

CONSIDERATION OF YOUTH FOR YOUNG ADULTS

Juvenile Sentencing Project Quinnipiac University School of Law

January 2020

This memo describes reforms relating to the prosecution and sentencing of young adults ages 18-25 and proposes legislation to limit or mitigate imposition of adult penalties on this age group.

I. BACKGROUND: YOUNG ADULTS ARE LESS CULPABLE AND MORE CAPABLE OF REHABILITATION

The U.S. Supreme Court has made clear that children are entitled to special consideration under the Eighth Amendment in light of their reduced culpability and greater capacity for reform. In *Roper v. Simmons*, 543 U.S. 551 (2005), the Court prohibited the execution of children under 18 at the time of the crime.¹ In *Graham v. Florida*, it held that children convicted of nonhomicide offenses cannot be sentenced to life without parole and must have a “realistic” and “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” 560 U.S. 48, 74-75 (2010). And in *Miller v. Alabama* and *Montgomery v. Louisiana*, the Court established that children must have this meaningful opportunity for release even in homicide cases—except in the rarest of cases where the sentencer determines that the particular child “exhibits such irretrievable depravity that rehabilitation is impossible.” *Montgomery*, 136 S. Ct. 718, 733 (2016); *Miller*, 567 U.S. 460, 473 (2012). These decisions are grounded in “psychology and brain science [showing] fundamental differences between juvenile and adult minds.” *Graham*, 560 U.S. at 68; *see also Miller*, 567 U.S. at 471-472, 472 n.5. As some courts and legislatures across the country are beginning to recognize, brain science and psychological research shows that young adults, whose brains are still developing, are similarly less culpable and more capable of reform than older adults, and thus ought to be treated more like juveniles than adults when they commit crimes.

Indeed, recent studies show that certain brain systems and structures, including those involved in self-regulation and higher-order cognition, continue to develop and mature well into the mid-twenties.² Moreover, research demonstrates that individuals in

¹ In drawing the line at 18, the *Roper* Court explained: “Drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach. For the reasons we have discussed, however, a line must be drawn. . . . The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death eligibility ought to rest.” 543 U.S. at 574.

² *See, e.g., Commonwealth v. Bredhold*, No. 14-CR-161, Order Declaring Kentucky’s Death Penalty Statute as Unconstitutional, at *6-*10 (Fayette Circuit Court, 7th Div. Aug. 1, 2017) (Scorsone, J.) [hereinafter

their late teens and early twenties are less mature than older adults in several ways, including underestimating risk, reduced ability to control impulses and consider future consequences, and social and emotional immaturity.³ Finally, brain science shows that the late teens and early twenties is one of the periods of the most marked neuroplasticity of the brain, suggesting that individuals in this age group have a strong potential for behavioral change.⁴ Thus, recent research makes clear that older teenagers and young adults are, like juveniles, “more capable of change than are adults, and their actions are less likely to be evidence of an ‘irretrievably depraved character,’” *Graham*, 560 U.S. at 68 (citing *Roper*, 543 U.S. at 570), which warrants special consideration in criminal sentencing.

II. EXAMPLES: LEGISLATION PROVIDING FOR SPECIAL TREATMENT OF YOUNG ADULT OFFENDERS

Recognizing that older teens and young adults are more akin to juvenile offenders than to adults in their reduced culpability and greater capacity for reform, several state legislatures have proposed or implemented reforms that account for youth and mitigate criminal punishment imposed on young adults. Moreover, although most courts have thus far declined to do so, some state and federal courts have extended the relief of *Roper*, *Graham*, *Miller*, and *Montgomery* to young adult offenders. The following is a list of legislative reforms (that have been proposed or enacted) and judicial decisions across the country that provide special treatment and consideration of youth for young adult offenders.⁵

Bredhold Order] (citing, among other sources, B.J. Casey et al., *Imaging the Developing Brain: What Have We Learned About Cognitive Development?*, 9 *Trends in Cognitive Sci.* 104-110 (2005); N. Dosenbach, et al., *Prediction of Individual Brain Maturity Using fMRI*, 329 *Sci.* 1358-1361 (2011); A. Hedman, et al., *Human Brain Changes Across the Life Span: A Review of 56 Longitudinal Magnetic Resonance Imaging Studies*, 33 *Hum. Brain Mapping* 1987-2002 (2012)); *State v. O’Dell*, 358 P.3d 359, 364, 364 n.5 (Wash. 2015) (citing “psychological and neurological studies showing that the parts of the brain involved in behavior control continue to develop well into a person’s 20s”) (internal quotation marks omitted).

³ See, e.g., A. Cohen, et al., *When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Non-Emotional Contexts*, 4 *Psychological Science* 549-562, 559-560a (2016) (“[T]hese findings suggest that young adulthood is a time when cognitive control is still vulnerable to negative emotional influences, in part as a result of continued development of lateral and medial prefrontal circuitry.”); L. Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, *Dev. Rev.* Vol. 28(1) 78-106 (Mar. 2008) (noting that “rates of risk-taking are high among 18- to 21-year-olds” and explaining that adolescents and young adults are more likely than adults over 25 to engage in risky behaviors); *Bredhold Order* at *7-*9 (and sources cited therein); *O’Dell*, 358 P.3d at 364 (“[S]tudies reveal fundamental differences between adolescent and mature brains in the areas of risk and consequence assessment, impulse control, tendency toward antisocial behaviors, and susceptibility to peer pressure.”) (citing sources).

⁴ *Bredhold Order* at *10 (citing Laurence Steinberg, *Age of Opportunity: Lessons from the New Science of Adolescence* (2014)).

⁵ This list provides examples of reforms but is not a comprehensive list of all reforms nationwide.

A. Legislative Reform: Youthful Offender Parole

- **California** – In 2017, California passed a statute that extends youth offender parole eligibility to individuals who committed offenses before age 25.⁶ This statute amended earlier legislation providing new parole eligibility rules for individuals who committed crimes under age 23 and directing the parole board to use special criteria and procedures in these cases.⁷ Among other requirements, the statute instructs the parole board in reviewing a youthful offender’s suitability for parole to “give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law.”⁸
- **Illinois** – In 2019, Illinois enacted a statute providing for parole review after 10 years for persons under 21 at the time of the commission of crimes other than first-degree murder and aggravated criminal sexual assault, and after 20 years for crimes of first-degree murder and aggravated criminal sexual assault.⁹ The Prisoner Review Board is directed to consider, *inter alia*, “the diminished culpability of youthful offenders, the hallmark features of youth, and any subsequent growth and maturity of the youthful offender during incarceration.”¹⁰

⁶ A.B. 1308 (Cal. 2017) (amending Cal. Penal Code § 3051), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1308.

⁷ See S.B. 261 (Cal. 2015) (amending Cal. Penal Code § 3051), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB261. Prior to the enactment of S.B. 261, the legislature had enacted S.B. 260, which created these special parole rules for individuals who committed crimes under the age of 18. See S.B. 260 (Cal. 2013) (amending Cal. Penal Code §§ 3041, 3046, 4801 and enacting § 3051), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB260. Now, youth offenders are eligible for parole in California as follows, subject to certain exceptions: (1) those convicted of controlling offenses committed at age 25 or younger and sentenced to a determinate sentence are eligible after 15 years; (2) those convicted of controlling offenses committed at age 25 or younger and sentenced to less than 25 years to life are eligible after 20 years; (3) those convicted of controlling offenses committed at age 25 or younger and sentenced to 25 years to life will be eligible after 25 years. Individuals sentenced to life without parole for controlling offenses committed under age 18 are eligible after 25 years. Cal. Penal Code § 3051(b). Those sentenced to life without parole for crimes committed after reaching the age 18 are not eligible for the youth offender parole process. *Id.* § 3051(h). Individuals sentenced under the three strikes law or “Jessica’s law” are not eligible for the youth offender parole process. See *id.* § 3051(h). In addition, the parole process set forth in § 3051 does not apply “to an individual to whom this section would otherwise apply, but who, subsequent to attaining 26 years of age, commits an additional crime for which malice aforethought is a necessary element of the crime or for which the individual is sentenced to life in prison.” *Id.*

⁸ *Id.* § 4801(c).

⁹ 730 Ill. Comp. Stat. 5/5-4.5-115(b).

¹⁰ 730 Ill. Comp. Stat. 5/5-4.5-115(j). Note that the bill excludes those convicted of predatory criminal sexual assault of a child, certain types of first-degree murder, and those sentenced to natural life in prison. 730 Ill. Comp. Stat. 5/5-4.5-115(b).

B. Legislative Reform: Special Status and Sentencing Relief for Young Adults or “Youthful Offenders”

- **Alabama** — Alabama law permits courts to designate certain offenders under the age of 21 as “youthful offenders.”¹¹ A person charged with a felony and adjudged a youthful offender may receive a suspended sentence, a period of probation, a fine, and/or a term of incarceration not to exceed three years.¹² Moreover, the record will be sealed in a case in which the defendant is granted youthful offender status.¹³
- **Florida** — Florida’s youthful offender law permits alternative sentences for youth under the age of 21 at the time of sentencing for any felony offense other than those carrying a capital or life sentence. Under the law, courts can sentence such defendants to supervision on probation or in a community control program, incarceration in county or community residential facilities, or incarceration in the custody of the state department of corrections for a period not to exceed six years.¹⁴
- **Hawaii** – Hawaii defines “young adult defendant[.]” as a person convicted of a crime under the age of 22 that has not previously been convicted of a felony.¹⁵ Young adult defendants are eligible for specialized correctional treatment, including the possibility of commitment to the custody of the department of public safety and, as far as practicable, special and individualized correctional and rehabilitative treatment according to need. Moreover, young adult defendants may be sentenced to special, indeterminate terms for a maximum of 8 years (for a class A felony) of imprisonment if the court considers such a term adequate. Note that the statute does not apply to young adults convicted of murder or attempted murder.¹⁶
- **Virginia** — Virginia provides the possibility of relief for young adults convicted of certain first-time offenses that occurred before the age of 21 (excluding capital murder, first- and second-degree murder, and other enumerated crimes). In particular, in such cases, judges have the discretion to sentence to an indeterminate period of incarceration of four years.¹⁷

¹¹ Ala. Code §§ 15-9-1 to 15-19-7.

¹² *Id.* § 15-19-6.

¹³ *Id.* § 15-19-7

¹⁴ Fla. Stat. § 958.04.

¹⁵ Haw. Rev. Stat. § 706-667. Excluded are those previously convicted of a felony as an adult or adjudicated as a juvenile for an offense that would be a felony if committed by an adult.

¹⁶ *Id.*

¹⁷ Va. Code § 19.2-311.

C. Legislative Reform: Expanding Juvenile Court Jurisdiction to Include Young Adults

- **Vermont** — Vermont recently passed a law requiring the state’s Department for Children and Families and others to report to the General Assembly on a plan for expanding juvenile court jurisdiction to include 18- and 19-year-olds.¹⁸ Raising the age of juvenile jurisdiction will go into effect for 18-year-olds on July 1, 2020 and for 19-year-olds on July 1, 2022.¹⁹ The Act further provides for expungement of criminal history records of certain qualifying crimes committed by youth ages 18-21 30 days after completion of the sentence if the court finds expungement is in the interests of justice.²⁰
- **Connecticut** — Legislation introduced in Connecticut in 2018 proposed raising the age of juvenile court jurisdiction to encompass all delinquent acts committed by “young adults,” or persons under the age of 21.²¹ (The bill provided for a gradual expansion of juvenile court jurisdiction, to 18-year-olds in the first year, then to 18- and 19-year-olds in the second year, and, finally, in the third year, to 18-, 19-, and 20-year-olds.) The bill did not pass in the 2018 legislative session. In 2019, legislation was introduced that would have expanded the jurisdiction of the juvenile court to include “all teenagers.”²²
- **Massachusetts** — A bill currently pending in Massachusetts would gradually expand the upper age in delinquency and youthful offender cases to include 18- to 20-year-olds, and would similarly expand the upper age of commitment to the Department of Youth Services to ensure adequate rehabilitation opportunities, including extending commitment in youthful offender cases up to age 23.²³
- **Illinois** — A bill introduced in Illinois would expand the definition of “delinquent minor” subject to juvenile court jurisdiction to include, in the first year, 18-year-olds that commit misdemeanor offenses, and, by the third year, 19- and 20-year-olds that commit misdemeanor offenses.²⁴

¹⁸ S. 234, 2017-2018 Sess. (Vt. 2018),

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT201/ACT201%20As%20Enacted.pdf>.

¹⁹ Report to the Vermont Legislature: Report on the Expansion of Juvenile Jurisdiction, Vermont Agency of Human Services, Department of Children and Families (Nov. 1, 2018),

<https://legislature.vermont.gov/assets/Legislative-Reports/Act-201-Report.pdf>.

²⁰ S. 234, 2017-2018 Sess. (Vt. 2018),

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT201/ACT201%20As%20Enacted.pdf>.

²¹ H.B. 5040, Feb. Sess. 2018 (Conn. 2018), <https://www.cga.ct.gov/2018/TOB/h/pdf/2018HB-05040-R00-HB.PDF>.

²² S.B. 57, Jan. Sess. 2019 (Conn. 2019), <https://www.cga.ct.gov/2019/TOB/s/pdf/2019SB-00057-R00-SB.PDF>.

²³ H. 3420, 191st Gen. Ct. (Mass. 2019), <https://malegislature.gov/Bills/191/H3420>.

²⁴ HB 4581, 100th Gen. Ass. (Ill. 2018),

<http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=91&GA=100&DocTypeId=HB&DocNum=4581&GAID=14&LegID=109512&SpecSess=&Session=>.

D. Extending *Roper*, *Graham*, *Miller* and *Montgomery* to Young Adults

- **Connecticut (federal)** — A federal district court for the District of Connecticut has extended *Miller* to an 18-year-old offender, finding that imposition of a mandatory life sentence warranted habeas relief. *See Cruz v. United States*, No. 11-CV-787 (JCH), 2018 WL 1541898 (D. Conn. Mar. 29, 2018) (granting § 2255 habeas relief under *Miller* to a defendant sentenced to mandatory life without parole for a crime committed at age 18, finding a national consensus against imposing mandatory life without parole on 18-year-olds and reasoning that the hallmark characteristics of youth apply to 18-year-olds). Note that the case is currently pending before the Second Circuit. *See Cruz v. United States*, No. 19-989 (2d Cir. 2019).
- **Kentucky** — A circuit court in Kentucky has extended *Roper* to all persons under the age of 21, declaring the death penalty unconstitutional for young adults ages 18-20. *See Commonwealth v. Bredhold*, No. 14-CR-161, Order Declaring Kentucky’s Death Penalty Statute as Unconstitutional (Fayette Circuit Court, 7th Div. Aug. 1, 2017) (Scorsone, J.) (declaring the death penalty unconstitutional for offenders under 21, relying heavily on brain science-related testimony to conclude that the death penalty is a disproportionate punishment for offenders younger than 21 because such individuals are categorically less culpable and have a better chance at rehabilitation). Note that the Kentucky Supreme Court recently heard argument in the appeal of this decision. *See Commonwealth v. Bredhold*, No. 2017-SC-000436 (Ky. 2019).²⁵
- **New Jersey** — A superior court in New Jersey remanded for resentencing a lengthy sentence imposed on a 21-year old defendant, finding that *Miller* supported requiring consideration of youth. *See State v. Norris*, No. A-3008-15T4, 2017 WL 2062145, at *5 (N.J. Super. Ct. App. Div. May 15, 2017).
- **Washington** — The Washington Supreme Court has looked to *Roper*, *Graham* and *Miller* to conclude that a court must consider the youth of an 18-year-old as a mitigating factor justifying an exceptional sentence, citing “fundamental differences between adolescent and mature brains” that might justify a finding of diminished culpability for youthful offenders older than 17. *See State v. O’Dell*, 358 P. 3d 359 (Wash. 2015).

²⁵ The briefs filed in the case are available via the Juvenile Law Center, at <https://jlc.org/cases/commonwealth-v-bredhold>.

III. MODEL LEGISLATION

A. Model Legislation to Raise the Age of Juvenile Court Jurisdiction Above 18

Most bills raising the age of juvenile court jurisdiction amend the age range provided in the definition of those subject to juvenile court jurisdiction. For example, the Illinois bill would amend the definition of “delinquent minor,” Massachusetts’ would amend the age of “criminal majority,” on which its definition of “delinquent child” relies, and the proposed legislation in Connecticut creates a “young adult” category of offenders subject to juvenile court jurisdiction (in addition to those defined as “child”).

The Connecticut bill’s definition of “young adult” for purposes of delinquency matters and proceedings—including the gradual ramp-up to encompass 18-, then 19-, and finally 20-year-olds—is reproduced below, as it might serve as a model for other jurisdictions considering similar reform.

“Young adult” means, for purposes of delinquency matters and proceedings, any person who (A) on or after July 1, 2019, (i) allegedly committed a delinquent act while eighteen years of age, or (ii) committed a delinquent act while eighteen years of age, and (I) subsequent to attaining nineteen years of age, violates any order of the Superior Court or any condition of probation ordered by the Superior Court with respect to a delinquency proceeding, or (II) wilfully fails to appear in response to a summons under section 46b-133, as amended by this act, or at any other court hearing in a delinquency proceeding of which such person had notice, (B) on or after July 1, 2020, (i) allegedly committed a delinquent act while eighteen or nineteen years of age, or (ii) committed a delinquent act while eighteen or nineteen years of age, and (I) subsequent to attaining twenty years of age, violates any order of the Superior Court or any condition of probation ordered by the Superior Court with respect to a delinquency proceeding, or (II) wilfully fails to appear in response to a summons under section 46b-133, as amended by this act, or at any other court hearing in a delinquency proceeding of which such person had notice, and (C) on or after July 1, 2021, (i) allegedly committed a delinquent act while eighteen, nineteen or twenty years of age, or (ii) committed a Governor's Bill No. 5040 LCO No. 349 3 of 75 delinquent act while eighteen, nineteen or twenty years of age, and (I) subsequent to attaining twenty-one years of age, violates any order of the Superior Court or any condition of probation ordered by the Superior Court with respect to a delinquency proceeding, or (II) wilfully fails to appear in response to a summons under section 46b 133, as amended by this act, or at any other court h hearing in a delinquency proceeding of which such person had notice.

B. Model Legislation to Provide for Youthful Offender Parole

California's law providing for youth offender parole for all offenders under the age of 25 at the time of the crime may serve as a model for other states looking to provide similar post-sentencing relief to young adults. The law is produced in part below; for more on the particular youth-sensitive procedures provided and other details.

Cal. Penal Code § 4801(c) provides:

(c) When a prisoner committed his or her controlling offense, as defined in subdivision (a) of Section 3051, when he or she was 25 years of age or younger, the board, in reviewing a prisoner's suitability for parole pursuant to Section 3041.5, shall give great weight to the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law.

Cal. Penal Code § 3051 provides in part:

(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 as specified in paragraph (4) of subdivision (b), at the time of his or her controlling offense.

(2) For the purposes of this section, the following definitions shall apply:

(A) "Incarceration" means detention in a city or county jail, a local juvenile facility, a mental health facility, a Division of Juvenile Justice facility, or a Department of Corrections and Rehabilitation facility.

(B) "Controlling offense" means the offense or enhancement for which any sentencing court imposed the longest term of imprisonment.

(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 by the board during his or her 15th year of incarceration, unless previously released pursuant to other statutory provisions.

(2) 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 life term of less than 25 years to life shall be eligible for release on parole by the board during his or her 20th year of incarceration at a youth offender parole hearing, unless previously released or entitled to

an earlier parole consideration hearing pursuant to other statutory provisions.

(3) 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 life term of 25 years to life shall be eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions.

(4) A person who was convicted of a controlling offense that was committed before the person had attained 18 years of age and for which the sentence is life without the possibility of parole shall be eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions.

...

(e) The youth offender parole hearing to consider release shall provide for a meaningful opportunity to obtain release. The board shall review and, as necessary, revise existing regulations and adopt new regulations regarding determinations of suitability made pursuant to this section, subdivision (c) of Section 4801, and other related topics, consistent with relevant case law, in order to provide that meaningful opportunity for release.

(f)(1) In assessing growth and maturity, psychological evaluations and risk assessment instruments, if used by the board, shall be administered by licensed psychologists employed by the board and shall take into consideration the diminished culpability of juveniles as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual.

(2) Family members, friends, school personnel, faith leaders, and representatives from community-based organizations with knowledge about the individual before the crime or his or her growth and maturity since the time of the crime may submit statements for review by the board.