

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

In Re Personal Restraint of:) CoA No. 47455-7-II
)
) JOSEPH LEIF WOLF)
) SIXTH NOTICE OF
) SUPPLEMENTAL
) AUTHORITY

Pursuant to RAP 10.8, Petitioner respectfully cites the following
additional authorities:

1. *State v. Ronquillo*, No. 71723-5-I, 2015 WL 6447740 (October 26, 2015) (Holding that Eighth Amendment jurisprudence has unequivocally altered juvenile justice such that the state’s most severe penalties cannot be imposed on juveniles as if they were not children; rejecting the State’s argument that the legislature necessarily considered appropriate punishment for youthful offenders when enacting decline or transfer statutes; and concluding that the Sentence Reform Act is not compromised by requiring courts to consider the relationship between youthfulness and culpability.)

A copy of this decision is attached as Appendix A.

2. Vincent Schiraldi, Bruce Western, and Kendra Bradner, “*Community-Based Responses to Justice-Involved Young Adults*”, National Institute of Justice, Volume 1, September 2015.

SIXTH NOTICE OF SUPPLEMENTAL AUTHORITY -- 1

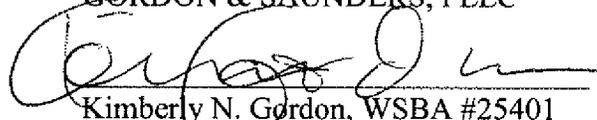
(Concluding that recent advances in behavior and neuroscience confirm that young adults have more psychosocial similarities to children than to older adults; historical data shows that “[c]learly, the current system is not effectively reducing future criminality among this age group”; and the age of juvenile court jurisdiction should be raised to at least 21 years old with additional, gradually diminishing protections for young adults up to age 24 or 25 so that the flexibility of juvenile court is extended to the stage of the life cycle that faces many of the same challenges as adolescence.)

A copy of this article is attached as Appendix B.

DATED this 27th day of October, 2015.

Respectfully submitted,

GORDON & SAUNDERS, PLLC



Kimberly N. Gordon, WSBA #25401
Attorney for Petitioner

DECLARATION OF DOCUMENT FILING AND SERVICE

I, Robert J. Gross, state that on this 12th Day of October, 2015, I caused the **Sixth Notice of Supplemental Authority** to be filed in the **Court of Appeals – Division II**, and a true and correct copy of the same to be served on the following in the manner indicated below:

[X]	James Schacht	() U.S. Mail
	Pierce County Prosecuting Atty Ofc.	(x) Email
	930 Tacoma Ave S Rm 946	() _____
	Tacoma, WA 98402-2171	
	Email: jschach@co.pierce.wa.us	

Signed in Seattle, Washington on this 27th Day of October, 2015.

X  _____
Robert J. Gross
Paralegal

CERTIFICATE OF SERVICE -- 1

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Respondent,)
)
 v.)
)
 BRIAN KEITH RONQUILLO,)
)
 Appellant.)

No. 71723-5-I
DIVISION ONE
PUBLISHED OPINION
FILED: October 26, 2015

2015 OCT 26 9:48
STATE OF WASHINGTON
COURT OF APPEALS

BECKER, J. — At issue is a sentence of 51.3 years imposed for murder and other violent crimes the offender committed in a gang-motivated drive-by shooting when he was 16 years old. We reverse and remand for resentencing because the trial court erroneously concluded there was no legal basis for an exceptional sentence. This is a de facto life sentence governed by Miller v. Alabama.¹ Under our sentencing statutes and Miller, the diminished culpability of youth may serve as a mitigating factor. The court may also consider whether running three sentences consecutively produced a total sentence that is clearly excessive.

¹ ___ U.S. ___, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

FACTS

This case arises from the resentencing of appellant Brian Ronquillo for crimes he committed in 1994. Ronquillo was 16 years old at the time. Riding in a car with other gang members, he fired at least six shots at a group of students who were standing in front of Ballard High School. He missed two intended targets, but one of his shots killed innocent bystander Melissa Fernandes. Another student was injured by a bullet fragment.

Ronquillo was initially charged in juvenile court. The State initiated decline proceedings. The court determined that Ronquillo would be tried as an adult, concluding that his "maturity and sophistication weighed heavily in favor of decline" and the juvenile corrections system, which could not keep him past age 21, would not have sufficient time to rehabilitate him if he were convicted. State v. Ronquillo, noted at 89 Wn. App. 1037, 1998 WL 87641, at *3, review denied, 136 Wn.2d 1018 (1998).²

Ronquillo was tried with two codefendants. Ronquillo, 1998 WL 87641, at *1 n.1. A jury convicted him on four counts: one count of first degree murder, two counts of attempted first degree murder, and one count of second degree assault while armed with a firearm. The trial judge sentenced Ronquillo to the bottom of the standard range for each count. This produced a sentence of 621 months: 261 months for the murder and 180 months for each of the attempted murders, all to be served consecutively, with a concurrent sentence of 45 months for the assault. The consecutive aspect of the sentence was an application of

² See also decline hearing transcript, Clerk's Papers 374-452 at 415, 449.

No. 71723-5-I/3

what is known as the multiple offense policy. Sentences must run consecutively rather than concurrently when a person “is convicted of two or more serious violent offenses arising from separate and distinct criminal conduct.” RCW 9.94A.589(1)(b), former RCW 9.94A.400 (1)(b) (2001).

Ronquillo's defense counsel Anthony Savage had argued that such a long sentence for a teenager was “morally wrong and legally unnecessary.” He asked the court to impose an exceptional sentence by running the sentences concurrently. Savage argued that the operation of the multiple offense policy “results in a presumptive sentence that is clearly excessive.” The request for a concurrent sentence was rejected, and Ronquillo was sentenced to 51.75 years in prison.

This court affirmed Ronquillo's conviction on direct appeal. Ronquillo, noted at 89 Wn. App. 1037. Three years later, Ronquillo returned to this court with a personal restraint petition claiming, among other things, that the trial court erred by concluding it was required to impose consecutive sentences. Ronquillo's petition was denied. In re Pers. Restraint of Ronquillo, noted at 109 Wn. App. 1025, 2001 WL 1516938, at *8.

In 2012, this court held that the statute setting forth the multiple offense policy, RCW 9.94A.589(1)(b), is ambiguous where two or more serious violent offenses arguably have the same seriousness level. State v. Breaux, 167 Wn. App. 166, 273 P.3d 447 (2012). Because this holding applied to Ronquillo's sentence, he again sought relief from his sentence on the ground that it was based on an incorrect calculation of his offender score. The State conceded, and

this court agreed, that Ronquillo was entitled to a remand for resentencing. In re Pers. Restraint of Ronquillo, noted at 176 Wn. App. 1011, 2013 WL 4607710, at *2.

The correct calculation of Ronquillo's offender score under Breaux would reduce his standard range sentence by only 5.25 months if everything else that went into the determination of the sentence remained the same. But the trial court had discretion to reconsider the sentence as a whole. State v. Graham, 178 Wn. App. 580, 586, 314 P.3d 1148 (2013), reversed on other grounds, State v. Graham, 181 Wn.2d 878, 337 P.3d 319 (2014). Ronquillo renewed his request for an exceptional sentence, and the court exercised its discretion to hear his argument. Ronquillo requested that his sentence be reduced to 320 months.

Ronquillo presented two alternative grounds for an exceptional sentence. First, he argued that youth alone can be a mitigating factor. As he recognized, this argument was not readily reconcilable with Washington statutes that govern the sentencing of persons convicted of felonies. Generally, a trial court must impose a sentence within the standard range. State v. Law, 154 Wn.2d 85, 94, 110 P.3d 717 (2005). The court has discretion to depart from the standard range either upward or downward. But this discretion may be exercised only if: (1) the asserted aggravating or mitigating factor is not one necessarily considered by the legislature in establishing the standard sentence range, and (2) it is sufficiently substantial and compelling to distinguish the crime in question from others in the same category. Law, 154 Wn.2d at 95. A factor is sufficiently substantial and compelling to justify departure only if it relates "directly to the crime or the

defendant's culpability for the crime committed." Law, 154 Wn.2d at 95. At the time of Ronquillo's resentencing, a defendant's youthfulness was not, by itself, a mitigating factor that could justify a downward departure. Law, 154 Wn.2d at 97-98; State v. Ha'mim, 132 Wn.2d 834, 847, 940 P.2d 633 (1997).

In recent years, the law governing the sentencing of juveniles has been significantly informed and in some respects unequivocally altered by the Eighth Amendment jurisprudence of the United States Supreme Court. Ronquillo asserted that his sentence of more than 51 years, "a near-life sentence," could not be reconciled with the reasoning of Miller v. Alabama, ___ U.S. ___, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), and its predecessors, Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005), and Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010). In Roper and Graham v. Florida, the Court "adopted categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty." Miller, 132 S. Ct. at 2463. The first two of these cases held that children may not be subjected to capital punishment, and children who have committed nonhomicide offenses may not be subjected to life without the possibility of parole. Miller, 132 S. Ct. at 2463-64. The third case, Miller, holds that "mandatory life-without-parole sentences for juveniles violate the Eighth Amendment." Miller, 132 S. Ct. at 2464. Miller "does not categorically bar a penalty for a class of offenders or type of crime," but it does mandate that "a sentencer follow a certain process—considering an offender's youth and

attendant circumstances—before imposing a particular penalty.” Miller, 132 S. Ct. at 2471.

Roper and Graham v. Florida established that juvenile offenders “are constitutionally different from adults for purposes of sentencing.” Miller, 132 S. Ct. at 2464. The constitutional difference arises from a juvenile's lack of maturity, underdeveloped sense of responsibility, greater vulnerability to negative outside influences, including peer pressure, and the less fixed nature of the juvenile's character traits. Miller, 132 S. Ct. at 2464. Because juveniles have diminished culpability and greater prospects for reform, they are less deserving of the most severe punishments. Miller, 132 S. Ct. at 2464.

With Miller as a backdrop, Ronquillo argued that his youth at the time of the crime should be considered as a mitigating factor that would permit a departure from the strict application of the adult sentencing statutes. Ronquillo's sentencing memorandum described stressors in his family and school background that may have contributed to his gang involvement. It was accompanied by evidence that he has matured and made significant progress in rehabilitating himself through education and employment while in prison.

As an alternative ground for a reduced sentence, Ronquillo invoked the statute that permits a downward departure from the standard range if “the operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive.” RCW 9.94A.535(1)(g).

At resentencing on March 21, 2014, the court concluded that Miller had no application in Ronquillo's case. In Miller, the two petitioners were convicted of

murder and sentenced to a mandatory term of life without parole. The Supreme Court held that the Eighth Amendment “forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.” Miller, 132 S. Ct. at 2469. Because Ronquillo was not facing a mandatory term of life without parole, the court concluded Miller did not supply a constitutional basis compelling consideration of Ronquillo's youth as a mitigating factor. Accordingly, the court looked only to Washington's sentencing statutes and determined that under Law and Ha'mim, age alone cannot be a lawful mitigating factor in a felony sentence. The court also concluded state sentencing law did not permit a finding that Ronquillo's sentence was “clearly excessive.”

I appreciate the presentation on brain research. I find the science incredibly compelling. We certainly know much more about juveniles' brain development today than we did in 1994. And the research does tell us that juveniles' brains have not—usually have not, developed fully at age 16 and that impulsivity, irresponsibility, and vulnerability to peer pressure can be the product of neurological immaturity. It thus provides a very strong basis for the legislature to revisit current laws relating to the punishment of juvenile offenders.

But this Court has concluded that ultimately what is the appropriate use of that juvenile research in criminal sentencing is a decision for the legislature to make and not one this Court can make.

[Ronquillo's] post-conviction behavior is, as the State points out, not related to the crime he committed in 1994 and thus not something that I can legally turn to when imposing a sentence. As I said earlier, this is not in question of what I personally believe is a good sentence for a 16-year-old.

If the law were different, I might be making a different decision. But I do feel that because of the law, I am constrained by how I rule today. For these reasons, I deny the request for an exceptional sentence.^[3]

³ Verbatim Report of Proceedings (Mar. 21, 2014) at 63-65.

No. 71723-5-I/8

Having rejected both bases offered by Ronquillo for an exceptional sentence, the court resentenced him to 615.75 months in prison. This was the same sentence as before, minus 5.25 months to correct for the Breaux error.

Ronquillo appeals. He contends that he is eligible for an exceptional sentence both under the Eighth Amendment as interpreted by Miller and because running his sentences consecutively makes his total sentence “clearly excessive” under RCW 9.94A.535(1)(g).

Whether a particular factor can justify an exceptional sentence is a question of law, which we review de novo. State v. O’Dell, No. 90337-9, 2015 WL 4760476, at *4 (Wash. Aug. 13, 2015).

MILLER APPLIES TO DE FACTO LIFE SENTENCES

The State asks us to affirm the sentence and hold that Miller does not apply to a term-of-years sentence.

A sentence of 51.3 years is not necessarily a life sentence for a 16-year-old, but it is a very severe sentence. A question that has emerged is whether Miller’s mandates “apply not only to mandatory life sentences without parole, but also to the practical equivalent of life-without-parole sentences.” State v. Ragland, 836 N.W.2d 107, 119 (Iowa 2013).

Under the Eighth Amendment, the “imposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.” Miller, 132 S. Ct. at 2466. The Eighth Amendment requires courts to consider a juvenile’s chronological age “and its hallmark features—among them,

immaturity, impetuosity, and failure to appreciate risks and consequences.”

Miller, 132 S. Ct. at 2468.

In a persuasive opinion by the Iowa Supreme Court, the issue was whether a 52.5-year aggregate prison term imposed upon a juvenile for second degree murder and first degree robbery triggered Miller-type protections. State v. Null, 836 N.W.2d 41, 71-75 (Iowa 2013). The court did not regard the juvenile’s “potential future release in his or her late sixties after a half century of incarceration” sufficient to escape the rationales of Graham or Miller. Null, 836 N.W.2d at 71. The court concluded that “Miller’s principles are fully applicable to a lengthy term-of-years sentence” where the juvenile offender would otherwise face “the prospect of geriatric release.” Null, 836 N.W.2d at 71. See also Casiano v. Comm’r of Correction, 317 Conn. 52, 72-80, 115 A.3d 1031 (2015) (imposition of a 50-year sentence without the possibility of parole on a juvenile offender was subject to the sentencing procedures set forth in Miller).

Ronquillo’s sentence contemplates that he will remain in prison until the age of 68. This is a de facto life sentence. It assesses Ronquillo as virtually irredeemable. This is inconsistent with the teachings of Miller and its predecessors. Before imposing a term-of-years sentence that is the functional equivalent of a life sentence for crimes committed when the offender was a juvenile, the court must “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” Miller, 132 S. Ct. at 2469. The trial court erred in concluding that only a literally mandatory life sentence falls within the ambit of Miller.

MILLER APPLIES TO AGGREGATE SENTENCES

The State emphasizes that Ronquillo is serving four separate sentences for crimes against four different victims, not a single lengthy sentence for a single conviction. According to the State, the Eighth Amendment is not implicated by separate sentences for separate crimes. For this proposition, the State relies on State v. Kasic, 228 Ariz. 228, 265 P.3d 410 (App. 2011); Walle v. State, 99 So. 3d 967 (Fla. Dist. Ct. App. 2012); and Bunch v. Smith, 685 F.3d 546 (6th Cir. 2012), cert. denied, 133 S. Ct. 1996 (2013).

The State's cases do not persuasively show that Eighth Amendment analysis does not apply to aggregate or consecutive sentencing of juveniles. In Kasic, a case that is both pre-Miller and factually dissimilar to Ronquillo's, the offender was sentenced to 139.75 years on 32 counts relating to a 1-year spree of arsons, most of them committed after he turned 18. Kasic, 228 Ariz. at 229-31. The court concluded the sentences were not categorically barred under Graham. Kasic, 228 Ariz. at 232-33. In Walle, the Florida Court of Appeal interpreted Graham and Miller narrowly and in doing so relied on another Court of Appeal opinion that has since been called into question by the Florida Supreme Court. Walle, 99 So. 3d at 971, citing Henry v. State, 82 So. 3d 1084 (Fla. Dist. Ct. App. 2012), decision quashed by Henry v. State, ___ So. 3d ___, 2015 WL 1239696 (2015). Bunch, a habeas matter, is unhelpful because of the restricted standard of review. Bunch, 685 F.3d at 550 (Graham did not "clearly establish" that consecutive, fixed-term sentences for juveniles are

unconstitutional when they amount to “the practical equivalent of life without parole”).

In Miller, one of the petitioners, Kuntrell Jackson, was convicted of felony murder *and* aggravated robbery. Miller, 132 S. Ct. at 2461. The Supreme Court reversed his mandatory life sentence with no indication that it should be treated differently on remand than a mandatory life sentence for a single crime. Since Miller, the United States Supreme Court in several cases involving aggregate crimes has granted certiorari, vacated sentences of life without parole, and remanded for further consideration in light of Miller. Blackwell v. California, ___ U.S. ___, 133 S. Ct. 837, 837, 184 L. Ed. 2d 646 (2013); Mauricio v. California, ___ U.S. ___, 133 S. Ct. 524, 524, 184 L. Ed. 2d 335 (2012); Bear Cloud v. Wyoming, ___ U.S. ___, 133 S. Ct. 183, 183-84, 184 L. Ed. 2d 5 (2012); and Whiteside v. Arkansas, ___ U.S. ___, 133 S. Ct. 65, 66, 183 L. Ed. 2d 708 (2012). On remand in Bear Cloud, the Wyoming Supreme Court held that an individualized sentencing hearing was required under Miller, not only when the sentence is life without parole, but also when aggregate sentences result in the functional equivalent of life without parole. Bear Cloud v. State, 2014 WY 133, 334 P.3d 132, 141-44 (Wyo. 2014); see also Null, 836 N.W.2d at 73 (“we agree with appellate courts that have concluded the imposition of an aggregate sentence does not remove the case from the ambit of Miller’s principles.”) Viewing these more recent authorities as persuasive, we conclude that the aggregate nature of Ronquillo’s 51.3-year sentence does not protect it from a Miller challenge.

THE "MILLER FIX" DOES NOT MAKE RESENTENCING UNNECESSARY

The State also argues that Ronquillo's sentence need not be reversed because a new statute known as the "Miller fix" provides a possibility of early release. The legislature enacted the statute in March 2014 with the intention of bringing Washington's sentencing framework into conformity with Miller.⁴ See In re McNeil, 181 Wn.2d 582, 588-89, 334 P.3d 548 (2014) (summarizing the new sentencing guidelines for aggravated first degree murder committed by juvenile offenders). See also Nick Straley, Miller's Promise: Re-evaluating Extreme Criminal Sentences for Children, 89 Wash. L. Rev. 963, 993-96 (2014) (summarizing the new statute). The new statute provides that "any person convicted of one or more crimes committed prior to the person's eighteenth birthday may petition the indeterminate sentence review board for early release after serving no less than twenty years of total confinement." RCW 9.94A.730(1). Early release after 20 years is presumptive in such cases subject to conditions the board may see fit to impose, unless the board determines that even with conditions, "it is more likely than not that the person will commit new criminal law violations if released." RCW 9.94A.730(3).⁵

⁴ Laws of 2014, ch. 130, effective June 1, 2014.

⁵ In the same section, a person who commits another crime after age 18 is disqualified from seeking relief under RCW 9.94A.730(1). Ronquillo may not be eligible for early release under the Miller fix because he has a conviction for custodial assault arising from an incident that occurred not long after he went to prison. See State v. Ronquillo, noted at 99 Wn. App. 1069, 2000 WL 557902, review denied, 142 Wn.2d 1005 (2000).

This is not an appeal from a proceeding under RCW 9.94A.730(1). Ronquillo's situation is unusual because the Breaux error brought him back to the trial court for a post-Miller resentencing in a way not contemplated by the Miller fix. At resentencing, Ronquillo was able to argue that under Miller, his sentence of more than 50 years was unconstitutional and should be replaced with an exceptional sentence downward. The resentencing that occurred was not governed by the new statute, which had not yet gone into effect. Therefore, the State is not arguing that Ronquillo's sentence should be affirmed as a correct application of the Miller fix. Rather, the State is arguing that the existence of a new statutory avenue for early release means that Ronquillo's sentence can be affirmed because it "is not among those prohibited by Miller."

The distinction is illustrated by an analogous case not cited by the parties. Ragland, 836 N.W.2d at 110. The juvenile offender in Ragland was serving a mandatory term of life without parole for a first degree murder committed in 1986. Ragland, 836 N.W.2d at 110. After Miller was decided, the governor of Iowa was concerned about the prospect that offenders serving life sentences for murders committed as juveniles might be able to obtain substantially shorter sentences by seeking resentencing under Miller. The governor attempted to forestall that outcome by commuting 38 juvenile sentences of life without parole to term-of-years sentences. Ragland's sentence was commuted to 60 years without the possibility of parole. Ragland, though technically no longer serving a mandatory life sentence, sought resentencing under Miller. The State opposed the request for resentencing, taking the position that the commutation by the governor made

the sentence that Ragland was serving “no longer illegal.” Ragland, 836 N.W.2d at 113. The trial court, however, granted Ragland's request by resentencing him to life in prison with the possibility of parole after 25 years, making him immediately eligible for parole. The Iowa Supreme Court rejected the State's argument and affirmed. The court stated that the commutation “did not affect the mandatory nature of the sentence or cure the absence of a process of individualized sentencing considerations mandated under Miller. Miller protects youth at the time of sentencing.” Ragland, 836 N.W.2d at 119.

Ragland is persuasive, and we apply its reasoning here. Ronquillo's sentence of 51.3 years is not a constitutional sentence because the trial court erroneously concluded it could not apply Miller. The Miller fix does not correct the error. The error must be corrected in the trial court. We leave it to the trial court to determine what significance, if any, should be given to the potential of early release under the new statute.

YOUTH RELATES TO A JUVENILE OFFENDER'S CULPABILITY

One of the State's concerns in this appeal is that opening the door for Ronquillo to get an exceptional sentence based on his youth will undermine the integrity of the Sentencing Reform Act. As noted above, the Act has been interpreted consistently as disallowing a defendant's personal characteristics from serving as a basis for a sentence outside the standard range. Until recently, age was viewed narrowly as only a personal characteristic. In the leading case of Ha'mim, a defendant unsuccessfully requested an exceptional sentence downward for a robbery conviction on the basis that she was just 18 years old at

the time of the crime. The State argued that the factors that can mitigate sentences are limited to two types: where the facts of the crime itself are less serious than typical for that crime, or where the defendant is less culpable because of outside influences on the defendant's judgment. Ha'mim, 132 Wn.2d at 846. On that basis, the court held that "age alone" could not be a substantial and compelling reason justifying an exceptional sentence. Ha'mim, 132 Wn.2d at 846. Youthfulness could be considered, but only if relevant to the recognized mitigating factor of impaired capacity to tell right from wrong—and then only if there was evidence of such impaired capacity. Ha'mim, 132 Wn.2d at 846.

At Ronquillo's resentencing, the trial court relied heavily on Ha'mim as the basis for refusing his request for an exceptional sentence. "I cannot rely on Mr. Ronquillo's age and the juvenile brain science to impose an exceptional sentence unless there's a demonstration that he lacked the neurological development to—at the time of his crime such that he did not understand right from wrong or that it impaired his ability to conform his conduct to the law. And reluctantly, the court concludes that that showing has not been made."⁶

A recent opinion by our Supreme Court has significantly revised the interpretation of Ha'mim relied on by the trial court. O'Dell, 2015 WL 4760476. In O'Dell, the appellant confronted the court with an argument that Ha'mim should be overruled in light of Miller. The court did not overrule Ha'mim and did not directly apply Miller to the case. In fact, the court explicitly adhered to the two-part test cited in Ha'mim that determines whether a departure from the

⁶ Verbatim Report of Proceedings (Mar. 21, 2014) at 64.

standard range is permissible under the Sentencing Reform Act. But in place of Ha'mim's limitations on the consideration that may be given to a defendant's youthfulness, the court concluded—in light of the studies underlying Miller, Roper, and Graham v. Florida—that youth *can* satisfy the two-part test. Because the trial court did not “meaningfully consider youth as a possible mitigating factor” in O'Dell's case, the court remanded for a new sentencing hearing. O'Dell, 2015 WL 4760476, at *4.

The first part of the two-part test is whether the asserted mitigating factor was necessarily considered by the legislature when it established the standard sentence range for the crime in question. Ha'mim, 132 Wn.2d at 840. In O'Dell, the court held that while the legislature has determined that all defendants 18 or over “*in general*” are equally culpable for equivalent crimes, the legislature could not have considered “particular vulnerabilities—for example, impulsivity, poor judgment, and susceptibility to outside influences—of specific individuals.” O'Dell, 2015 WL 4760476, at *5. In addition, the legislature did not have the benefit of the relatively recent psychological and neurological studies discussed in Miller. “These studies 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.” O'Dell, 2015 WL 4760476, at *6 (footnotes omitted). And it is “precisely these differences that might justify a trial court's finding that youth diminished a defendant's culpability.” O'Dell, 2015 WL 4760476, at *6. In O'Dell, these observations were applied to an adult defendant who was barely over the

age of 18 when his crime was committed. They must necessarily apply even more forcefully to juvenile offenders.

Moreover, Ronquillo was tried as an adult, not as a juvenile. The decline statute, RCW 13.04.030, is not part of the Sentencing Reform Act. Adult criminal jurisdiction is not inevitable for a juvenile charged as Ronquillo was. This is a further reason to doubt that the legislature necessarily considered that juvenile offenders would have their sentences determined under the adult sentencing provisions that produced Ronquillo's sentence. See Graham v. Florida, 130 S. Ct. at 2025 (decline or transfer statutes tell us nothing about the judgments States have made regarding the appropriate punishment for such youthful offenders); Miller, 132 S. Ct. at 2474-75.

The second part of the two-part test is whether the asserted mitigating factor is "sufficiently substantial and compelling to distinguish the crime in question from others in the same category." Ha'mim, 132 Wn.2d at 840. With this part of the test in mind, the O'Dell court critiqued and revised Ha'mim's reasoning:

Having embraced this reasoning—that it is "absurd" to believe that youth could mitigate culpability—this court went on to explain that youth alone could not be a nonstatutory mitigating factor under the SRA because "[t]he age of the defendant *does not relate to the crime* or the previous record of the defendant."

When our court made that sweeping conclusion, it did not have the benefit of the studies underlying Miller, Roper, and Graham—studies that establish a clear connection between youth and decreased moral culpability for criminal conduct. And as the United States Supreme Court recognized in Roper, this connection may persist well past an individual's 18th birthday "[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18 [just as] some under 18 have already attained a level of maturity some adults will never reach."

Today, we do have the benefit of those advances in the scientific literature. Thus, we now know that age may well mitigate a defendant's culpability, even if that defendant is over the age of 18. It remains true that age is not a per se mitigating factor automatically entitling every youthful defendant to an exceptional sentence. In this respect, we adhere to our holding in Ha'mim, 132 Wash.2d at 847, 940 P.2d 633. But, in light of what we know today about adolescents' cognitive and emotional development, we conclude that youth may, in fact, "relate to [a defendant's] crime," *id.* at 847, 940 P.2d 633 (quoting RCW 9.94A.340); that it is far more likely to diminish a defendant's culpability than this court implied in Ha'mim; and that youth can, therefore, amount to a substantial and compelling factor, in particular cases, justifying a sentence below the standard range.

For these reasons, a trial court must be allowed to consider youth as a mitigating factor when imposing a sentence on an offender like O'Dell, who committed his offense just a few days after he turned 18. To the extent that this court's reasoning in Ha'mim is inconsistent, we disavow that reasoning.

O'Dell, 2015 WL 4760476, at *7 (alterations in original) (footnote and citations omitted).

Following O'Dell, we conclude it does not compromise the fundamental principles of our statutory felony sentencing regime to hold that Miller is relevant to Ronquillo's request for an exceptional sentence. The trial court erroneously believed Ronquillo's age could not be considered as a possible mitigating factor, whereas we now know from O'Dell that it can be. As in O'Dell, we remand for a new sentencing hearing. O'Dell, 2015 WL 4760476, at *5, *8. At that hearing the trial court will consider, in light of Miller and O'Dell, whether youth diminished Ronquillo's culpability. See O'Dell, 2015 WL 4760476, at *7.

ARGUABLY, RONQUILLO'S SENTENCE WAS "CLEARLY EXCESSIVE"

As a second basis for requesting an exceptional sentence, Ronquillo invoked the statutory mitigating factor that may be considered when the

operation of the multiple offense policy of RCW 9.94A.589 "results in a presumptive sentence that is clearly excessive." RCW 9.94A.535(1)(g).

At the time of Ronquillo's resentencing, the trial court found his request was barred by this court's decision in State v. Graham, which held that mitigation for a clearly excessive aggregate sentence is allowed only for nonserious violent offenses. Ronquillo committed serious violent offenses. But this court's decision was reversed, and there is no longer a bar to imposing concurrent standard range sentences for serious violent offenses. State v. Graham, 181 Wn.2d at 886-87. In fact, a "clearly excessive" sentence may be reduced either by lessening the individual sentences or by imposing concurrent sentences or both. State v. Graham, 181 Wn.2d at 885-86. This recent decision by our Supreme Court is another reason why Ronquillo is entitled to consideration of his request for an exceptional sentence.

As directed by the plain language of RCW 9.94A.535(1)(g), a trial court must look to the purposes of the Sentencing Reform Act as expressed in RCW 9.94A.010 to determine whether mitigation of a consecutive sentence is appropriate in a particular case. State v. Graham, 181 Wn.2d at 886-87. Those purposes are as follows:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;
- (4) Protect the public;
- (5) Offer the offender an opportunity to improve himself or herself;

(6) Make frugal use of the state's and local governments' resources; and

(7) Reduce the risk of reoffending by offenders in the community.

RCW 9.94A.010. "Sentencing judges should examine each of these policies when imposing an exceptional sentence under .535(1)(g)." State v. Graham, 181 Wn.2d at 887.

Here, these purposes should be examined in light of Miller in the same manner that the exceptional sentencing framework in O'Dell was examined in light of Miller. In that light, many if not all of the seven statutory purposes will point toward a mitigated sentence. On remand, the trial court shall let Miller inform and illuminate its consideration of whether Ronquillo's presumptive aggregate sentence for multiple offenses is clearly excessive in light of the purposes of the Sentencing Reform Act.

The sentence is reversed and remanded for further proceedings not inconsistent with this opinion.⁷

⁷ After oral argument in this case, and contemporaneously with our Supreme Court's opinion in O'Dell, Division Three of this court issued an opinion affirming an 85-year aggregate sentence imposed at resentencing of an offender who was 14 years old when he committed four murders. State v. Ramos, No. 32027-8-III, 2015 WL 4760496 (Wash. Ct. App. Aug. 13, 2015). Unlike here, the trial court in Ramos acknowledged its discretion to: (1) adopt a mitigated sentence in light of Miller, and (2) let the separate sentences on each count run concurrently. Because of this difference, the issues in Ramos are not the same as here and we conclude Ramos does not indicate that Ronquillo's sentence should be affirmed. To the extent Ramos might be interpreted as reasoning that Miller does not apply in cases of nonlife sentences or aggregate sentences, we respectfully disagree.

Becker, J.

WE CONCUR:

Speasman, C.J.

Schivella, J.

STATE OF NEW YORK
2015 OCT 26 AM 9:48

APPENDIX B



Community-Based Responses to Justice-Involved Young Adults

Vincent Schiraldi, Bruce Western and Kendra Bradner

Executive Session on Community Corrections

This is one in a series of papers that will be published as a result of the Executive Session on Community Corrections.

The Executive Sessions at Harvard Kennedy School bring together individuals of independent standing who take joint responsibility for rethinking and improving society's responses to an issue. Members are selected based on their experiences, their reputation for thoughtfulness and their potential for helping to disseminate the work of the Session.

Members of the Executive Session on Community Corrections have come together with the aim of developing a new paradigm for correctional policy at a historic time for criminal justice reform. The Executive Session works to explore the role of community corrections and communities in the interest of justice and public safety.

Learn more about the Executive Session on Community Corrections at:

NIJ's website: www.nij.gov, keywords "Executive Session Community Corrections"

Harvard's website: <http://www.hks.harvard.edu/criminaljustice/communitycorrections>

Foreword

This paper raises important questions about the criminal justice system's response to young adults. Recent advances in behavior and neuroscience research confirm that brain development continues well into a person's 20s, meaning that young adults have more psychosocial similarities to children than to older adults. This developmental distinction should help inform the justice system's response to criminal behavior among this age group.

Young adults comprise a disproportionately high percentage of arrests and prison admissions, and about half of all young adults return to prison within three years following release. At the Office of Justice Programs (OJP), we see the opportunity to reduce future criminal activity — and consequently the number of future victims — by having a justice system that appropriately responds to criminal behavior, helps young adults rebuild their lives, and is not overly reliant on incarceration.

The authors outline a number of thoughtful recommendations aimed at making our justice system more developmentally appropriate in its response to young adults. At OJP, we are committed to collaborating with our local, state and tribal partners on this important issue so that we can help all of our communities become safer, stronger and more stable.

Karol V. Mason
Assistant Attorney General
Office of Justice Programs
U.S. Department of Justice

Introduction and History

In the late 1800s, the Progressive movement mounted a campaign on behalf of America's children. Child labor laws, kindergartens and compulsory schooling were proposed to draw a new generation of immigrants into American society and open social opportunities to their children. This movement — to expand opportunity for disadvantaged youth and integrate them into the mainstream of social life — also spawned the juvenile court.

The juvenile court of the early 20th century represented a clear alternative to adult criminal justice. The new court relaxed the adversarial posture of court procedure, was built on a jurisprudence of diminished capacity and rehabilitation, provided individualized case management, guarded youthful lawbreakers' confidentiality, and relied overwhelmingly on community-based supervision instead of the penitentiary. The early juvenile court recognized that childhood was a distinct stage of life for which different procedures and solutions were needed. The objective of the court was unapologetically progressive: to help build citizenship and social membership, and promote opportunity for a disadvantaged population still at the starting gate of the life course.

These reformers set the age jurisdiction of these juvenile courts at around 18, based on the mores

of the time. However, over a century's worth of experience, along with more recent research on adolescent brain development, now enables us to better understand the adolescent maturation process and demonstrates the need to revisit this strict adherence to an outmoded understanding of maturity to adulthood. This new research shows that the brain and its capacity for mature decision-making continue to evolve well past the teenage years. It also shows that brain development is disrupted and slowed for those exposed to trauma in childhood.

The passage to actual adulthood has also shifted over time. Particularly for disadvantaged youth, this transition now unfolds more slowly. Young adults are more detached from the socializing institutions of work and family, and more dependent on advanced education, than in previous decades.

Our new understanding of the developmental process through young adulthood and historical shifts in the early life course demand new kinds of institutions. Young adults are malleable, and systematic changes that positively affect their lives can have long-lasting, perhaps permanent impacts on them and, subsequently, on their communities.

In this paper, we propose a different kind of criminal justice for young men and women. We propose new institutional methods and processes for young adult justice, for those ages 18 to 24, that can meet the realities of life for today's disadvantaged youth involved in crime and the criminal justice system. What we envision seeks

to extend the reach of the juvenile court while also using it as a basis for a new system that reflects a modern understanding of the transition into adulthood. *Our central recommendation is that the age of juvenile court jurisdiction be raised to at least 21 years old¹ with additional, gradually diminishing protections for young adults up to age 24 or 25.*

Such a system recognizes the diminished capacity for responsible decision-making in youth while harnessing the opportunities presented by their ability to grow, adapt and change. Additionally, such a system would recognize the diminished opportunities and greater demands that now face young adults, particularly in the disadvantaged communities that supply the adult correctional system.

Like the juvenile court of the early Progressive era, this justice system for young adults aims to promote opportunity as much as public safety. It aims to integrate young men and women into the mainstream institutions of work and family while building robust public safety in poor communities to foster order and predictability in daily life. Because the goal of young adult justice is socially integrative, it is primarily community-based, providing supervision and programming amid the social institutions that can ultimately draw young men and women into prosocial adult roles.

Why Young Adults Are a Distinct Population

Recent neurological research shows that brain development for adolescents continues well into young adulthood, and the decision-making capacity of young adults shares much with the

impulsiveness of younger teenagers. Moreover, the transition from childhood to adulthood has slowed in some respects and has become more challenging, particularly for young disadvantaged men. New research on young adult development and historical changes in the transition to adulthood motivate a new, community-based strategy for young adults in the criminal justice system.

Brain Development in Young Adults

Young adults are developmentally distinct from older adults. Recent scientific work suggests that the human brain continues to develop well into the 20s, particularly in the prefrontal cortex region, which regulates impulse control and reasoning (Giedd et al., 1999; Paus et al., 1999; Sowell et al., 1999, 2011; Gruber and Yurgelun-Todd, 2006; Johnson, Blum and Giedd, 2009; Konrad, Firk and Uhlhaas, 2013; Howell et al., 2013). Several studies suggest that people do not develop adult-quality decision-making until their early 20s (Scott and Steinberg, 2003; Barriga, Sullivan-Cossetti and Gibbs, 2009; Bryan-Hancock and Casey, 2010), and others have shown that psychosocial capacities continue to mature even further into adulthood (Steinberg, 2007; Colwell et al., 2005; Grisso and Steinberg, 2003; Cauffman and Steinberg, 2000). Moffitt characterized this gap between cognitive and psychosocial capacities as the “maturity gap,” where cognitive function develops in advance of the executive function (Moffitt, 1993; Galambos, Barker and Tilton-Weaver, 2003). Because of this, young adults are more likely to engage in risk-seeking behavior, have difficulty moderating their responses in emotionally charged situations, or have not fully developed a future-oriented method

of decision-making (Monahan et al., 2009; Mulvey et al., 2004).

This group is also distinct, though less so, from juveniles. For one, cognitive function is, on average, more developed for this age group than for juveniles; within this age group, 24-year-olds have more developed cognitive functioning than, say, 18-year-olds. However, despite the increased cognitive development, they are more likely to engage in risk-seeking behavior than juveniles, which places them at higher risk for physical injury and at greater risk for becoming justice-involved (Steinberg, 2004, 2007). Furthermore, the social contexts that young adults operate within are different from those of juveniles: Young adults are more likely to be influenced by peer groups, have different sets of social expectations, develop a greater degree of independence from family, and have greater access both to employment opportunities and to alcohol or controlled substances.

The transition to adulthood is especially challenging for young men and women who are involved in crime, as they are more likely to have personal histories that can further disrupt psychosocial development. Justice-involved individuals are more likely to have experienced a traumatic incident, including sustaining a traumatic brain injury (TBI) — more than twice as likely as the general population, by some measures (Wolff et al., 2013; prevalence of TBI among prisoners measured as high as 60 percent: Bridwell and MacDonald, 2014). In addition, justice-involved youth and young adults have a higher likelihood of parental incarceration,

poverty, foster care, substance abuse, mental health needs and learning disabilities, all of which have been linked to impeding psychosocial maturity.² Moffitt (2006) linked life-course-persistent offending to harsh parenting practices, low IQ, hyperactivity, rejection at school and reinforcement of poor behavior. If young adults have a history of involvement with the juvenile justice system, there is a higher likelihood that they may be developmentally delayed or have untreated mental health needs (Sampson and Laub, 1997).

The Changing Context of Adulthood

Life-course criminologists see the transition to the adult roles of worker and householder as key stages on the path to criminal desistance. Steady employment, in the context of a stable family, builds routines in everyday life and develops a stake in conformity that ultimately diverts youth from crime. However, this transition to adulthood has changed in recent decades. Youth in their late teens and early 20s are more detached from the socializing institutions of work and family than in the past.³ Moreover, the dislocation of young adulthood is more prevalent among males, and disadvantaged males in particular.

The transition to young adulthood has been transformed by the changing structure of the American family. U.S. marriage rates declined from the 1960s through the mid-1990s. These trends vary with race and income. Marriage rates have always been much lower among African-Americans than whites, and the decline in marriage has been largest for African-American

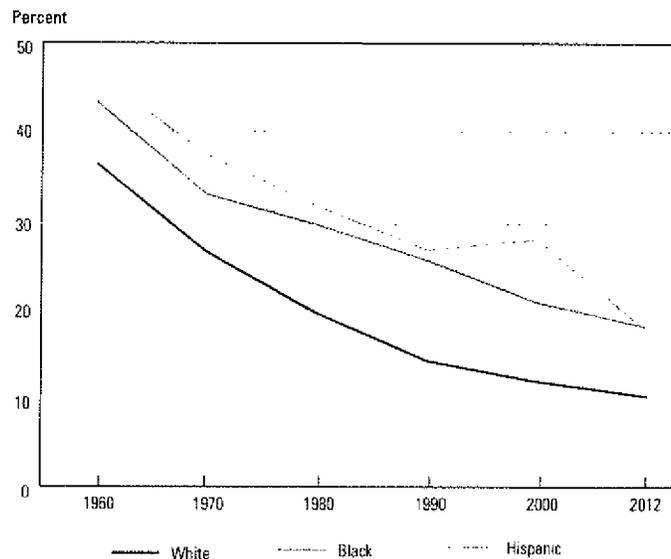
men and women. Most of the decline in marriage has been concentrated among low-income people with little schooling. As marriage rates have declined, the nonmarital birth rate and rates of single parenthood have increased (Ellwood and Jencks, 2004). In 2012, over 40 percent of all U.S. births were to unmarried mothers (Martin et al., 2013). For young adults, these trends in marriage and single parenthood mean that more men were living separately from their children and their children's mothers. These young nonresident fathers made up a large proportion of men with no more than a high school education, especially young African-American men with relatively little schooling.

Although marriage and parenthood contribute greatly to the structure and routine of the daily life of young men without college education, the economic environment has also become more difficult (Danziger and Ratner, 2010). Over the past four decades, the earnings of young men without college education have declined significantly. Among white non-college men in their 20s and early 30s, median earnings declined in real terms from over \$40,000 a year in 1973 to around \$30,000 a year in 2007. Among African-American men of the same age and education, median earnings declined from about \$34,000 to \$25,000 a year in that same period. Among female high school

graduates, both black and white median earnings slightly increased.

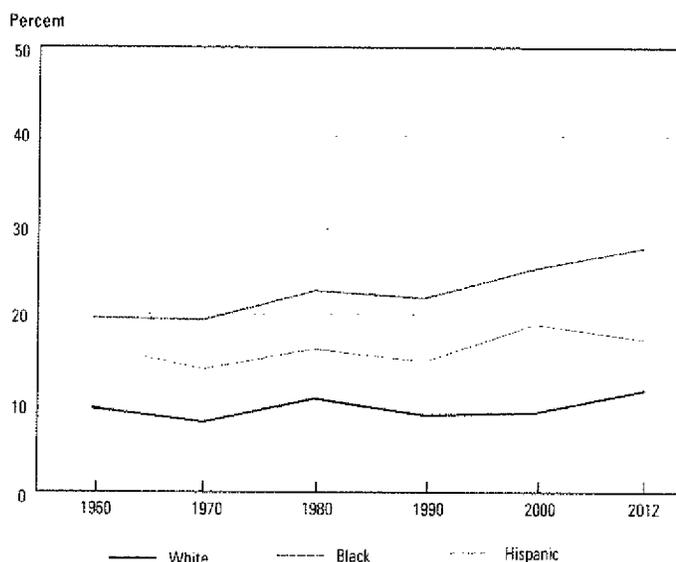
The subsequent detachment of young adults from mainstream institutions has been described as a problem of "disconnection." We can define the proportion of disconnected youth as the fraction that were out of work and out of school.⁴ We can measure the trend in disconnected young adults, ages 16 to 24, with census data showing the percentage of those out of work and out of school over a five-decade period from 1960 to 2012 (see figures 1 and 2). Among young women in 1960, many who were out of work and out of school were married and at home, often raising children. The large decline in the fraction that were out of work and out of school reflects the increasing movement of young women into higher education and the increasing female

Figure 1. Females out of school and not working, ages 16-24, by race and ethnicity, 1960-2012



Source: Data for 1960 to 2000 are from the U.S. Census. Data for 2012 were taken from the American Communities Survey (ACS). Census and ACS microdata were obtained from Ruggles et al. (2012).

Figure 2. Males out of school and not working, ages 16-24, by race and ethnicity, 1960-2012



Source: Data for 1960 to 2000 are from the U.S. Census. Data for 2012 were taken from the American Communities Survey (ACS). Census and ACS microdata were obtained from Ruggles et al. (2012).

labor force participation rates. For young men, the trend in the percentage of those out of school and work can be more properly interpreted as a measure of disconnection. Among white men, the percentage disconnected has increased from 9.8 to 14 percent from 1960 to 2012. Strikingly, among African-American young men, the percentage disconnected has significantly increased from less than 20 to 27 percent. These increases in “disconnectedness” are probably understated by these data; they exclude the much higher number of young men who are incarcerated today than were incarcerated in 1960.

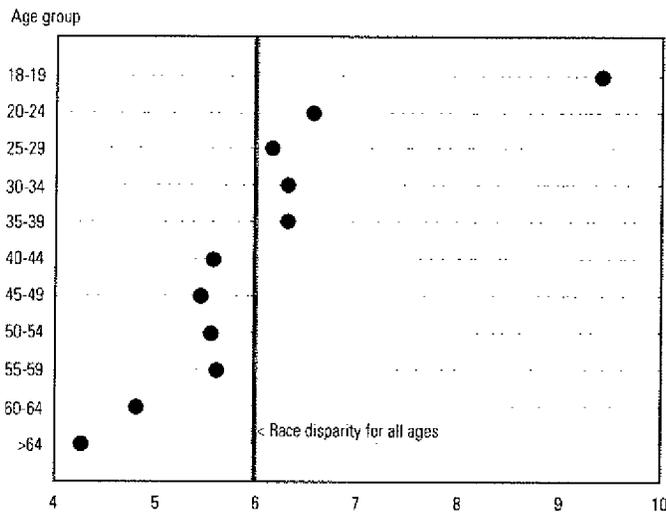
In short, historic shifts in the structure of daily life have left young adults more disconnected from the institutions of family and the labor market. The historically new challenges of young adulthood appear most serious for males without

college education, particularly young men of color with little schooling. It is in this group that incarceration has also increased most dramatically in the past two decades. These levels of demographic disconnectedness and the increasing need for higher education to compete meaningfully in the labor market add to the neurobiological findings, compounding the challenges for this age cohort.

Current Outcomes for Justice-Involved Youth

In 2012, over 200,000 young adults between the ages of 18 and 24 either entered or left the prison system. Nearly 130,000 youths between the ages of 18 and 24 were admitted to state or federal prison, 21 percent of all admissions that year (Carson and Golinelli, 2013, appendix table 3). Another 97,500 between the ages of 18 and 24 — 15 percent of all prison releasees — were released from state or federal prison back to their communities. For those who were released, the recidivism rates are significantly higher than for the population of prison releasees as a whole (Carson and Golinelli, 2013, appendix table 5). Roughly 78 percent of those released will be rearrested within 3 years.⁵ Clearly, the current system is not effectively reducing future criminality among this age group. This matters, because relatively few justice-involved individuals commit their first offense past the age of 25, so the outcomes

Figure 3. The ratio of black to white male imprisonment rates, by age group, 2012



Source: Carson and Golinelli (2013, table 18).

for this population have large and long-lasting consequences for future offending, and for public safety as a whole.

Rates of criminal justice system involvement are markedly higher for minorities, particularly young black men, than for other groups. Among men in prison in 2012, the black-to-white ratio in imprisonment rates was about 6:1 and the Hispanic-to-white ratio was almost 3:1. Carson and Golinelli reported figures showing that the black-white disparities are highest among the 18-19 and 20-24 age cohorts (see figure 3). The rate of incarceration in 2012, either in state or federal prison, was more than 9 times greater for black males ages 18-19 than for white males of the same age, and nearly 3 times the rate for Hispanic men of the same age (Carson and Golinelli, 2013, table 18). For black males ages 20-24, the incarceration rate was almost 7 times greater than for whites of

the same age, and nearly 2.5 times the rate for Hispanic men of the same age.

These large disparities are the result of the high incarceration rate for minority men. More than 1 in 12 black men between 20 and 24 were being held in a secure facility in 2010 (Glaze, 2011, appendix table 3). Cumulative risk of imprisonment is especially high for prime-age black men who dropped out of high school (Western and Pettit, 2010; Western, 2006). Nearly all of those incarcerated in the United States

will be released back to the community eventually. In addition, the most recent estimates suggest that around 26 percent of those on probation are between the ages of 18 and 24 (around 1 million people) (Bonczar, 1997; Maruschak and Bonczar, 2013).

Justice-involved youth are likely to enter the justice system significantly behind their peers in many of the markers of adult life — attachment to work, stable relationships, housing, and educational attainment. They are more likely to have had a parent incarcerated or to have lived in a foster home, and more likely to report regular drug use than young adults in the general population.⁶ About 20 percent of young inmates report having some kind of disability. There is also a drastic difference in educational attainment between incarcerated populations and the general public. In the general public,

more than 70 percent of males ages 18-24 have attained at least a high school diploma or GED; among incarcerated men of the same age, the rate is less than 20 percent. Two-thirds (68 percent) of African-American male high school dropouts have been imprisoned by the time they reached age 35.

Studies suggest that incarceration worsens these disadvantages, creating additional barriers to educational attainment, stable employment, housing, health care and relationships. The multiple disadvantages that these young people face suggest that correctional programming, both in secure facilities and in the community, must include more robust options than skills training alone. Young adults must also build the prosocial skills to succeed in adult roles — exercising impulse control, emotional self-regulation, and better interpreting others' intentions — in addition to the technical skills of their work (Chung, Little and Steinberg, 2005).

Young adults incarcerated in adult prisons are especially at risk for negative outcomes, as adult facilities often function as “schools for crime” where youths are “likely to learn social rules and norms that [legitimate] domination, exploitation, and retaliation” (Bishop and Frazier, 2000: 263-264; see also Howell et al., 2013). For those who spend part or all of their transition to adulthood incarcerated, they miss out on key opportunities to take on adult social roles or prepare for the future through educational and employment experience. Not only does this put these young adults “off-time” in achieving these markers but it also has significant negative consequences for

their lifetime earning potential and the outcomes of their future families.⁷

Implications for an Age-Responsive Criminal Justice System

Our jurisprudence fully accepts that adolescents are entitled to a separate system of justice, with separate facilities, confidentiality protections, and more individualized treatment in a more robust network of rehabilitative programming. Yet, the choice of age 18 (in most states) as the line of demarcation of the jurisdiction of the juvenile court was a relatively arbitrary one, based more on 19th-century customs and mores than rigorous scientific analysis. As we have seen from our review, today's neurobiological and developmental research suggests that young people ages 18-24 are more developmentally akin to juveniles than fully mature adults. Sociologically, young adults today are in far more need of support — for education and employment, for example — to successfully enter adulthood than they were 40 years ago (not to mention 116 years ago, when the juvenile court was founded). In comparing adolescence and young adulthood in the 19th and 21st centuries, it is no exaggeration to say that 22 is the new 16.

If young adults are developmentally similar to juveniles and the path to adulthood is more challenging today, and if the need for a separate court for adolescents is well-established, then it must follow that a substantially different response to lawbreaking by young adults is required. *Our central recommendation is that the age of juvenile court jurisdiction be raised to*

at least 21 years old⁸ with additional, gradually diminishing protections for young adults up to age 24 or 25. This reform would extend much of the flexibility of the juvenile court to a stage of the life cycle that now faces many of the same challenges as adolescence.

An extension of the age of jurisdiction is, however, just one reform for a fundamentally more age-responsive criminal justice system. Regardless of whether reforms are made in the juvenile system, the adult system, or a mix of the two, we envision an age-responsive system as necessarily community based. At each stage, priority should be placed on keeping young adults in the community whenever possible, where they are able to maintain and build prosocial relationships through education, housing, family and employment. To achieve this, we propose a variety of supplementary reforms that go beyond the court's function,⁹ to promote public safety, better life outcomes, greater social integration and more fairness. We describe these reforms at each stage of criminal processing.

Pre-Arrest and Arrest

A more age-responsive system must necessarily involve police as well as social service programs for troubled young people that prevent them from entering the system in the first place. With police and community programs working in close cooperation, young adults could be diverted to social services in lieu of arrest. Elements of this proposal can be found in Seattle, where the Seattle Police Department implemented a type of prearrest diversion for those whose involvement

in crime was clearly related to needs for substance abuse treatment, mental health services and housing.¹⁰ For low-risk young adults, we also recommend the exploration of citations that might obviate the need for a court appearance altogether. Probation-run “diversion” or “adjustment” currently allows juvenile probation departments in many jurisdictions to divert some juvenile cases from formal court processing. Such diversion options should be applied to less serious cases of young adults as well.¹¹

Pretrial

The key objectives here are to minimize the life disruption of a criminal proceeding by moving quickly to trial and taking full advantage of community-based options instead of putting the offender in pretrial detention. The first step toward fulfilling these objectives is the use of an age-sensitive risk assessment that recognizes the behavioral malleability of young adults and their potential for change. Dynamic risk assessment instruments that measure behavioral change have special utility here. In setting bail, courts should recognize the relatively weak financial position of young adults and their more tenuous attachment to employment. Pretrial release could be used more expansively where community resources are enlisted — in the form of mentors and family or community members — to provide social supports in a specialized young adult caseload.

If pretrial detention is used, enhanced mental health and trauma assessments will be needed, along with work-force development and

opportunities for education programming. Additionally, detained young adults should be housed separately from older, more sophisticated inmates whenever possible. Initiatives like the Annie E. Casey Foundation’s Juvenile Detention Alternatives Initiative — which collaboratively examines data on juvenile pretrial populations before creating policies and programs that safely reduce the use of pretrial detention — could readily be retooled to focus on young people in the adult criminal justice system (National Research Council, 2013).¹²

Courts

The expanded juvenile court should be supported by experts with backgrounds in adolescent and young adult development. Human development experts could help to develop case plans aimed at promoting social integration and a smooth transition to stable adult roles. Such case plans would be bolstered by the availability of developmentally appropriate alternatives to incarceration that are able to build life skills and address the specific needs of justice-involved young adults. Partnerships between the court and community organizations facilitate the quick transition to programs, accelerating release from supervision and promoting specialized treatment.

Such partnerships could be realized through a family court model with extended jurisdiction up to at least age 21, through “specialty courts” affecting 18- to 24-year-olds, or through a hybrid model of both courts. With all their imperfections, juvenile courts are far more likely to attempt to

rehabilitate, to dispense procedural justice, and to individualize sentencing decisions than adult courts are. Courts with specially trained judges, prosecutors, defense attorneys and probation staff, and which have access to adequate resources geared toward the special needs of this population (particularly education, workforce development, and cognitive-behavioral training) would go a long way toward legitimizing the adjudicatory process for young adults, which has been shown to improve outcomes.

Community-Based Programs

Whenever possible, young adults should be kept in the community. This means that probation and parole departments, along with their community-based programming partners, have a crucial role to play in the lives of justice-involved young adults. Periods of community supervision should be shorter and, with the savings from reducing supervision periods, more rehabilitative programs should be made available to young people during periods of supervision. Case plan structures and staff preparedness must be achieved within a framework that recognizes not only the need for integration between agencies and community partners but also the opportunities inherent in young adults’ potential to grow, learn and adapt.

There are, currently, programs that demonstrate the feasibility and power of this approach in both mandated and nonmandated settings. San Francisco’s Transitional Age Unit (see sidebar, “San Francisco Adult Probation Transitional Age Youth Unit”) relies on uniquely trained staff,

San Francisco Adult Probation Transitional Age Youth Unit

Since 2009, the San Francisco Adult Probation Department has maintained a special unit for 18- to 25-year-old young adult probationers, called a transitional age youth (TAY) unit. This unit has a dedicated supervisor as well as seven officers who collectively handle 500 cases per year. The TAY unit selects officers based not only on their skill for creating professional alliances but also on their demonstrated passion to provide support for this age group. Officers are trained in cultural competency for this age group.

The unit provides staff enrichment to maintain a positive culture that allows the officers to harness opportunities for change in their young adult clients, even under complex and challenging circumstances. Officers are coached to see the volatility of their young clients, not as a problem but as the foundation for rehabilitation. Additionally, four of the TAY unit officers are certified as *Thinking for Change* (T4C) facilitators. These officers run a TAY-specific T4C class, which requires a unique awareness of the cognitive-behavioral challenges that exist within the TAY unit's target population.

The TAY unit uses a risk-needs assessment to develop case plans and refer young adult probationers to various services. Within the unit, cases are divided into low- and high-risk categories, and there are additional specialized caseloads for women and Pacific Islanders. The staff work collaboratively with each client to develop an individualized treatment and rehabilitation plan (ITRP) based on the risks, needs and potential emotional development of each client. The design of ITRPs is based on the philosophy of "dosage" probation, which calls for plans to be successfully completed in the shortest effective time — preferably within two years for each client. In order to monitor progress and identify setbacks, cases are reviewed every six months. Goals that are set and completed within the ITRP framework can result in a reduction in reporting requirements, early termination of supervision, or possible expungement of records for the young probationers.

The TAY unit's success is derived, in large part, from its collaboration with partners throughout the city and county. The unit works closely with the Mayor's Task Force on Transitional Age Youth. Thirteen of the 25 slots in each cohort of the Mayor's *Interrupt, Predict, Organize* employment program are set aside for TAY unit clients. This year-long program targets high-risk 18- to 25-year-olds who are deemed most likely to be involved in gun violence. Those who successfully complete the program are assisted in obtaining long-term employment.

The unit also works with an Alternative Sentencing Planner in the San Francisco District Attorney's office, who helps in the development of alternative sentencing recommendations to be used by prosecuting attorneys. Additionally, the unit, in collaboration with the Sheriff's Department and the District Attorney, created two classrooms within the Probation Department that provide high school diploma, GED and Adult Basic Education classes as well as other enrichment and elective courses. Educational goals are integrated into the definition of success, as courses can satisfy reporting requirements and community service hours, and can also serve as the basis for term reductions.

All of this work has led to some remarkable results for the TAY unit. In the previous fiscal year, the unit reported a 73-percent successful completion rate. By identifying young probationers, training staff both thoughtfully and comprehensively, developing appropriate case plans, and collaborating with local partners, the TAY unit has demonstrated an ability to turn significant disadvantages into meaningful opportunities for rehabilitation and long-term community integration.

Roca: A Model Community Program for High-Risk Young Men

Roca is a Massachusetts-based nonprofit that specializes in helping court-involved young men, ages 18-24, stay out of jail and get jobs. Roca's work with high-risk young men has reduced recidivism by two-thirds and doubled employment rates. Roca's path to today's success was the product of years of hard work, self-examination, and a rigorous commitment to high standards and outcomes data. Initially founded in 1988 as a program to reduce poverty, violence and teen pregnancy, Roca shifted its focus to offering services to justice-system-involved young men. There was, and in many ways still is, a conspicuous gap in services for these youth, as neither the nonprofit sector nor the justice system were built to adequately serve this population — a population that was responsible for much of the violence and gang activity in and around Boston.

Combining research from the medical and mental health fields, with best practices from community corrections, substance abuse treatment and cognitive-behavioral therapy, Roca's model is built around the premise that high-risk young people ages 17-24 are developmentally capable of change and therefore need the support and opportunities to overcome their destructive behaviors over time. The difficult process of behavior change cannot and will not happen overnight.

Roca engages young men in two years of intensive programming and two years of less intensive follow-up. Given the organization's primary target population — young men with a high propensity for criminal involvement and adult incarceration — Roca focuses on achieving two long-term outcomes for the group: reduced incarceration and increased employment. To measure these outcomes and a range of short and intermediate benchmarks, the program uses a customized, Web-based data tracking and performance-based management system, which provides Roca staff with a critical feedback loop for both individual participant outcomes and staff efforts as well as the ability to analyze patterns in aggregate, organizationwide data.

The Roca Model has four major components: (1) relentless street outreach and engagement; (2) data-driven case management; (3) stage-based programming in education, life skills and employment; and (4) work with engaged institutions, focused on partnering with myriad law enforcement, judicial, corrections and government agencies.

Last year, in a study conducted by Roca evaluation staff — in collaboration with the Harvard Social Impact Bond Lab and the Massachusetts Department of Administration and Finance — approximately 900 high-risk young men served by Roca over a five-year period were compared to a control group of juvenile and adult justice-system-involved young men across Massachusetts. Compared to the control group, Roca's outcomes with young men showed a 65 percent reduction in recidivism and a 100 percent increase in employment.

intensive community collaboration, and a deep understanding of the problems affecting justice-system-involved young adults in developing programs for young probationers. The model of attempting to fully reintegrate young adults back into the community over the course of their probationary period should be a model for all community supervision programs. Roca, Inc., a program for youth in Massachusetts (see

sidebar, "Roca: A Model Community Program for High-Risk Young Men"), provides an important example of community partnerships that lead the courts and law enforcement to seek out nonmandated, community-based alternatives to the adult criminal justice system.

With respect to case plans, they should be individualized, developed in collaboration with

the client, and structured around achievable goals. Setting small, achievable goals helps young adults gain confidence and optimism about their own abilities. Case plans should focus, not on surveillance, but instead on building, finding and utilizing concrete support for young adults within the community. A case plan should encourage and assist the search for housing, employment and education opportunities.

However, supervision is an important element of case plans and must be carefully structured. Supervision expectations must be compatible with prosocial goals. In setting the locations for check-in and service delivery, departments must recognize and adapt to work, school and family schedules of the supervised young adults. For example, the case plan could allow for check-ins outside of work or school hours, or close to a family home. Additionally, departments should prioritize colocation of their services by placing them in areas in which other prosocial services are offered, such as community centers, churches and recreation areas.

Case plans should be built to anticipate and withstand relapse into previous destructive behaviors, and should recognize this as a natural occurrence within the process of maturation and behavioral change for justice-involved young adults. Whenever possible, actions that could be disruptive to full reintegration should, instead, be opportunities for staff to further understand the needs of their clients, and therefore should not be used to automatically find clients in violation of probationary terms.

Positive growth and behavior should also be anticipated, and incentivized. Case plans should be structured to allow for frequent and tangible rewards for positive behavior. Decreased reporting frequency, shortened supervision terms, or possible expungement of records are examples of rewards that can be granted for positive progress.

A case plan should also recognize that, for its duration — and beyond — young adults will need assistance in thinking strategically about how to use their time, especially if they are transitioning out of a highly structured incarcerative environment. Community supervision officers can help create a plan for young adults to structure their time productively, pursue prosocial activities, and develop a positive routine. This reduces the temptation to use downtime to reestablish connections with negative influences, such as gang affiliates, other violent offenders, or environments that led to prior criminal behavior.

Given the levels of attention and understanding necessary for a successful case plan, staff should be trained to understand the psychosocial development and social contexts of young adults and also be trained in facilitating evidence-based cognitive-behavioral programs for this age group.¹³ This level of expertise is required, as probation or parole officers must present themselves to their clients as legitimate, helpful and committed partners in the process of reintegration. Additionally, staff should develop positive professional relationships with clients

and use techniques, such as motivational interviewing, to collaboratively help the young adult build goals that are relevant to him or her.

To do their jobs effectively, well-trained probation and parole officers (as those most closely involved in the lives of these young adults) should be granted broader discretion. They should have the ability to craft and amend supervision conditions, shorten supervision terms for good behavior, and divert cases to community services or treatment, where appropriate, based on a young adult's risk-needs assessment or progress toward prosocial goals.

Incarceration

Incarceration is the most expensive and least effective sentencing option for young adults. However, for cases in which incarceration is the final outcome, sentence lengths should be shorter and more intensely rehabilitative. When youth are incarcerated, "youth discounts" that reduce sentence lengths for young adults should be considered.¹⁴

For those who are incarcerated, we recommend specialized housing (see sidebar, "Future Facilities") where programs are available for treatment, education and work-force development. These facilities should have specially selected and trained staff, be designed or rehabilitated to reflect a more youth-friendly and less correctional atmosphere, and emphasize education, work-force development and cognitive-behavioral training (see Welsh et al., 2012; National Research Council, 2014).¹⁵ Any

Future Facilities

Specialized, rehabilitative-robust facilities focused on the developmental needs of young adults are being planned in several large jurisdictions in the U.S.

New York City Department of Corrections Commissioner Joseph Ponte announced in 2014 that he will be opening a specialized facility for young adults ages 18-21 and has begun planning to improve in-facility programming and educational and mental health services, provide specialized training in adolescent development to his staff, and create alternatives to incarceration and improved reentry planning for the young inmates (Ponte, 2014).

In California, a group of juvenile justice advocates led by renowned Hollywood Producer Scott Budnick is organizing an effort to create a new young adult facility focused on education, treatment and vocational training. The California Leadership Academy (CLA) is planning on opening in 2016 with two 300-bed campuses, one each in Southern and Northern California. The CLA will be operated by a nonprofit organization and the living units will be staffed by social workers and treatment professionals. CLA residents will be drawn from California prison inmates 18-24 years old. The CLA is looking to the successful Missouri model as a guide to developing these new facilities, which enjoy the support of the Governor and the California Department of Corrections and Rehabilitation.

period of incarceration for young adults should be married with brief but robust, specialized aftercare services pairing specially trained parole agents with community-based supports for young parolees. Young inmates and parolees should be incentivized with "merit time" provisions that reduce their terms of incarceration or parole for participation in promising educational, vocational or rehabilitative programs.

Collateral Consequences

Because the collateral consequences of justice involvement are especially severe for young adults, we recommend expanding confidentiality protections to age 24. We envision a continuum of such protections that could range from greater to lesser protections, depending on a youth's age, offense severity, and prior record and rehabilitative efforts. Several states have "youthful offender laws" granting judges the discretion to maintain the confidentiality of young adults up to age 21 and seal their records after conviction.

Recent research on criminal desistance shows that after five to seven years without a subsequent arrest, first-time arrestees are statistically indistinguishable from the general population in their risk of arrest (Blumstein and Nakamura, 2009). This principle, that a period of five to seven years without incident is indicative of one's reintegration with the general population, should be applied to justice-involved young adults. In other words, for justice-involved young adults, a similar time period without incident should warrant their ability to earn a clean record. Therefore, we submit that record sealing or expungement after five years without a new conviction would not only be appropriate but would also — obviously — significantly mitigate the collateral consequences of involvement with the justice system.

A less complete form of protecting young people from collateral consequences could be a "certificate of relief from disabilities" that

could be granted immediately upon conviction or, similarly, a "certificate of good conduct" that could be granted after a period of good behavior. Such certificates signal — to colleges, public housing boards, and regulatory bodies that grant licenses and other professional certificates — that, while not completely spared from having to reveal their record, these youth are worthy of special consideration due to their youthfulness and rehabilitative progress.

Conclusion

Our criminal justice system is currently mismatched with the human development and social context of young adults. This places disadvantaged young people — particularly young men of color with little schooling — in a context in which the risk of incarceration is great, with the potential for enormous long-term damage not only to them but also to the communities from which they originate.

We propose a different kind of criminal justice for young men and women. The system we envision shares much with the juvenile court. It is motivated by recognition of the diminished capacity of young adults in their late teens and early 20s whose brain development is continuing and who are confronting a transition to adulthood that is historically challenging. Its key objective is to promote the process of human development and the transition to stable adult roles that we ultimately believe will contribute to improved public safety and other positive outcomes. In our model, incarceration is used sparingly, and community organizations are enlisted as

partners to promote the social integration of criminally involved young men and women.

The waste of young lives and public resources to lifetimes of incarceration lends moral urgency to the project of young adult justice. Institutions that treat the apprehension of a young person involved in crime as an opportunity for intervention and assistance can promote socially integrative public safety that also alleviates the social costs of punitive criminal justice in our poorest communities.

Endnotes

1. This suggestion mirrors the recommendation of Rolf Loeber and David P. Farrington who, after chairing a National Institute of Justice panel on justice-involved young adults, stated, “We recommend raising the minimum age for referral of young people to adult court to age 21 or 24 so that fewer young offenders are dealt with in the adult criminal justice system” (Loeber, Farrington and Petechuk, 2013). Velazquez (2013) discusses similar rationales.
2. For parental incarceration and foster care issues, see Uggen and Wakefield (2005); for poverty issues: Lynam et al. (2000); for substance abuse issues: Chassin et al. (2010); for mental health needs: Davis and Vander Stoep (1997); and for complex factors: Palmer and Hollin (2000).
3. Empirical evidence on changes in family structure, labor market status and other social indicators is reported by Berlin, Furstenberg and Waters (2010).
4. Similar definitions have been proposed by Wald and Martinez (2003).
5. Durose, Cooper and Snyder (2014, table 2). Rearrest within three years for 2005 releasees as a whole was 71.6 percent. The 24-and-younger age group had a higher recidivism rate than any other age group.
6. Uggen and Wakefield (2005) describe characteristics of young adults returning to the community from incarceration.
7. For impact on earnings and lifetime outcome, see Grogger (1995); Western, Kling and Weiman (2001); Pager (2003); Huebner (2005); Kling (2006); and Western (2006).
8. See endnote 1.
9. Recognizing that raising the age may not be feasible for some jurisdictions, the recommendations that follow could be applied to 18- to 24-year-olds in a jurisdiction that retains a cutoff for adult court jurisdiction at age 18.
10. See Collins, Lonczak and Clifasefi (2014). Evaluation indicates that participants in the LEAD program were 58 percent less likely to be arrested than a typically processed control group.
11. For example, New York City diverted 36 percent of all juvenile arrestees in 2012; 88 percent of those diverted successfully completed their diversion conditions (see New York City Department of Probation, 2013). In Illinois, probation officers can divert cases from court proceedings through

probation adjustments for juvenile offenders charged with misdemeanor offenses. Extending that power to include young adult offenders (18-24 years old) would significantly reduce the jail population and potentially improve the outcomes of young adults (Ishida, 2015).

12. In their 2013 consensus report, *Reforming Juvenile Justice: A Developmental Approach*, the Committee on Assessing Juvenile Justice Reform, appointed by the National Research Council of the National Academies, provides a helpful review of the Juvenile Detention Alternatives Initiative and how the program uses data to lower commitment rates and provide developmentally appropriate interventions for juveniles.

13. The U.K.-based organization Transition to Adulthood has an excellent guide, *Taking Account of Maturity: A Guide for Probation Practitioners*, that discusses methods for staff to understand the complexities of maturity when dealing with young adults (Barrow Cadbury Trust, 2013).

14. Barry Feld writes extensively about the concept of youth discounts for juveniles, wherein youthfulness is formally incorporated as a mitigating factor in sentencing policy. See, for example, Feld (2013). A similar practice of “youth mitigation” is available in Sweden for young adults under 21, with proportional reductions in sentences based on the age when an offense was committed. See pp. 3-4 of Barrow Cadbury Trust and the International Center for Prison Studies (2011) for additional international examples.

15. The evidence base is sparse for programs specifically targeting young adults. However, available research suggests that validated interventions of educational, vocational or employment programs; cognitive-behavioral therapy; drug treatment; and treatment for sex offenders should be effective with young adults as well.

References

Barriga, A.Q., M. Sullivan-Cossetti and John C. Gibbs (2009). “Moral cognitive correlates of empathy in juvenile delinquents.” *Criminal Behaviour and Mental Health* 19(4): 253-264.

Barrow Cadbury Trust (2013). *Taking Account of Maturity: A Guide for Probation Practitioners*. London, England: Barrow Cadbury Trust.

Barrow Cadbury Trust and the International Center for Prison Studies (2011). *Young Adults and Criminal Justice: International Norms and Practices*. London, England: Barrow Cadbury Trust.

Berlin, G., Furstenberg, F.F., and M.C. Waters (Eds.) (Spring 2010). “Transition to Adulthood.” Special Issue. *The Future of Children* 20(1).

Bishop, D.M., and C.E. Frazier (2000). “Consequences of transfer.” In J.E. Fagan and F.E. Zimring (Eds.), *The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court* (pp. 227-276). Chicago, IL: University of Chicago Press.

Blumstein, A., and K. Nakamura (2009). "Redemption in the presence of widespread criminal background checks." *Criminology* 47(2): 327-359.

Bonczar, T.P. (1997). *Characteristics of Adults on Probation, 1995: Special Report*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics. NCJ 164267.

Bridwell, A., and R. MacDonald (2014). "Traumatic Brain Injury in the Criminal Justice Population." Webinar held by the Council of State Governments Justice Center, New York, NY, Feb. 11, 2014.

Bryan-Hancock, C., and S. Casey (2010). "Psychological maturity of at-risk juveniles, young adults and adults: Implications for the justice system." *Psychiatry, Psychology and Law* 17(1): 57-69.

Carson, E.A., and D. Golinelli (Dec. 2013). *Prisoners in 2012: Trends in Admissions and Releases, 1991-2012*. Bulletin. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics. NCJ 243920.

Cauffman, E., and L. Steinberg (2000). "(Im)maturity of judgment in adolescence: Why adolescents may be less culpable than adults." *Behavioral Sciences and the Law* 18(6): 741-760.

Chassin, L., J. Dmitrieva, K. Modecki, L. Steinberg, E. Cauffman, A.R. Piquero, G.P. Knight and S.H. Losoya (2010). "Does adolescent alcohol and

marijuana use predict suppressed growth in psychosocial maturity among male juvenile offenders?" *Psychology of Addictive Behaviors* 24(1): 48-60.

Chung, H.L., M. Little and L. Steinberg (2005). "The transition to adulthood for adolescents in the juvenile justice system: A developmental perspective." In D. Wayne Osgood, M. Foster and C. Flanagan (Eds.), *On Your Own Without a Net: The Transition to Adulthood for Vulnerable Populations* (pp. 68-91). Chicago, IL: University of Chicago Press.

Collins, Susan E., H.S. Lonczak and S.L. Clifasefi (2014). "LEAD Program Evaluation: Recidivism Report." Harm Reduction Research and Treatment Lab, University of Washington-Harborview Medical Center. Available at: <http://leadkingcounty.org/lead-evaluation>.

Colwell, L.H., K.R. Cruise, L.S. Guy, W.M. McCoy, K. Fernandez and H.H. Ross (2005). "The influence of psychosocial maturity on male juvenile offenders' comprehension and understanding of the Miranda warning." *Journal of the American Academy of Psychiatry and the Law* 33(4): 444-454.

Danziger, S., and D. Ratner (2010). "Labor market outcomes and the transition to adulthood." *The Future of Children* 20(1): 133-158.

Davis, M., and A. Vander Stoep (1997). "The transition to adulthood for youth who have serious emotional disturbance: Developmental transition and young adult outcomes." *Journal of Mental Health Administration* 24(4): 400-427.

- Durose, M.R., A.D. Cooper and H.N. Snyder (2014). Special Report. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics. NCJ 244205.
- Ellwood, D.T., and C. Jencks (2004). "The uneven spread of single-parent families: What do we know?" In K.M. Neckerman (Ed.), *Social Inequality* (pp. 3-78). New York, NY: Russell Sage Foundation.
- Feld, B.C. (2013). "The youth discount: Old enough to do the crime, too young to do the time." *Ohio State Journal of Criminal Law* 11(1): 107-148.
- Galambos, N.L., E.T. Barker and L.C. Tilton-Weaver (2003). "Who gets caught at maturity gap? A study of pseudomature, immature, and mature adolescents." *International Journal of Behavioral Development* 27(3): 253-263.
- Giedd, J.N., J. Blumenthal, N.O. Jeffries, F.X. Castellanos, H. Liu, A. Zijdenbos, T. Paus, A.C. Evans and J.L. Rapoport (1999). "Brain development during childhood and adolescence: A longitudinal MRI study." *Nature Neuroscience* 2: 861-863.
- Glaze, L.E. (2011). *Correctional Populations in the United States, 2010*. Bulletin. Washington, DC: U.S. Department of Justice, Bureau of Statistics. NCJ 236319.
- Grisso, T., and L. Steinberg (2003). "Juveniles' competence to stand trial: A comparison of adolescents' and adults' capacities as trial defendants." *Law and Human Behavior* 27(4): 333-363.
- Grogger, J. (1995). "The effect of arrests on the employment and earnings of young men." *Quarterly Journal of Economics* 110: 51-71.
- Gruber, S.A., and D.A. Yurgelun-Todd (2006). "Neurobiology and the law: A role in juvenile justice." *Ohio State Journal of Criminal Law* 3: 321-340.
- Howell, J.C., B.C. Feld, D.P. Mears, D.P. Farrington, R. Loeber and D. Petechuk (2013). "Bulletin 5: Young Offenders and an Effective Response in the Juvenile and Adult Justice Systems: What Happens, What Should Happen, and What We Need to Know." Study Group on the Transitions Between Juvenile Delinquency and Adult Crime. Final report to National Institute of Justice (grant number 2008-IJ-CX-K402). Available at: <https://ncjrs.gov/pdffiles1/nij/grants/242935.pdf>.
- Huebner, B.M. (2005). "The effect of incarceration on marriage and work over the life course." *Justice Quarterly* 22: 281-303.
- Ishida, K. (2015). "Young Adults in Conflict with the Law: Opportunities for Diversion." Juvenile Justice Initiative. Available online at: <http://jjjustice.org/wordpress/wp-content/uploads/Young-Adults-in-Conflict-with-the-Law-Opportunities-for-Diversion.pdf>.
- Johnson, S.B., R.W. Blum and J.N. Giedd (2009). "Adolescent maturity and the brain: The promise and pitfalls of neuroscience research in adolescent health policy." *Journal of Adolescent Health* 45(3): 216-221.

Kling, J.R. (2006). "Incarceration length, employment, and earnings." *American Economic Review* 96(3): 863-876.

Konrad, K., C. Firk and P.J. Uhlhaas (2013). "Brain development during adolescence." *Deutsches Arzteblatt International* 110(25): 425-431.

Loeber, R., D.P. Farrington and D. Petechuk (2013). "Bulletin 1: From Juvenile Delinquency to Young Adult Offending." Study Group on the Transitions between Juvenile Delinquency and Adult Crime. Final report to National Institute of Justice (grant number 2008-IJ-CX-K402). Available at: <https://ncjrs.gov/pdffiles1/nij/grants/242931.pdf>.

Lynam, D.R., A. Caspi, T.E. Moffitt, P.H. Wikstrom, R. Loeber and S. Novak (2000). "The interaction between impulsivity and neighborhood context on offending: The effects of impulsivity are stronger in poorer neighbourhoods." *Journal of Abnormal Psychology* 109(4): 563-574.

Martin, J.A., B.E. Hamilton, M.J.K. Osterman, S.C. Curtin and T.J. Mathews (2013). "Births: Final Data for 2012." *National Vital Statistics System*, vol. 62, no. 9. Available at: http://www.cdc.gov/nchs/data/nvsr/nvsr62/nvsr62_09.pdf.

Maruschak, L.M., and T.P. Bonczar (Dec. 2013). *Probation and Parole in the United States, 2012*. Bulletin. Washington, DC: U.S. Department of Justice. NCJ 243826.

Moffitt, T.E. (1993). "Adolescence-limited and life-course-persistent antisocial behavior." *Psychological Review* 100(4): 674-701.

Moffitt, T.E. (2006). "A review of research on the taxonomy of life-course persistent versus adolescence-limited anti-social behavior." In F.E. Cullen, J.P. Wright and K.R. Blevins (Eds.), *Taking Stock: The Status of Criminological Theory* (vol. 15, pp. 277-311). New Brunswick, NJ: Transaction Press.

Monahan, K.C., L. Steinberg, E. Cauffman and E.P. Mulvey (2009). "Trajectories of antisocial behavior and psychosocial maturity from adolescence to young adulthood." *Developmental Psychology* 45(6): 1654-1668.

Mulvey, E.P., L. Steinberg, J. Fagan, E. Cauffman, A.R. Piquero, L. Chassin, G.P. Knight, R. Brame, C.A. Schubert, T. Hecker and S.H. Losoya (2004). "Theory and research on desistance from antisocial activity among serious adolescent offenders." *Youth Violence and Juvenile Justice* 2(3): 213-236.

National Research Council (2013). *Reforming Juvenile Justice: A Developmental Approach*. Committee on Assessing Juvenile Justice Reform. R.J. Bonnie, R.L. Johnson, B.M. Chemers and J.A. Schuck (Eds.). Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: National Academies Press.

National Research Council (2014). *Investing in the Health and Well-Being of Young Adults*. Committee on Improving the Health, Safety, and Well-Being of Young Adults. R.J. Bonnie, C. Stroud and H. Breiner (Eds.). Washington, DC: National Academies Press.

- New York City Department of Probation (2013). "Do More Good: A Progress Report From the NYC Department of Probation." Available online at: http://issuu.com/nycprobation/docs/dop_progress_report_-_draft_-_12-18.
- Pager, D. (2003). "The mark of a criminal record." *American Journal of Sociology* 108(5): 937-975.
- Palmer, E.J., and C.R. Hollin (2000). "The interrelations of socio-moral reasoning, perceptions of own parenting and attributions of intent with self-reported delinquency." *Legal and Criminological Psychology* 5(2): 201-218.
- Paus, T., A. Zijdenbos, K. Worsley, D.L. Collins, J. Blumenthal, J.N. Giedd, J.L. Rapoport and A.C. Evans (1999). Structural maturation of neural pathways in children and adolescents: In vivo study. *Science* 283: 1908-1911.
- Ponte, J. (New York City Department of Corrections Commissioner) (2014). Letter to Gordon Campbell (New York City Board of Corrections Chair), "Supplemental Information: Enhanced Supervision Housing Variance Request," Nov. 4, 2014. Available at: http://www.nyc.gov/html/boc/downloads/pdf/Variance_Documents/ESH-Supplemental2%20%20Final.pdf.
- Ruggles, S., J.T. Alexander, K. Genadek, R. Goeken, M.B. Schroeder and M. Sobek (2012). Integrated Public Use Microdata Series: Version 5.0 [machine-readable database]. Minneapolis, MN: Minnesota Population Center [producer and distributor].
- Sampson, R.J., and J.H. Laub (1997). "A life-course theory of cumulative disadvantage and the stability of delinquency." In T.P. Thornberry (Ed.), *Developmental Theories of Crime and Delinquency: Vol. 7. Advances in Criminological Theory* (pp. 133-161). New Brunswick, NJ: Transaction Press.
- Scott, E.S., and L. Steinberg (2003). "Blaming youth." *Texas Law Review* 81: 799-840.
- Sowell, E.R., P.M. Thompson, C.J. Holmes, T.L. Jernigan and A.W. Toga (1999). "In vivo evidence for post-adolescent brain maturation in frontal and striatal regions." *Nature Neuroscience* 2(10): 859-861.
- Sowell, E.R., P.M. Thompson, K.D. Tessner and A.W. Toga (2011). "Mapping continued brain growth and gray matter density reduction in dorsal frontal cortex: Inverse relationships during post-adolescent brain maturation." *Journal of Neuroscience* 21: 8819-8829.
- Steinberg, L. (2004). "Risk-taking in adolescence: What changes, and why?" *Annals of the New York Academy of Sciences* 1021: 51-58.
- Steinberg, L. (2007). "Risk taking in adolescence: New perspectives from brain and behavioral science." *Current Directions in Psychological Science* 16: 55-59.
- Uggen, C., and S. Wakefield (2005). "Young adults reentering the community from the criminal justice system: The challenge of becoming an adult." In D.W. Osgood, M. Foster and C. Flanagan

(Eds.), *On Your Own Without a Net: the Transition to Adulthood for Vulnerable Populations* (pp. 114-144). Chicago, IL: University of Chicago Press.

Velazquez, T. (2013). "Young adult justice: A new frontier worth exploring." *The Chronicle of Social Change*. Available at: <https://chronicleofsocialchange.org/policy-paper/chronicle-exclusive-young-adult-justice-a-new-frontier-worth-exploring/2687>

Wald, M., and T. Martinez (2003). "Connected by 25: Improving the Life Chances of the Country's Most Vulnerable 14-24 Year Olds." Available at: <http://www.hewlett.org/uploads/files/ConnectedBy25.pdf>.

Welsh, B.C., M.W. Lipsey, F.P. Rivara, J.D. Hawkins, S. Aos and M.E. Hollis-Peel (2012). "Promoting change, changing lives: Effective prevention and intervention to reduce serious offending." In R. Loeber and D.P. Farrington (Eds.), *From Juvenile Delinquency to Adult Crime: Criminal Careers, Justice Policy, and Prevention* (pp. 245-277). New York, NY: Oxford University Press.

Western, B. (2006). *Punishment and Inequality in America*. New York, NY: Russell Sage Foundation.

Western, B., J.R. Kling and D.F. Weiman (2001). "The labor market consequences of incarceration." *Crime and Delinquency* 47: 410-427.

Western, B., and B. Pettit (2010). "Incarceration and social inequality." *Daedalus* 139(3): 8-19.

Wolff, N., J. Huening, J. Shi and B.C. Frueh (Oct. 2013). *Screening for and Treating PTSD and*

Substance Use Disorders Among Incarcerated Men. Policy Brief. New Brunswick, NJ: Rutgers University, Center for Behavioral Health Services and Criminal Justice Research.

Other Resources

Bernberg, J.G., and M.D. Krohn (2003). "Labeling, life chances, and adult crime: The direct and indirect effects of official intervention in adolescence on crime in early adulthood." *Criminology* 41: 1287-1318.

Bernberg, J.G., M.D. Krohn and C.J. Rivera (2006). "Official labeling, criminal embeddedness, and subsequent delinquency." *Journal of Research in Crime and Delinquency* 43: 67-88.

Bottoms, A., and J. Shapland (2011). "Steps toward desistance among male young adult recidivists." In S. Farrall, M. Hough, S. Maruna and S.R. Abington (Eds.), *Escape Routes: Contemporary Perspectives on Life After Punishment* (pp. 43-80). New York, NY: Routledge.

Cullen, F.T. (2007). "Make rehabilitation corrections' guiding paradigm." *Criminology and Public Policy* 6: 717-728.

Farrington, D., A.R. Piquero and W.G. Jennings (2013). *Offending from Childhood to Late Middle Age: Recent Results from the Cambridge Study in Delinquent Development* (p. 21). New York, NY: Springer-Verlag.

Helyar-Cardwell, V. (2009). *A New Start: Young Adults in the Criminal Justice System*. London, England: Barrow Cadbury Trust.

Helyar-Cardwell, V. (2010). *Young Adult Manifesto*. London, England: Barrow Cadbury Trust.

Howden, L.M., and J.A. Meyer (2011). *Age and Sex Composition, 2010*. 2010 Census Brief. Washington, DC: U.S. Census Bureau.

Huizinga, D., and K.L. Henry (2008). "The effect of arrest and justice system sanctions on subsequent behavior: Findings from longitudinal and other studies." In A.M. Liberman (Ed.), *The Long View of Crime: A Synthesis of Longitudinal Research* (pp. 220-254). New York, NY: Springer.

Lipsey, M.W. (2009). "The primary factors that characterize effective interventions with juvenile offenders: A meta-analytic overview." *Victims and Offenders* 4: 124-147.

Lipsey, M.W., and F.T. Cullen (2007). "The effectiveness of correctional rehabilitation: A review of systematic reviews." *Annual Review of Law and Social Science* 3: 297-320.

Lipsey, M.W., and D.B. Wilson (1998). "Effective intervention for serious juvenile offenders: A synthesis of research." In R. Loeber and D.P. Farrington (Eds.), *Serious and Violent Juvenile Offenders: Risk Factors and Successful Interventions* (pp. 313-345). Thousand Oaks, CA: Sage Publications.

Loughran, T.A., E.P. Mulvey, C.A. Schubert, J. Fagan, A.R. Piquero and S.H. Losoya (2009). "Estimating a dose-response relationship between length of stay and future recidivism in serious juvenile offenders." *Criminology* 47: 699-740.

Modecki, K.L. (2008). "Addressing gaps in the maturity of judgment literature: Age differences and delinquency." *Law and Human Behavior* 32(1): 78-91.

Sampson, R.J., and J.H. Laub (1993). *Crime in the Making: Pathways and Turning Points Through Life*. Cambridge, MA: Harvard University Press.

Seiter, R.P., and K.R. Kadela (2003). "Prisoner reentry: What works, what does not, and what is promising." *Crime and Delinquency* 49: 360-388.

Snyder, H.N., and J. Mulako-Wangota (2013). *Arrest in the United States, 1980-2011*. Data source: FBI Uniform Crime Reporting Program. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

Uggen, C. (2000). "Work as a turning point in the life course of criminals: A duration model of age, employment, and recidivism." *American Sociological Review* 65: 529-546.

Walsh, C. (2010). "Youth justice and neuroscience: A dual-use dilemma." *British Journal of Criminology* 51(1): 21-39.

Warr, M. (1998). "Life-course transitions and desistance from crime." *Criminology* 36(2): 183-216.

Wikstrom, P.O., and K. Trieber (2007). "The role of self-control in crime causation: Beyond Gottfredson and Hirschi's general theory of crime." *European Journal of Criminology* 4(2): 237-264.

Zimring, F.E. (1998). "Toward a jurisprudence of youth violence." In M. Tonry and M.H. Moore (Eds.), *Youth Violence* (pp. 477-501). Chicago, IL: University of Chicago Press.

Author Note

Vincent Schiraldi is Senior Advisor to the Mayor's Office of Criminal Justice in New York City. He has formerly served as Commissioner of the New York City Probation Department and as Director of the District of Columbia Department of Youth Rehabilitation Services. Bruce Western is Faculty

Chair of the Program in Criminal Justice Policy and Management at Harvard Kennedy School, and Daniel and Florence Guggenheim Professor of Criminal Justice at Harvard University. Kendra Bradner is Project Coordinator of the Executive Session on Community Corrections at Harvard Kennedy School.

The authors would like to thank Molly Baldwin, Christine Cole, Brent Cohen, Marie Garcia, Amy Solomon and Wendy Still for their insightful comments on earlier versions of this paper.

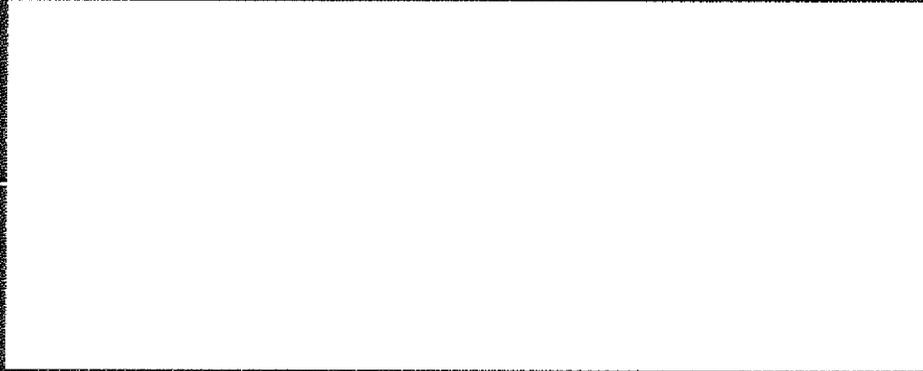
Findings and conclusions in this publication are those of the authors and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

U.S. Department of Justice
Office of Justice Programs
National Institute of Justice
8660 Cherry Lane
Laurel, MD 20707-4651



PRESORTED STANDARD
POSTAGE & FEES PAID
DOJ/NIJ/GPO
PERMIT NO. G-26

Official Business
Penalty for Private Use \$300



Members of the Executive Session on Community Corrections

Molly Baldwin, Founder and CEO, Roca, Inc.

Barbara Broderick, Chief Probation Officer, Maricopa County Probation Adult Probation Department

Douglas Burris, Chief Probation Officer, United States District Court, The Eastern District of Missouri, Probation

John Chisholm, District Attorney, Milwaukee County District Attorney's Office

Christine Cole (Facilitator), Executive Director, Program in Criminal Justice Policy and Management, Harvard Kennedy School

George Gascón, District Attorney, San Francisco District Attorney's Office

Adam Gelb, Director, Public Safety Performance Project, The Pew Charitable Trusts

Susan Herman, Deputy Commissioner for Collaborative Policing, New York City Police Department

Michael Jacobson, Director, CUNY Institute for State and Local Governance, Professor, Sociology Department, CUNY Graduate Center, City University of New York, Institute for State and Local Governance

Sharon Keller, Presiding Judge, Texas Court of Criminal Appeals

Marc Levin, Policy Director, Right on Crime; Director, Center for Effective Justice, Texas Public Policy Foundation

Glenn E. Martin, President and Founder, JustLeadershipUSA

Anne Milgram, Vice President of Criminal Justice, Laura and John Arnold Foundation

Jason Myers, Sheriff, Marion County Sheriff's Office

Michael Nail, Commissioner, Georgia Department of Community Supervision

James Pugel, Chief Deputy Sheriff, Washington King County Sheriff's Department

Steven Raphael, Professor, Goldman School of Public Policy, University of California, Berkeley

Nancy Rodriguez, Director, National Institute of Justice

Vincent N. Schiraldi, Senior Advisor, Mayor's Office of Criminal Justice, New York City Mayor's Office

Sandra Susan Smith, Associate Professor, Department of Sociology, University of California, Berkeley

Amy Solomon, Senior Advisor to the Assistant Attorney General, Co-Chair, Federal Interagency Reentry Council Staff Working Group, Office of Justice Programs, United States Department of Justice

Wendy S. Still, Chief Adult Probation Officer (retired), San Francisco Adult Probation Department

John Tilley, State Representative, Kentucky Legislature

Steven W. Tompkins, Sheriff, Massachusetts Suffolk County Sheriff's Department

Harold Dean Trulear, Director, Healing Communities; Associate Professor of Applied Theology, Howard University School of Divinity

Vesla Weaver, Assistant Professor of African American Studies and Political Science, Yale University, Institution for Social and Policy Studies

Bruce Western, Faculty Chair, Program in Criminal Justice Policy and Management, Harvard Kennedy School; Director, Malcolm Wiener Center for Social Policy; Daniel and Florence Guggenheim Professor of Criminal Justice, Harvard University

John Wetzel, Secretary of Corrections, Pennsylvania Department of Corrections

Ana Yáñez-Correa, Executive Director, Texas Criminal Justice Coalition

Learn more about the Executive Session at:

www.NIJ.gov, keywords "Executive Session Community Corrections"
www.hks.harvard.edu, keywords "Executive Session Community Corrections"

GORDON & SAUNDERS LAW OFFICE

October 27, 2015 - 11:12 AM

Transmittal Letter

Document Uploaded: 3-474557-6th Notice of Supplemental Authority.pdf

Case Name:

Court of Appeals Case Number: 47455-7

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: _____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: Sixth Notice of Supplemental Authority

Comments:

No Comments were entered.

Sender Name: Robbie Gross - Email: robert@gordonsaunderslaw.com

A copy of this document has been emailed to the following addresses:

kim@gordonsaunderslaw.com

ian@gordonsaunderslaw.com

jschach@co.pierce.wa.us