



Elizabeth Henneke, Policy Attorney

Work: (512) 441-8123, ext. 105

Cell: (512) 810-8392

ehenneke@TexasCJC.org

www.TexasCJC.org

INTERIM TESTIMONY 2014

House Committee on Criminal Jurisprudence

Charge 1: Study the classification of 17-year-olds as adults in the criminal justice system of Texas.

RAISE THE AGE OF JURISDICTION

In Texas, a slew of rights are granted to teens when they reach 18 years of age: the rights to vote, join the military, and buy a lottery ticket are among them. Unfortunately, the right to be charged as an adult for a criminal offense comes sooner. The day a teen turns 17, he or she is legally considered an adult. Not only is this practice inconsistent with our societal consensus for “maturity,” it is also inconsistent with common sense—“what every parent knows”—and what neurological research has confirmed: youth are inherently less likely to consider the potential outcomes of their actions, are prone to risky behavior, and are more vulnerable or susceptible to negative influences and outside pressures.¹ Because of these distinctive attributes of youth, which thankfully they outgrow with time, there is less justifications for treating them as adults and subjecting them to adult punishment.

The majority of these youth are charged with low-level offenses that could be adequately handled in other ways, without subjecting them to an adult criminal record or adult prison.² Youth in the adult system may be exposed to isolation and detention within a jail setting or incarceration within a prison setting – all of which pose a severe danger to the mental and physical health of youth.

RAISE THE AGE OF JURISDICTION: KEY FINDINGS

- The most common offenses for 17-year-old youth are minor offenses, such as disorderly conduct, violation of liquor laws, public drunkenness, vandalism, and larceny theft.³
- Setting the age of adult criminal justice jurisdiction at 17 negates neurological research findings that identify this age as a crucial point in developing cognitive reasoning.⁴
- According to criminologists, one of the most significant factors associated with a youth desisting from crime is known as “turning points,” (e.g., job stability and marriage), while “cumulative disadvantage” (e.g., incarceration) is a factor strongly correlated to youth continuing to engage in criminal activity.⁵ Given that the age of criminal jurisdiction is set only a year after a youth is eligible to obtain employment and a year before a youth is eligible to leave home, current policy makes it impossible for a turning point to be reached.
- **Research shows that young people who are kept in the juvenile justice system are less likely to re-offend than young people who are transferred into the adult system.** According to the Centers for Disease Control and Prevention, youth who are transferred from the juvenile court system to the adult criminal system are approximately 34% more likely than youth retained in the juvenile court system to be re-arrested for violent or other crime.⁶
- Regardless of legislative action on this jurisdictional issue, Texas county jails cannot continue housing 17-year-olds with adult inmates or in isolation cells without financial cost.⁷ The Prison Rape Elimination Act (PREA) requires all offenders under 18, even those in the adult criminal system, to be housed separately from adults in all lockups, jails, detention centers, and prisons.

KEY FINDINGS (CONTINUED)

- PREA noncompliance can result in a 5% penalty on several federal formula funds and block grants, which support state and local law enforcement agencies throughout Texas.⁸
- **Studies have shown that raising the age of juvenile jurisdiction to 18 will ultimately save Texans \$88.9 million for every cohort of 17-year-olds moved into the juvenile system in Texas.**⁹
- The United State Supreme Court has set the age of adulthood at 18 years old, and provided procedural protections for youth that differ from adults.¹⁰ Because 17-year-olds in Texas are considered adults by state law and juveniles by federal law, confusion and jurisdictional questions often arise when 17-year-olds are arrested.

SENTENCING FOR JUVENILES

In 2009, Texas eliminated life without parole (LWOP) as a sentencing option for individuals convicted of a capital felony committed under the age of 17. In 2013, following the U.S. Supreme Court's decision in *Miller v. Alabama*, Texas eliminated LWOP for 17-year-olds convicted of a capital felony as well. Under the statutes, individuals convicted of a capital felony committed under age 18 are subject to life sentences with the possibility of parole after 40 years rather than LWOP.

While the Texas Criminal Justice Coalition applauds Texas for eliminating life without parole for juveniles prospectively, these reform efforts do not sufficiently protect Texas youth, some of whom will still die in prison. Because of this, Texas is not in compliance with the Eighth Amendment, wastes money incarcerating persons who have now matured and are fully rehabilitated, risks escalating litigation costs as the United States Supreme Court and the Texas Court of Criminal Appeals continue to refine the jurisprudence on youth, and subjects victims to continued uncertainty. For these reasons, the Texas Criminal Justice Coalition urges the legislature to adopt new policies to bring down costs, provide finality to victims, and give youthful offenders the opportunity to prove that they have sufficiently matured and rehabilitated to be given a second chance.

SENTENCING FOR JUVENILES: KEY FINDINGS

- Children sentenced to life in prison without parole are often the most vulnerable members of our society. A national survey revealed that nearly 80% of juvenile lifers reported witnessing violence in their homes; more than half (54.1%) witnessed weekly violence in their neighborhoods.¹¹
- This national survey further reported that 77% of girls and 20% of all youth lifers said they have been sexually abused.¹²
- African American youth are sentenced to life without parole as children at a per capita rate that is 10 times that of white youth.¹³
- The Eighth Amendment demands that states provide juvenile offenders a meaningful opportunity for release.¹⁴ Since *Miller v. Alabama*, several states have eliminated juvenile life without parole entirely, providing for parole eligibility after 10-35 years.¹⁵ Litigation in this area is rampant, depriving victims of the finality they deserve.

KEY FINDINGS (CONTINUED)

- The United States is the only country in the world to allow life without parole sentences for juveniles; the majority of the world (65%) either limits sentences to 20 years or less or reduces the degree of the crime for juveniles.¹⁶
- The current sentencing scheme deprives Texas juries from exercising their discretion to choose a sentence that matches the facts of the crime and the defendant's level of culpability and potential for rehabilitation.
- It costs approximately \$2.5 million to incarcerate juveniles for life,¹⁷ whereas it costs taxpayers approximately \$625,720 to incarcerate a juvenile for 20 years.¹⁸ **Early release for those offenders who have demonstrated that they have sufficiently matured and rehabilitated can save the state approximately \$1,874,280 per inmate.** That figure does not include the extra costs of litigation currently associated with life or functional life sentences, which are expected to substantially drive up those costs.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS

- **Raise the age of maximum juvenile jurisdiction from 17 to 18.** The Texas Criminal Justice Coalition recommends that Texas raise the age of juvenile jurisdiction for both misdemeanors and felonies from 17 to 18. This expansion of juvenile jurisdiction is consistent with federal constitutional law and promotes a juvenile justice system focused on public safety, youth rehabilitation, fairness, and fiscal responsibility. This change will reduce confusion and jurisdictional questions that arise when 17-year-olds are arrested.
- **Bring Texas into compliance with the Supreme Court rulings regarding juvenile life without parole.** The Texas Criminal Justice Coalition recommends that Texas (1) provide a range of sentencing options for juries considering crimes involving juveniles; (2) permit juries to consider the mitigating factors of youth when choosing between those sentencing options; (3) reduce the time served prior to parole eligibility; (4) instruct the Parole Board to consider whether mitigating factors of youth played a part in the initial commitment offense and whether the juvenile has now demonstrated sufficient maturity and rehabilitation to justify release into society; and (5) apply these changes retroactively so as to bring Texas into conformity with the constitutional dictates of *Graham v. Florida* and *Miller v. Alabama*.

Citations

- ¹ *Miller v. Alabama*, 132 S.Ct. 2455, 2464-65 (2012); *See generally*, S. Johnson, R. Blum, and J. Giedd, *Adolescent Maturity*
- ² Michele Deitch, et.al, *Seventeen, Going on Eighteen: An Operational Fiscal Analysis of a Proposal to Raise the Age of Juvenile Jurisdiction in Texas*, *American Journal of Criminal Law*, Vol. 40:1 (2012).
- ³ *Ibid.*
- ⁴ J.N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, *Annals of the New York Academy of Sciences*, Vol. 1021 (2004).
- ⁵ Robert J. Sampson and John H. Laub, *A life-course view of the development of crime*, *The Journal of the American Academy on Political and Social Science*, Vol. 602 (Nov. 2005).
- ⁶ Centers for Disease Control and Prevention. *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services*. *MMWR* 2007; 56 (No. RR-9) (2007). Available online at <http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>.
- ⁷ Michele Deitch, Anna Lipton Galbraith & Jordan Pollock, *Conditions for Certified Juveniles in Texas County Jails*, 11-15 (2012), available at <https://www.utexas.edu/lbj/sites/default/files/file/news/Conditions%20for%20Certified%20Juveniles%20in%20Texas%20County%20Jails-FINAL-3.pdf>.
- ⁸ PREA imposes three new requirements for housing minors in adult prisons: 1) agencies must place youth in a housing unit separated by sight, sound, and physical contact with any adult inmate, including shared and common spaces such as showers, dayrooms, and sleeping quarters; 2) in areas outside of housing units, agencies must maintain sight and sound separation between youth and adults, or provide direct staff supervision of youth; and 3) agencies must make the “best efforts” to avoid placing youth in isolation to comply with this requirement and if youth are isolated, facilities may not deny youth large muscle exercise and special education services absent “exigent circumstances.” 28 C.F.R. § 115.14.
- ⁹ Michele Deitch, et. al, *Seventeen, Going on Eighteen*, *supra n. 2*.
- ¹⁰ *Miller v. Alabama*, 132 S.Ct. 2455 (2012); *J.D.B. v. North Carolina*, 131 S.Ct. 2394 (2011); *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005).
- ¹¹ Ashley Nellis, Ph.D., *The Lives of Juvenile Lifers: Findings from a National Survey* (Mar. 2012). Available online at http://sentencingproject.org/doc/publications/jj_The_Lives_of_Juvenile_Lifers.pdf.
- ¹² *Ibid.*
- ¹³ *Ibid.*
- ¹⁴ In a series of cases the Supreme Court of the United States has recognized that juveniles are different and provided strict restrictions upon juvenile sentencing. In *Graham v. Florida*, 560 U.S. 48 (2010), the Supreme Court held that juveniles who had not committed a homicide could never be sentenced to life without parole. It also required states to give juvenile offenders a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. Thus, the Supreme Court limited the length of sentences that states can impose upon juveniles at the time of sentencing, requiring a meaningful review process to occur at some “later” date. The Supreme Court did not provide any guidance on when states must allow that opportunity for release to occur, leaving it up to states to decide in the first instance. Two years later, the Supreme Court in *Miller v. Alabama*, 132 S.Ct. 2455 (2012), held that mandatory life without parole violated the Eighth Amendment. After *Miller*, states must require sentencing courts to consider the distinctive mitigating features of youth prior to sentencing a juvenile to life without parole.
- ¹⁵ Please see the Appendix, *Memorandum re sentencing reform relating to Graham and Miller nationwide*, Civil Justice Clinic, Quinnipiac University School of Law (Mar. 18, 2014).
- ¹⁶ Connie de la Vega, et al., *Cruel and Unusual: U.S. Sentencing Practices in a Global Context* (USF School of Law Center for Law and Global Justice 2012) available at ; *see also* Connie de la Vega & Michelle Leighton, *Sentencing our Children to Die in Prison: Global Law and Practice*, 42 U.S.F.L. REV. 983 (2008). Both are available at http://www.usfca.edu/law/jlwop/law_review/.
- ¹⁷ *At America’s Expense: The Mass Incarceration of the Elderly*, ACLU (June 2012). Available at: https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf. Calculation = ((Average cost per year per inmate to incarcerate before age 50 x 34) + (National estimate for annual cost for the care of an inmate after age 50 x 21)).
- ¹⁸ *Ibid.* Calculation = (Average cost per year per inmate to incarcerate before age 50 x 20).