

Juvenile Sentencing in a Developmental Framework

The Role of the Courts

Three United States Supreme Court decisions in the past decade have delineated the constitutional principle that children are developmentally different from adults in ways that matter for the fair punishment of juvenile offenders. The Court has prohibited the death penalty for juveniles and strictly limited the use of life without parole—prohibiting the sentence for non-homicide offenses and, even for homicide, requiring courts to consider mitigating factors.

The Court's developmental framework is grounded in scientific research and such bedrock principles of criminal law as proportionality, mitigation, culpability, and competence. Some jurisdictions have used the framework to adopt further reforms in juvenile justice, including:

- Abolishing altogether juvenile life without parole (JLWOP).
- Revising or prohibiting mandatory minimum sentences and enhanced sentencing such as “three strikes” rules.
- Rejecting lifetime parole and sex offender registries.
- Reforming transfer laws.
- Addressing expungement and the confidentiality of juvenile records.

The Supreme Court reframes juvenile sentencing

Since 2005, the Supreme Court has transformed the constitutional landscape of juvenile justice. In three strongly worded opinions, the Court prohibited the death penalty for juveniles (*Roper v. Simmons*, 2005), barred the sentence of life without parole (LWOP) for juveniles convicted of a non-homicide offense (*Graham v. Florida*, 2010), and banned the use of mandatory LWOP sentences for juveniles, even those convicted of homicide (*Miller v. Alabama*, 2012).

Together, the Court opinions create a special status for juveniles under the Eighth Amendment's prohibition of cruel and unusual punishment. Citing a large and growing body of behavioral and brain research, the Court affirmed that adolescents are less mature than adults in ways that make them less culpable even for the most serious crimes, less competent to participate in criminal proceedings, and more likely to change over time.¹ In short, children are different from adults, and these differences have implications for criminal punishment.

Although the Court’s decisions directly address only the most serious crimes, their implications are much broader. As Justice Roberts pointed out in his *Miller* dissent, the Court, in emphasizing that children are different, has announced a general principle of reduced culpability that applies to the criminal conduct of young offenders across the board.² The same developmental factors that mitigate culpability for murder or armed robbery also influence adolescents committing less serious crimes.

Key themes of the framework, grounded in law and science

The three Supreme Court opinions have provided a coherent developmental framework for sentencing adolescents, grounded in scientific research and such bedrock principles of criminal law as proportionality and mitigation.³ Several key themes carry through the three opinions.

Juveniles are less culpable. The legal principle of proportionality holds that punishment should be based not only on the harm caused by the crime, but also on the culpability of the offender. Juvenile offenders must be held accountable for their crimes; adolescent immaturity does not exculpate young offenders. But their developmental immaturity *does* mitigate their culpability, and it should be taken into account in sentencing decisions.

The court noted three ways in which adolescent immaturity mitigates culpability. First, teenagers’ decision-making capacity is reduced due to their “inability to assess consequences”⁴ and to the “recklessness, impulsivity, and heedless risk-taking” that contribute to an “underdeveloped sense of responsibility”⁵ in adolescents. These typical features of adolescents can be traced to the normal processes of brain development: neuroscientists have found that in adolescents, the brain systems involved in self-regulation (for example, impulse control and thinking ahead) are relatively immature, while the systems that respond to emotional and social stimuli, such as immediate rewards, exhibit heightened activity, partly as a consequence of changes in the brain at puberty.⁶ Second, the Court noted that legal minors are susceptible to coercion. They are vulnerable to peer

pressure and have limited ability to extricate themselves from their homes and other settings that can contribute to their criminal activity.⁷ Finally, the Court observed that much juvenile offending is the product of “transient immaturity”; thus, a youth’s criminal activity is less likely than an adult’s to be “evidence of irretrievable depravity.”⁹ These differences between juvenile and adult offenders correlate to conventional sources of mitigation in criminal law.¹⁰

Juvenile offenders are likely to reform. Brain research has shown that adolescence, like infancy and early childhood, is a period of high neuroplasticity—the capacity of the brain to change in response to experience. This capacity makes young offenders good candidates for rehabilitation.¹¹ Moreover, as noted above, most adolescent offending is the product of a transient phase, and most adolescents will desist from criminal activity as they mature into adulthood. Thus, lengthy incarceration does little to protect the public, despite the considerable expense it creates for taxpayers. The lengthiest sentence, life without parole, also denies young offenders a meaningful opportunity to reform and to demonstrate their growth and maturity—a point the Court reiterated forcefully in both *Graham* and *Miller*.

Juveniles are less competent. The Court emphasized in *Graham* and *Miller* that severe sentences might result from juvenile defendants’ relative incapacity to deal effectively with the police, execute plea agreements, or participate competently in their trials. Several scientifically demonstrated developmental factors contribute to this incapacity, including adolescents’ tendencies toward dependence and acquiescence, as well as their impulsiveness and short-sightedness in decision-making.¹² In addition, their cognitive and intellectual abilities often are not fully developed, and most lack knowledge about the legal process. Together, these factors can lead to an impulsive confession, the rash rejection of a plea offer, or the inability to assist counsel by challenging witnesses or pointing to relevant exculpatory or mitigating evidence. Severe sentences might also result because immature teenage defendants may create negative impressions in court. In sum, the Court concluded that a juvenile may simply be less able than an adult to navigate a high-stakes encounter with the police and a criminal proceeding in which his entire future is on the line.

Sentencing juveniles after *Miller*

The Supreme Court did not require states to abolish the discretionary sentence of LWOP for juveniles convicted of homicide. But a fair reading of *Miller*—including the Court’s forceful conclusion that the sentence of LWOP will be “uncommon” and its emphasis on the risk of an erroneous LWOP sentence—creates a presumption of immaturity. This implies that the state bears the burden of demonstrating that a juvenile is one of the rare youths who deserve this sentence.

In jurisdictions that retain JLWOP, sentencing courts must carefully evaluate the mitigating factors that reduce the culpability of juveniles and make young offenders more likely to reform. Although courts may approach this in different ways, the evaluation should include assessment of the five factors specified in *Miller*, all linked to youthful immaturity and the sources of mitigation discussed above:¹³

1. Immaturity, impetuosity, less capacity to consider future consequences, and related characteristics that impair juveniles’ ability to make decisions.
2. A family and home environment from which a child cannot extricate himself or herself.
3. The circumstances of the offense, including the role the youth played and the influence of peer pressure.
4. Impaired legal competency that puts juveniles at a disadvantage in dealing with police or participating in legal proceedings.
5. The youth’s potential for rehabilitation.

Because these factors are based on developmental constructs, not all experts will have the training and experience to evaluate them. It is important that forensic *child* psychologists or psychiatrists be involved. These experts have the skills, experience, and tools needed to inform courts making sentencing decisions.

Some states have found that even with an assessment of mitigating factors, the risk of error in applying JLWOP is too high, and the sentence is inherently problematic under the Eighth Amendment. In response, they have abolished the sentence altogether. In Massachusetts, for example, the state’s highest court concluded that juveniles’ reduced culpability makes LWOP a disproportionate sentence for *any* crime.

Five Mitigating Factors for Sentencing Hearings

1. **Decision-making capacity:** immaturity, impetuosity, and related characteristics that impair the ability to make decisions.
2. **Capacity to resist negative influences:** family circumstances and individual capacities that limit the youth’s ability to meet his or her own needs.
3. **Context of the offense:** the circumstances of the offense, including peer pressure and the role the youth played.
4. **Legal competency:** impaired competency that puts the youth at a disadvantage in dealing with police or legal proceedings.
5. **Potential for rehabilitation:** the potential for the youth to desist from offending, on his or her own or with interventions.

Moreover, that court said, JLWOP is flawed because it denies the young offender the opportunity to reform:¹⁴

The developmental framework and other sentencing reforms

The Supreme Court’s developmental framework supports broader sentencing reforms affecting juveniles in the adult system. Two areas where courts are playing an important role in reform involve mandatory minimum sentences and enhanced sentencing.

Mandatory minimum sentences. A sentencing structure that subjects juveniles and adults to the same fixed minimum sentence rejects the core principle that children are less culpable than adults and deserve less punishment. Furthermore, lengthy mandatory sentences, which sometimes are the virtual equivalent of LWOP, deny young offenders the meaningful opportunity to reform. A number of courts have rejected lengthy sentences of juveniles on these grounds. For example, after *Miller*, the Iowa Supreme Court struck down an order by the Governor commuting the sentences of all juveniles serving LWOP to life with parole eligibility after 60 years. The Court observed that subjecting juveniles to such a lengthy fixed sentence was a rejection of the fundamental principles that young offenders were less culpable than adults and that they should be given a meaningful opportunity to demonstrate reform.¹⁵ A year later, the same court found all mandatory minimum adult sentences to be unconstitutional for juveniles.¹⁶

Enhanced sentencing. “Three strikes” laws, and others that use previous offenses to enhance the severity of sentences for later offenses, have been criticized even for adult offenders. Some courts have found that this objection is amplified when the earlier convictions are juvenile offenses.¹⁷ The likelihood that the youthful offense was the product of immaturity is too compelling to allow it to be the basis for a later harsh sentence.

Lifetime parole and sex offender registries.

Because research shows that juvenile offending does not predict adult criminality, some courts have rejected lifetime parole or lifetime registration for juvenile sex offenders.¹⁸

Further implications of the developmental framework

Lawmakers influenced by the Supreme Court’s developmental framework have undertaken additional reforms, two of which are described briefly here.

Transfer laws. Laws that automatically transfer juveniles to criminal courts for specific offenses subvert the lessons of the developmental framework described in *Miller* and *Graham*. Some legislatures have restricted these laws, recognizing that due to their immaturity, most adolescents belong in the juvenile system and that transfer decisions should be made on an individualized basis, taking into consideration the offender’s immaturity and potential for rehabilitation.¹⁹

Expungement and confidentiality. The stigma of a criminal record has long-term consequences and can exclude individuals from educational opportunities, jobs, voting, and public housing. Mitigating these harmful effects is essential if young people are to become productive members of society. The developmental framework supports efforts to maintain the confidentiality of juvenile records, to automatically expunge minor offenses, and to provide a process whereby more serious offenses may be expunged.

1. Laurence Steinberg (2013). The influence of neuroscience on U.S. Supreme Court decisions involving adolescents’ criminal culpability. *Nature Reviews Neuroscience*, 14, 513-518.
2. *Miller*, 132 S.Ct. 2455, 2482 (Roberts, C.J., dissenting).
3. *Miller v. Alabama*, 132 S.Ct. 2455, 2470 (2012).
4. *Miller* 132 S.Ct. 2455, 2464
5. *Miller* 132 S.Ct. 2455, 2464
6. BJ Casey, Sarah Getz, and Adriana Galvan (2008). The adolescent brain. *Developmental Review*, 28, 62–77.
7. *Miller*, 132 S.Ct. 2455, 2462; Scott & Steinberg, note 5 at 818.
8. *Miller*, 132 S.Ct. 2455, 2469 (2012).
9. *Roper*, 543 U.S. 551, 579 (2005).
10. Laurence Steinberg and Elizabeth Scott, *Less Guilty by Reason of Adolescence*, *Am. Psychologist* (2003).
11. Laurence Steinberg, *Age of Opportunity: Lessons From the New Science of Adolescence*, New York: Houghton Mifflin Harcourt (2014), note 19.
12. T Grisso, L. Steinberg, J. Woolard, E. Cauffman, E. Scott, S. Graham, F. Lexcen, N.D. Reppucci, R. Schwartz, *Juveniles= Competence to Stand Trial: A Comparison of Adolescents= and Adults= Capacities as Trial Defendants*, 27 *Law & Human Behavior* 333 (2003).
13. Particularly helpful is the guidance provided by the California Supreme Court, *People v. Gutierrez*, 324 P.3d 245 (Cal. 2014).
14. *Diatchenko v Commonwealth*, 1 N.E.3rd 270 (Mass. 2013).
15. *State v. Ragland*, 836 N.W. 2d. 107 (Iowa 2013).
16. *State v. Lyle*, 854 N.W.2d 378, 400 (Iowa 2014).
17. *United States v. Howard*, 2014 WL 6807270 (C.A.4th (N.C.)) reversing life sentence for drug distribution offense as “unreasonable” for relying on offender’s juvenile record.
18. *State v. Dull*, 2015 Kan. LEXIS 359 (2015).
19. The Texas Court of Criminal Appeals has required individualized consideration of a juvenile’s attributes before transfer to adult court. *Moon v. State*, NO. PD-1215-13 (Tx. Ct. Crim. App 2014). A substantial number of states have reformed their transfer laws and made transfer more difficult, including Delaware (Del. SB 200); Colorado (SB 1271 (2012)); Maryland (SB 515 2014) and Ohio (SB 86 2011). Some states such as Missouri have created Task Forces to evaluate transfer laws. The Campaign for Youth Justice maintains a list of statutory reforms. See *Legislative Trends*, at www.campaignforyouthjustice.org.

This brief is based on the report “The Supreme Court and the Transformation of Juvenile Sentencing,” prepared by Elizabeth Scott, Thomas Grisso, Marsha Levick, and Laurence Steinberg, and available at modelsforchange.net/transformation. For more information, contact Elizabeth Scott, Harold R. Medina Professor of Law, Columbia Law School, es2054@columbia.edu.

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