery.

Texas: Whether Crimes of Executed People Involved Robbery, by Age

Executions 3/1/2005 - 12/31/2024



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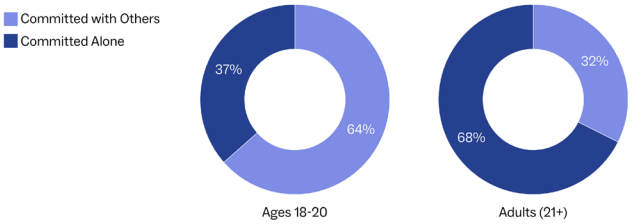
DPI found that roughly two-thirds of 18-, 19-, and 20-year olds were tried for a crime committed with one or more other people, and nearly three-quarters of their cases involved robbery. [27] By comparison, only thirty-two percent of adult cases involved codefendants and only thirty-seven percent involved robbery.[28] About half of the cases involving 18- to 20-year-olds in Texas featured a robbery committed with codefendants, compared to just one in six adult cases.[29] Some cases involved several young people participating in a crime but only one receiving a death sentence, while other cases involved an older adult who appeared to influence or direct the younger individuals to participate in a crime.

Texas: Whether Executed People Committed Crime Alone or with Others, by Age

Executions 3/1/2005 - 12/31/2024



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Endnotes

1. *Roper v. Simmons*, 543 U.S. 551, 565 (2005).

2. *Id*. at 564. ("30 States prohibit the juvenile death penalty, comprising 12 that have rejected the death penalty altogether and 18 that maintain it but, by express provision or judicial interpretation, exclude juveniles from its reach").

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4. *Id.* at 565. ("Five States that allowed the juvenile death penalty at the time of *Stanford* have abandoned it in the intervening 15 years—four through legislative enactments and one through judicial decision").

5. *Id.* at 553.

6. *Graham v. Florida*, 560 U.S. 48 (2010).

7. *Roper* at 552.

8. *Id.* at 566.

9. *Graham* at 52.

10. *Id*. In *Miller v. Alabama*, 567 U.S. 460 (2012), the Court acknowledged that while "mandatory sentencing does not itself account for the number of juveniles serving life-without-parole terms, the evidence we have of practice supports our holding [prohibiting mandatory life imprisonment without parole for those under the age of 18 at the time of their crimes]. Fifteen jurisdictions make life without parole discretionary for juveniles . . . only about 15% of all juvenile life-without parole sentences come from those 15 jurisdictions, while 85% come from the 29 mandatory ones." *Miller* at 483 n. 10. "Of the 29 jurisdictions mandating life without parole for children, more than half do so by virtue of generally applicable penalty provisions, imposing the sentence without regard to age." *Id*. at 486.

11. 2005-09: 13.5% (92/679); 2015-2024: 8.4% (28/333); 2020-2024: 4.3% (5/115).

12. 214/303 = 70.6%

13. 43/143 = 30.1% . 143 people have been sentenced to death for the first time since *Roper*. In total, there have been 174 sentences of 18-, 19-, and 20-year-olds at the time of the crime since *Roper*, including resentencings of people originally sentenced earlier. Those 174 sentences represent 11.7% of the 1482 total death sentences since *Roper*.

14. Those 43 individuals have been resentenced to life or less, had their sentence commuted, or received a grant of relief on appeal with a final outcome pending.

15. Maurice Possley, Kareem Johnson, National Registry of Exonerations, June 2, 2020.

16. The Biden Administration authorized prosecutors to seek a federal death sentence for Payton Gendron, who was 18 years old at the time of the Tops Supermarket shooting in Buffalo, NY in 2022. His trial is pending. *See* Staff, U.S. Department of Justice Authorizes First Federal Death Penalty Case for Payton Gendron, Teen Who Killed Ten Black People in 2022, Death Penalty Information Center, Jan. 16, 2024.

17. 43/174 = 24.7%.

18. 10/24 (41.7%) new death sentences for 18- to 20-year-olds since 2015 were imposed in California. 3/5 (60%) new death sentences for 18- to 20-year-olds since 2020 were imposed in California.

19. 188/303 = 62%

20. Excluding the federal government, just 86 of the nation's 3,144 counties (2.7%) have sentenced 18- to 20-year-olds to death since *Roper*. This number represents just one-fifth of the 428 counties sentencing people to death in that timeframe. Since 2015, only 20 counties have sentenced an individual in this age group to death, comprising 12.4% of the 161 counties sentencing people to death, and 0.6% of all counties in the United States.

21. Los Angeles County accounts for 17 death sentences, and Riverside County accounts for 12 death sentences, of people under age 21 at the time of their offense since *Roper*. 29/166 = 17.5%.

22. 126/663 = 19%. This number includes five individuals executed in 2005 prior to the holding in *Roper* in March 2005.

23. Brian Eschels, *Data & the Death Penalty: Exploring the Question of National Consensus Against Executing Emerging Adults in Conversation with Andrew Michaels's A Decent Proposal: Exempting Eighteen- to Twenty-Year-Olds From the Death Penalty*, 40 N.Y.U. Rev. L. & Soc. Change 152 (2016).

24. 63/126 = 50% Texas accounts for 38.3% (252/658) of all executions in this timeframe.

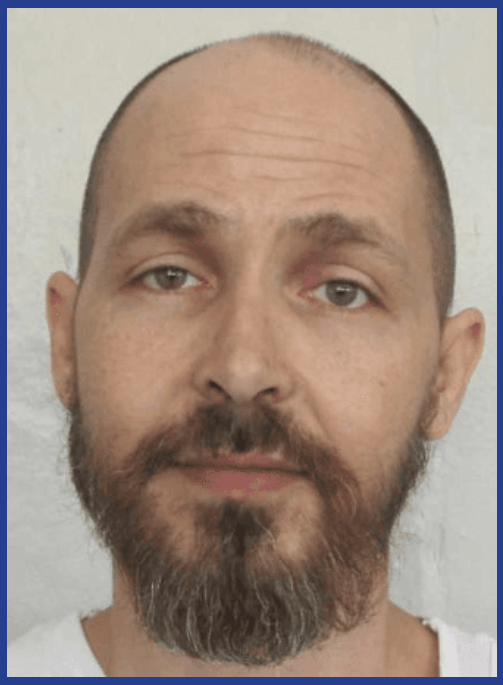
25. 11/126 = 8.7%

26. *Roper* at 570 (citing *Eddings v. Oklahoma,* 455 U.S. 104, 115 (1982) ("[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage")).

27. 63.5% (40/63) of 18- to 20-year-olds were tried for a crime committed with one or more other people, and 73% (46/63) of their crimes involved robbery.

28. 32.4% (61/188) of adults 21 and older had codefendants, and 37.2% (70/188) of their crimes involved robbery.

29. 49.2% (31/63) of crimes committed by 18- to 20-year-olds involved a robbery that included codefendants, compared to 16.5% (29/188) of crimes committed by people aged 21 or older.



Carey Dale Grayson: A "Nonsensical" and "Arbitrary" Execution

On February 21, 1994, after a day spent drinking and using drugs, four teenage boys picked up a woman hitchhiking. The boys drove the woman to a wooded area, where they eventually killed her and threw her body off a cliff on Bald Rock Mountain in Alabama. But while all four boys participated in the crime, only one, Carey Dale Grayson, age 19, was executed for killing Vickie DeBlieux. His friends Kenneth Loggins and Trace Duncan, both 17, were initially sentenced to death, but their sentences were commuted to life in prison after *Roper*. Sixteen-year-old Louis Mangione received a life sentence.

The state of Alabama tried each defendant separately—and told each jury that the defendant on trial was the ringleader. At Louis' and Trace's trials, the prosecutor said it was "ludicrous" and an "illusion" to think that Carey was the leader, because the "only" evidence against him was that he had driven the car. Carey's trial came last, and his appointed attorney failed to tell the jury about his adverse childhood experiences, including mental illness, severe neglect, chronic hunger, and homelessness. The prosecutor told jurors that Carey was the "leader of the pack"—the exact same language he had used to describe Kenneth Loggins.[1]

Alabama submitted an amicus brief in *Roper* urging the Court not to exclude juveniles from the death penalty, in which the state Attorney General admitted that it would be "nonsensical" and "arbitrary" for Carey to face execution solely because he was 19 and the others were younger. The AG wrote that two of Carey's codefendants, Kenneth and Trace, "plainly are every bit as culpable—if not more so—in Vickie's death and mutilation."[2]

On November 21, 2024, Carey became the third person in history to be executed by nitrogen gas. He gasped for air for several minutes and struggled against the restraints, his legs lifting off the gurney.[3] Jodi Haley, Ms. DeBlieux's daughter, strenuously opposed the execution and addressed reporters afterwards. "Society failed Carey as a child, and my family suffered because of it," she said.[4]

Endnotes

1. Staff, *Alabama Executes Carey Grayson*, Equal Justice Initiative, November 21, 2024.

2. Brief of the States of Alabama, Delaware, Oklahoma, Texas, Utah, and Virginia as Amici Curiae in Support of Petitioner 6-7, *Roper v. Simmons,* 543 U.S. 551 (2005).

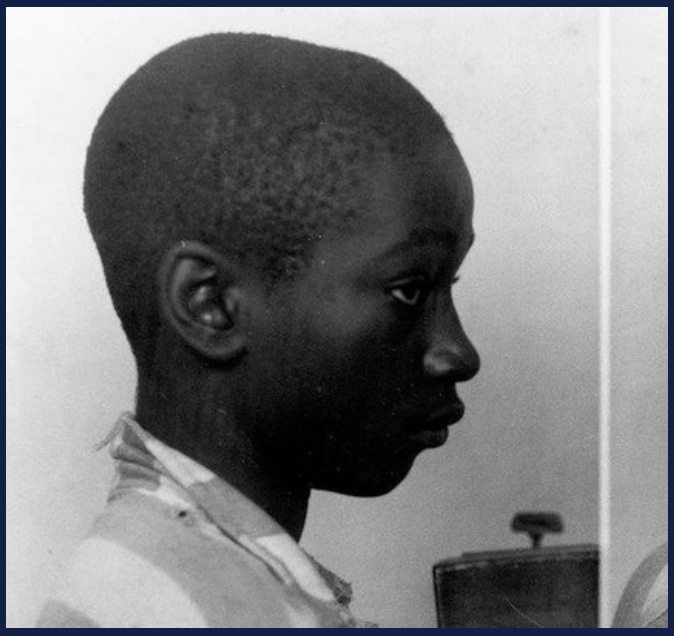
3. Ed Pilkington and Sam Levine, *Alabama man shook and gasped in final moments of nitrogen gas execution*, The Guardian, November 22, 2024.

4. Ralph Chapoco, *Alabama executes Carey Dale Grayson for 1994 murder of Vickie Deblieux, Alabama Reflector*, Nov. 21, 2024.

Chapter Three: Racial Disparities Among Capitally Charged, Sentenced, and Executed 18- to 20-Year-Olds

"Emerging adults disproportionately comprise those who are arrested and incarcerated across the country . . . in a criminal justice system rife with racism, available data suggests racial disparities are worst for this age group."

2020 report by the Juvenile Law Center, *Rethinking Justice for Emerging Adults*



The Youngest Person Executed in the U.S. in the 20th Century

More than 80 years ago, South Carolina executed George Stinney Jr., a 14-year-old Black child. Historical news reports indicate that on March 24, 1944, George and his younger sister were playing outside when two young white girls approached them and had a brief conversation. That evening, after both young girls failed to return home, George and his family joined a search party and he mentioned to another searcher that he had seen the girls earlier in the day. The next morning, after a pastor's son discovered the bodies of both girls in a shallow ditch, George was arrested and charged with their murders. According to police, George confessed to bludgeoning both girls to death despite the absence of any physical evidence connecting him to the crime.

George was charged with capital murder and rape, tried, convicted, and executed in South Carolina's electric chair in just under three months.

Two days after the girls disappeared, a white mob attempted to lynch George and failed only because he had already been moved to a jail in a different town. Just days after George's arrest, his father was fired from his job and the family was forced to flee town because of threats of violence. One month later, George went to trial, but his family and other African Americans were not allowed to enter the segregated courthouse. Geroge's attorney had no experience representing capital defendants and failed to call any witnesses in his defense. The prosecutor only presented testimony from the local sheriff, who described George's alleged confession.

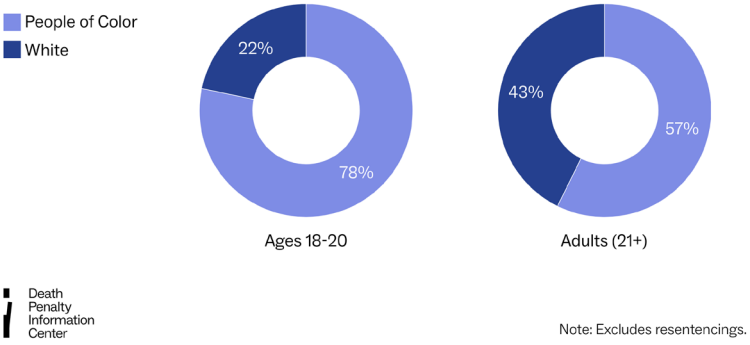
After just 10 minutes of deliberation, an all-white jury sentenced George to death for rape and murder. Governor Olin Johnston refused to grant clemency, and he was executed by the electric chair on June 16, 1944. Newspapers reported that guards had trouble getting George strapped into the electric chair built for adults, as he stood at just 5 foot 1 and weighed 95 pounds. He remains the youngest person executed in the United States during the 20th century.

Racial Trends in Death Sentencing

People of color are overrepresented among 18- to 20-year-olds sentenced to death in the United States. In the last twenty years, seventy-eight percent of this age group sentenced to death have been people of color. This rate is much higher than the rate found in older defendants: fifty-seven percent of the death sentences imposed in this time frame on adults 21 and older were imposed on people of color.

Racial Disparities in Individuals Sentenced to Death Since *Roper* by Age

3/1/2005 - 12/31/2024



Death Penalty Information Center

Note: Excludes resentencings.

Studies suggest that Black youth are often held to different standards than their white peers as it concerns guilt and punishment, which may help explain the overrepresentation of Black youth in death sentencing. A 2014 study examining the intersection of race and youth found that people overestimated the ages of Black children by an average of 4.5 years. Study participants, which included police officers and college students, also indicated that they believed Black youth were more culpable, and less innocent, than white or Latino/a youth. Another study of perceived age and race found that people who estimated Black youth to be older than their real age were also more likely to describe Black youth as "angry." As the study authors note, "it may only take one micro-aggression to impair a relationship between an adult and a child or one small moment for a police officer to misidentify an emotional expression in an interaction that can lead to dire consequences."

Nearly all jurisdictions that have sentenced people under 21 to death since *Roper* have sentenced young people of color, and particularly young Black people, at disproportionate rates.

In eighty-seven percent of jurisdictions that sentenced anyone in this age group to death since *Roper,* half or more were people of color. In seventy-three percent of the jurisdictions that sentenced any 18- to 20-year-old to death since *Roper,* half or more were Black.

A few states exhibit particularly sharp racial disparities when sentencing adults 18 to 20. In seven states, *every* adult in this age range sentenced to death since *Roper* was a person of color (Colorado, Kentucky, Louisiana, Mississippi, Pennsylvania, Tennessee, and Virginia). Among federal government cases, seventy-five percent of 18- to 20-year-olds sentenced to death were people of color; in North Carolina it was eighty-three percent; and in Oklahoma, eighty-six percent. Alabama, Arizona, Florida, and Nevada sentenced non-white adults in this age range to death at a rate at least ten percentage points higher than the rates they sentenced to death non-white adults of any age.

California, Florida, and Texas stand out. In California, eighty-one percent of adults 18 to 20 currently on death row are people of color, compared to sixty-nine percent of all people on death row in the state. Of the 135 adults in this age range sentenced to death in California in the modern death penalty era, more than three-quarters were people of color. Looking only at those sentenced in the twenty years since *Roper*, nine out of ten death sentences in California for 18-, 19-, and 20-year-olds were imposed on people of color.

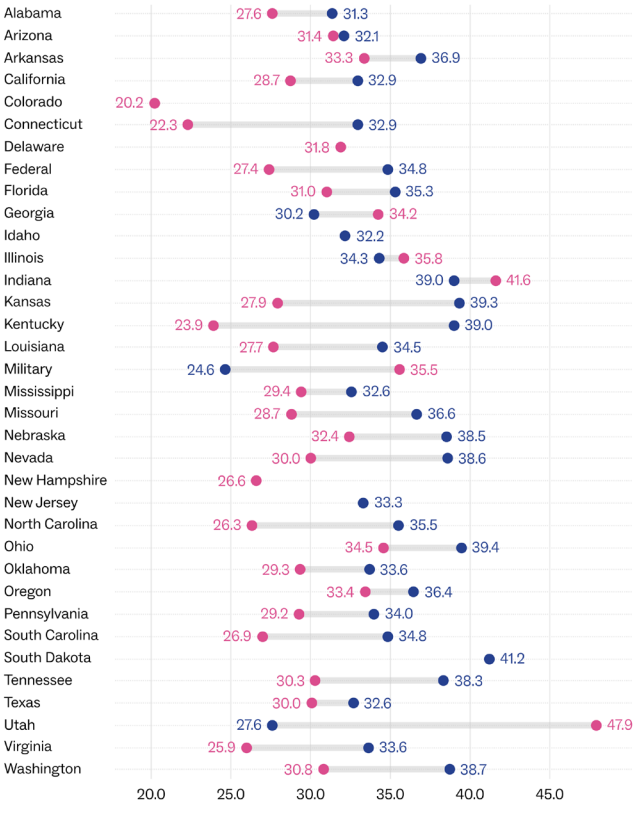
While fewer in number, Texas and Florida follow closely behind California in their racial sentencing patterns. In Texas, three-quarters of death sentences given to youth age 18 to 20 since *Roper* were given to people of color. Among current Texas death row residents who were 18, 19, or 20 years old at the time of their crimes, ninety-four percent are people of color. In Florida, almost two-thirds of death sentences given to individuals in this age range since *Roper* were given to people of color.

In general, people of color are also sentenced to death at earlier ages than white people. Comparing average age at the time of crime for white (34.4 years) and non-white defendants (29.7 years) reveals a five-year gap between the two groups. This trend is fairly uniform across jurisdictions: of the twenty-nine states that have imposed death sentences on both white people and people of color since *Roper*, twenty-four have a lower average age at crime for people of color compared to white people (see chart). The disparity ranges from less than a year in Arizona to over fifteen years in Kentucky, where average age at crime for white people sentenced to death is 39 years old compared to just 24 years old for people of color.

Other jurisdictions with notably large age disparities by race include North Carolina (9.2 years), Nevada (8.5 years), Tennessee (8 years), Missouri (7.9 years), South Carolina (7.9 years), and the federal government (7.5 years).

Death Sentences Since *Roper*: Average Age at Crime by State and Race

The pink dot represents the average age at crime for people of color sentenced to death, while the blue dot represents the average age at crime for white people sentenced to death. This data covers death sentences imposed between 3/1/2005, when the Supreme Court decided Roper v. Simmons, and 12/31/2024.



Death Penalty Information Center

Note: Colorado, Delaware, and New Hampshire only sentenced people of color to death in this period, and all three states have since abolished the death penalty. Idaho, New Jersey, and South Dakota only sentenced white people to death; New Jersey has abolished the death penalty.

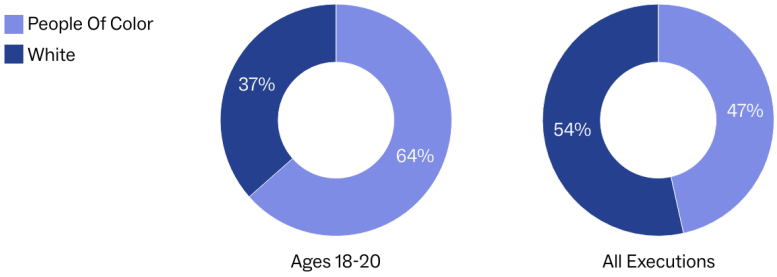
Racial Trends in the Executions

Since *Roper*, people of color who are sentenced to death for crimes committed at age 18 to 20 are nearly twice as likely to be executed as white youth of the same age. In three jurisdictions, *every* individual in this age range who has been executed since *Roper* was a person of color (Arkansas, South Carolina, and the federal government). These trends are also consistent with historical execution data. Of the 832 executions for 18-, 19-, and 20-year-olds in the pre-*Furman* era, 480, or fifty-eight percent, of those executed were Black youth.

Texas alone accounts for half of all executions of 18-, 19-, and 20-year-olds since *Roper*, almost eighty percent of whom were people of color.

Racial Disparities in Executions Since *Roper* by Age

3/1/2005 - 12/31/2024



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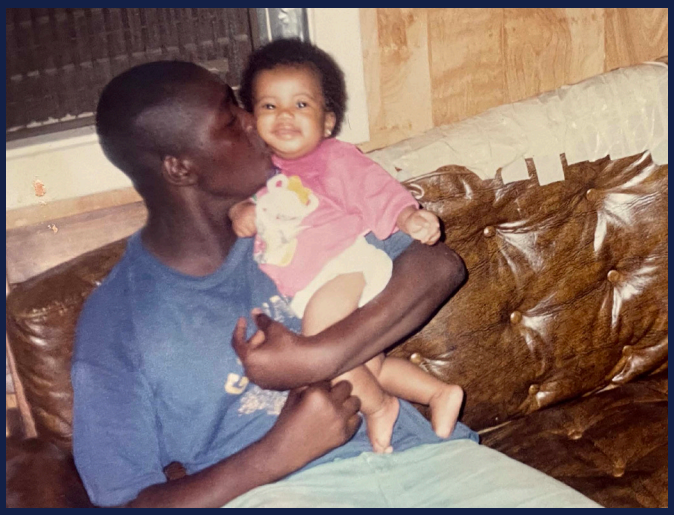


Marion Bowman

On January 31, 2025, Marion Bowman became the fifth youth in the 18 to 20 age range executed in South Carolina since *Roper.* All five were Black. The median age at crime for a Black person executed in South Carolina is 23 years. The median age at crime for a white person is almost 30 years.

Marion was 20 years old when he was arrested for the murder of Kandee Martin in connection with a drug-dealing dispute. At 21, Ms. Martin was just a year older than Marion, but Marion's own trial attorney called him a "man" while referring to Ms. Martin as a "little white girl." After prosecutors alleged that Marion raped Ms. Martin, Marion's attorney apologized to the jury for suggesting that the relationship might have been consensual, because, he later admitted, he thought the idea of a sexual relationship between a Black man and a white woman was "dirty." Years later, one of the jurors said that "race played a role in this case" and that he "would not sentence Mr. Bowman to death if I were on his jury today."

Dr. Donna Maddox, who examined Marion, concluded that "his brain development was not yet complete" at the time of his arrest, and his cognition had been further damaged by "his extensive use of alcohol" and multiple serious head injuries. Marion's attorneys noted his nearly spotless prison record and service as an "Inmate Representative" liaison between prisoners and corrections staff for twelve years. Dr. Robert Ellis, the chief psychiatrist on South Carolina's death row, said that Marion was "a very different man than the boy who came in many years ago," and was possibly the "most respected" person on death row.

"Over the years I have learned that we are labeled as the worst of the worst. None of these guys that I have gotten to know and grown to love are the people that they were when they had their moment that cost them everything. If the world could see us in our day to day, they would have a different view of the death penalty."

-Marion Bowman, final statement

Endnotes

1. Karen U. Lindell and Katrina L. Goodjoint: *Rethinking Justice for Emerging Adults*, Juvenile Law Center (2020), at 3.

2. Hayley Bedard, *Remembering the Execution of 14-year-old George Stinney 80 Years Later*, Death Penalty Information Center, June 14, 2024.

3. 112 of 143 (78.3%).

4. 3958 of 7528 (53%).

5. Phillip Atiba Goff, Matthew Christian Jackson, Brooke Allison Lewis Di Leone, Carmen Marie Culotta, and Natalie Ann DiTomasso, *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. Pers. Soc. Psychol. 526, 532 (2014).

6. Alison N. Cooke and Amy G. Halberstadt, *Adultification, anger bias, and adults' different perceptions of Black and White children,* 35 Cogn. Emot. 1416 (2021).

7. *Id.*

8. All of these states imposed two or fewer death sentences on youth 18 to 20, except Pennsylvania, which imposed six death sentences on this age group (five on Black people: Kareem Johnson, Derrick White, Jakeem Towles, and Melvin Knight; and one on a Latino person, Abraham Sanchez). Melvin Knight is counted twice here because he was sentenced to death in 2012 and resentenced to death in 2018. Note: Colorado and Virginia have since abolished the death penalty.

9. Each of these states sentenced at least five youth aged 18 to 20 to death since *Roper*. Other states which sentenced fewer than five youth aged 18 to 20 to death but also had at least a 10-point gap in sentencing based on race include Connecticut, Missouri, and South Carolina. Connecticut has abolished the death penalty.

10. 39/43 (90%).

11. 16/21 (76%).

12. 30/32 (93.75%).

13. 16/25 (64%).

14. 80/126 (63.5%) of adults 18 to 20 executed since *Roper* were people of color, 46/126 (36.5%) were white. The risk ratio calculation: .635/.365 = 1.7.

15. *See* M. Watt Espy and John Ortiz Smykla, *Executions in the United States, 1608-2002: The ESPY File*, Inter-university Consortium for Political and Social Research (2016). This database includes 15,269 executions in the United States and American colonies.

16. 50/63 (79.4%) people aged 18 to 20 executed in Texas since Roper have been people of color.

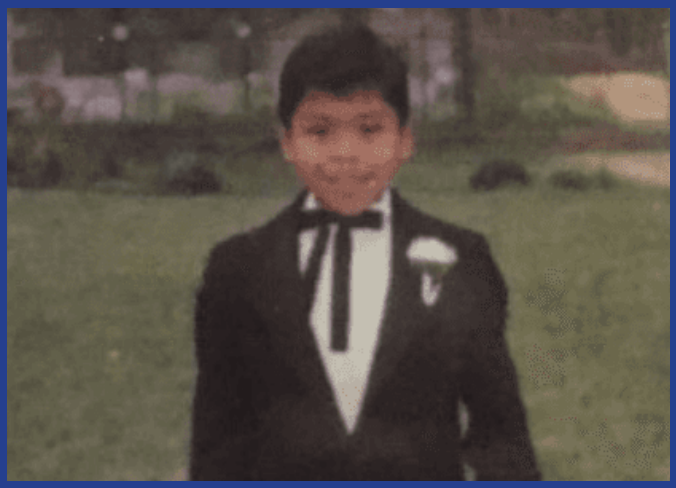
17. Skylar Laird, *SC death row inmate claims prosecutors withheld evidence as execution looms*, South Carolina Daily Gazette, Dec. 17, 2024; link to: *Petition for Writ of Habeas Corpus.*

18. *Id.* at 114.

19. *Id.* at 59.

20. *Id.* at 61-65.

21. Bryce Jacquot, *South Carolina death row inmate Marion Bowman Jr. pens final words*, ABC News, Jan. 31, 2025.



Ramiro Gonzales: Executed Despite Being Deemed No Threat to Society

Ramiro Gonzales was sentenced to death for crimes committed shortly after his 18th birthday, but his path to death row was paved by a lifetime of trauma. Given up for adoption as an infant, Ramiro endured sexual abuse throughout his childhood. Ramiro's aunt was one of his few sources of stability, but after she died when he was 15 he turned to drugs to cope with her death. When he dropped out of school at 16 he was still in eighth grade. Ramiro also suffered from fetal alcohol syndrome disorder, a condition that can severely impair judgment and impulse control. According to Dr. Katherine Porterfield, who reviewed Ramiro's trial records, expert witnesses who evaluated him before sentencing "were not provided extensive, multi-witness evidence of the traumas he suffered."[1]

In prison, Ramiro became a peer mentor and coordinator for the Faith Based Program, where he helped guide fellow death row prisoners. He also attempted to donate a kidney in 2022 after a medical evaluation found he would be an "excellent candidate" due to his rare blood type. Potential matches were identified, including a cancer survivor who had been waiting years for someone with the same blood type, before Ramiro's request was blocked by state officials.[2]

That same year, court-appointed psychologist Dr. Edward Gripon recanted his trial assessment of Ramiro as a "potential future danger to society"—a required finding in Texas for a jury to impose death. Dr. Gripon had never before recanted a finding of future dangerousness in a capital case. He further acknowledged that he had relied upon recidivism data that has since been debunked within the psychiatric community. “If this man’s sentence was changed to life without parole, I don’t think he’d be a problem,” Dr. Gripon said. According to The Marshall Project, Dr. Gripon noted that Ramiro “was so young that there wasn’t nearly as much of a past to assess—which, [Dr. Gripon] admitted, raises questions about seeking the death penalty for an 18-year-old.”[3] Despite this, Ramiro was executed by lethal injection on June 26, 2024, at age 41, after spending more than half his life in prison.

Endnotes

1. Appendix to Petition for Certiorari, *Gonzales v. Texas* (2024) (No. 23-7791). *See also* William Melhado and Kayla Guo, *Texas executes Ramiro Gonzales for 2001 murder*, Texas Tribune, Jun. 26, 2024.

2. *See, e.g.*, María Luisa Paúl, *A death row inmate wants to donate a kidney. Texas won’t let him*, The Washington Post, Jul. 12, 2022; Dakin Andone, *A Texas death row inmate is seeking a 30-day reprieve to donate a kidney. An appeals court has issued an execution stay for a different reason*, CNN, Jul. 12, 2022.

3. Maurice Chammah and Keri Blakinger, *This Doctor Helped Send Ramiro Gonzales to Death Row. Now He’s Changed His Mind*, The Marshall Project, Jun. 27, 2024.

Christa Pike: A Story of Childhood Trauma and Abuse

At age 18, Christa Pike had already endured a lifetime of trauma and abuse. She was exposed to alcohol in utero, which severely damaged the area of her brain that regulates impulses and behavior.[1] She was born into poverty and neglect; court records show that she "crawl[ed] around through piles of dog stool all over the house" as a baby and her mother once stayed at a bar even after getting a call that Christa was having a seizure.[2] Christa was raped multiple times as a child, dependent on alcohol and marijuana by age 12, and attempted suicide several times as a teenager.[3]

In 1995, Christa and two other teenagers committed the brutal murder of another teen.[4] Her boyfriend, Tadaryl Shipp, who at 17 was just a few months younger than Christa, received a life sentence for his participation in the murder. But Christa became the youngest woman sentenced to death in Tennessee in the modern era, and today is the only woman on the state's death row.[5]

After the Tennessee Supreme Court held in 2022 that mandatory life sentences for juveniles are unconstitutional,[6] Christa's attorneys filed a new appeal arguing that the same rationale applied to young adults like Christa. "If the courts agree that a 17-year-old is not eligible for mandatory life in prison due to well-established adolescent brain science, we should not death-sentence an 18-year-old," said her attorney Kelly Gleason. "There is no hard line of maturity or difference between the brain development of a 17-year-old and 18-year-old."[7] Ms. Gleason further argued that executing Christa for a crime she committed as a teenager would "contradict Tennessee's deeply held beliefs in the value of human life and redemption, as well as the scientific consensus that youthful brains are not fully formed, especially for young people who experience severe abuse, neglect, and trauma."[8]

In 2019, Judge Jane Stranch of the Sixth Circuit wrote that she believed Christa's death sentence was likely unconstitutional based on her youth at the time of the crime, but procedural rules prevented the court from deciding in her favor.

"The difficulty of this case is not just age; the gravest concern arises from the combination of Pike's youth and the nature of her crime. Capital cases involve heinous and inexplicable crimes, and Pike's case presents no exception. But in sentencing Pike to death, we rule out the possibility that her crime was a product of the immature mind of youth rather than fixed depravity. And we presume that she is incapable of reform even though the stories of other teenage killers, many of whom have been rehabilitated behind bars, reveal other possibilities.[9] The judgment that she merits the most severe punishment is in tension with Supreme Court precedent focusing on the lesser blameworthiness and greater prospect for reform that is characteristic of youth. [...] I believe that society's evolving standards of decency likely do not permit the execution of individuals who were under 21 at the time of their offense."

Judge Jane Stranch, concurring in *Pike v. Gross* (2019)

In a recent letter to *The Tennessean*, Christa wrote that she had "changed drastically since I was a teenager."[10]

"Think back to the worst mistake you made as a reckless teenager. Well, mine happened to be huge, unforgettable and ruined countless lives. I was a mentally ill 18 yr. old kid. It took me numerous years to even realize the gravity of what I'd done. Even more to accept how many lives I effected (sic). I took the life of someone's child, sister, friend. It sickens me now to think that someone as loving and compassionate as myself had the ability to commit such a crime."

– Christa Pike

If executed, Christa Pike will be the first person put to death in Tennessee in the modern era for a crime committed at age 18, and the first woman executed in the state in over two centuries. All nine men sentenced to death in Tennessee for crimes committed at 18 later had their sentences vacated.[11] Christa's codefendant Tadaryl Shipp will be eligible for parole in 2026.[12]

Endnotes

1. *State v. Pike*, *Defendant Christa Pike's Response*, June 7, 2021.

2. *Pike v. Gross*, 936 F .3d 372 (6th Cir. 2019).

3. *State v. Pike*, *Defendant Christa Pike's Response*, June 7, 2021; Evan Mealins, *Christa Pike, who would be first Tennessee woman executed in 200 years, moves to reopen appeals*, The Tennessean, Aug. 30, 2023.

4. At trial, two defense experts testified that Christa's mental health and the pressures of a peer group situation caused her to escalate the attack on the victim when the teenagers initially intended only to scare her. Dr. Eric Engum believed that Christa "simply lost control," and Dr. William Bernet testified that group settings can cause "collective aggression," to which young people may be more susceptible. The "end result is that they engage in some kind of violent, extremely violent activity," Dr. Bernet said. *See* n. 2.

5. In 2024, Christa won a settlement with the state that allowed her to work and socialize with women in the general prison population, after she was kept in "functional solitary confinement" for 28 years. *See* Steven Hale, *Court Settlement Ends Isolation for the Only Woman on Tennessee's Death Row*, Nashville Banner, September 17, 2024; Leah Roemer, *Rulings for Two Death-Sentenced Prisoners Recognize Devastating Harm Caused by Solitary Confinement*, Sept. 30, 2024.

6. *State v. Booker* 656 S.W.3d 49(Tenn. 2022).

7. Mealins, n. 3.

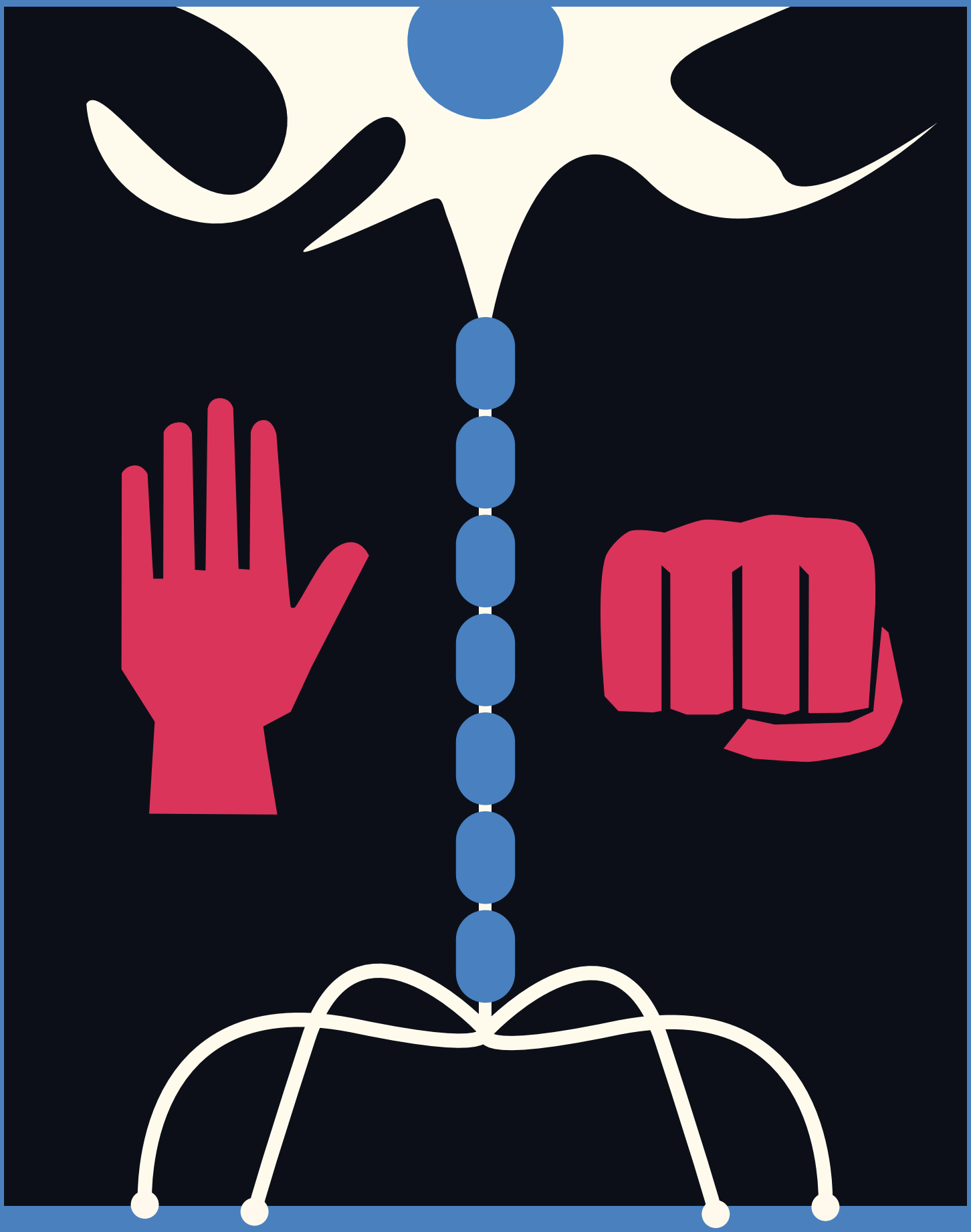
8. WBIR Staff, *Attorneys ask prosecutors to reconsider death sentence for Christa Pike again*, WBIR, Aug. 30, 2023.

9. *See Pike v. Gross*, Stranch, J., concurring, at 15, n. 1. Judge Stranch described four cases of teenagers sentenced to life in prison for murder who demonstrated tremendous growth and rehabilitation, including performing extensive charity work, attaining advanced degrees, and serving as mentors for other prisoners.

10. Mealins, n. 3.

11. Sentenced to death for a crime committed at 18, with year of death sentence: Larry Preston (1975), Carl Jones (1975), Anthony Hayes (1975), David Duncan (1983), David Poe (1987), Ronald Cauthern (1991), Derrick Johnson (1992), Michael Bush (1993), Fredrick Sledge (1993). All nine men were resentenced to life or less, or had their sentences commuted.

12. Gregory Raucoules, *Woman convicted in 1995 Knoxville murder asks death sentence be vacated*, WATE, Aug. 30, 2023.



Chapter Four:
The Evolving Science of Young Brains

"[T]here is no bright line regarding brain development nor is there neuroscience to indicate the brains of 18-year-olds differ in any significant way from those of 17-year-olds."

Resolution of the American Academy of Pediatric Neuropsychology relating to the imposition of death as a penalty for persons aged 18 through 20 years (2020)

How Science Persuaded the *Roper* Court that Juveniles Are Different

Scientific and behavioral studies of children support the *Roper* Court's findings that juveniles are different from adults. As a group, they lack maturity, have an underdeveloped sense of responsibility and are more vulnerable to negative influences, while also having a greater capacity for rehabilitation. The *Roper* Court found the collective effects of these characteristics mean that the social purposes of retribution and deterrence intended to be served by the death penalty are inapplicable to juveniles.[1] Brain imaging provided the Court with scientific proof that the key executive control systems in juvenile brains—responsible for higher order processing such as decision-making, behavioral inhibition, and risk assessment—are not fully developed until they are much older. Functional brain imaging studies provided further support but were still in their infancy at the time *Roper* was decided.[2] [3]

Modern Studies of Brain Development in 18- to 20-Year-Olds

Neurological evidence, especially functional magnetic resonance imaging (fMRI) studies,[4] confirm that the adolescent brain undergoes major neurocircuitry[5] changes until at least age 21. According to one review of the literature, "the science shows unambiguously that 18-, 19-, and 20-year-olds are more similar than different from 17-year-olds in many important respects of behavioral and brain maturity."[6] These neurocircuitry changes are responsible for processing in discrete areas of the brain, such as those involving high-level cognitive control of behavior and working memory, as well as improved speed and better communication between different regions of the brain.[7] [8] [9]

Research has shown that adolescent neurological differences present in 17-year-olds also persist beyond the age of 18.[10] [11] [12] One study, summarizing the findings of several large-scale studies, found brain tissue and its interconnectivity continues to develop "into the early 20s."[13] A survey of neuroscientific studies by Craig Haney, Frank Baumgartner, and Karen Steele notes that many such studies have found that "the brain development of 18-, 19-, and 20-year-olds is not substantially different from that of 17-year-olds."[14] [15] [16] [17] As the American Psychological Association explains, there is "no neuroscientific bright line" between the brain of a 17-year-old and a 20-year-old.[18] Reflecting this, the American Psychiatric Association has removed the age-18 developmental period cutoff for diagnosis of certain developmental disorders in its 2013 diagnostic manual (DSM-5).[18] [19]

As neurological evidence has demonstrated, different areas and circuits of the brain mature at different rates.[20] Those areas responsible for top-down control[21] mature last.[22] [23] [24] Psychological studies have likewise identified a "maturity gap" between an adolescent's "higher-level, complex thinking processes," which may be on par with adult levels as early as age 16, and an adolescent's psychosocial maturity, or "one's ability to self-restrain in emotional situations," which is immature at younger ages and continues to develop into the 20s.[25]

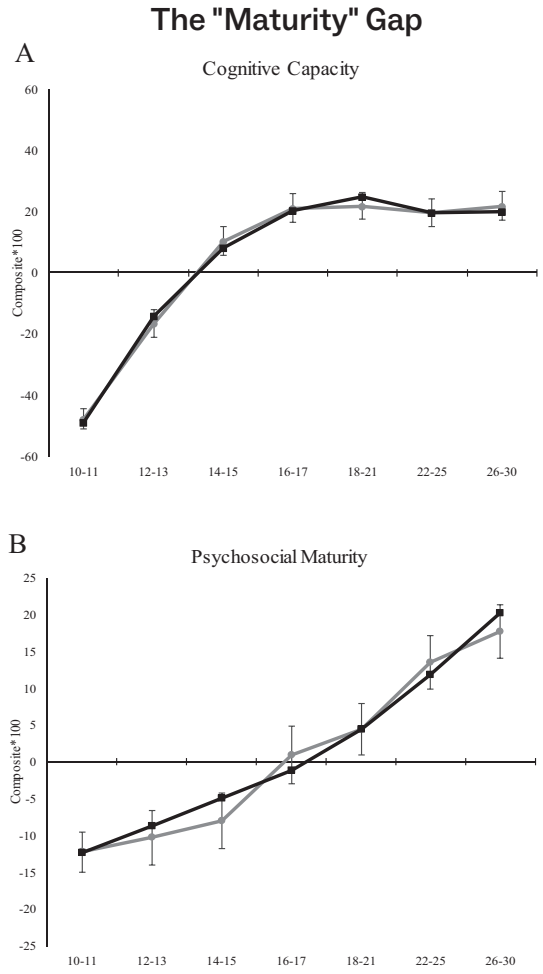


Figure 1. Age patterns in cognitive capacity (top) and psychosocial maturity (bottom) in the aggregate sample. Values of these composites were multiplied by 100. Gray lines denote estimated marginal mean for each age group (error bars indicate 95% confidence intervals). Black lines denote estimated regressio value.

Icenogle, Steinberg, et al. (2019).
Used with author permission.[26]

This "maturity gap" is further evident during adolescent decision-making. During this period of development, the emotional system is competing with the still-maturing cognitive-control system.[27] [28]

As Professor Craig Haney and his colleagues note, "the specific similarities in psychosocial and neurological development occur along precisely the dimensions on which the *Roper* Court premised its age-based death penalty exclusion—the tendency to take ill-considered actions, to be emotionally vulnerable and more easily influenced, and [experience] personality formation that is more changeable and more capable of growth."[29]

Studies have shown that there is no significant difference between adolescent and adult decision-making during non-emotional situations that allow for thoughtful, deliberate consideration, referred to as "cold cognition." However, the adolescent brain performs poorly compared to the adult brain in emotionally charged situations that require quick decision-making, referred to as "hot cognition."[30] [31] [32] [33] It is during these heightened states, when the emotional system is activated, that the immature cognitive-control system of the adolescent brain struggles to provide an adequate check on behavior. Under hot cognition conditions, there are stark differences in the reactions of adults versus juveniles.[34] It is precisely in these "hot" conditions that criminal behavior is most likely to occur, triggered by stress, perceived threats, and heightened emotions.

A 2009 study, using a gambling task to trigger "hot" and "cold" cognition situations, found support for the idea that adolescent risk-taking is explained by the dual-system model,[35] that is, the tension between the highly sensitive emotional and the immature cognitive-control parts of the brain. The study compared risk-taking behaviors between three age groups (14-16, 17-19, and 20+). In the "cold" situation, all groups exhibited similar risk-taking behaviors. In the "hot" situation, they found that participants aged 17-19 followed riskier strategies than adults (age 20+), and they saw no significant difference in risk-taking between the group aged 17-19 and the group aged 14-16.[36]

This sensitive socioemotional system is not only susceptible to activation in emotionally charged contexts but also in the presence of peers, who are likely to activate reward-motivated areas and reduce emotional regulation.[37] [38] A 2005 study evaluated risk-taking and the mediating effect of peer pressure among adolescents (age 13-16), young adults (age 18-22), and adults (age 24+) using a video game task where the objective is to reach the end of the track as fast as possible. Participants must decide whether to stop a car when encountering yellow stoplights.[39] The study found that risk-taking, as evaluated through the game, and risky decision-making, as evaluated through a survey, decrease with age. When comparing the solo participant to a group of three peers (i.e. one participant in the presence of two same-aged peers), they found that the presence of peers increased risk-taking and risky decision-making, and that this effect was greater among the younger groups than the adults.

Using the same stoplight game, a 2016 study examined risk-taking by a solo participant (male, age 18-22), by a group of four same-age peers (male, age 18-22), and by a group of three same-age peers (male, age 18-22) and one older adult (male, age 25-30).[40] They found that participants surrounded by four same-age peers exhibited significantly greater risk-taking than both the solo participant and the group with an adult present.

Group Dynamics and Risk-Taking Behavior

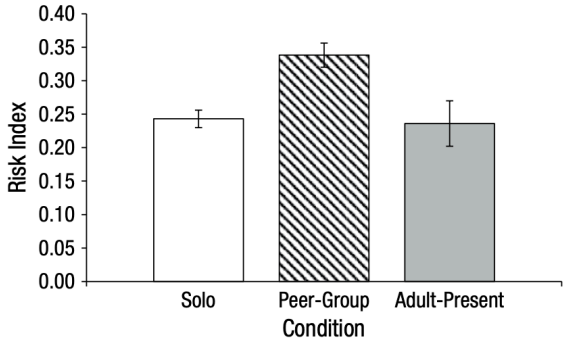


Fig. 1. Risk-taking behavior (average risk index) of the target subjects in the three social-context conditions. Error bars represent ±1 *SE*.

Icenogle, Steinberg, et al. (2019).
Used with author permission.[41]

Adverse Childhood Experiences and Brain Development

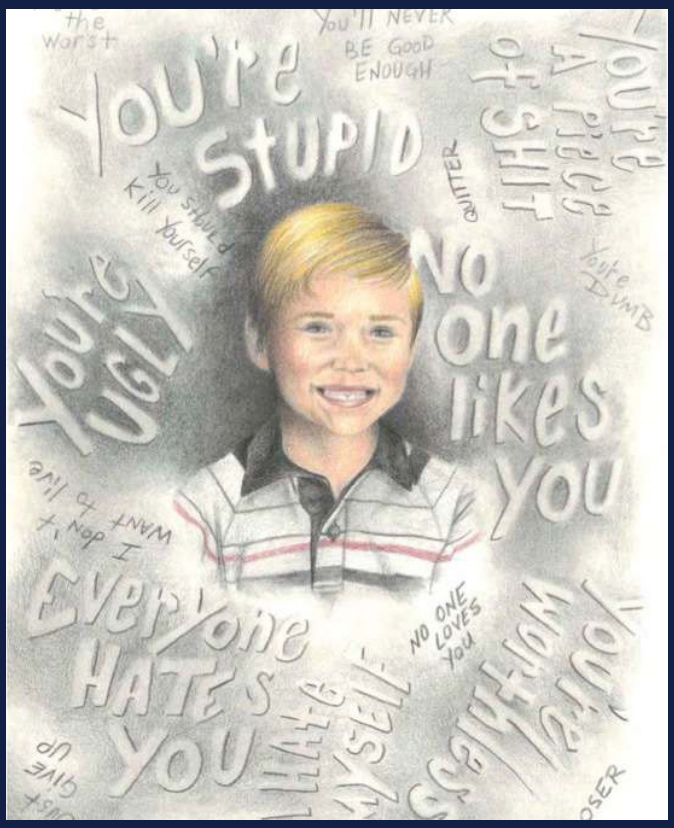
At the time of *Roper*, the 1989 landmark study recognized as having launched the field of Adverse Childhood Experiences (ACE) was still relatively new but was finding solid support in the scientific community.[49] Since then, the field has grown considerably, including significant research into the intersection between violent crime and higher rates of ACE exposure.

Adverse childhood experiences, or potentially traumatic events or circumstances that undermine one's sense of safety from age 0 to 17,[50] also contribute to delays in brain development.[51] ACEs could include, but are not limited to, experiencing abuse, witnessing family or community violence, and household instability.[52] Children who have been physically abused experience problems with affective and socio-emotional development, including issues with aggression and self-control in adolescence, and children who have witnessed familial violence may resort to aggression as a primary problem-solving method in adolescence.[53] Numerous studies have linked ACEs to increased likelihood of developing depression,[54] alcohol abuse,[55] post-traumatic stress disorder (PTSD),[56] and other conditions.

Professor Haney and colleagues wrote in 2022 that, "persons who engage in serious violent behavior of the sort that may lead to capital prosecutions, including members of the late adolescent class, are, as a group, more likely to have been exposed earlier in their lives to multiple risk factors, developmental traumas, and . . . 'ACEs.'"[57]

The authors note that because ACEs have a detrimental effect on neurological development, "a sizable sub-group of members of the late adolescent class who are subject to the death penalty are likely to be even more neurologically, cognitively, and emotionally immature" than average members of their age cohort. Their research aligns with earlier studies that found higher arrest rates among youth with histories of physical abuse or neglect[58] and significantly higher rates of ACEs exposure among people convicted of crimes than among a control group.[59]

Childhood trauma and neglect, including the types of experiences considered ACEs, are common among death row prisoners. A DPI analysis found that 71 of the 95 people executed between 2020 and 2024 (75%) had evidence of severe trauma during their youth. Of those with severe trauma, 32 were sentenced for a crime committed under age 25. As society's awareness of ACEs and the effects of childhood trauma has grown, many attorneys now include evidence of their clients' traumatic experiences in clemency petitions and court filings. In 2017, Jason McGehee was granted clemency in Arkansas based on the combination of his youth—he was 20 years old at the time of his crime—and the severe abuse and neglect he had suffered as a child.[60]



Michael Tisius Self Portrait

Michael Tisius: The Effect Of Trauma And Abuse On A Developing Brain

Michael Tisius' clemency petition[42] tells a harrowing story of how trauma and abuse damage a developing brain.

Michael's life was shaped by generational trauma that began even before his birth. Both of his parents came from families with histories of substance abuse and mental illness. Both sets of grandparents abandoned the children that would become his parents.[43] From the time he was born, he was told he was unwanted. His father's intermittent presence in his life was destabilizing and created cycles of hope and disappointment throughout his childhood.

In his mother's home, where he lived most of the time, Michael was emotionally and physically neglected. He was often hungry, wasn't taught how to care for himself and maintain basic hygiene, and his mother ignored the severe and unrelenting physical abuse that his older brother inflicted on him.[44]

A trauma expert who examined Michael found that he experienced six of the ten Adverse Childhood Experiences (ACEs) that are known to affect brain development, with attendant consequences on a person's mental health and likelihood to engage in high-risk behavior. Less than 5% of Americans score as high as Michael on the ACEs scale. Dr. Laurence Steinberg, a psychologist and leading expert on adolescent brains, said of Michael, "the psychological and neurobiological immaturity I described in this report as characteristic of average adolescents was likely exacerbated by the environmental conditions to which Mr. Tisius was exposed throughout his childhood."[45]

Michael was 19 years and four months old when he attempted to help a friend escape from jail, panicked during the attempt, and fatally shot two guards.[46] Although his age made him eligible for a death sentence under Missouri law, numerous experts who examined him agreed that his brain was not fully developed.

During his time in prison, Michael showed another characteristic of those who commit crimes under age 21—a great capacity for rehabilitation. A former warden called him a "model inmate." [47]Michael developed a passion for visual art and donated artworks to raise funds for a domestic violence shelter.[48] He expressed deep remorse and regret for the crime he committed in his youth. He was executed by the state of Missouri on June 6, 2023.

Endnotes

1. *Roper v. Simmons*, 543 U.S. 551, 570-71 (2005).

2. Invented in 1990, functional MRIs (fMRIs) are used to study brain function by measuring and mapping brain activity, whereas older MRIs are only able to create structural images of organs and tissues.

3. Robert J. McCaffrey & Cecil R. Reynolds, *Neuroscience and death as a penalty for late adolescents*, 7 Journal of Pediatric Neuropsychology 1–2, 3–8 (2021).

4. According to the Cleveland Clinic, a functional MRI "is a type of MRI scan that can show which areas of your brain are most active. Tracking and comparing that activity to what you were doing at the time can help 'map' your brain activity." *See* Cleveland Clinic, Functional MRI (fMRI), at https://my.clevelandclinic.org/health/diagnostics/25034-functional-mri-fmri.

5. 'Neurocircuitry' is comprised of a network of neurons, synapses, neurotransmitters, and brain regions, and helps us understand the functioning of the body's nervous system.

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12. *See* n. 6.

13. Ruben C. Gur, *Development of brain behavior integration systems related to criminal culpability from childhood to young adulthood: Does it stop at 18 years?*, 7 Journal of Pediatric Neuropsychology 1–2, 55–65 (2021).

14. Craig Haney, Frank Baumgartner, & Karen Steele, *Roper and Race: the Nature and Effects of Death Penalty for Juveniles and the "Late Adolescent Class"*, 8 Journal of Pediatric Neuropsychology, 168-177 (2022) (citing to to Erin D. Bigler, *Charting brain development in graphs, diagrams, and figures from childhood, adolescence, to early adulthood: Neuroimaging implications for neuropsychology*, 7 Journal of Pediatric Neuropsychology 1–2, 27–54 (2021)).

15. *See* n. 8.

16. U.S. Department of Health and Human Services, Office of Population Affairs, Adolescent Development Explained, Nov. 2018.

17. Health and Human Services Department, Office of Public Health and Science, The Teenage Brain: Still Under Construction, 2011.

18. *See* n. 3.

19. American Psychological Association, APA Resolution on the Imposition of Death as a Penalty for Persons Aged 18 Through 20, Also Known As the Late Adolescent Class, Aug. 2022.

20. Erin D. Bigler, *Charting brain development in graphs, diagrams, and figures from childhood, adolescence, to early adulthood: Neuroimaging implications for neuropsychology*, 7 Journal of Pediatric Neuropsychology 1–2, 27–54 (2021).

21. 'Top-down' control refers to the brain processing information and making decisions using previous knowledge and experience.

22. *See* n. 8.

23. *See* n. 13.

24. *See* n. 20.

25. Grace Icenogle, Laurence Steinberg, Natasha Duell, Jason Chein, Lei Chang, Nandita Chaudhary, Laura Di Giunta, Kenneth A. Dodge, Kostas A. Fanti, Jennifer E. Lansford, Paul Oburu, Concetta Pastorelli, Ann T. Skinner, Emma Sorbring, Sombat Tapanya, Liliana M. Uribe Tirado, Liane P. Alampay, Suha M. Al-Hassan, Hanan M. S. Takash, & Dario Bacchini, *Adolescents' cognitive capacity reaches adult levels prior to their psychosocial maturity: Evidence for a "maturity gap" in a multinational, cross-sectional sample*, 43 Law and Human Behavior, 69–85 (2019).

26. *Id.* Reprinted with permission granted by author Lawrence Steinberg.

27. Laurence Steinberg, *Risk Taking in Adolescence: New Perspectives From Brain and Behavioral Science*, 16 Current Directions in Psychological Science 2, 55–59 (Apr. 2007).

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30. U.S. Department of Health and Human Services, Office of Population Affairs, Adolescent Development Explained, Nov. 2018.

31. *See* n. 6.

32. *See* n. 27.

33. Alexandra O. Cohen, Kaitlyn Breiner, Laurence Steinberg, Richard J. Bonnie, Elizabeth S. Scott, Kim Taylor-Thompson, Marc D. Rudolph, Jason Chein, Jennifer A. Richeson, Aaron S. Heller, Melanie R. Silverman, Danielle V. Dellarco, Damien A. Fair, Adriana Galván, & B. J. Casey, *When Is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts*, 27 Psychological Science 4, 549–562 (Feb. 24, 2016).

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36. *See also* n. 28.This study used data on more than 7,000 youth ages 12-24 from the National Longitudinal Study of Youth Children and Young Adults from 1994 to 2006 to provide further support for the dual system model of adolescent development. Harden & Tucker-Drob found that mean levels of impulsivity decline through adolescence until leveling off in the mid-20s—in line with neurological findings on the late maturation of impulse control areas—and that there was a peak in sensation-seeking around 16 years of age and then a decline through the mid-20s—in line with findings on the increased activation sensitivity of the socioemotional system.

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39. Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 Developmental Psychology 4, 625–635 (2005).

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41. *Id.* Reprinted with permission granted by author Lawrence Steinberg.

42. Michael A. Tisius' Clemency Application to Missouri Governor Michael L. Parson.

43. *Id.* at 5-7.

44. *Id.* at 29-36.

45. *Id.* at 46.

46. Nick Witkowski, *Missouri Executes Michael Tisius for Crime Committed at Age 19*, American Bar Association, June 16, 2023.

47. Letter of Retired Warden Troy Steele, Michael A. Tisius' Clemency Application to Missouri Governor Michael L. Parson, page 10.

48. *Id.* at 14.

49. "Over 25 years ago, the landmark study by Felitti and colleagues coined the term ACEs by examining how exposure to abuse and household challenges were associated with increased health and mental health risks among nearly 10,000 adults (Felitti et al., 1998)." Nicole Racine, Mark A. Bellis, Sheri Madigan, *An introduction to twenty-five years of adverse childhood experiences: A special issue*, Child Abuse & Neglect, (Dec. 26, 2024) at 1 (citing to Felitti, V. J., Anda, R. F., Nordenberg, D., Williamson, D. F., Spitz, A. M., Edwards, V., ... Marks, J. S. (1998). Relationship of childhood abuse and household dysfunction to many of the leading causes of death in adults). The Adverse Childhood Experiences (ACE) Study, American Journal of Preventive Medicine, 14(4), 245–258.

50. Centers for Disease Control and Prevention, Adverse Childhood Experiences (ACEs), About Adverse Childhood Experiences,Oct. 8, 2024.

51. U.S. Department of Health and Human Services, Office of Population Affairs, Adolescent Development Explained, Nov. 2018.

52. *See* n. 50.

53. David A. Wolfe & Peter Jaffe, *Child abuse and family violence as determinants of child psychopathology*, 23 Canadian Journal of Behavioural Science / Revue Canadienne Des Sciences Du Comportement 3, 282–299 (1991).

54. Daniel P. Chapman, Charles L. Whitfield, Vincent J. Felitti, Shanta R. Dube, Valerie J. Edwards, & Robert F. Anda, *Adverse childhood experiences and the risk of depressive disorders in adulthood*, 82 Journal of Affective Disorders 2, 217-225 (Oct 15, 2004).

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Henry McCollum and Leon Brown: Pressured Into False Confessions

In 1994, Supreme Court Justice Harry Blackmun, having reached the conclusion that the death penalty could never be applied in a constitutional manner, announced that he would "no longer . . . tinker with the machinery of death."[1] In retort, Justice Antonin Scalia described the murder of a young girl by Henry McCollum, age 19, who along with his 15-year-old brother Leon Brown had been sentenced to death in North Carolina for the girl's rape and murder. "How enviable a quiet death by lethal injection compared with that!" Justice Scalia wrote.[2]

In 2010, the North Carolina Republican Party mailed a flier to voters attacking the Democratic House Majority Leader, as a "criminal coddler" who would let death row prisoners "move in next door" because of his support for the state's Racial Justice Act. On the front of the flier was Henry's mugshot. The Democrat lost his seat, and the state GOP gained control of both state houses for the first time in over a century.[3]

But both Henry and his brother were innocent.

The teenage brothers, both Black with intellectual disability, were coerced into confessing despite an absence of physical evidence connecting them to the crime scene. In interrogations, police used racial slurs, threatened them with the death penalty if they did not waive their right to an attorney, and promised they could leave if they confessed.[4] Henry tried to walk out of the police station after he finally confessed. Leon could not sign his own name, so he wrote it in block letters.[5]

Henry's IQ was as low as 51[6] and Leon's as low as 49,[7] well below the threshold of 70 generally indicative of intellectual disability. The National Registry of Exonerations has found that 70% of wrongfully convicted people with a mental illness or intellectual disability made a false confession. Young people are also much more likely to make false confessions than adults.[8]

In 2014, DNA testing revealed that a cigarette butt from the murder scene matched the murder victim's neighbor, Roscoe Artis, who had been sentenced to death for the rape and murder of another local girl that occurred around the same time. After 31 years in prison, the brothers walked free in 2014 and were pardoned by the governor the following year. At the time, Henry was the longest-serving person on North Carolina's death row. Both men experienced severe psychological damage from their wrongful incarcerations. Henry attempted suicide at least once,[9] while Leon's cognitive abilities declined even further. Leon was hospitalized multiple times for psychotic episodes following his release.[10]

"It's terrifying that our justice system allowed two intellectually disabled children to go to prison for a crime they had nothing to do with, and then to suffer there for 30 years. Henry watched dozens of people be hauled away for execution. He would become so distraught he had to be put in isolation. It's impossible to put into words what these men have been through and how much they have lost."[11]

Ken Rose, attorney for Henry McCollum, upon his exoneration in 2014

The brothers later won $75 million in lawsuits against state officials. But their hard-won compensation attracted a lawyer, two so-called advocates, and a sister who preyed on Henry and Leon, swindling them of hundreds of thousands of dollars over several years. A judge observed that "the same vulnerability that subjected [Henry] to a false confession and 31 years of death row imprisonment is now operating on his claims for recovery, that he's subject to manipulation and control." The attorney's license was later suspended, and he was ordered to repay $250,000 to the brothers.[12]

"I've got my freedom. There's still a lot of innocent people in prison today. And they don't deserve to be there."

– Henry McCollum

Endnotes

1. *Callins v. Collins*, 510 U.S. 1141, 1145 (1994) (Blackmun, J., dissenting).
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8. National Registry of Exonerations, *Age and Mental Status of Exonerated Defendants Who Confessed*; *see also Roper v. Simmons*, 543 U.S. 551, 569 (2005).
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10. Joseph Neff, *The Price of Innocence*, The Marshall Project, Apr. 7, 2018.
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12. *See* Neff, n. 10.

Chapter Five:
18- to 20-Year-Olds in Life and Law

"The qualities that distinguish juveniles from adults do not disappear when an individual turns 18 . . . however, a line must be drawn."[1]

Justice Kennedy, writing for the majority in *Roper*.

Older adolescents are now understood to be more like younger adolescents than adults, in that older adolescents are "more susceptible to peer pressure, less future-oriented and more volatile in emotionally charged settings."[2]

"[A]dolescence itself has become elongated compared with that of previous generations. Today's young people finish college, find jobs, get married and leave home much later than their parents did. Just 9 percent of young adults were married in 2010, compared with 45 percent in 1960."[3]

Vincent Schiraldi & Bruce Western, Criminal Justice Policy and Management Program, Harvard Kennedy School

Defining Emerging Adulthood

The idea that there is a distinct life phase between adolescence and young adulthood owes its origin to psychologist Jeffrey Jensen Arnett's seminal 2000 work on emerging adulthood.[4]

Dr. Arnett focused on individuals ages 18 to 25, pointing to trends towards later marriage and parenthood to support the idea that emerging adulthood is a distinct period demographically, subjectively, and in terms of identity exploration, especially in places like the United States which "allow young people a prolonged period of independent role exploration during the late teens and twenties."[5] In addition to marriage and parenthood, financial independence is also now part of the modern calculus around emerging adults.[6] During this extended developmental phase, individuals are prone to taking unreasonable risks as "[c]onnections between the brain's limbic system, which plays a role in emotion regulation, and the prefrontal cortex, which is responsible for inhibition, are slow to develop."[7]

Today, the American Psychology Association defines emerging adulthood as:

"A developmental stage that is neither adolescence nor young adulthood but is theoretically and empirically distinct from them both, spanning the late teens through the twenties, with a focus on ages 18 to 25. Emerging adulthood is distinguished by relative independence from social roles and from normative expectations."[8]

Statutes Curtailing the Rights and Responsibilities of 18- to 20-Year-Olds in Daily Life

> "In recognition of the comparative immaturity and irresponsibility of juveniles, almost every state prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent."[9]
>
> Justice Kennedy, writing for the majority in *Roper*

The Court in *Roper* cited to state statutes addressing the minimum age for voting, jury service, and marriage without the consent of a parent. Both decisions in *Stanford* and *Roper* were focused on 16- and 17-year-olds.

An expansion of the analysis to 18- to 20-year-olds finds a wide variety of federal and state statutes that treat this older group, for all intents and purposes, like their juvenile counterparts. While the age of majority[10] is 18 in most states, [11] the age is 19 in Alabama[12] and Nebraska,[13] and 21 in Pennsylvania,[14] Colorado,[15] and Mississippi.[16] Most states do not allow property transfers to individuals under the Uniform Transfers to Minors Act until age 21.[17] You must be 21 to rent a car in most states, and extra surcharges can be added for those up to the age of 25.[18] Most states allow 18-year-olds to serve on juries, but you must be 19 in Alabama and Nebraska, and 21 in Mississippi and Missouri.[19]

Twenty states prohibit youth under the age of 21 from some forms of gambling[20] and two states prohibit it for youth under the age of 19.[21] In Missouri, when Kevin Johnson was executed, his 19-year-old daughter was not permitted to witness the execution because the law required her to be 21.[22]

Twenty-one is the federally defined legal age for many other activities as well. You must be 21 to purchase cigarettes under federal law.[23] Firearms other than shotguns and rifles, and all ammunition other than ammunition for shotguns or rifles, may be sold only to individuals 21 or older under the Federal Gun Control Act.[24] An individual must be at least 21 to adopt a child.[25] You must be at least 25 years old to serve in the House of Representatives.[26] Under federal law, children can stay on their parent's health insurance until the age of 26.[27] The Internal Revenue Service allows parents to claim children as dependents until age 24 if they are still in school.[28]

Young Adults in the Criminal Legal System

A number of courts and jurisdictions now recognize that younger adults are deserving of additional legal protections in the criminal justice system, the same as juveniles. For example, the Massachusetts Supreme Court recently held that the protections against mandatory life without parole sentences should be extended to people "eighteen, nineteen, or twenty years of age."[32] Because Massachusetts does not authorize use of the death penalty, this ruling exempts this age group from the harshest punishment still available in the state.

In 2015, the city of San Francisco established a Young Adult Court for individuals 18 to 25 years of age in recognition that the prefrontal cortex of a human brain does not develop fully until the early to mid-20s.[33] Based on similar reasoning, a Massachusetts Task Force on Emerging Adults in the Criminal Justice System recommended that in instances other than murder involving a felony crime, "young offenders" should be eligible, at the discretion of a judge, for diversion to juvenile courts.[34]

State legislatures are also increasingly acknowledging the "blurred line between being a juvenile and a young adult"[36] in the criminal legal system. According to 2017 research by Alex Stamm, 36 states allow juvenile courts to exercise jurisdiction over youth up to age 21, six states set the limit at 22 to 25, and three states have no age limit.[37] Mr. Stamm's research identified at least 25 states that have established "special criminal justice policies within the adult criminal justice system for young adults, such as reduced sentencing options, young adult courts, separate prison facilities, or expulsion provisions."[38] A 2020 Juvenile Law Center report identified 15 states with criminal justice programs specifically designed for young adults.[39]

Age Standards Change as Society Changes

"Historically, there has been no definitive age for determining when children have attained the capacity to function as adults. Rather, externalities—changes and developments in society—often have had an effect on raising and lowering the age standard." [29]

Jeffery A. Fagan, *Columbia Law School*

Until 1984, the legal drinking age in the United States was 18, until a "moral panic surrounding teenage drunk driving animated a sudden and sharp increase in the minimum legal drinking age [from 18 to 21]." [30]

Mary Clement, *The Juvenile Justice System: Law and Process*

"Emerging adults disproportionately comprise those who are arrested and incarcerated across the country . . . [and] in a criminal justice system rife with racism, available data suggests racial disparities are worst for this age group."[31]

2020 report by the Juvenile Law Center, Rethinking Justice for Emerging Adults

"Developmentally, there appears to be no meaningful difference between 17-year-olds and 18-year-olds."[35]

2018 Report of the Massachusetts Task Force on Emerging Adults in the Criminal Justice System

Who is an Adult in the Eyes of the Law?

Several states have raised the age of eligibility for juvenile court from 16 to 18.[40] The National Conference of State Legislatures (NCSL) reports that "[i]n 44 states, for most offenses, the maximum age of juvenile court jurisdiction is 17."[41] Only five states (Georgia, Louisiana, North Carolina, Texas, and Wisconsin) still limit eligibility for juvenile court to age 16 and younger.[42] In 2018, Vermont passed Act 201, which expanded the jurisdiction of the Vermont juvenile court system to 18- and 19-year-olds.[43]

For the last three legislative sessions, Massachusetts lawmakers have considered bills which would the raise the age of criminal majority to 21, up from 18.[44] A study by Alex Meggitt of laws governing the behavior of young adults since *Roper* notes that the California legislature has gradually increased the age for entitlement to parole hearings for specified crimes from 18, to 23, to 25, "in light of scientific evidence that certain areas of the brain, particularly those affecting judgment and decision-making, do not develop until the early-to-mid-20s."[45]

Mr. Meggitt notes that many states have taken other actions "that recognize 21 as the dividing line between youth and adults in the criminal system."[46] Other states, including Georgia, Illinois, Mississippi, and Utah, "have amended criminal laws to recognize a dividing line in responsibility between those over and under 21."[47] A DPI analysis of state criminal laws authorizing different definitions, rights, or penalties targeted at young adults since 2012 identified at least thirteen such provisions in twelve states, including: more favorable conditions for parole eligibility and release; possible sentence modification; limits on LWOP sentences; eligibility for juvenile court and youthful sentencing guidelines; and opportunities to be tried as a "youth offender" or treated as a "youthful trainee."[48]

The Retreat from Harsh Punishment for Young Defendants

The U.S. Supreme Court has emphasized that "youth matters in sentencing"[49] and recognized when evolving contemporary standards demand greater protections for young people from society's harshest punishments. State courts and legislatures are beginning to make similar acknowledgements.

Since 2021, three state supreme courts—Massachusetts, Michigan, and Washington— have restricted or prohibited sentences of life without parole (LWOP) for young adults. Massachusetts and Washington extended the prohibition on LWOP to those up to 21 years old, while Michigan extended the prohibition to 18-year-olds.[50] In all three cases, the science about age and brain development was a significant factor. Reforms to the Washington, D.C. criminal code, passed in 2019, prohibit LWOP sentences for people under the age of 25.[51] A 2023 Connecticut law expanded parole eligibility for anyone sentenced to LWOP before 2005 for a crime they committed before age 21.[52] The same year, Illinois abolished LWOP sentences for juveniles and applied that law to nearly all crimes for people under age 21.[53] Each of these developments "concretizes the same principle . . . that 18 is not the proper place to set a limit for who gets to be considered a young person deserving of special protections."[54]

In 2017, the Fayette Circuit Court in Kentucky ruled that the Commonwealth's death penalty statute was unconstitutional as applied to people under 21 at the time of their crime.[55] The court credited Dr. Laurence Steinberg, a leading researcher in the field, who testified that "adolescents [under 21] are more impulsive, more likely to misperceive risk, less able to regulate behavior, more easily emotionally aroused, and, importantly, more capable of change."[56]

Dr. Steinberg argued that "if a different version of *Roper* were heard today, knowing what we know now, one could've made the very same arguments about 18-, 19-, and 20-year-olds that were made about 16- and 17-year-olds in *Roper*." [57]

Judge Ernesto Scorsone interpreted Dr. Steinberg's findings to mean, "put simply, under feelings of stress, anger, fear, threat, etc., the brain of a twenty-year-old functions similarly to a sixteen- or seventeen-year-old."[58] The judge concluded that "[i]f the science in 2005 mandated the ruling in *Roper*, the science in 2017 mandates this ruling."[59] In 2020, the Kentucky Supreme Court held that the youthful defendants who brought claims did not have standing because they had not yet been tried, convicted, or sentenced to death—but did not contest the underlying science or reasoning in Judge Scorsone's opinion.[60] On April 21, 2021, Kentucky prosecutors announced they would no longer seek the death penalty against two of the three teenagers (age 18 and 20) who brought the challenge in the Fayette Circuit Court along with a third 18 year old in a separate case.[61]

Trends in Sentencing Relief for Young Adults Convicted of Violent Crimes

Some state courts have granted relief to young adults convicted of violent crimes because of their youthfulness and cognitive immaturity. For example, in 2023, an appellate court in Illinois granted relief to Quinton Gates, who was convicted of first-degree murder and sentenced to 48 years in prison for an offense committed when he was 18 years and two months old. The court held that "[a]dvances in science and law recognize that emerging adults like Gates are less culpable and more capable of rehabilitation than older offenders,"[62] and cited research showing that "during emotionally charged situations, late adolescents (ages 18-21) respond more like younger adolescents (ages 13-17) than like young adults (22-25) due to differences in brain maturation." [63]The court noted that "the concept of emerging adults has been considered and discussed by the courts in Illinois and throughout the nation," [64]and "[c]aselaw on sentencing young defendants continues to evolve, continues to respond to research on the minds of young people, and continues to forge a more humane approach to incarceration."[65]

Similarly, an Illinois court held in 2021 that Sherman Ward should be able to challenge the constitutionality of his 45-year sentence for a crime committed when he was 19 years old.[66] Mr. Ward was convicted of first-degree murder and other charges for a liquor store robbery committed with several codefendants, during which Mr. Ward never fired a shot. The court held that "juveniles lack maturity, lack a developed sense of responsibility, engage in impulsive reckless behavior, are particularly vulnerable to negative influences, have limited control over their environment, and lack the ability to extricate themselves from settings prone to produce crime."[67]

But they also possess "a greater capability to change" and "their actions are less likely to reflect irretrievable depravity."[68] The court credited "recent legislative developments [that] point to the recognition that individuals between the ages of 18 and 21 are considered minors,"[69] and judicial practice of allowing prisoners to argue on appeal that their "brain was more like a juvenile's than an adult's" at the time of the offense.[70]

Federal courts have frequently cited youthfulness and neuropsychological research in granting sentence reductions to young adult defendants.[71] In New York, a mandatory life sentence for murder and racketeering was reduced to a 30-year sentence for a defendant who was 18 at the time of the offense because the federal court said a defendant's "youth is highly relevant to the Court's understanding of his offense and the Court's measurement of that offense's blameworthiness." Accordingly, "courts cannot simply treat anyone over 18 as an 'adult' for sentencing purposes but must inquire whether the human being they are about to sentence is still in many respects an adolescent."[72]

In 2022, a federal court in Connecticut reduced a defendant's life sentence for a murder committed at age 18 to a sentence of 30 years, citing the "applicable characteristics of late adolescence . . . hot cognition, poor impulse control, and susceptibility to peer pressure."[73] One federal judge in Kansas found that "[i]n light of the timing of adolescent brain development," a 20-year-old defendant "necessarily possessed a lack of maturity and underdeveloped sense of responsibility that made him more likely to make egregious mistakes and engage in poor decision-making."[74]

Another federal judge in New York noted that at the time of sentencing, the legal system "could only guess at [a defendant's] future behavior," but the passage of years demonstrated the defendant's rehabilitation and growth.[75]

Retribution and deterrence are the oft-cited "penological justifications" for extreme sentences—but Minnesota Supreme Court Justice Margaret Chutich argued in a 2022 concurrence that the scientific understanding around brain development "undercut" those justifications as applied to young adults. She cited evidence showing that up to age 25, the brain exhibits a "plasticity" that diminishes a young person's ability to control impulses in accordance with the law and to respond logically to societal norms or restrictions. A sentence that "serves no penological purpose is by its nature disproportionate and therefore unconstitutionally cruel," she wrote. She suggested courts should "determine whether, based on relevant brain science, the brain of the youthful defendant was fully developed at the time of the offense before the court may sentence the defendant to life in prison without the hope of release."[76]

In 2024, the United States Sentencing Commission amended the federal sentencing guidelines to explicitly state that youthfulness at time of offense could be a reason to impose a lesser sentence. The Commission heard testimony from, formerly incarcerated people, and the public before reaching its decision.

U.S. Sentencing Commission Sentencing Guideline for Youthful Individuals

"A downward departure [on a sentence] also may be warranted due to the defendant's youthfulness at the time of the offense or prior offenses. Certain risk factors may affect a youthful individual's development into the mid-20's and contribute to involvement in criminal justice systems, including environment, adverse childhood experiences, substance use, lack of educational opportunities, and familial relationships. In addition, youthful individuals generally are more impulsive, risk-seeking, and susceptible to outside influence as their brains continue to develop into young adulthood. Youthful individuals also are more amenable to rehabilitation. The age-crime curve, one of the most consistent findings in criminology, demonstrates that criminal behavior tends to decrease with age."[77]

Endnotes

1. *Roper v. Simmons*, 543 U.S. 551, 574 (2005).

2. *See* Vincent Schiraldi & Bruce Western, *Why 21 year-old offenders should be tried in family court,* The Washington Post, Oct. 2, 2015.

3. *Id.*

4. Jeffrey Jensen Arnett, *Emerging Adulthood: A theory of development from the late teens through the twenties*, 55 American Psychologist 5, 469-480 at 469 (2000).

5. *Id.*

6. A 2020 report by the Juvenile Law Center noted "studies show [ ] the classic social markers of adulthood—marriage, parenthood, and financial independence—now occur later than at any point in history." Karen U. Lindell & Katrina L. Goodjoint, *Rethinking Justice for Emerging Adults: Spotlight on the Great Lakes Region*, Juvenile Law Center, Sept. 2, 2020.

7. Rebecca Gotlieb, *Age of Opportunity: Lessons from the New Science of Adolescence...*, Learning & the Brain, Aug. 24, 2015.

8. American Psychology Association Dictionary of Psychology, *Emerging Adulthood*, Apr. 19, 2018. For purposes of this report, DPI is following the lead of legislators and courts and focusing on 18-, 19-, and 20-year-olds.

9. *Roper* at 569. (Referencing Appendix B – State Statutes Establishing a Minimum Age to Vote; Appendix C – State Statutes Establishing a Minimum Age for Jury Service; and Appendix D – State Statutes Establishing a Minimum Age for Marriage).

10.The Merriam-Webster Dictionary defines age of majority as "the age at which a person is granted by law the rights (as ability to sue) and responsibilities (as liability under contract) of an adult, called also full age. Note: Age of majority is set by statute, in most states at 18. The age at which a person may perform various acts, as legally drink alcoholic beverages or make a valid will, does not necessarily correspond with the age of majority."

11.USLegal.com, Age of Majority. https://minors.uslegal.com/age-of-majority/; World Population Review, Age of Majority by State, (2025). https://worldpopulationreview.com/state-rankings/age-of-majority-by-state;

12. AL Code *§ 26-1-1 (2024)*.

13. Nebraska Code §43-2101.

14. PA. ST. 1 Pa.C.S.A. §1991. Definitions.

15. Colo. Rev. Stat. §2-4-401(6).

16. Mississippi Code Title 1, S1-3-27 .

17.*See* Cornell Law School Legal Information Institute, Uniform Transfers to Minors Act, Aug. 2021. Last visited on Apr. 24, 2025.

18. *See, e.g.,* Budget Car Rental FAQs, Age Requirements to Rent a Car.

19. *See* Alabama, ALA. CODE § 12-16-60; Nebraska, NEB. REV. STAT. § 25-1601; Mississippi, MISS. CODE ANN. § 13-5-1; Missouri, MO. ANN. STAT. § 494.425.

20. *See* National Research Council (U.S.) Committee on the Social and Economic Impact of Pathological Gambling, C, Legal-Age Gambling Opportunities and Restrictions, Pathological Gambling: A Critical Review (1999). States that prohibit at least some gambling under the age of 21 include Arizona, Iowa, and Louisiana, Mississippi, Nevada, Nebraska, California, Colorado, Connecticut, Illinois, Indiana, Missouri, New Jersey, North Dakota, Oregon, South Carolina, South Dakota, Wisconsin, and Texas.

21. *Id.* Alabama, Alaska.

22. Daughter Seeks Emergency Order to Attend her Father's Execution, Despite Missouri Law, ACLU, Nov. 21, 2022.

23. *See* U.S. Food and Drug Administration, Tobacco 21, Sept. 30, 2024.

24. *See* Title 18, Chapter 44 – Firearms.

25. *See* National Adoption Foundation, Adopting a child....

26. *See* United States House of Representatives, The House Explained.

27. *See* HealthCare.gov, People under 30.

28. *See* IRS, Publication 501 (2024), Dependents, Standard Deduction, and Filing Information, Dec. 19, 2024.

29. Jeffrey A. Fagan, *Atkins , Adolescence, and the Maturity Heuristic: Rationales for a Categorical Exemption for Juveniles from Capital Punishment,* 33 N.M. L. REV. 207, 224 (2003).

30. *Id.*

31. Karen U. Lindell & Katrina L. Goodjoint, Rethinking Justice for Emerging Adults: Spotlight on the Great Lakes Region, Juvenile Law Center, at 3, Sept. 2, 2020.

32. *Commonwealth v. Mattis*, No. SJC-11693 (Mass. Jan. 11, 2024).

33. *See* Superior Court of California, County of San Francisco, Young Adult Court.

34. In support of these recommendations, the Task Force, which included legislators, district attorneys, sheriffs, juvenile service providers, and members of the scientific community argued that "[e]merging adults, while possessing the cognitive capacity to make deliberative decisions, are more likely to be more impulsive, less future oriented, more unstable in emotionally charged settings, and more susceptible to peer and other outside influences[,]" and are "uniquely amenable to rehabilitative programming." *See* Report of the Task Force on Emerging Adults in the Criminal Justice System (S.D.2840, Mass., 2018).

35. *Id*.

36. Alex A. Stamm, *Young Adults Are Different, Too: Why and How We Can Create a Better Justice System for Young People Age 18 to 25*, 95 Texas Law Review 72 ,72-105 (2017).

37. *Id.* at 90-93.

38. *Id.* at 81, (documenting statutes in AL, CO, FL, GA, HI, IN, MI, NJ, OK, SC, VA, and WV). In additionlegislation recently introduced in Maine provides sentencing reforms for people under 26. "Recognizing young people's unique capacity for change, this bill ensures extreme sentences are not imposed without a meaningful opportunity for review," Fair and Just Prosecution (LD 1113, Mar. 12, 2025).

39. *See* Karen U. Lindell & Katrina L. Goodjoint, *Rethinking Justice for Emerging Adults: Spotlight on the Great Lakes Region*, Juvenile Law Center, at 91, Sep. 2, 2020 (listing criminal justice programs designed for emerging adults in AL, CA, CO, FL, GA, IL, IN, MI, MN, NJ, NY, OH, SC, VT, VA, WI).

40. *Id.* at 80.

41. See NCSL, Juvenile Age of Jurisdiction and Transfer to Adult Court Laws, (last visited March 7, 2025).

42. *Id.*

43. *Id.; see also* Vermont Legislature Summary of Act 201 (S.234, 2018).

44. *See* An Act to Promote Public Safety and Better Outcomes for Young Adults (H. 1710, Mass., 2023).

45. Alex Meggitt, *Trends in laws governing the behavior of late adolescents up to age 21 since Roper, 7* Journal of Pediatric Neuropsychology 1-2, 74–87 at 85 (2021) (citing *inter alia* to *People v. Montelongo*, 55 Cal. App. 5th 1016 - Cal: Court of Appeal, 2nd Appellate Dist., 7th Div. 2020; (2013 Cal. Legis. Serv. Ch. 312 (S.B. 260); (2015 Cal. Legis. Serv. Ch. 471 (S.B. 261); and 2017 Cal. Legis. Serv. Ch. 684 (S.B. 394)).

46. *Trends in laws governing the behavior of late adolescents up to age 21 since Roper* at 85. ("For example, in New York, the law requires that male inmates under 21 be kept in separate correctional facilities from those over 21 (NY Correct Law § 71), and Connecticut places the maximum age for confinement to a youth institution at 21 (Conn Gen Stat § 18-73).")

47. *Id.* ("In Georgia, legislators inserted provisions to give those who commit identity fraud a lesser sentence if they are under 21 (2007 Georgia Laws Act 241 (SB 236)). Illinois enacted a law allowing parole review of prisoners who were under 21 at the time of the commission of their offense (2018 Ill Legis Serv PA 100-1182 (HB 531)). In 2013, Mississippi passed laws that provide different penalties for certain homicide offenses when the perpetrator is under 21 (2013 Miss Laws Ch 379 (SB 2255), and in 2006, for those who commit sex offenses while under 21 (Miss Code Ann § 45-33-47). Between 2012 and 2017, Utah passed several laws providing lesser punishment for defendants under 21 who commit certain sexual offenses (2012 Utah Laws Ch 145 (HB 17), 2016 Utah Laws Ch 372 (HB 179), 2017 Utah Laws Ch 290 (HB 222)).")

48. *See* Appendix A.

49. *Miller v. Alabama*, 567 U.S. 460 483 (2012).

50. *See Commonwealth v. Mattis*, 224 N.E.3d 410 (Mass. 2024) (extending the prohibition on LWOP to 18- to 20-year-olds); *Matter of Monschke*, 482 P.3d 276 (Wash. 2021)(extending the prohibition on mandatory LWOP to 19- and 20-year-olds); *People v. Parks*, 987 N.W.2d 161 (Mich. 2022)(extending the prohibition on mandatory LWOP to 18-year-olds) and the combined cases of *People v. Czarnecki* and *People v. Taylor* Docket Nos. 166428 and 166654, decided Apr. 10, 2025 (extending the prohibition on mandatory LWOP to 19- and 20-year-olds).

51. Code of the District of Columbia, Title 2, Chapter 4 – Indeterminate Sentences and Paroles.

52. Jaden Edison, CT legislature broadens parole eligibility, clashes on juvenile justice reform, CT Mirror, June 7, 2023.

53. Illinois Abolishes Life-Without-Parole Sentences for Children, Equal Justice Initiative, Feb. 16, 2023.

54. Daniel Nichanian, A Wave of States Reduce "Death by Incarceration" for Young Adults, Bolts, Feb. 2, 2024.

55. *Commonwealth v. Bredhold,* Order Declaring Kentucky's Death Penalty Statute as Unconstitutional, 14-CR-161, *1 (Fayette Circuit Court, Aug. 1, 2017).

56. *Id.* at 2.

57. *Id*.

58. *Id.* at 10.

59. *Id.* at 6.

60. *Commonwealth v. Bredhold,* 599 S.W.3d 409 (Ky. 2020).

61. *See* Death Penalty Information Center, *Kentucky Prosecutors Drop Death Penalty in Cases that Raised Constitutionality of Capital Punishment for Offenders Aged 18-21*, May 3, 2021.

62. *People v. Gates*, 229 N.E.3d 1012, 1023 (Ill. Ct. App. 2023).

63. *Id.*

64. *Id.* at 1021.

65. *Id.* at 1022.

66. *People v. Ward*, 2021 Ill. App (1st) 181402-U, 2021 WL 1667229. (unpublished).

67. *Id.* at 2.

68. *Id.*

69. *Id.* at 6.

70. *Id.* at 4.

71. *See United States v. Lara*, 658 F.Supp.3d 22 (D.R.I. 2023) (granting sentence reduction for 18-year-old who received life sentence for carjacking and witness intimidation, because "[i] n the past two decades, science, medicine, and legal thought have all underscored that youthful offenders are less culpable than older adults because their brains are less developed in critical areas"); *United States v. Johnson*, 2021 WL 503WL 5037679 (N.D. Cal. 2021) (granting sentence reduction to time served for defendant convicted of conspiracy to commit murder and drug offenses under RICO for offenses committed at ages 18 and 19, noting better understanding of adverse childhood experiences in childhood and risky behavior as a young adult, as well as crediting defendant's "extraordinary rehabilitation" while incarcerated); *United States v. Cruz*, 2021 WL 1326851 (D. Conn. 2021) (granting sentence reduction to defendant who shot and killed fellow gang member at age 18 under orders from a gang leader).

72. *United States v. Ramsay*, 538 F.Supp.3d 407, 423 (S.D.N.Y. 2021).

73. *United States v. Morris*, 2022 WL 3703201, at 8 (D. Conn. 2022).

74. *United States v. Espino*, 2022 WL 4465096, at 2 (D. Kan. 2022) (granting sentence reduction for a person who received a life sentence for drug-related offenses committed at age 20, and also noting that he was "highly susceptible to and dependent on the influence of his older peer").

75. *United States v. Golding*, 2022 WL 2985014, at 3 (S.D.N.Y. 2022).

76. *State v. Hassan*, 977 N.W.2d 633, 644-48 (Minn. 2022) (Chutich, J., concurring).

77. United States Sentencing Commission, Chapter 5 - Determining the Sentence (5H1.1, 2024); *see also Amendments to the Sentencing Guidelines* at 13-14 for reasoning (effective Nov. 2024).

Conclusion

The law must often draw boundaries: to define terms, set expectations, and warn of consequences. But the law is also dynamic, continuously reflecting new learning and understanding in order to remain relevant to a changing society.

Twenty years ago, the Supreme Court embraced new science and behavioral research about juveniles. It acknowledged the changed views of legislatures and juries regarding the culpability of teenagers. And the Court found hope in the transitory characters of teenagers and their "potential to attain a mature understanding of [their] own humanity." In doing so, the Court's decision laid the groundwork for an expansion of rights and legal protections reflected in today's juvenile justice policies. And thousands of young people who might otherwise have died in prisons or execution chambers were given the chance to demonstrate they were capable of meaningful change.

Today there is very little that justifies allowing a teenager to be sentenced to death on his 18th birthday but not the day before. A meaningful examination of all the evidence suggests that 18-, 19- and 20-year-olds are equally deserving as those under 18 to be excluded from death penalty eligibility.

APPENDIX A

Recent State Criminal Laws Authorizing Different Rights or Penalties for Ages 18 to 25

States	Statute	Text	Year Passed
Connecticut	Conn. Gen. Stat. §54-125a	(g)(1) A person convicted of one or more crimes committed while such person was under twenty-one years of age...and who received a definite sentence or total effective sentence of more than ten years' incarceration for such crime...may be allowed to go at large on parole in the discretion of the panel of the Board of Pardons and Paroles.	2024, effective 2024
Illinois	730 ILCS 5/5-4.5-115	(b) A person under 21 years of age at the time of the commission of an offense...and who is not serving a sentence for first degree murder...shall be eligible for parole review by the Prisoner Review Board after serving 10 years or more of his or her sentence or sentences.	2021, effective 2024
District of Columbia	D.C. Code §24-403.03	(b)(1) A defendant convicted as an adult of an offense committed before the defendant's 25th birthday may file an application for a sentence modification under this section (d) If the court denies or grants only in part the defendant's 1st application under this section, a court shall entertain a 2nd application under this section no sooner than 3 years after the date that the order on the initial application becomes final...No court shall entertain a 4th or successive application under this section.	2021, effective 2021
California	Cal Pen Code §3051	(a)(1) A youth offender parole hearing is a hearing by the Board of Parole Hearings for the purpose of reviewing the parole suitability of any prisoner who was 25 years of age or younger, or was under 18 years of age...at the time of the controlling offense. (b)(1) A person who was convicted of a controlling offense that was committed when the person was 25 years of age or younger and for which the sentence is a determinate sentence shall be eligible for release on parole at a youth offender parole hearing under the person's 15th year of incarceration. (Identical language but for 20th year and 25th year for b(2) and b(3)).	2019, effective 2020
Washington	Rev. Code Wash. (ARCW) §10.95.030 interpreted through *In re Pers. Restraint of Monschke*	2(a)(ii) Any person convicted of the crime of aggravated first degree murder for an offense committed when the person is at least 16 years old but less than 18 years old shall be sentenced to a maximum term of life imprisonment and a minimum term of total confinement of no less than 25 years. Notes to Decision, *In re Pers. Restraint of Monschke:* When it comes to mandatory life without parole sentences, the constitutional guaranty of an individualized sentence—one that considers the mitigating qualities of youth—must apply when sentencing 18, 19, or 20 years old at the time of his or her crimes.	2024, effective 2024

States	Statute	Text	Year Passed
Vermont	33 V.S.A. §5280 33 V.S.A. §5103	(b) A State's Attorney may commerce a proceeding in the Family Division of the Superior Court concerning a child who is alleged to have committed an offense after attaining 14 years of age but not 22 years of age that could otherwise be filed in the Criminal Division. (a) The Family Division of the Superior Court shall have exclusive jurisdiction over all proceedings... (2)(A)(ii) Jurisdiction over a child with a pending delinquency may be extended until six months beyond the child's...20th birthday if the child was 18 years of age when he or she committed the offense.	2021, effective 2022 2023, effective 2025
New York	NY CLS CPL §720.10	1. "Youth" means a person charged with a crime alleged to have been committed when he was at least sixteen years old and less than nineteen years old or a person charged with being a juvenile offender... 3. [A] youth...is an eligible youth...the court shall make a statement on the record of the reasons for its determination, a transcript of which shall be forwarded to the state division of criminal justice services...	2024, effective 2024
Massachusetts	ALM GL wwch. 119, §86 §72	(a) "Juvenile", (2) a person under the age of 21 in a youthful offender proceeding If a child commits an offense prior to his eighteenth birthday, and is not apprehended until between such child's eighteenth and nineteenth birthday, the court shall deal with such child in the same manner as if he has not attained his eighteenth birthday, and all provisions and rights applicable to a child under 18 shall apply to such child.	2018, effective 2018 2014, effective 2015
Florida	Fla. Stat. §958.04	(1) The court may sentence as a youthful offender any person: (b) Who is found guilty of or who has tendered, and the court has accepted, a plea of nolo contendere or guilty to a crime that is, under the laws of this state, a felony if such crime was committed before the defendant turned 21 years of age.	2019, effective 2019
Alabama	Code of Ala. §15-19-1 Editor's Note	(a) A person charged with a crime which was committed in his or her minority...may be investigated and examined by the court to determine whether he or she should be tried as a youthful offender Section 26-1-1, as enacted by Acts 1975, No. 77, designates the age of majority 19 years instead of 21 years of age. This chapter is excluded from those provisions.	2012, effective 2012
Michigan	MCLS §762.11	(2)[I]f an individual pleads guilty to a criminal offense, committed on or after the individual's eighteenth birthday but before his or her twenty-sixth birthday, the court...having jurisdiction of the criminal offense may...consider and assign that individual to the status of youthful trainee. If the offense was committed on or after the individual's twenty-first birthday but before his or her twenty-sixth birthday, the individual must not be assigned to youthful trainee status without the consent of the prosecuting attorney.	2020, effective 2021