LIMITING TRANSFER OF YOUNG TEENAGERS TO ADULT COURT

Juvenile Sentencing Project
Quinnipiac University School of Law

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This memo addresses reforms that have raised the minimum age of transfer to adult court to ensure that 14- and 15-year-olds (and younger children) are able to benefit from the rehabilitation-focused juvenile justice system and are not subject to adult penalties even for serious crimes.

I. BACKGROUND: YOUNG ADOLESCENTS REQUIRE SPECIAL TREATMENT

Recent U.S. Supreme Court decisions that limit the sentences that may be imposed on children are grounded in children's reduced culpability and greater capacity for reform, an understanding gleaned in large part from developments in psychology and brain science showing "fundamental differences between juvenile and adult minds." *Miller v. Alabama*, 567 U.S. 460, 471-472 (2012) (citing *Graham v. Florida*, 560 U.S. 48, 68 (2010)). In particular, children lack maturity, are impulsive, take risks, and are more vulnerable to negative influence and outside pressure, all of which render them less deserving of the most severe punishments for their crimes. *Miller*, 567 U.S. at 471. Moreover, "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 an irretrievable depravity." *Id*. (internal quotation marks omitted).

Young adolescents are particularly likely to have underdeveloped self-control systems, deficient judgment, and susceptibility to peer pressure,[1] which contributes to criminal behavior and reduces culpability. Moreover, young adolescents are more likely than older teenagers to mature and change with age, enabling them to better regulate impulses, resist negative external forces, outgrow criminal behavior, and contribute productively to society.[2] Young adolescents

[1] *See, e.g.*, Leon Mann et al. *Adolescent Decision-Making: The Development of Competence*, 12 J. Adolescence 265, 267-70 (1989) (explaining, *inter alia*, that 13-year-olds are less inclined to consider consequences than 15-year-olds); Laurence Steinberg, Sandra Graham et al. *Age Differences in Future Orientation and Delay Discounting*, 80 Child Dev. 28, 36 (2009) (finding "significantly lower planning scores among adolescents between 12 and 15 than among younger or older individuals"); Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence: Why Adolescents May be Less Culpable than Adults*, 18 Behav. Schi & L. 741, 756 (2000) (describing significant gains in psychosocial maturity after age 16); Laurence Steinberg & Kathryn C. Monahan, *Age Differences in Resistance to Peer Influence*, 43 Dev. Psychol. 1531, 1538-41 (2007) (explaining that resistance to peer influence increases linearly over the course of adolescence, especially between ages 14 and 18).

[2] *See, e.g.*, Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 Ann. Rev. Clinical Psychol. 47, 66 (2009); Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence: Why Adolescents May be Less Culpable than Adults*, 18 Behav. Sci. & L. 741, 756 (2000) (describing steep development in psychosocial maturity between the ages of 16 and 19).

are thus especially likely to benefit from the rehabilitation-focused programs and services of the juvenile justice system.

II. EXAMPLES: LEGISLATION LIMITING TRANSFER OF YOUNG TEENAGERS TO ADULT COURT

Several states have recently amended their transfer and sentencing statutes to limit or eliminate transfer of young teenagers to adult court, even for the most serious crimes.

- **Connecticut** recently raised the minimum age of transfer to adult court from 14 to 15, prohibiting transfer of children age 14 and younger to adult court even for the most serious crimes.[3]

- **New Jersey** similarly raised the minimum age of transfer to adult court from 14 to 15.[4] Now, regardless of crime, a 14-year-old can be transferred to adult court only if he or she elects to have the case transferred.[5]

- **California** recently enacted legislation preventing the transfer of an individual to adult court for any crime committed at age 14 or 15, unless the individual is not apprehended until after he or she has aged out of juvenile court jurisdiction.[6]

III. MODEL LEGISLATION TO LIMIT TRANSFER OF YOUNG TEENAGERS TO ADULT COURT

States that have amended their transfer laws to prohibit or limit transfer of young teenagers to adult court have substituted "15" or "16" for "14" in the relevant statutory provisions permitting and discussing transfer. California's legislation, prohibiting transfer of 14- and 15-year-olds to adult court except under narrow circumstances, may be instructive:

> *In any case in which a minor is alleged to be a person described in [section of code describing minors who have committed crimes] by reason of the violation, when he or she was 16 years of age or older, of any offense listed in subdivision (b) [listing serious felony offenses including murder] or any other felony criminal statute, the district attorney or other appropriate prosecuting officer may make a motion to transfer the minor from juvenile court to a court of criminal jurisdiction. The motion shall be made prior to the attachment of jeopardy. Upon the motion, the juvenile court shall order the probation officer to submit a report on the behavioral patterns and social history of the minor. The report shall*

[3] Conn. Gen. Stat. § 46b-127(a). A fourteen-year-old offender can receive an adult sentence only if he or she is defined a "serious juvenile repeat offender" and (1) declines to waive his or her jury trial right in juvenile court (which would trigger transfer to adult court) or (2) violates the conditions of the juvenile court sentence. *See* Conn. Gen. Stat. § 46b-133c(f).
[4] N.J. Stat. § 2A:4A-26.1(c)(1).
[5] *Id.* § 2A:4A-27.
[6] S.B. 1391, 2017-2018 Reg. Sess. (Cal. 2018), *available at* https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1391.

include any written or oral statement offered by the victim pursuant to [relevant provision of the code].

In any case in which an individual is alleged to be a person described in Section 602 by reason of the violation, when he or she was 14 or 15 years of age, of any offense listed in subdivision (b) [listing serious felony offenses including murder], but was not apprehended prior to the end of juvenile court jurisdiction, the district attorney or other appropriate prosecuting officer may make a motion to transfer the individual from juvenile court to a court of criminal jurisdiction. The motion shall be made prior to the attachment of jeopardy. Upon the motion, the juvenile court shall order the probation officer to submit a report on the behavioral patterns and social history of the individual. The report shall include any written or oral statement offered by the victim pursuant to [relevant provision of the code].