How Adolescent Brain & Behavioral Development Can Affect Competency, Culpability, and Other Determinations in Criminal Court – Cathryn S. Crawford (Austin, TX)


Handouts

Articles / Studies

Reducing Recidivism and Improving Other Outcomes for Young Adults in the Juvenile and Adult Court, The Council of State Governments Justice Center (2015)

‘Map’ of teenage brain provides strong evidence of link between serious antisocial behavior and brain development (6/15/16) reprinted in Science Daily (5/9/17)

Annotated Bibliography of Key Adolescent Development Studies, National Juvenile Defender Center (issued 5/22/15)

Psychosocial Maturity and Desistance From Crime in a Sample of Serious Juvenile Offenders, Steinberg, Kauffman and Monahan, OJJDP Juv. Justice Bulletin, March 2015


Sample Jury Instructions

Sample Juvenile Specific Jury Instructions, Committee for Public Counsel Services, Youth Advocacy Division (MA), Sept. 2014

Sample Pleading

Death penalty pleading relating to 21 year old

Death penalty pleading relating to a 19 year old

Miscellaneous

Chart of youth executions (2000-2016) (showing declining use of death penalty for person 18-21)
Cases

*Roper v. Simmons*, 543 U.S. 551 (2005) (prohibiting the execution of people who committed crimes when they were under the age of eighteen)


*Miller v. Alabama*, 567 U.S. ___ (2012) (extending Graham to prohibit mandatory life without parole sentences to youth who were convicted of murder)

    Amicus brief by American Psychological Association, American Psychiatric Association, et al, can be found at: http://www.apa.org/about/offices/ogc/amicus/miller-hobbs.pdf


Publications / Resources

Confessions


*REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH*, National Research Council of the National Academies (2103)
http://www.nap.edu/catalog/14685/reforming-juvenile-justice-a-developmental-approach


Hoffman, Jan, *In Interrogations, Teenagers Are Too Young to Know Better*, New York Times blog (10/13/14) (discussing study of teenagers and waiver of constitutional rights)


**Neuroscience generally**


http://lawdigitalcommons.bc.edu/bclr/vol56/iss2/3

**Websites**

**Campaign for Fair Sentencing of Youth (CFSY),** [http://fairstencingofyouth.org/](http://fairstencingofyouth.org/)

Mission: The Campaign for the Fair Sentencing of Youth is a national coalition and clearinghouse that coordinates, develops and supports efforts to implement fair and age-appropriate sentences for youth, with a focus on abolishing life without parole sentences for youth. Its website contains resources such as fact sheets and informational graphics and has a robust library.

**Models for Change,** John D. and Catherine T. MacArthur Foundation

[http://www.modelsforchange.net/index.html](http://www.modelsforchange.net/index.html)

Website contains numerous publications relating to youth in conflict in the law, including scientific studies, practitioners’ briefings, policy and advocacy manuals and reports.

**National Juvenile Defender Center (NJDC)** [www.njdc.info](http://www.njdc.info)

NJDC is a non-profit organization that is dedicated to promoting justice for all children by ensuring excellence in juvenile defense through support and training, technical assistance, policy advocacy, and publications and other resources that can be found on its website.


Go to **Publications**, click on Bulletins, click on
Beyond Detention Series, The Northwestern Juvenile Project is a large-scale, longitudinal study of drug, alcohol, and psychiatric disorders in a diverse sample of juvenile detainees in Cook County. The bulletins include data and findings on a range of issues, including:

- Perceived Barriers to Mental Health Services Among Detained Youth Sept. 2015
- Detained Youth Processed in Juvenile and Adult Court: Psychiatric Disorders and Mental Health Needs Sept. 2015
- The Northwestern Juvenile Project: Overview February 2013

Pathways to Desistance Series: The Pathways to Desistance study followed more than 1,300 serious juvenile offenders (ages 14-17) in Philadelphia and Phoenix for 7 years after their conviction, as they transitioned into early adulthood (up to 25 years old). The stated purpose of the study was to inform the on-going debate regarding the treatment and processing of serious adolescent offenders. The actual study can be found at: http://www.pathwaysstudy.pitt.edu/

The OJJDP bulletins provide summaries of on-going research and data analysis in specific topics areas, including:

- Studying Deterrence Among High-Risk Adolescents August 2015
- Psychosocial Maturity and Desistance From Crime in a Sample of Serious Juvenile Offenders March 2015
- Behavioral Health Problems, Treatment, and Outcomes in Serious Youthful Offenders June 2015
- Transfer of Juveniles to Adult Court: Effects of a Broad Policy in One Court December 2012

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Articles / Studies
INTRODUCTION

Researchers focused on brain development have found that 18- to 24-year-olds—also referred to as young adults—stand out as a distinct developmental group with heightened impulsive behavior, risk taking, and poor decision making. Young adults are also frequently not connected to education or jobs—approximately 1 in 5 young adults (the majority of whom are black or Latino) were out of school and out of work in 2013. These factors increase the odds that a young adult might come into contact with the justice system.

Not coincidentally, law enforcement officials say that more often than not, when a violent crime is committed, it involves someone between the ages of 18 and 24. And it is people in this same age group that law enforcement officials say are especially likely to be repeat offenders.

Of course, the overwhelming majority of young adults across the country are not involved in any criminal activity. And among those young adults who have committed a crime, most of those offenses are minor offenses. Still, because this subset of individuals drives a disproportionately large share of criminal justice activity, they should be an important focus of juvenile and adult justice systems alike. [See box, “Young Adults in the Justice System,” which explains that both systems can have jurisdiction over this population.] But whereas considerable research exists demonstrating what strategies make it less likely an adolescent or, say, a 35-year-old adult will reoffend, similar research does not exist for young adults. Nor is it clear what strategies can improve education and employment outcomes for this age group. As states work to ensure that limited resources are used efficiently to protect public safety, they need to develop a strategy for addressing the distinct needs of young adults under juvenile or adult criminal justice system supervision.

Young Adults in the Justice System

When someone between the ages of 18 and 24 commits a crime, neither the juvenile nor the adult criminal justice system is exclusively responsible for providing services and supervision to this individual. In every state, a person who commits a crime after age 18 is referred to the adult criminal justice system, and in some states that age can be 17 or even 16. Yet, some states are considering raising the upper age limit of juvenile court jurisdiction beyond the age of 18.

At the same time, when a young person is adjudicated delinquent in the juvenile justice system, two-thirds of states allow them to remain under the supervision of the juvenile system through age 20 and, in some other states, up to age 24. Even if a young person commits a new crime while under community supervision within the juvenile justice system, it is possible that he or she may still remain in that system.

Because young adults can be involved in either the juvenile or adult criminal justice systems, policymakers and administrators in both systems should be focusing their attention on this important population and developing strategies to reduce recidivism and improve other outcomes for young adults.

* While there is no universal definition of “young adult,” this brief defines them as individuals ages 18–24. This population may also be described as “transition-age youth” or “emerging adults.”
† A number of critical issues impact why and how young adults come into contact with the justice system, including law enforcement and court practices, racial and ethnic disparities, community factors such as crime or poverty, and the prevalence and effectiveness of prevention and early intervention programs. These issues are beyond the scope of this brief. Instead, this brief focuses on how to better address the needs and reduce reoffending for those moderate- and high-risk young adults who are already under system supervision.
‡ This brief does not take a position on the age of juvenile jurisdiction, nor does it advocate for breaking down carefully constructed boundaries between the juvenile and adult justice systems. Rather, since young adults in both systems experience the same developmental stages and have similar needs, approaches within either system that are tailored to these young people should share common elements.
§ Adjudication is a formal disposition of a youth’s case by the juvenile court, which is similar to a conviction in an adult court.

Reducing Recidivism and Improving Other Outcomes for Young Adults in the Juvenile and Adult Criminal Justice Systems

1. Highlights how young adults are distinct from youth and older adults
2. Identifies young adults’ distinct needs, summarizing the limited research available on what works to address these needs, and detailing the unintentional barriers imposed by states to getting these needs met
3. Provides recommendations for the steps that policymakers, juvenile and adult criminal justice agency leaders, researchers, and the field can take to improve outcomes for young adults
**Methodology**

This issue brief was informed by an extensive review of the available literature and data on young adults in the justice system, research on brain and adolescent development, and relevant findings from the fields of education, employment, mental health, substance use, child welfare, and reentry. To supplement this literature review, more than 50 experts, researchers, and practitioners were consulted across these various fields.

**PART I: HOW YOUNG ADULTS ARE DEVELOPMENTALLY DIFFERENT FROM YOUTH AND OLDER ADULTS**

Contrary to conventional belief, age 18 is not a fixed point when all adolescents become fully mature adults. Rather, young adulthood is a transitional period that can range from age 18 to 24 and even beyond, during which significant brain development is still occurring and decision-making abilities are not fully mature. During this period of substantial growth and change, young adults exhibit clear developmental differences from both youth and older adults.

<table>
<thead>
<tr>
<th>How Young Adults Are Distinct From Youth</th>
<th>How Young Adults Are Distinct from Adults</th>
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<tbody>
<tr>
<td>■ More cognitively developed⁷</td>
<td>■ More impulsive</td>
</tr>
<tr>
<td>■ More vulnerable to peer pressure and other external influences</td>
<td>■ Less able to control emotions</td>
</tr>
<tr>
<td>■ More likely to engage in risky behaviors</td>
<td>■ Less likely to consider future consequences of their actions</td>
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<tr>
<td>■ Seeking autonomy from families/caregivers</td>
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It is unrealistic to expect justice systems to develop interventions designed specifically for every age group. However, what is clear from the research is that any effective policy response to reducing young adult reoffending must account for these basic developmental differences.

**Young Adults by the Numbers**

Longstanding research on the age-crime curve demonstrates that criminal behavior peaks during young adulthood, as does offending for serious crimes.⁸ However, limited data specifically focused on young adults in the juvenile and adult criminal justice systems are being tracked. The following summarizes the data currently available:

**Arrest Rates**

In 2013, young adults comprised 10 percent of the U.S. population but accounted for nearly 30 percent of people arrested for both serious and non-serious crimes, including:⁹

■ 40 percent of those arrested for murder and non-negligent manslaughter
■ 40 percent of those arrested for robbery
■ 33 percent of those arrested for weapon possession
■ 30 percent of those arrested for vandalism
■ 35 percent of those arrested for drug abuse violations


**Incarceration Rates**

- In 2013, approximately 20 percent of young people incarcerated in the juvenile justice system were between the ages of 18 and 20 and more than half of these young adults (7,044 people) were incarcerated as the result of a serious offense.

- In 2012, young adults comprised more than 21 percent of admissions (129,274 people) to adult state and federal prisons.

- Black males ages 18 to 24 comprised nearly 40 percent of all young adults admitted to adult state and federal prisons in 2012, and represented nearly 10 percent of all prison admissions that year.

**Recidivism Rates**

- Recidivism rates for young adults released from prison are significantly higher than for other age groups. One study found that approximately 76 percent of people who were under the age of 25 when released from prison were rearrested within three years, and 84 percent were rearrested within five years.

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**PART II: OPPORTUNITIES AND CHALLENGES TO MEETING YOUNG ADULTS’ NEEDS**

**Young Adults under Justice System Supervision Have Distinct Needs and Few Programs Exist that Are Proven to Effectively Meet these Needs**

Young adults in the juvenile and adult criminal justice systems have distinct needs that can make them more likely to reoffend than youth and older adults. At the same time, few research-based interventions are targeted specifically for young adults at moderate and high risk of reoffending, or have been tested for this population. Indeed, despite the fact that young adults are the most likely to commit serious offenses, little is known about how to effectively tailor programming to address the primary causes of their behavior in ways that are proven to reduce recidivism and improve other outcomes.

**Criminal Thinking and Behavior**

For both youth and adults, criminal thinking and antisocial tendencies are often the primary causes of delinquent and criminal behavior. And young adults’ immaturity and susceptibility to peer influences makes them even more prone to engage in this type of behavior. As such, it is likely that any strategy for improving outcomes for young adults should incorporate cognitive behavioral therapy (CBT) interventions, which address the causes of delinquent and criminal behavior and have proven to be among the most effective interventions for improving outcomes for youth and adults. However, few evaluations have been conducted of the CBT interventions that have been shown to reduce recidivism among adults, such as Thinking for a Change, to determine whether they are equally effective for young adults, or to identify how they may need to be customized to this population’s distinct needs. Additionally, few CBT programs target young adults specifically, and young adults are not even eligible for a number of those programs due to their age.

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* OJJDP Census of Juveniles in Residential Placement does not include data for individuals above the age of 20 in the juvenile justice system. As more states increase the age of juvenile court jurisdiction, the proportion of high-risk young adults under the supervision of the juvenile justice system is likely to grow.

† These needs exist for anyone involved in the criminal justice system, but are particularly challenging for young adults under justice system supervision. Research has shown that the best way to identify the needs associated with a person’s criminal thinking and behavior and match those needs with appropriate services and supervision is through the use of validated risk assessments.
**Education**

Typically, people involved with the justice system have lower education levels, significant deficiencies in literacy skills, and many qualify for special education services. Young adults under justice system supervision face particular educational challenges. They are often over-age and lack the credits necessary to complete high school, and as a result, find it difficult or even impossible to reenter the public school system upon release from incarceration. Due to their difficulty thinking long-term, young adults are also less likely to see the value in pursuing further education or may face pressure to secure a job rather than complete their education as they transition to financial independence. Given that earning education credentials is associated with a host of positive outcomes such as higher levels of employment and increased earnings, it is critical that juvenile and adult criminal justice systems help provide young adults with viable pathways to high school and post-secondary success.

An array of education programs are available to youth and adults to recover high school credits, earn a GED or high school equivalency diploma, and connect them to post-secondary education opportunities. However, young adults are a particularly challenging group to attract to these programs. And while educational attainment has been shown to reduce recidivism for adults, almost no research exists on what types of education programs effectively reduce recidivism and improve long-term educational outcomes specifically for young adults.

**Employment**

People who are involved with the juvenile and adult criminal justice systems often lack important vocational and job-readiness skills necessary to secure and maintain employment. For young adults, these deficits are particularly acute. Young adults have few vocational skills and most have little or no job experience, making it even more difficult for them to find and retain jobs. Employers may also be reluctant to hire young adults, who can be perceived as less motivated, reliable, and job ready. Nationally, labor market participation among 18- to 24-year-olds is at a historic low, making it difficult for even the most qualified young adults—let alone young adults involved in the justice system—to find employment. Given that young adults are transitioning to independence, it is particularly important that they are equipped with the skills and tools necessary to secure long-term employment.

Despite a history of federal investment, few employment and training programs have shown substantial impacts on long-term employment for young adults. Further, there is little research on what types of vocational programs effectively engage and prepare young adults under justice system supervision for successful employment and also reduce reoffending.

**Mental Health and Substance Use**

Research indicates that up to 70 percent of incarcerated juveniles and 50 percent of incarcerated adults meet the criteria for at least one mental disorder, and a large proportion of these individuals have co-occurring mental and substance use disorders. Young adults have particularly acute mental health treatment needs, as many disorders emerge for the first time during young adulthood. In addition, many young adults have experienced significant trauma as a result of their early involvement in the justice system, which can often go undiagnosed and untreated. Finally, young adults under justice system supervision are particularly likely to have a substance use disorder, which has been shown to significantly impair judgment and contribute to long-term offending among all individuals. To better identify and manage these conditions, young adults under justice system supervision require mental health and substance use treatment.
Few mental health and substance use interventions have been tested specifically for young adults, however, particularly young adults involved with the justice system. In addition, treatment providers often do not receive specialized training to work with young adults, and a lack of coordination between the mental health and justice systems presents challenges to determining whether and how young adults' behavioral health needs are being met.

**Transition to Independence**

Many youth and adults under justice system supervision lack the stable housing, life skills, and connections to positive peers or adults necessary to succeed in the community. However, young adults face particular challenges as they seek to become self-sufficient, often without the necessary skills, experience, and support systems to make this transition to independence successful. It is, therefore, critical that juvenile and adult criminal justice systems provide services and supports to help young adults prepare for independence and successfully transition to adulthood.

Unfortunately, minimal research has been conducted on how and to what extent the challenges associated with this transition for young adults drive reoffending, and accordingly, what strategies are needed to help young adults involved in the justice system successfully transition to independence.

**Young Adults Face Systemic Barriers to Meeting their Needs**

State policies often present additional barriers to improving outcomes for young adults. Many public systems—including education, health care, and child welfare—terminate or change conditions of care as youth transition to young adulthood, limiting their access to key protective networks. In addition, there is a lack of coordination across service systems, which can result in duplication or gaps in services. Finally, a criminal record brings a host of collateral consequences that present added barriers for moderate- and high-risk young adults under justice system supervision to connect with the education, employment, and housing needed for them to transition to a crime-free and productive adulthood.

**Aging Out of Protective Networks and Lack of Coordination across Service Systems**

Many young adults are not required by law to attend school during or after justice system supervision. By age 18, young adults in every state are able to opt out of the public school system, which disconnects them from a key protective network and reduces their likelihood of ever receiving a high school diploma or GED. Upon reaching age 19, they face interruptions in and even termination of their care. Medicaid's eligibility criteria for youth under the age of 19 are relatively broad, yet only a fraction of young adults over the age of 19 are able to meet the stricter requirements for eligibility to access adult mental health services. As of 2015, almost half of states provide no Medicaid coverage for childless adults, thus, young adults over the age of 19 without children who need access to mental health or substance use treatment must be a dependent of a qualifying adult, pay out-of-pocket for services, or forgo treatment altogether. Additionally, even for those young adults who do qualify for continued Medicaid coverage, some childhood diagnoses are not covered in the adult system, which can interfere with the continuity of their care. Finally, up to two-thirds of youth who are involved with the juvenile justice system are also involved with the...
child welfare system, and research shows that these youth tend to have higher recidivism rates than youth not involved in both of these systems. It is likely that a significant proportion of people in the adult criminal justice system have current or prior involvement in the child welfare system. The maximum age for foster care eligibility in most states ranges from 18 to 21, meaning that these young people are potentially exiting the child welfare and justice system at the same time, placing them at greater risk of reoffending and leaving them to face the transition to independence on their own.

As a further complication, there is rarely coordination across these service systems within a given state to ensure that young adults’ particular needs are being met. To the extent that any of these systems are providing services for young adults, there is typically little effort to coordinate policies and funding to ensure that resources are being used efficiently to reduce recidivism and improve other outcomes for young adults. In addition, service systems rarely work to ensure continuity of care so that young adults are not aging out of all these protective networks simultaneously without access to any formal supports. Finally, data is rarely shared across the justice and other service systems, which makes it challenging for states to understand young adults’ key needs and which interventions are most effective for them.

Collateral Consequences
Legal and regulatory penalties, sanctions, and restrictions imposed on anyone convicted of a crime that are distinct from his or her court sentence—known as “collateral consequences”—also create barriers that hinder access to post-secondary education, employment, and housing. For a young adult who is trying to transition to independence, this can be a particular challenge, as a criminal record may hinder his or her ability to gain the critical skills necessary to becoming self-sufficient.

Young adults under justice system supervision have less access to education, particularly post-secondary education, than young adults without justice system involvement. While state policies vary, many public and private college applications include questions about an individual’s criminal record. Such questions not only discourage young adults from completing the application process, but can also limit the likelihood they will be accepted to a higher education program. A recent survey found that more than half of responding higher education institutions collect and use information about an applicant’s criminal record in the admissions process. Convictions for drug-related or sex offenses can also prevent young adults from accessing federal and state student financial aid.

Young adults who are required to disclose a criminal record during the job application process are less likely to find a job and develop the essential work skills and experience needed for stable, long-term employment. In addition, many employers conduct background checks, which, coupled with employer wariness of prospective employees who have been involved in the justice system and young adults generally, can present additional barriers to securing employment. As of May 2015, two-thirds of states had no legislation or regulations restricting employers’ use of criminal record for hiring purposes.

A criminal record can also limit young adults’ housing options. Most housing applications ask about criminal history, and federal law gives Public Housing Agencies (PHAs) discretion to reject anyone with a criminal record for most types of crimes. Additionally, many young adults under justice system supervision experience homelessness, putting them at greater risk of continued contact with the justice system.
PART III: RECOMMENDATIONS

While many young adults who come into contact with the juvenile and adult criminal justice system will desist from future criminal behavior on their own, there remains a population of young adults who are at moderate to high risk of reoffending under the supervision of both systems. Given the scarcity of research on what works for these young adults, few states have targeted strategies specifically at reducing recidivism and improving other outcomes for this population. The following recommendations are intended to address this gap and help state policymakers, agency leaders, researchers, and the field to advance policies and practices that can help these young adults transition to a crime-free and productive life.

Recommendation 1: Tailor supervision and services to address young adults’ distinct needs

Both juvenile and adult criminal justice system leaders should ensure that services and supervision for young adults are developmentally appropriate and address the distinct needs of this population. While research findings are limited, existing literature and consultations with experts and practitioners in the field identified the following elements that will likely need to undergird any effective strategy for improving outcomes for young adults under justice system supervision:

- Targeted cognitive behavioral approaches to address criminal thinking and antisocial behavior
- Career pathways that integrate education, vocational training, and job-readiness supports to ensure that young adults are prepared to join and succeed in the workforce
- Targeted mental health and substance use treatment so that young adults are better able to manage their conditions
- Life skills training to ensure that young adults are ready to transition to independence
- Family involvement or connection to a supportive adult to help young adults navigate the difficult transition to adulthood

Regardless of the strategy employed to improve outcomes for young adults, it will only succeed if justice system professionals are equipped to successfully engage and work with this population. All staff that interact with young adults, including corrections, parole, and probation staff, should receive ongoing training on how interventions should be tailored to young adults’ distinct needs.

Promising Models for Young Adults under Justice System Supervision

Multisystemic Therapy for Emerging Adults

Multisystemic Therapy for Emerging Adults (MST-EA) is an adaptation of MST—an evidence-based intervention that has been effective in reducing reoffending among juveniles—that is specifically tailored to the distinct needs of young adults ages 17 to 21. MST-EA is designed to target the greatest causes of offending in young adults with both justice system involvement and a serious mental health condition (SMHC). MST-EA follows the general MST treatment process, but incorporates two important adaptations. First, while MST is considered primarily a family-based treatment, MST-EA is more focused on directly engaging the emerging adult. Second, the role of
family in MST-EA is expanded to include the young adult’s social network, such as close friends or supportive adults outside the family whenever possible. MST-EA integrates psychiatric support, substance use treatment, and trauma-focused interventions when necessary, as well as several “coaches” that provide mentoring support and help build the young adult’s social, emotional, vocational, and life skills.

A feasibility study funded by the National Institute of Mental Health and National Institute on Disability and Rehabilitation Research was conducted of 41 MST-EA participants, ages 17 to 20, that had a SMHC and a recent arrest or incarceration. Pre- and post-intervention analyses revealed significant reductions in participants’ mental health symptoms, justice system involvement, and associations with antisocial peers.

_Roca, Inc._

Roca is a nonprofit organization that aims to help reduce justice system involvement and increase job readiness for young adults in Massachusetts. Roca’s evidence-based Intervention Model engages 17- to 24-year-olds who are at high risk of reoffending in a long-term process of behavior change and skill-building opportunities. With two years of intensive engagement and two years of less intensive follow-up, Roca’s Intervention Model provides a robust combination of services, including street outreach, data-driven case management, and stage-based education and employment training. Roca focuses its efforts on two groups of young people: young men trapped in cycles of crime and incarceration and young mothers with a multitude of risk factors.

Roca partners with an important array of leaders and institutions within the criminal justice field, government, social service sector, and business, to create systemic improvements to respond to the crises of crime, poverty, and the over-incarceration of young people.

Findings from Roca’s program evaluation in FY2014 found that, of the 171 participants enrolled 24 months or longer, 92 percent had no new arrests, 98 percent had no new technical violations of the conditions of their supervision, and 89 percent had retained employment for 3 months or more. In addition, of the 150 participants enrolled 21 months or longer who were placed in a job, 85 percent retained employment for at least 180 days.

**Recommendation 2: Reduce barriers across service systems to meeting the distinct needs of young adults**

Federal, state, and local policymakers should take steps to reduce the systemic barriers that prevent the needs of young adults under justice system supervision from being met. First, policymakers should ensure that individual service systems—including child welfare, education, employment, behavioral health, and health care—provide as much of a safety net as possible. In addition, policymakers should look across these service systems to ensure consistency in eligibility for services and improved alignment of endpoints for care. Available services and funding sources to support young adults should also be examined to ensure that resources are being used efficiently across systems and that program investments are producing improved outcomes for young adults. Finally, policymakers should examine laws and policies that result in collateral consequences for young adults with a criminal record. Every effort should be taken to ensure that justice, education, employment, health care, housing, and other systems do not impose additional penalties on young adults that can prevent them from transitioning to a crime-free and productive adulthood.
Increasing Cross-Systems Coordination to Improve Outcomes for Young Adults in Iowa

The Iowa Collaboration for Youth Development (ICYD) Council is a collaborative of state and community agencies that are leading an effort to better align policies and programs for young people and improve interagency coordination across Iowa. Established in 1999, and formalized through a state statute passed in 2009, the ICYD Council meets quarterly to examine reports from state agencies, review progress of current activities, evaluate data, and establish priorities and recommendations to improve outcomes for youth and young adults. The ICYD Council serves as a statewide coordinating body to examine youth-related issues across agencies and programs, including education and dropout prevention, juvenile justice reform, transitions from foster care, and homelessness. Among its many priorities, the ICYD Council is also working to develop a cross-systems model for expanding the use of evidence-based practices and improving how data and information is shared to improve outcomes for youth and young adults.

Recommendation 3: Improve data collection and reporting on young adult recidivism and other outcomes

Currently, there is limited public information on arrest, incarceration, and community supervision for young adults, and many states are not specifically tracking recidivism for this population. To address this gap, federal, state, and local policymakers should require both juvenile and adult criminal justice agencies to collect and report data at least annually on the number of young adults under justice system supervision, as well as detailed recidivism data that is disaggregated by age, risk level, and other key variables. Efforts should also be made to connect juvenile and adult criminal justice data systems and to improve data sharing among the various public systems that serve youth, in compliance with data privacy mandates. This effort can help states and local jurisdictions evaluate whether young adults in the juvenile justice system end up in the adult system; track the services that young adults receive in both systems and identify ways to use resources more efficiently; and analyze not only recidivism trends, but other key outcomes, such as education and employment, over time.

Recommendation 4: Build the knowledge base of “what works” by testing promising and innovative supervision and service delivery approaches, and direct funding to programs proven to be effective

To help expand the existing research base, policymakers at the federal and state level need to support the development, testing, and evaluation of potential strategies to reduce recidivism and improve other outcomes for young adults under justice system supervision. First, policymakers should support rigorous evaluations of the few existing programs designed to improve outcomes for young adults in the juvenile and adult criminal justice systems. At the same time, policymakers must help develop and test new, innovative models for meeting young adults’ needs. Finally, policymakers should use findings from these evaluations to direct resources toward effective and promising approaches for reducing recidivism and improving other outcomes for young adults. Findings from this research can help leaders and practitioners across the juvenile justice, adult criminal justice, and other service systems to institute more systematic, research-based responses to young adults.
ENDNOTES


3. Risk of offending is the likelihood that a person will engage in future criminality. Risk levels are typically determined through a validated risk assessment tool that examines what risk factors—characteristics and other variables that increase the probability of future offending—are present. Risk factors include age of first offense, antisocial behavior, negative peer influences, and substance use. Rolf Loeber, David Farrington, Magda Stouthamer-Loeber, and Helene Raskin White, eds., *Violence and Serious Theft: Development and Prediction from Childhood to Adulthood* (London: Routledge Press, 2014); Rolf Loeber, Barbara Menting, Donald Lynham, Magda Stouthamer-Loeber, Rebecca Stallings, David Farrington, and Dustin Pardini, “Findings From the Pittsburgh Youth Study: Cognitive Impulsivity and Intelligence as Predictors of the Age-Crime Curve,” *Journal of the American Academy of Child & Adolescent Psychiatry* 51, no. 11 (November 2012): 1136–1149; Rolf Loeber and David Farrington (eds.) From Juvenile Delinquency to Adult Crime: Criminal Careers, Justice Policy, and Prevention (New York: Oxford University Press, 2012).


7. Cognitive development is the process through which a person’s perceptions, thinking, and understanding of the world evolves from childhood to adulthood. Aspects of development include information processing, intelligence, reasoning, language development, and memory.


12. Ibid.


17. An “over-age and under-credited” student is defined as one who is over the traditional school age for his or her grade level and lacks adequate credit hours for his or her grade level.


31. The federal government sets minimum guidelines for Medicaid eligibility, but states can choose to expand coverage beyond the minimum threshold.

30. National Center for Education Statistics,


41. There was no control group in this study.

38. U.S. Government Publishing Office,

35. Center for Community Alternatives,


29. National Center for Education Statistics,


Science News

‘Map’ of teenage brain provides strong evidence of link between serious antisocial behavior and brain development

Date: June 15, 2016
Source: University of Cambridge
Summary: The brains of teenagers with serious antisocial behavior problems differ significantly in structure to those of their peers, providing the clearest evidence to date that their behavior stems from changes in brain development in early life, according to new research.

These two regions of the brain (orbitofrontal cortex and medial temporal cortex) were more similar in terms of thickness in youths with Conduct Disorder than in typically-developing youths. This suggests that the normal pattern of brain development is disrupted in youths with Conduct Disorder.

Credit: Nicola Toschi

The brains of teenagers with serious antisocial behaviour problems differ significantly in structure to those of their peers, providing the clearest evidence to date that their behaviour stems from changes in brain development in early life, according to new research led by the University of Cambridge and the University of Southampton, in collaboration with the University of Rome "Tor Vergata" in Italy.

In a study published today in the Journal of Child Psychology and Psychiatry, researchers used magnetic resonance imaging (MRI) methods to look at the brain structure of male adolescents and young adults who had been diagnosed with conduct disorder -- persistent behavioural problems including aggressive and destructive behaviour, lying and stealing, and for older children, weapon use or staying out all night.

In particular, the researchers looked at the coordinated development of different brain regions by studying whether they were similar or different in terms of thickness. Regions that develop at similar rates would be expected to show similar patterns of cortical thickness, for example.

"There's evidence already of differences in the brains of individuals with serious behavioural problems, but this is often simplistic and only focused on regions such as the amygdala, which we know is important for emotional behaviour," explains Dr Luca Passamonti from the Department of Clinical Neurosciences at the University of Cambridge. "But conduct disorder is a complex behavioural disorder, so likewise we would expect the changes to be more complex in nature and to potentially involve other brain regions."
In a study funded by the Wellcome Trust and the Medical Research Council, researchers at the University of Cambridge recruited 58 male adolescents and young adults with conduct disorder and 25 typically-developing controls, all aged between 16 and 21 years. The researchers divided the individuals with conduct disorder according to whether they displayed childhood-onset conduct disorder or adolescent-onset conduct disorder.

The team found that youths with childhood-onset conduct disorder (sometimes termed “early-starters”) showed a strikingly higher number of significant correlations in thickness between regions relative to the controls. They believe this may reflect disruptions in the normal pattern of brain development in childhood or adolescence.

On the other hand, youths with adolescent-onset conduct disorder (“late starters”) displayed fewer such correlations than the healthy individuals. The researchers believe this may reflect specific disruptions in the development of the brain during adolescence, for example to the ‘pruning’ of nerve cells or the connections (synapses) between them.

As the findings were particularly striking, the researchers sought to replicate their findings in an independent sample of 37 individuals with conduct disorder and 32 healthy controls, all male and aged 13-18 years, recruited at the University of Southampton; they were able to confirm their findings, adding to the robustness of the study.

"The differences that we see between healthy teenagers and those with both forms of conduct disorders show that most of the brain is involved, but particularly the frontal and temporal regions of the brain," says Dr Graeme Fairchild, who is an Associate Professor in the Department of Psychology at the University of Southampton. "This provides extremely compelling evidence that conduct disorder is a real psychiatric disorder and not, as some experts maintain, just an exaggerated form of teenage rebellion."

"These findings also show that there are important differences in the brain between those who develop problems early in childhood compared with those who only show behavioural problems in their teenage years. More research is now needed to investigate how to use these results to help these young people clinically and to examine the factors leading to this abnormal pattern of brain development, such as exposure to early adversity."

"There's never been any doubt that conditions such as Alzheimer's disease are diseases of the brain because imaging allows us to see clearly how it eats away at the brain," adds Professor Nicola Toschi from the University "Tor Vergata" of Rome, "but until now we haven't been able to see the clear -- and widespread -- structural differences in the brains of youths with conduct disorder."

Although the findings point to the importance of the brain in explaining the development of conduct disorder, it is not clear how the structural differences arise and whether, for example, it is a mixture of an individual's genetic make-up and the environment in which they are raised that causes the changes. However, the researchers say their findings may make it possible to monitor objectively the effectiveness of interventions.

"Now that we have a way of imaging the whole brain and providing a 'map' of conduct disorder, we may in future be able to see whether the changes we have observed in this study are reversible if early interventions or psychological therapies are provided," says Professor Ian Goodyer from the Department of Psychiatry at the University of Cambridge.

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Journal Reference:
'Map' of teenage brain provides strong evidence of link between serious antisocial behavior and brain development -- ScienceDaily

https://www.sciencedaily.com/releases/2016/06/160615203122.htm
The following brief summaries highlight several aspects of adolescent development that are important to consider when representing youth in the juvenile justice system. The studies included focus primarily on youth’s psychosocial development. Psychosocial development refers to internal psychological processes that are influenced by and interact with social/environmental cues. Many developmental and legal scholars argue that certain psychosocial characteristics of adolescence (susceptibility to peer influence; lack of future orientation; lower impulse control) should mitigate the culpability of young offenders because their decision-making capacities are often still immature and not fully developed. However, some of these same psychosocial characteristics (e.g., lack of future orientation) also speak to youth’s vulnerabilities in interrogation settings.

A couple of the studies reviewed discuss youth’s cognitive development (e.g., how youth think, reason and process information). Since youth are still developing cognitive capacities, they are at a higher risk than adults of being incompetent to stand trial, and for invalid waivers of Miranda.

I. Susceptibility to Peer Influences (Psychosocial Development)

The following studies speak to the important role peers play in adolescents’ poor judgment and risky behaviors. Such evidence helps to explain why adolescents, more so than adults, commit crimes in groups. This is a critical psychosocial characteristic of youth to consider, particularly when we think about issues of mitigation and culpability. Highlighting how a youth may have been influenced by peers involved in the same incident may be critical for mitigating a client’s behavior.


**Purpose**

- To explore age differences in susceptibility to peer influences:
  - across a diverse demographic group;
  - using a measure specifically designed to examine resistance to peer influences in neutral rather than anti-social scenarios.
- To determine whether growth in resistance to peer influences increases “linearly” (e.g., gradually increases as youth age) throughout adolescence.

**Methodology**

- Used data that had been previously collected from three different studies in order to have a diverse group of participants who varied in age (10 to 30), gender, social class and ethnicity.
  - Additionally, the samples consisted of individuals from the community, as well as those who had been arrested.
- Resistance to Peer Influence (RPI) was measured by a self-report questionnaire that directed participants to choose between two statements in order to best describe how they would respond to pressure from peers in different scenarios.
Results
- Results indicate that youth from ages 14 to 18 increase in their resistance to peer influences. By 18, youth appear to reach maturity in regard to resistance to peer influence, and show little growth in this capacity. In fact, their scores are comparable to those of 30-year-olds.
- Additionally, researchers reported demographic differences with some groups, showing more resistance to peer influences than others.

Relevance
- Although teenagers may be more susceptible than adults to the influence of their peers, middle adolescence is an important time period for developing a resistance to peer influences.


Purpose
- To investigate the influence of peers on risk-taking and risky decision-making in adolescents and adults.

Methodology
- An experimental study conducted in a laboratory setting with a sample of 306 individuals recruited from both the community and from an undergraduate university. Participants consisted of three groups: a) adolescents ages 13 to 16 years old; b) youth ages 18 to 22 years old; and c) adults ages 24 and older.
- Researchers used self-report questionnaires and a behavioral task to assess risky decision-making and risk-taking.
  - For the behavioral task, researchers used a simulated driving task on the computer to assess participants’ risky decision-making. Participants had to decide whether or not to break as they approached a changing stoplight. The time it took the light to change from yellow to green varied, and so did the probability of crashing in the intersection.

Results
- Individuals in middle and late adolescence were much more likely than adults to take more risks and engage in riskier decision-making when tested in groups than when tested alone.

Relevance
- Demonstrates that adolescents are more susceptible to the influence of their peers than adults, particularly when engaging in risky behavior and/or risky decision-making.


Purpose
- To explore a possible explanation for why peers influence adolescent risk-taking by using fMRI equipment to study brain activity while completing a risk-taking task in the presence of peers.
Researchers were interested in whether the presence of peers activates regions of the brain differently for adolescents than for adults.

- The two brain systems thought to be involved in risky decision-making are the cognitive control system and the incentive processing/socio-emotional system.
- The cognitive control system of the brain is related to impulse control, as well as better reasoning and planning.
- The incentive processing/socio-emotional system of the brain is associated with the processing of rewards and punishments, as well as emotions and social information.
- Adolescence is thought to be a time when the incentive processing/socio-emotional system of the brain is easily aroused and highly sensitive to social feedback, while the cognitive control system is still immature and developing.

Methodology

- An experimental study conducted in a laboratory setting with: 40 participants age 14 to 18 years old; 14 participants age 19 to 22 years old; and 12 participants age 24 to 29 years old.
- Researchers used a simulated driving task on the computer to assess participants’ risky decision-making. Participants had to decide whether or not to break as they approached a changing stoplight. The time it took the light to change from yellow to green varied, and so did the probability of crashing in the intersection.
- While completing the computer driving task, brain activity was assessed using fMRI technology.
  - One group of participants completed the driving task with no peers present. A second group of participants were told that their peers were observing them from a monitor in another room. These observers were allowed to communicate periodically with participants over an intercom. The observers were instructed to let participants know that they were making predictions about the participants’ outcome, but the observers were not allowed to make comments that might overly bias participants’ performance on the task.
  - In order to determine if there was a difference in brain activity when participants completed the game alone or in the presence of peers, brain activity and responses to the driving task were aligned temporally.

Results

- Adolescents, more so than young adults or adults, took more risks with peers than when alone, and crashed more with peers than when alone.
- In the presence of peers, adolescents demonstrated heightened brain activity in the incentive processing/socio-emotional system in comparison to young adults and adults.
- Adult participants did not show an increase in the incentive processing/socio-emotional system of the brain during the simulated driving task. Instead, young adults and adults showed more recruitment of the cognitive control system while completing the driving task, both in the presence of peers and alone.

Relevance

- Results support a neurodevelopmental explanation for the influence of peers on risky behavior in adolescence. The findings suggest that the presence of peers increases the salience of immediate rewards, and activates the incentive processing/socio-emotional system of the brain, which subsequently increases risky decision-making.
Results also suggest that adults, due to maturation, are better able to recruit the cognitive control system of the brain in order to engage in better-reasoned decision-making when confronted with risky situations.


Purpose

- To test the hypothesis that adolescents’ preferences for immediate rewards, versus delayed rewards, increases in the presence of peers.
- To investigate the mechanism underlying the influence of peers on risky decision-making. The authors propose that the presence of peers increases adolescents’ sensitivity to the immediate rewards of a risky decision.

Methodology

- An experimental study conducted in a laboratory setting with a sample of 100 participants, ages 18 through 20.
  - Participants were recruited from a college campus.
  - Participants were asked to bring two friends with them to the study, and were randomly assigned to a group or alone condition.
- Participants were administered a delay-discounting task on the computer.
  - The delay-discounting task required participants to choose between smaller immediate rewards (e.g. US $200 today) or larger delayed reward (e.g. US $1000 in six months).
  - “Discount” refers to the extent to which participants discount the larger reward, due to the delay in receiving the larger reward.

Results

- Participants who were in the presence of their peers were more likely than when alone to:
  - Prefer immediate rather than delayed rewards.
  - Discount the value of delayed rewards.
- Researchers compared the results of the present study with a study conducted by Laurence Steinberg and colleagues (2009) (see summary on Future Orientation) that used the same delay-discounting task. In the Steinberg and colleagues study, the results of youth age 14 to 15 that did the discounting task alone paralleled the results of 18- to 20-year-olds who completed the task in the presence of peers. Thus, even 18- to 20-year-olds may make immature decisions that resemble 14- to 15-year-olds when they are in the presence of peers.

Relevance

- Results suggest that an adolescent tendency towards riskier decision-making in the presence of peers is due to a shift in “reward processing.” Youth tend to value more the immediate rewards of a risky decision (e.g. unprotected sex) than considering the long-term consequences of such a decision (e.g. disease or pregnancy).
II. Compliance with Authority


**Purpose**
- To investigate the influence of cognitive and psychosocial maturity on adjudicative-related capacities in adolescents.

**Methodology**
- The sample consisted of:
  - 927 youth ages 11 to 17: approximately half were detained in a detention facility or jail and half resided in the community with no current justice system involvement.
  - 466 adults ages 18 to 24: approximately half were detained in a jail and half resided in the community with no current justice system involvement.
- Interviews were conducted in detention or jail settings for the detained participants and in a laboratory setting for community participants.
  - A standardized measure, the MacCAT-CA, was used to evaluate individuals’ capacity to understand, reason about and appreciate critical aspects related to capacities to serve as trial defendants.
  - Another measure, the MacJen, used responses to different vignettes to assess the influence of psychosocial characteristics (e.g., compliance with authorities, risk perception, future orientation) on adolescents’ decision-making in the adjudicative context. The MacJen gives three different vignettes that ask youth about the choices they would make in certain legal contexts. The first vignette depicts a youth being asked to respond to a police interrogation. The second vignette asks a youth to decide on whether or not to disclose information to his attorney. The third vignette asks a youth to make a choice about whether or not to accept a plea agreement.

**Results**
- **Cognitive Development**: Adolescents 15 years old and younger were significantly more cognitively impaired than 16- and 17-year-old adolescents and young adults in abilities related to competence to stand trial.
  - Adolescents aged 11 to 13 years old showed the most significant impairments.
  - 33% of the 11- to 13-year-olds and 20% of the 14- to 15-year-olds were “as impaired in capacities relevant to adjudicative competence as are seriously mentally ill adults who would likely be considered incompetent to stand trial by clinicians who perform evaluations for courts (p. 356).”
  - Also, adolescents with lower IQs demonstrated significant impairment in capacities.
- **Psychosocial Development**: Psychosocial characteristics such as compliance with authorities, risk appraisal and future orientation were found to influence adolescents’ decision-making in three different legal scenarios: confessing to the police, accepting a plea agreement and disclosing to an attorney.
Youth 15 years old and younger were significantly more likely than older youth to make decisions that represented compliance with authorities and to choose options associated with higher risks.

Those youth who were aged 14 years and younger were significantly less likely to consider the long-term consequences of their choices.

Relevance

- **Cognitive Development**: Many youth, particularly younger youth and youth with low IQs, are at risk for not being competent to stand trial. Unlike with adult defendants where incompetence may be found due to mental retardation and/or mental illness, youth may be incompetent to stand trial due to developmental immaturity.

- **Psychosocial Development**: Not only are youth more likely to be impaired in adjudicative capacities related to understanding, reasoning and appreciation, but psychosocial immaturity may make youth particularly vulnerable to poor decisions in legal contexts. For example:
  - Youth’s tendencies to be more compliant with authorities may increase their vulnerability to police coercion.
  - Youth’s lack of future orientation may impede their ability to fully understand the implications of waiving their right to silence when being interrogated by police.

III. Present Orientation and the InAbility to Delay Rewards (Psychosocial Development)

This study demonstrates that youth, more so than adults, lack consideration of future consequences. While these findings speak to issues of mitigation and culpability, they also suggest that youth’s difficulty in thinking about long-term consequences may make them vulnerable to being coerced into waiving *Miranda* rights or making a statement.

Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 Child Dev. 28 (2009).

Purpose

- To investigate age differences in future orientation and the ability to delay rewards.

Methodology

- An experimental study conducted in a laboratory setting with a sample of 935 individuals, ages 10 to 30 years. Participants were recruited from the community in several cities across the United States.

- Used both self-report questionnaires and behavioral tasks to assess future orientation and preference for delayed versus immediate rewards.
  - Self-report questionnaire assessed participants’ abilities to think about the future, plan ahead and anticipate future consequences.
  - Behavioral task was a “delay-discounting” task, a standardized measure designed to assess participants’ tendencies to choose immediate versus delayed rewards. This task was administered on a computer and presented participants with several choices between a
smaller amount of pretend money that they could receive immediately (i.e., $5.00) versus a larger amount of money they could receive in a week (i.e., $100).

Results
- Researchers did find age differences in future orientation as measured by the self-report questionnaire and the behavioral task.
  - Younger adolescents, more so than individuals age 16 and older, demonstrated a weaker orientation toward the future.
    - Younger adolescents were less likely to think about the future and anticipate future consequences of decisions.
    - Planning ahead continued to develop into young adulthood.
  - In the “delay-discounting” task, younger adolescents, more so than individuals age 16 and older, preferred smaller immediate rewards than larger delayed rewards.

Relevance
- The evidence suggests that adolescents’ (in contrast to adults’) preference for immediate versus delayed rewards is more closely linked to adolescents’ ability to think about the future and anticipate future consequences, and not their ability to self-regulate.
- The authors also note that “future orientation” has different dimensions, and adolescents’ ability to anticipate consequences may occur along a different timetable than their ability to plan ahead.
  - Authors suggest that adolescents’ difficulty in anticipating future consequences is more closely linked to a sensitivity to rewards, which is attributed to development of a particular brain system (socio-emotional system), more highly aroused in early adolescence.
- The authors note that evidence demonstrating adolescents’ weakened future orientation, or inability to anticipate the consequences of their actions, is often applied to discussions of adolescents’ capacity for “premeditation” or “planfulness” in the context of criminal culpability.
- However, adolescents’ weakened future orientation may increase their vulnerability to coercion in the interrogation context, as well.

IV. Sensation-Seeking and Impulsivity (Psychosocial Development)

These findings speak particularly to the issue of immaturity and culpability, and are important to consider when mitigating illegal behavior in adolescents. In general, youth are more likely than adults to display less impulse control and more sensation-seeking behaviors. It appears that these characteristics are a normal part of adolescent development.


Purpose
- To explore age differences in sensation-seeking (tendency to seek stimulating and novel experiences) and impulsivity (lack of self-control).
- Researchers predicted that sensation-seeking and impulsivity:
  - Occur along different timetables

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- Are connected to the increased vulnerability to risk-taking found in adolescence

Methodology
- An experimental study conducted in a laboratory setting with a sample of 935 individuals, ages 10 to 30 years. Participants were recruited from the community in several cities across the United States.
- Used both self-report questionnaires and behavioral tasks to assess sensation-seeking and impulsivity.

Results
- Age differences were found for both impulsivity and sensation-seeking, but they developed along different timetables.
  - Sensation-seeking behaviors increased between the ages of 12 to 15 (initiating around the beginning of puberty), and then steadily declined.
  - Impulsivity was found to steadily decline from age 10 through adolescence and well into early adulthood. Adolescents younger than 16 demonstrated significantly less impulse control than 16- to 17-year-olds, and 16- to 17-year-olds demonstrated significantly less impulse control than 22- to 25-year-olds.

Relevance
- After age 15, adolescent vulnerability to risky behavior steadily decreases as sensation-seeking decreases, and impulse control continues to increase into early adulthood.
- Evidence from this study is consistent with adolescent brain research that demonstrates that the brain systems (cognitive control system) linked to impulse control and self-regulation does not fully develop until early adulthood. In contrast, the brain systems (socio-emotional system) linked with sensation-seeking becomes more highly aroused in early adolescence.


Purpose
- To examine the development differences in the appraisal of risk and to see how this difference related to involvement in the court system. The authors call the tendency to perceive more rewards than risk when facing risky situations, “reward bias.” They hypothesize that compared to adults; adolescents have more reward bias and higher reward bias is associated with higher engagement in illegal activity.

Methodology
- To measure risk perception, subjects were asked to imagine themselves engaging in identified risky behavior (e.g., having unprotected sex, stealing from a store, or fighting) and rate the likelihood of a negative outcome, how serious the negative consequence could be, and how potential costs compare to potential benefits.
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- **Study One**
  - Community-based sample consisting of 935 subjects age 10-30, ethnically diverse, males and females, working or middle class, with no involvement in the legal system.

- **Study Two**
  - Sample of over 1,400 community and pre-adjudication court-involved youths and adults.
  - Data was analyzed using five participants in each group: 12-13 years old (early adolescence), 14-15 years old (middle adolescence), 16-17 years old (later adolescence), 18-21 years old (late adolescence) and those 22-24 years old (young adults).

**Results**

- **Study One**
  - Age was related to reward bias such that reward bias increased during adolescence (peaking for 16-17 years old) then decreased with age.
  - Males are more likely to demonstrate a reward bias.

- **Study Two**
  - In the sample involved in the justice system, reward bias decreased with age and was highest in the 12-13 year old group.
  - The decrease in reward bias was true even for those who pled guilty or were found guilty of a crime in the past.

**Implications**

- This is yet another study that demonstrates that adolescents, more so than adults, tend to focus on the reward rather than the risk.
- These findings are consistent with the dual system theory that postulates the risk and reward system of the adolescent brain is “stronger” than the cognitive control system.


**Purpose**

To examine if adolescents respond more impulsively than adults or children when confronted with a frightening or threatening stimuli relative to one that is neutral. This study considered behavioral and FMRI data.

**Methodology**

- 57 subjects between the ages of 6-27 years old. Children were ages 6-12, adolescents 13-17 and adults 18 and older.
- Subjects were shown calm and fighting faces. They were told to press the button when they saw a calm face and not to press it if they saw a frightening face. Subjects were instructed to respond as quickly as they could and they only saw the face for 500 ms, so they didn’t have a lot of time to think about it. The subjects were in an FMRI while they did the task.
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Results
- The experimenters were interested in the condition that required subjects to suppress a response; that is, not respond, when they saw a frightening face, a potential threat. Subjects made a false alarm or error if they responded to the threat.
- Compared to adults or children, adolescents were more likely to respond incorrectly or impulsively respond to the fearful stimuli.
- Compared to females, males were more likely to make false alarms.
- Compared to children or adults, when doing the task, the limbic region of the adolescent brain was more active.

Relevance
- Adolescents, compared to children or adults, are more likely to act impulsively when they are faced with threatening stimuli. (Other research has shown they are also more likely to act impulsively when faced with positive stimuli.) The take home is that as a normal developmental process, adolescents are more impulsive.
- Just as adolescents respond differently, their brains functions differently than the brains of adults or children.

IV. Capacities Related to Adjudicative Competence and Validity of Miranda Warnings (Cognitive and Psychosocial Development)

These studies demonstrate that on average, younger youth (15 and under) may be more likely to have impairments related to adjudicative competence and Miranda comprehension. These impairments are most likely due to the fact that they are still developing cognitive capacities (i.e., the capacity to think, reason and process information). However, it is important to understand that older youth may demonstrate impairments as well, particularly if they have lower IQs or have learning disabilities. In addition, youth’s psychosocial immaturity (e.g., compliance with adults) makes them more vulnerable than adults to coercion in interrogation settings.


Purpose
- The following study explored the relationship of youth’s cognitive development, psychological symptoms and attorney-client contact to capacities related to adjudicative competency and Miranda waiver.

Methodology
- Participants were 152 youth detained in a pre-trial detention facility (73 females and 79 males) between 11 and 17 years old.
- Interviews were conducted with youth over the course of two different sessions in the detention facility.
- In the first session, youth were given Grisso’s Instruments for Assessing Understanding and Appreciation of Miranda Rights, as well as an assessment of capacities related to adjudicative
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competence created by Roesch and colleagues: The Fitness Interview Test. In the second testing session, participants were given a battery of tests assessing cognitive abilities and psychological symptoms. Also, participants were asked how many times they met with their lawyer and how long they spent with their lawyer.

Results
- Researchers had multiple research questions; however, some of the more significant results were:
  - Older youth performed better on tests related to adjudicative competence and *Miranda* comprehension and reasoning than younger youth.
  - Cognitive abilities (e.g., general intellectual ability) for youth who are 11 to 15 years old are significantly lower than for youth who are aged 16 and 17.
  - Cognitive abilities were strongly related to participants’ performance on the tests related to adjudicative competence and *Miranda* comprehension and reasoning.
  - Psychological symptoms (e.g., depression, anxiety, behavior problems) were not related to performance on *Miranda* instruments regarding adjudicative competence. However, a symptom of ADHD (e.g., excitation) was related to understanding of *Miranda* warnings, as well as communication with attorneys on a measure of adjudicative competence.
- Youth who had more contact with and time spent with attorneys demonstrated better understanding of adjudicative proceedings and *Miranda* warnings.

Relevance
- Results suggest that teenagers are still developing cognitive abilities in adolescence. As a result, youth who are 11 to 15 years old are at a much higher risk of being found incompetent to stand trial.
- Also, due to still-developing cognitive capacities, younger youth are at a higher risk of not giving an “intelligent and knowing” *Miranda* waiver.
- Results also suggest that adolescents’ limitations in capacities related to adjudicative competence and *Miranda* comprehension are not generally a result of psychopathology, as is often the case with adults. Although symptoms of ADHD may play a role in youth’s legal capacities.


Purpose
- Researchers compared adolescents’ cognitive capacities with a composite measure of psychosocial maturity examining risk perception, sensation seeking, impulsivity, resistance to peer influence and future orientation.

Methodology
- An experimental study conducted in a laboratory setting with a sample of 935 individuals, ages 10 to 30 years. Participants were recruited from the community in several cities across the United States.
- To assess cognitive capacity, a battery of tests assessing basic cognitive skills was administered.
To assess psychosocial maturity, researchers administered a combination of self-report questionnaires designed to measure risk preference, sensation-seeking, impulsivity, resistance to peer influence and future orientation.

Results
- Findings support the theory that cognitive maturation and psychosocial maturation occur along different timetables.
- “By age 16, adolescents’ general cognitive abilities are essentially indistinguishable from those of adults, but adolescents’ psychosocial functioning, even at the age of 18, is significantly less mature than that of individuals in their mid-20s.” (p. 592)

Relevance
- Researchers highlight that adolescents’ poor judgment is not necessarily a result of poor reasoning skills, but more closely linked to adolescents’ psychosocial development.
  - “When it comes to decisions that permit more deliberative, reasoned decision-making, where emotional and social influences on judgment are minimized or can be mitigated, and where there are consultants who can provide objective information about the costs and benefits of alternative courses of action, adolescents are likely to be just as capable of mature decision-making as adults, at least by the time they are 16… In contrast, in situations that elicit impulsivity, that are typically characterized by high levels of emotional arousal or social coercion, or that do not encourage or permit consultation with an expert who is more knowledgeable…adolescent decision-making at least until they have turned 18 is likely to be less mature than adults.” (p. 592)

V. Desistance


Purpose
- To examine patterns of anti-social behavior in serious offenders after court involvement in order to obtain a better understanding of how adolescents’ reduce their offending behavior over time.

Methodology
- Data used in this analysis/article draws from a larger study called the “Pathways to Desistance” in which 1,354 serious offenders are interviewed over a 7 year period.
- Analyses for the current study used 1,119 male adolescents who had been adjudicated of a serious offense (e.g. includes all felony offenses, as well as misdemeanor weapon offenses and misdemeanor sexual assaults).
- Participants ranged between 14 and 18 years old, with an average age of 16. The sample was ethnically diverse: 19.6% white, 41.1% African American, 34.7% Hispanic. Data was collected in two cities: Philadelphia, PA and Phoenix, AZ.
- Participants for the current analyses were interviewed twice a year for up to 3 years. Interviews consisted of a number of measures to assess self-reported offending, mood/anxiety and substance use problems, attitudes toward the legal system, psychosocial maturity, parenting, peers, as well
as prior arrest history. Several demographic characteristics were also collected in addition to an assessment of neighborhood disadvantage.

Results

- Researchers clustered participants into 5 different groups based on their offending patterns. They highlighted in particular those participants who persisted in offending and those who desisted from offending.
  - Two years after being adjudicated for a serious offense, a majority of youth (73.8%) reduced their offending to low or zero involvement in offending behavior.
  - For those youth who self-reported the lowest level of offending, placement in an institution raised their level of self-reported offending after release from institutional placement.

Relevance

- The authors conclude that the majority of serious offenders are not necessarily “bad actors” destined for adult criminal activity. Most serious offenders demonstrate low or zero involvement in criminal activity years after court involvement. As a result, this is an important point to raise when highlighting the amenability of a youth to treatment at disposition or in transfer proceedings.
- For youth who have been adjudicated for a serious offense, but demonstrate overall low levels of offending, incarceration or placement in residential treatment facilities has the potential to increase recidivism. As a result, community based alternatives may be a far better rehabilitative option than incarceration or institutional placement, particularly for youth with low levels of overall offending.

VI. Link Between Trauma and Delinquency


Purpose

- To investigate a sample of detained boys in order to determine if there is a link between Post Traumatic Stress Disorder (PTSD) symptoms and the number and severity of prior arrests.

Methodology

- Researchers conducted interviews with detained youth in private interview rooms at a detention facility.
- Researchers administered questionnaires that assessed trauma exposure and PTSD symptoms. Delinquency was measured using official arrest records. Investigators examined the number of lifetime arrests, the severity of lifetime delinquency, the number of past-year arrests and the severity of past-year delinquency.

Results

- 25.3% of boys reported experiencing community violence, 19.3% reported domestic violence and 19.2% reported witnessing community violence.
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- PTSD symptoms significantly predicted the number of lifetime arrests, the number of arrests in the past year and the severity of delinquency in the past year.

Relevance
- Findings suggest that trauma and PTSD symptoms are linked to delinquency.
- Findings demonstrate that a high number of youth in the juvenile justice system are exposed to trauma and experience PTSD symptoms.
- Findings suggest that juvenile justice stakeholders should pay more attention to the needs of youth in the delinquency system who are exposed to trauma.
Pathways to Desistance

How and why do many serious adolescent offenders stop offending while others continue to commit crimes? This series of bulletins presents findings from the Pathways to Desistance study, a multidisciplinary investigation that attempts to answer this question.

Investigators interviewed 1,354 young offenders from Philadelphia and Phoenix for 7 years after their convictions to learn what factors (e.g., individual maturation, life changes, and involvement with the criminal justice system) lead youth who have committed serious offenses to persist in or desist from offending.

As a result of these interviews and a review of official records, researchers have collected the most comprehensive dataset available about serious adolescent offenders and their lives in late adolescence and early adulthood. These data provide an unprecedented look at how young people mature out of offending and what the justice system can do to promote positive changes in the lives of these youth.

Psychosocial Maturity and Desistance From Crime in a Sample of Serious Juvenile Offenders

Laurence Steinberg, Elizabeth Cauffman, and Kathryn C. Monahan

Highlights

The Pathways to Desistance study followed more than 1,300 serious juvenile offenders for 7 years after their conviction. In this bulletin, the authors present key findings on the link between psychosocial maturity and desistance from crime in the males in the Pathways sample as they transition from midadolescence to early adulthood (ages 14–25):

- Recent research indicates that youth experience protracted maturation, into their midtwenties, of brain systems responsible for self-regulation. This has stimulated interest in measuring young offenders’ psychosocial maturity into early adulthood.

- Youth whose antisocial behavior persisted into early adulthood were found to have lower levels of psychosocial maturity in adolescence and deficits in their development of maturity (i.e., arrested development) compared with other antisocial youth.

- The vast majority of juvenile offenders, even those who commit serious crimes, grow out of antisocial activity as they transition to adulthood. Most juvenile offending is, in fact, limited to adolescence.

- This study suggests that the process of maturing out of crime is linked to the process of maturing more generally, including the development of impulse control and future orientation.
Psychosocial Maturity and Desistance From Crime in a Sample of Serious Juvenile Offenders

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Involvement in delinquent and criminal behavior increases through adolescence, peaking at about age 16 (in cases of property crime) or age 17 (in cases of violent crime) and declining thereafter (Farrington, 1986; Piquero, 2007; Piquero et al., 2001). Although a small number of youth persist in antisocial behavior across this developmental period, the vast majority of antisocial adolescents desist from criminal behavior as they enter adulthood (Laub and Sampson, 2001; Piquero, 2007; Sampson and Laub, 2003). Understanding why most juvenile offenders desist from antisocial activity as a part of the normative transition into adulthood may provide important insights into the design of interventions aimed at encouraging desistance. This bulletin describes findings from the Pathways to Desistance study, a multisite, longitudinal sample of adolescent (primarily felony) offenders (see “About the Pathways to Desistance Study”).1 This study explores the processes through which juvenile offenders desist from crime and delinquency.

Theories of the Psychosocial Maturation Process

Both sociological and psychological theories suggest that one reason most adolescents desist from crime is that they mature out of antisocial behavior, but sociologists and psychologists have different ideas about the nature of this maturation. A traditional sociological view is grounded in the notion that the activities individuals typically enter into during early adulthood—such as full-time employment, marriage, and parenthood—are largely incompatible with criminal activity (Sampson and Laub, 2003). Thus, according to this view, individuals desist from antisocial behavior as a consequence of taking on more mature social roles, either because the time and energy demands of these activities make it difficult to maintain a criminal lifestyle or because embracing the socially approved roles of adulthood leads individuals to adopt more conventional values and attitudes.

The conventional psychological view describes a different scenario. According to this view, desistance from antisocial behavior is the product of psychosocial maturation (Cauffman and Steinberg, 2000; Steinberg and Cauffman, 1996; Monahan et al., 2009), which includes the ability to:

- Control one’s impulses.
- Consider the implications of one’s actions on others.
- Delay gratification in the service of longer term goals.
- Resist the influences of peers.

Thus, psychologists see that much juvenile offending reflects psychological immaturity and, accordingly, they view desistance from antisocial behavior as a natural consequence of growing up—emotionally, socially, and intellectually. As individuals become better able to regulate their behavior, they become less likely to engage in impulsive, ill-considered acts.

Although the sociological and psychological explanations of desistance from antisocial behavior during the transition to adulthood are not incompatible, there has been much more research in the sociological tradition, largely because psychological maturation during young adulthood has received relatively little attention from psychologists. Indeed, most research on psychological development during adolescence has focused on the first half of the adolescent decade rather than on the transition from adolescence to adulthood (Institute of Medicine, 2013), perhaps because social scientists widely assumed that there was little systematic development after midadolescence (Steinberg, 2014). However, recent research indicating protracted maturation (into the midtwenties) of brain...
systems responsible for self-regulation has stimulated interest in charting the course of psychosocial maturity beyond adolescence (Steinberg, 2010). Because juvenile offending is likely to wane during late adolescence and young adulthood (age 16 through age 25), it is important to ask whether desistance from crime and delinquency is linked to normative processes of psychological maturation.

Psychologist Terrie Moffitt (1993, 2003) has advanced the most widely cited theory regarding psychological contributors to desistance from antisocial behavior during the transition to adulthood. She distinguished between the vast majority of individuals (90 percent or more, depending on the study) whose antisocial behavior stopped in adolescence (adolescence-limited offenders) and the small proportion of individuals whose antisocial behavior persisted into adulthood (life-course persistent offenders). Moffitt suggested that different etiological factors explained these groups’ involvement in antisocial behavior. Moffitt hypothesizes that adolescence-limited offenders’ involvement in antisocial behavior is a normative consequence of their desire to feel more mature, and their antisocial activity is often the result of peer pressure or the emulation of higher status agemates, especially during midadolescence, when opposition to adult authority may confer special prestige with peers. In contrast, she thinks that antisocial behavior that persists into adulthood is rooted in early neurological and cognitive deficits that, combined with environmental risk, lead to early conduct problems and lifelong antisocial behavior. Although the identification of variations in these broad patterns of antisocial behavior has led Moffitt to refine her framework (Moffitt, 2006; Moffitt et al., 2002), the scientific consensus is that the distinction between adolescence-limited and life-course persistent offenders is a useful one.

Although Moffitt never explicitly outlined the role of normative psychosocial maturation in her framework, it follows from this perspective that growth in psychosocial maturity underlies adolescence-limited offenders’ desistance from antisocial behavior. That is, if adolescence-limited offenders engage in antisocial behavior to appear and feel more mature, the genuine process of maturation should lessen their need to engage in antisocial behavior to achieve this end, thereby contributing to desistance from crime and delinquency. Moreover, juvenile offenders who are relatively more mature for their age, or who mature faster than their peers, should “age out” of offending sooner than others. Indeed, there is some evidence to suggest that this is the case. In a previous analysis of earlier waves of data from the Pathways study, the researchers found that youth whose antisocial behavior persisted into their early twenties were significantly less psychosocially mature than youth who desisted from antisocial behavior (Monahan et al., 2009). In this bulletin, the researchers explore whether this pattern characterizes trajectories of antisocial behavior through age 25.

Models of Psychosocial Maturity

Many psychologists have proposed theoretical models of psychosocial maturity (e.g., Greenberger et al., 1974). The researchers’ approach to measuring psychosocial maturity is based on a model advanced in the 1990s (Steinberg and Cauffman, 1996), which suggested that during adolescence and early adulthood, three aspects of psychosocial maturity develop:

- **Temperance.** The ability to control impulses, including aggressive impulses.
- **Perspective.** The ability to consider other points of view, including those that take into account longer term consequences or that take the vantage point of others.
- **Responsibility.** The ability to take personal responsibility for one’s behavior and resist the coercive influences of others.

Previous studies have demonstrated that youth with lower temperance, perspective, and responsibility report greater antisocial behavior (Cauffman and Steinberg, 2000) and that, over time, deficiencies in developing these aspects of psychosocial maturity are associated with more chronic patterns of antisocial behavior (Monahan et al., 2009).

The researchers’ model of psychosocial maturation maps nicely onto one of the most widely cited criminological theories of antisocial behavior: Gottfredson and Hirschi’s (1990) General Theory of Crime, which posits that deficits in self-control are the cause of criminal behavior. Gottfredson and Hirschi’s definition of self-control, like the definition of maturity, includes components such as orientation toward the future (rather than immediate gratification), planning ahead (rather than impulsive decisionmaking), physical restraint (rather than the use of aggression when frustrated), and concern for others (rather than self-centered or indifferent behavior) (Gottfredson and Hirschi, 1990). Although the General Theory of Crime is useful in explaining which adolescents are more likely to engage in antisocial behavior (i.e., the ones with poor self-control), it does not explain why most antisocial adolescents desist as they mature into adulthood. From a developmental perspective, it may be variability in both individuals’ level of maturity during adolescence and their degree of change in maturity over time that distinguishes between those whose antisocial behavior wanes and those whose antisocial behavior persists during the transition to adulthood. The General Theory of Crime predicts that, at any point in time, individuals who are less mature than their peers would be more likely to engage...
The Pathways to Desistance study is a multidisciplinary, multisite longitudinal investigation of how serious juvenile offenders make the transition from adolescence to adulthood. It follows 1,354 young offenders from Philadelphia County, PA, and Maricopa County, AZ (metropolitan Phoenix), for 7 years after their court involvement. This study has collected the most comprehensive dataset currently available about serious adolescent offenders and their lives in late adolescence and early adulthood. It looks at the factors that lead youth who have committed serious offenses to persist in or desist from offending. Among the aims of the study are to:

- Identify initial patterns of how serious adolescent offenders stop antisocial activity.
- Describe the role of social context and developmental changes in promoting these positive changes.
- Compare the effects of sanctions and interventions in promoting these changes.

Characteristics of Study Participants

Enrollment took place between November 2000 and March 2003, and the research team concluded data collection in 2010. In general, participating youth were at least 14 years old and younger than 18 years old at the time of their study index petition; 8 youth were 13 years old, and 16 youth were older than age 18 but younger than age 19 at the time of their index petition. The youth in the sample were adjudicated delinquent or found guilty of a serious (overwhelmingly felony-level) violent crime, property offense, or drug offense at their current court appearance. Although felony drug offenses are among the eligible charges, the study limited the proportion of male drug offenders to no more than 15 percent; this limit ensures a heterogeneous sample of serious offenders. Because investigators wanted to include a large enough sample of female offenders—a group neglected in previous research—this limit did not apply to female drug offenders. In addition, youth whose cases were considered for trial in the adult criminal justice system were enrolled regardless of the offense committed.

At the time of enrollment, participants were an average of 16.2 years old. The sample is 84 percent male and 80 percent minority (41 percent black, 34 percent Hispanic, and 5 percent American Indian/other). For approximately one-quarter (25.5 percent) of study participants, the study index petition was their first petition to court. Of the remaining participants (those with a petition before the study index petition), 69 percent had 2 or more prior petitions; the average was 3 in Maricopa County and 2.8 in Philadelphia County (exclusive of the study index offense). At both sites, more than 40 percent of the adolescents enrolled were adjudicated of felony crimes against persons (i.e., murder, robbery, aggravated assault, sex offenses, and kidnapping). At the time of the baseline interview for the study, 50 percent of these adolescents were in an institutional setting (usually a residential treatment center); during the 7 years after study enrollment, 87 percent of the sample spent some time in an institutional setting.

Interview Methodology

Immediately after enrollment, researchers conducted a structured 4-hour baseline interview (in two sessions) with each adolescent. This interview included a thorough assessment of the adolescent’s self-reported social background, developmental history, psychological functioning, psychosocial maturity, attitudes about illegal behavior, intelligence, school achievement and engagement, work experience, mental health, current and previous substance use and abuse, family and peer relationships, use of social services, and antisocial behavior.

After the baseline interview, researchers interviewed study participants every 6 months for the first 3 years and annually thereafter. At each followup interview, researchers gathered information on the adolescent’s self-reported behavior and experiences during the previous 6-month or 1-year reporting period, including any illegal activity, drug or alcohol use, and involvement with treatment or other services. Youth’s self-reports about illegal activities included information about the range, the number, and other circumstances of those activities (e.g., whether or not others took part). In addition, the followup interviews collected a wide range of information about changes in life situations (e.g., living arrangements, employment), developmental factors (e.g., likelihood of thinking about and planning for the future, relationships with parents), and functional capacities (e.g., mental health symptoms).

Researchers also asked participants to report monthly about certain variables (e.g., school attendance, work performance, and involvement in interventions and sanctions) to maximize the amount of information obtained and to detect activity cycles shorter than the reporting period.

In addition to the interviews of study participants, for the first 3 years of the study, researchers annually interviewed a family member or friend about the study participant to validate the participants’ responses. Each year, researchers also reviewed official records (local juvenile and adult court records and FBI nationwide arrest records) for each adolescent.

Investigators have now completed the last (84-month) set of followup interviews, and the research team is analyzing interview data. The study maintained the adolescents’ participation throughout the project: At each followup interview point, researchers found and interviewed approximately 90 percent of the enrolled sample. Researchers have completed more than 21,000 interviews in all.
in antisocial behavior. In this bulletin, the researchers examine this proposition but also ask whether individuals who mature more quickly over time compared to their peers are more likely to desist from crime as they get older.

To investigate whether and to what extent changes in psychosocial maturity across adolescence and young adulthood account for desistance from antisocial behavior, it is necessary to study a sample of individuals who are known to be involved in antisocial behavior. The Pathways study affords an ideal opportunity to do this because it is the first longitudinal study that examined psychosocial development among serious adolescent offenders during their transition to adulthood. As a result, the researchers examined whether the majority of juvenile offenders demonstrate significant growth in psychosocial maturity over time, as the psychological theories of desistance predict, and whether individual variability in the development of psychosocial maturity accounts for variability in patterns of desistance. They also examined whether differential development of psychosocial maturity over time is linked to differential timing in desistance; presumably, those who mature faster should desist earlier. Because individuals generally cease criminal activity by their midtwenties (Piquero, 2007), this extension of a previous analysis through age 25 allows greater confidence in any conclusions drawn about the connection between psychosocial maturation and desistance from antisocial behavior.

Measuring Psychosocial Maturity

As noted earlier, in the researchers’ theoretical model, psychosocial maturity consists of three separate components: temperance, perspective, and responsibility (Steinberg and Cauffman, 1996). Each of these components was indexed by two different measures. For more detail on the psychometric properties of the measures, see Monahan and colleagues (2009).

Temperance

The measures were self-reported impulse control (e.g., “I say the first thing that comes into my mind without thinking enough about it”) and suppression of aggression (e.g., “People who get me angry better watch out”), both of which are subscales of the Weinberger Adjustment Inventory (Weinberger and Schwartz, 1990).

Perspective

The measures were self-reported consideration of others (e.g., “Doing things to help other people is more important to me than almost anything else,” also from the Weinberger Adjustment Inventory; Weinberger and Schwartz, 1990) and future orientation (e.g., “I will keep working at difficult, boring tasks if I know they will help me get ahead later”) (Cauffman and Woolard, 1999).

Measuring Antisocial Behavior

Involvement in antisocial behavior was assessed using the Self-Report of Offending, a widely used instrument in delinquency research (Huizinga, Esbensen, and Weihar, 1991). Participants reported if they had been involved in any of 22 aggressive or income-generating antisocial acts (e.g., taking something from another person by force, using a weapon, carrying a weapon, stealing a car or motorcycle to keep or sell, or using checks or credit cards illegally). At the baseline interview and the 48- through 84-month annual interviews, these questions were asked with the qualifying phrase, “In the past 12 months have you … ?” At the 6- through 36-month biannual interviews, these questions were asked with the qualifying phrase, “In the past 6 months, have you … ?” The researchers counted the number of different types of antisocial acts that an individual reported having committed since the previous interview to derive the measure of antisocial activity. So-called “variety scores” are widely used in criminological research because they are highly correlated with measures of seriousness of antisocial behavior yet are less prone to recall errors than self-reported frequency scores, especially when the antisocial act is committed frequently (such as selling drugs). In the Pathways sample, self-reported variety scores also were significantly correlated with official arrest records (Brame et al., 2004).

Identifying Trajectories of Antisocial Behavior

The first task was to see whether individuals followed different patterns of antisocial behavior over time. The
research team used a type of analysis called group-based trajectory modeling (Nagin, 2005; Nagin and Land, 1993) to determine whether they could reliably divide the participants into distinct subgroups, each composed of individuals who demonstrated a common pattern of antisocial behavior. This analysis indicated that there were five different patterns, which are shown in figure 1.

The first group (low, 37.2 percent of the sample) consisted of individuals who reported low levels of offending at every time point. The second group (moderate, 13.5 percent) showed consistently moderate levels of antisocial behavior. The third group (early desisters, 31.3 percent) engaged in high levels of antisocial behavior in early adolescence, but their antisocial behavior declined steadily and rapidly thereafter. The fourth group (late desisters, 10.5 percent) engaged in high levels of antisocial behavior through midadolescence, which peaked at about age 15 and then declined during the transition to adulthood. The fifth group (persistent offenders, 7.5 percent) reported high levels of antisocial behavior consistently from ages 14 to 25.

Several points about these patterns are noteworthy:

- As expected—and consistent with other studies—the vast majority of serious juvenile offenders desisted from antisocial activity by the time they were in their early twenties. Less than 10 percent of the sample could be characterized as chronic offenders. This statistic is similar to that reported in other studies.

- More than one-third of the sample were infrequent offenders for the entire 7-year study period. Although all of these individuals were arrested for a very serious crime during midadolescence, their antisocial behavior did not continue.

- Even among the subgroup of juveniles who were high-frequency offenders at the beginning of the study (about 40 percent of the sample), the majority stopped offending by the time they reached young adulthood. Indeed, at age 25, most of the individuals who had been high-frequency offenders when they were in midadolescence were no longer committing crimes. This, too, is consistent with previous research showing that very few individuals—even those with a history of involvement in serious crime—were engaging in criminal activity after their midtwenties.

**Figure 1. Five Trajectories of Antisocial Behavior**

**Patterns of Change in Psychosocial Maturity Over Time**

The researchers next examined patterns of change in psychosocial maturity. Was adolescence a time of psychosocial maturation for these juveniles? Was it a period of continued growth in temperance, perspective, and responsibility? To answer these questions, they used an approach called growth curve modeling. This statistical technique examines whether, on average, individuals matured over the course of the study and whether there was significant variability within the sample.
“As expected—and consistent with other studies—the vast majority of serious juvenile offenders desisted from antisocial activity by the time they were in their early twenties.”

in the level, degree, and rate of change in psychosocial maturation.

Across each of the six individual indicators of psychosocial maturity—impulse control, suppression of aggression, consideration of others, future orientation, personal responsibility, and resistance to peer influence—and the global index of psychosocial maturity, the pattern of results was identical. Individuals showed increases in all aspects of psychosocial maturity over time, but the rate of increase slowed in early adulthood.

Figure 2 illustrates this pattern; it shows the growth curve for the composite psychosocial maturity variable and steady psychosocial maturation from age 14 to about age 22, and then maturation begins to slow down. The researchers investigated whether psychosocial maturation actually stopped by the end of adolescence and found that it did not. Rather, they found that, across each of the six indicators of psychosocial maturity and the global measure of psychosocial maturity, individuals in the Pathways sample were still maturing psychosocially at age 25. At this age, individuals in the sample continued to increase in impulse control, suppression of aggression, consideration of others, future orientation, personal responsibility, and resistance to peer influence—indicating that psychosocial development continues beyond adolescence. This finding is consistent with new research on brain development, which shows that there is continued maturation of brain systems that support self-regulation—well into the midtwenties. It is important to note that this pattern of growth was seen in a sample of serious juvenile offenders, a population that is often portrayed as “deviant.”

Although these analyses indicate that, on average, adolescence and (to a lesser extent) early adulthood are times of psychosocial maturation, the analyses also indicated—not surprisingly—that individuals differ in their level of psychosocial maturity (i.e., some are more mature than others of the same chronological age) and in the way they develop psychosocial maturity during adolescence and early adulthood (i.e., some mature to a greater degree or faster than others) (see Monahan et al., 2009, for a fuller discussion). These results confirm that the population of juvenile offenders—even serious offenders—is quite heterogeneous, at least with respect to their psychosocial maturation. This variability also leads to the question of whether differences in patterns of offending are linked to differences in patterns of psychosocial development.

Psychosocial Maturation and Patterns of Offending

If it is true that desistance from crime during the transition to adulthood is due, at least in part, to normative psychosocial maturation, then there should be a connection between patterns of offending and patterns of psychosocial growth. Juvenile offenders vary in their patterns of offending and their patterns of psychosocial development. Are the two connected? More specifically, is psychosocial maturation linked to desistance from antisocial behavior? To explore this question, the researchers compared patterns of development in psychosocial maturity within each of the
During adolescence showed significantly greater growth in psychosocial maturity than those who persisted into adulthood.

These findings are important for several reasons:

• Even in a population of serious juvenile offenders, there were significant gains in psychosocial maturity during adolescence and early adulthood. Between ages 14 and 25, youth continue to develop an increasing ability to control impulses, suppress aggression, consider the impact of their behavior on others, consider the future consequences of their behavior, take personal responsibility for their actions, and resist the influence of peers. Psychosocial development is far from over at age 18.

• Although the rate of maturation slows as individuals reach early adulthood (about age 22), it does not come to a standstill. Individuals are still maturing socially and emotionally when they are in their midtwenties; much of this maturation is probably linked to the maturation of brain systems that support self-control.

• There is significant variability in psychosocial maturity within the offender population with respect to both how mature individuals are in midadolescence and to what extent they continue to mature as they transition to adulthood.

• This variability in psychosocial maturity is linked to patterns of antisocial activity. Less mature individuals are more likely to be persistent offenders, and high-frequency offenders who desist from antisocial activity are likely to become more mature psychosocially than those who continue to commit crimes as adults. The association between immature impulse control and continued offending is consistent with Gottfredson and Hirschi’s General Theory of Crime, which posits that poor self-control is the root cause of antisocial behavior.

Figure 3. Trajectories of Antisocial Behavior and Global Psychosocial Maturity

“New research on brain development … shows that there is continued maturation of brain systems that support self-regulation—well into the midtwenties.”
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summary

Far more is known about the factors that cause young people to commit crimes than about the factors that cause them to stop committing crimes. The Pathways to Desistance study provides evidence that, just as immaturity is an important contributor to the emergence of much adolescent misbehavior, maturity is an important contributor to its cessation. This observation provides an important complement to models of desistance from crime that emphasize individuals’ entrance into adult roles and the fact that the demands of these roles are incompatible with a criminal lifestyle (Laub and Sampson, 2001; Sampson and Laub, 2003).

The results of the analyses suggest that the transition to adulthood involves the acquisition of more adultlike psychosocial capabilities and more adult responsibilities; however, not all adolescents mature to the same degree. Youth whose antisocial behavior persists into early adulthood exhibit lower levels of psychosocial maturity in adolescence and also demonstrate deficits in the development of psychosocial maturity compared with other antisocial youth. In a sense, these chronic offenders show a lack of psychosocial maturation that might be characterized as arrested development. Although it is reasonable to assume that this factor contributed to persistent involvement in criminal activity, researchers do not know the extent to which continued involvement in crime impeded the development of these individuals. To the extent that chronic offending leads to placement in institutional settings that do not facilitate positive development, the latter is certainly a strong possibility. In all likelihood, the connection between psychosocial immaturity and offending is bidirectional; that is, each factor affects the other factor. One important implication for practitioners is that interventions for juvenile offenders should be aimed explicitly at facilitating the development of psychosocial maturity and that special care should be taken to avoid exposing young offenders to environments that might inadvertently derail this developmental process. More research is needed that examines outcomes of interventions for antisocial youth that go beyond standard measures of recidivism.

Perhaps the most important lesson learned from these analyses is that the vast majority of juvenile offenders grow out of antisocial activity as they make the transition to adulthood; most juvenile offending is, in fact, limited to adolescence (i.e., these offenders do not persist into adulthood). Although this is well documented, the researchers believe that the Pathways study is the first investigation to show that the process of maturing out of crime is linked to the process of maturing more generally. It is therefore important to ask whether the types of sanctions and interventions that serious offenders are exposed to are likely to facilitate this process or are likely to impede it (Steinberg, Chung, and Little, 2004). When the former is the case, the result may well be desistance from crime. However, if responses to juvenile offenders slow the process of psychosocial maturation, in the long run these responses may do more harm than good.

endnotes

1. OJJDP is sponsoring the Pathways to Desistance study (project number 2007–MU–FX–0002) in partnership with the National Institute of Justice (project number 2008–IJ–CX–0023), the John D. and Catherine T. MacArthur Foundation, the William T. Grant Foundation, the Robert Wood Johnson Foundation, the William Penn Foundation, the National Institute on Drug Abuse (grant number...
the Centers for Disease Control and Prevention, the Pennsylvania Commission on Crime and Delinquency, and the Arizona State Governor’s Justice Commission. Investigators for this study are Edward P. Mulvey, Ph.D. (University of Pittsburgh), Robert Brame, Ph.D. (University of North Carolina–Charlotte), Elizabeth Cauffman, Ph.D. (University of California–Irvine), Laurie Chassin, Ph.D. (Arizona State University), Sonia Cota-Robles, Ph.D. (Temple University), Jeffrey Fagan, Ph.D. (Columbia University), George Knight, Ph.D. (Arizona State University), Sandra Losoya, Ph.D. (Arizona State University), Alex Piquero, Ph.D. (University of Texas–Dallas), Carol A. Schubert, M.P.H. (University of Pittsburgh), and Laurence Steinberg, Ph.D. (Temple University). More details about the study can be found in a previous OJJDP fact sheet (Mulvey, 2011) and at the study website (www.pathwaysstudy.pitt.edu), which includes a list of publications from the study.

2. The variety score is calculated as the number of different types of antisocial acts that the participant reported during the period that the interview covered, divided by the number of different antisocial acts the participant was asked about.

References


Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.


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Applying a Developmental Framework to Juvenile Sentencing
What Forensic Experts and Attorneys Should Know

Recent decisions by the United States Supreme Court have severely restricted the use of life without parole for juvenile offenders (JLWOP). Affirming the principle that children are developmentally different from adults, and that those differences must be considered in sentencing, the Court made it clear that sentencing hearings must consider five mitigating factors:

1. Decision-making capacity
2. Capacity to resist negative influences
3. Context of the offense
4. Legal competency
5. Potential for rehabilitation

Child forensic mental health experts have a variety of tools and procedures to assess these factors in juveniles and help guide decisions in sentencing hearings and, to a more limited extent, in resentencing and parole hearings. Although the Supreme Court ruling only dealt with JLWOP, these factors are important in guiding juvenile sentencing decisions more generally.

The Supreme Court and the science of adolescent development

Three Supreme Court cases over the past decade have had a major impact on the sentencing of juvenile offenders. In Roper v. Simmons (2005) the Court prohibited the death penalty for juveniles; in Graham v. Florida (2010) the Justices barred the sentence of life without parole (LWOP) for juveniles convicted of a non-homicide offense; and in Miller v. Alabama (2012) they banned the use of mandatory LWOP sentences even for juveniles convicted of homicide.

In the Miller opinion, the Court delineated a powerful constitutional principle: children are different from adults, and these differences have implications for criminal punishment. While that principle had previously been acknowledged by the Court, the recent opinions were the first to point to science for confirmation of what “any parent knows.” The Court noted three characteristics of adolescence that distinguish youths from adults:

- Their decision-making is impulsive and immature, with little regard for consequences.
considers the five mitigating factors described in Miller:

1. Decision-making capacity
2. Capacity to resist negative influences
3. Context of the offense
4. Legal competency
5. Potential for rehabilitation

Of course, not all factors will be relevant in every case. But in all cases, because the factors are based on developmental constructs, they require expert assessment by forensic child clinical psychologists or psychiatrists.

**Decision-making capacity.** This requires an assessment of the youth’s capacity for abstract thinking, ability to delay impulsive reactions, and capacity to consider future consequences (including the ability to weigh risks). Forensic mental health (FMH) experts have a variety of validated tools for comparing a youth’s performance to others of the same age. They also need to assess these capacities under real-life conditions, which can be done through a comprehensive review of records of the youth’s past behavior in school and other settings, and through skilled interviewing of the youth, family members, teachers, and peers. Finally, FMH experts should consider mental and behavioral disorders, such as ADHD and PTSD, that could affect the youth’s decision-making capacity. FMH experts will use their developmental and clinical knowledge and experience to integrate this information and often can offer potential explanations for the youth’s decision-making before and after the offense.

**Capacity to resist negative influences.** Miller expressed concern that negative family circumstances and other conditions from which the juvenile might not have the capacity to extricate himself could contribute to the youth’s involvement in crime. Depending on family circumstances as well as individual capacities, adolescents differ in their autonomy in making choices and in their ability to meet their needs independent of external guidance and support. FMH experts can identify an individual’s level of autonomy or dependency using measures such as “social maturity scales,” which assess the youth’s degree of independence and self-direction in everyday

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**Assessing mitigating factors in sentencing hearings**

The Miller decision did not entirely bar LWOP for juveniles convicted of homicide, though some states have done so. But the Court made clear that this sentence is seldom acceptable, creating a presumption of immaturity for youths facing the sentence.

This means states that retain JLWOP must do more than make it discretionary. Prosecutors must prove that LWOP is an appropriate sentence for a particular juvenile, in a sentencing hearing that considers the five mitigating factors described in Miller:

1. Decision-making capacity
2. Capacity to resist negative influences
3. Context of the offense
4. Legal competency
5. Potential for rehabilitation

These observations have been validated not only by behavioral science, but also by neuroscience documenting age-related changes in brain structure, neural connections, and brain functioning. Neuroscientists have found that in adolescence, the brain systems involved in self-regulation are relatively immature, while the systems that respond to emotional and social stimuli and to incentives exhibit heightened activity, partly as a consequence of changes in the brain at puberty. Brain studies also find that adolescence is a period of high neuroplasticity—the capacity of the brain to change in response to experience—making adolescents good candidates for rehabilitation.

With these findings, experts on adolescent development can provide sentencing courts with general information about aspects of both neurological and psychological functioning during adolescence that bear on issues of culpability, competence, and the potential for rehabilitation. However, it’s important to note that it is not currently possible to use brain imaging, either alone or in combination with psychological evaluation, to assess immaturity or risk in an individual adolescent. Experts who offer such opinions exceed the limits of current scientific knowledge.

• They are more vulnerable to external influences such as peer pressure and immediate incentives.
• Their character is still being formed, making it difficult to judge their actions as “irretrievably depraved.”

These observations have been validated not only by behavioral science, but also by neuroscience documenting age-related changes in brain structure, neural connections, and brain functioning. Neuroscientists have found that in adolescence, the brain systems involved in self-regulation are relatively immature, while the systems that respond to emotional and social stimuli and to incentives exhibit heightened activity, partly as a consequence of changes in the brain at puberty. Brain studies also find that adolescence is a period of high neuroplasticity—the capacity of the brain to change in response to experience—making adolescents good candidates for rehabilitation.
functioning according to age norms. Interviews with the youth and family members, along with inspection of school and clinical records, can provide additional evidence of autonomy or dependency in everyday life.

Context of the offense. Heightened susceptibility to peer influence is a major hallmark of adolescence. This means that attorneys and FMH experts should pay special attention to the youth’s role in the offense—and in particular, to the role of peer pressure. This is especially important in offenses that involve several youths acting in a group, where some may be initiators and others followers. But in adolescence, even “leaders” may be responding to peer pressure. In some cases the role of peer influence will be clear; in other cases it may be difficult or impossible to discern. Experienced forensic experts can often glean the necessary information from a close examination of reports of the youth’s involvement in the crime.

Legal competency. Our legal system requires that defendants be able to make decisions about whether to submit to police interrogation and accept a plea agreement, and they must be able to understand the trial process and assist in their defense. Compelling research shows that adolescents, especially those age 15 and under, are poorly prepared to do these things; older teens, however, may be as competent as most young adults. Forensic psychology and psychiatry offer standardized assessment tools for evaluating these capacities and can provide guidance for applying the results to a retrospective analysis of the youth’s competence in police interrogations and legal proceedings.

Potential for rehabilitation. Research has shown that the majority of youth involved in the justice system stop offending as they approach adulthood, and only a small number will become long-term offenders. There currently are no reliable and valid psychological instruments that alone can identify which individuals fall into the latter group, and the seriousness of the crime itself has no predictive value. However, there are systematic procedures for evaluating a youth’s rehabilitation potential. FMH experts can assess specific characteristics of the individual—for example, early onset of aggression and frequent offending—that are associated with persistence of criminal behavior into adulthood. They can also describe past rehabilitation programs that a youth has been provided, their outcomes, and reasons if those efforts have failed. However, they may not be able to state with confidence whether a given youth is or is not likely to reform.

An additional note on applying the mitigating factors: As Justice Roberts pointed out in his Miller dissent, the Court’s “children are different” framework posits a general principle of reduced culpability that applies not only to homicide, the crime at issue in the case, but generally to the criminal conduct of young offenders. The same developmental factors that mitigate culpability for murder or armed robbery also influence adolescents committing less serious crimes. Expert testimony on the mitigating factors can help guide courts in a broad spectrum of sentencing decisions.

### 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.

The *Miller* factors in resentencing and parole hearings

Many states have begun to require resentencing of offenders serving JLWOP. The resentencing hearings often examine factors that were not considered at the time of mandatory LWOP sentencing. This requires a retrospective analysis, since the original sentencing may have occurred years or decades earlier.

The issue of retrospective analysis is complex. Assessment of an adult prisoner’s intellectual,
cognitive, emotional, personality, or mental health functioning cannot provide an accurate picture of the individual as an adolescent at the time of the offense. The greater the time since the offense, the less valuable the current assessment. Nevertheless, in some cases new assessments by an FMH expert can provide useful information. For example, they might reveal disabilities such as intellectual impairment, brain damage, or ADHD; these conditions typically develop before adulthood and are likely to have existed when the individual was an adolescent.

Evaluations that were performed around the time of the offense—for example, mental health evaluations in the community, school-based evaluations, competence to stand trial evaluations prior to adjudication, and evaluations for discretionary transfer hearings—can sometimes be helpful, though their quality may be inferior to those using current assessment tools. FMH experts may also be able to obtain data from collateral sources such as school records, health and mental health records, offense data, and parents’ or peers’ recollections of the youth’s behavior and attitudes during adolescence. In some cases, these data might lead to relatively reliable evidence related to mitigating factors.

Apart from resentencing, some states provide special parole hearings for offenders serving life or other lengthy sentences for crimes committed as juveniles. Where these regulations require consideration of Miller factors, the same issues will arise around retrospective analyses. Parole hearings, however, are more concerned with evidence of the adult inmate’s current state of rehabilitation than with his or her potential for rehabilitation as a juvenile. Similarly, whether the individual as a youth would or would not have desisted from offending will be less relevant for parole boards than his or her current likelihood of offending if released on parole. FMH experts can use validated risk assessment instruments to assist in these evaluations; but parolees who are adults require a different approach from one based on developmental mitigation factors.

Sample Jury Instructions
**Introduction to Juvenile Specific Jury Instructions**

Children are different. Acknowledging the neuroscience that supports this fact, the United States Supreme Court has pronounced that in certain legal applications age and its attendant characteristics must be taken into account. The Massachusetts Supreme Judicial Court has followed suit and has recognized the hallmark differences between children and adults - they lack maturity and a sense of responsibility, they are more susceptible to negative influences and outside pressures, and their character is more transitory. We can see the change in the landscape; juveniles are able to receive a continuance without a finding after a jury trial, the legislature has raised the age of juvenile court jurisdiction, and juveniles may seek dismissal of a case prior to arraignment. We, as juvenile defenders, must push trial courts to apply the law as established by the U.S. Supreme Court and the Supreme Judicial Court. Requesting juvenile specific jury instructions is a natural and necessary next step.

Crafting jury instructions is an important part of trial preparation. Jury instructions inform the jury about the law and juries are presumed to follow and understand these instructions. While the Trial Court has adopted “model” jury instructions to be used in certain cases, we should file our own requests as these “model instructions” often fall short, are wrong, or do not keep up with changes in the law.

We have drafted a select number of juvenile specific jury instructions. Recognizing that courts may be reluctant to depart from the model instructions, we have incorporated the juvenile specific language into those instructions. The added language is in **bold and italic**. These instructions are a place to begin and they are in a “word document” so you can revise them to address your particular case. An instruction on Reasonable Child is included and, while there is no corresponding model instruction, we suggest that you request this instruction be given wherever the words “reasonable person” appear.

**Request for Juvenile Specific Jury Instructions**

As part of this packet, we have included a sample Request for Juvenile Specific Jury Instructions. Such a request should accompany the jury instructions that you are asking the judge to give to the jury.

**Use of Certain Language in the Juvenile Instructions**

In these instructions you will see the following –“defendant/juvenile,” “guilty/not delinquent,” “youth/child.” There are pros and cons to using these terms in a juvenile case. Some jurors might think that juvenile court does not impose serious consequences and using the terms “juvenile” or “not delinquent” in the instructions could foster that opinion. On the other hand, you may have a young looking client and using the word “defendant” might convey how detrimental a conviction can be. You may also want to use your client’s first and last name instead of using the words “defendant” or “juvenile” as this can humanize your client to the jury. In addition, using the word “youth/child” for an
older looking client could have the desired impact that your client is still a kid. Whatever language you chose to use, it is important to think about the facts of your case and your theory of defense.

Requests for Voir Dire

Your decision about what language to use can be clarified by carefully crafted voir dire questions. These may be used to test a potential juror’s attitudes about juvenile defendants. Here are some suggestions for questions to propose in a jury voir dire request:¹

i. Do you consider the purpose of this proceeding to determine whether a child is accountable their actions?
ii. Do you consider the purpose of this proceeding to determine whether a child should receive treatment?
iii. Do you have an opinion about whether juveniles (persons under 18) should be treated differently than adults for the same crimes?
iv. Do you believe that juveniles who commit violent crimes should be treated the same way as adults who commit such crimes?
v. Do you believe that there are certain crimes committed by juveniles where the juvenile offender should be treated the same way as an adult who commits that crime?
vi. Do you believe that people should be treated the same way by the courts for crimes they are charged with committing regardless of their age?
vii. Do you believe that there are differences between juveniles and adults that should be taken into account when they are charged with committing crimes?
viii. Do you feel that cases tried in Juvenile Court are less serious than those tried in adult court?
ix. Do you feel that courts are too lenient on juveniles accused or convicted of crimes?
x. Do you believe that juveniles tend to act more impulsively and have less self-control than adults?
xi. Do you believe that juveniles are less able than adults to think through and understand the consequences of their actions?
xii. Do you believe that juveniles are less able than adults to make mature and responsible decisions?
xiii. Do you agree with laws that prohibit juveniles from purchasing tobacco and intoxicating beverages, from voting, from sitting on juries and from doing many other things which adults can do?

¹ Thanks to Patricia Garin, Esq. for contributing to these questions.
Attorney Conducted Voir Dire

The legislature recently amended Mass. G.L. c. 234, § 28 (Examination of Jurors) stating that there shall be attorney conducted voir dire, when requested, in superior court jury trials. While the amendment does not mention juvenile court jury trials, we believe juvenile defenders should be asking the courts to allow attorney conducted voir dire. Mass. G.L. c. 234, § 28 has never prohibited attorney conducted voir dire. It is always been within the discretion of the judge. In addition, Mass. G. L. c. 119, § 56 (d) and (e) provide that juvenile court judges have the same powers and duties as superior court judges presiding over jury trials and the law applicable to jury trials in superior court shall also apply in juvenile court. When making this second argument, be aware of Commonwealth v. Russ R. 433 Mass. 515 (2001) in which the SJC stated that the statute allowing a superior court judge to grant immunity does not allow a juvenile court judge to grant immunity. A further rational for allowing attorney conducted voir dire in juvenile court is that an adolescent who is charged as a youthful offender and tried with adult co-defendants in superior court is permitted to have attorney conducted voir dire. It does not make sense that another individual charged as a youthful offender but tried in juvenile court would not have attorney conducted voir dire. Both individuals face adult sentences if convicted and are tried before a jury of twelve.

Conclusion

Remember to ask for a jury charge conference on the record before your closing and OBJECT if you do not get the instruction you requested at the charge conference. You must OBJECT again after the jury is instructed.

The instructions that follow are the result of the collaborative work from the authors listed below. This is our first group of instructions. We are working on additional instructions and they will be forwarded to you when complete. It is our hope that you will share with us your experience using juvenile specific instructions (please e-mail Wendy Wolf at wwolf@publiccounsel.net and/or Holly Smith at hsmith@publiccounsel.net).
I. THE EXECUTION OF MR. CLIENT, WHOSE MENTAL CAPACITY AT THE TIME OF THE CRIME WAS THAT OF A JUVENILE, VIOLATES THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTIONS 2 AND 20, OF THE LOUISIANA CONSTITUTION.

The Eighth Amendment provides that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. Amend. VII; XIV; See also La. Const. Art. I, secs. 2, 20; Furman v. Georgia, 408 U.S. 238, 239 (1972) (per curiam); Robinson v. California, 370 U.S. 660, 666-67 (1962); Louisiana ex rel. Francis v. Resweber, 329 U.S. 459, 463 (1947) (plurality opinion). As the United States Supreme Court has recognized, “[b]ecause the death penalty is the most severe punishment, the Eighth Amendment applies to it with special force.” Roper v. Simmons, 543 U.S. 551, 569 (2005); see also Thompson v. Oklahoma, 487 U.S. 815, 856 (1988) (O’Connor, J., concurring in judgment).

Capital punishment must be limited to those offenders who commit “a narrow category of the most serious crimes” and whose extreme culpability makes them “the most deserving of execution.” Atkins v. Virginia, 536 U.S. 304, 319 (2002); Simmons, 543 U.S. at 569.

To implement the Eighth Amendment, the Court has established the propriety and affirmed the necessity of referring to “the evolving standards of decency that mark the progress of a maturing society” to determine which punishments are so disproportionate as to be “cruel and unusual.” Simmons, 543 U.S. at 561; Trop v. Dulles, 356 U.S. 86, 100-101 (1958) (plurality opinion). As a result, a penalty or procedure that was permissible at one time in the nation’s history may no longer be acceptable today, as evidenced by the Court’s death penalty jurisprudence. In Atkins v. Virginia, the Supreme Court barred the execution of individuals with mental retardation because disabilities in the areas of “reasoning, judgment, and control of their impulses” render them less morally culpable than the most serious adult criminals, and execution does not “measurably contribute” to the stated purposes of the death penalty—retribution and deterrence of capital crimes by prospective offenders. Atkins, 536 U.S. at 320. These impulses also increase the possibility that intellectually disabled individuals will receive a death sentence even when factors are present that call for a less severe penalty. Id. Three years later, in Roper v. Simmons, the Court applied this same reasoning and banned the execution of juveniles. Simmons, 543 U.S. at 571-72. Although the Court in Simmons used a bright-line test of 18 years
of age, the Court also recognized that “[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18.” 543 U.S. at 574.

Given the constitutional purposes of the death penalty and the reasoning of *Atkins* and *Simmons*, the execution of a person with the mental age of a juvenile likewise violates the cruel and unusual punishment clause of the Eighth Amendment and La. Const. Art. I, §§ 2, 20. As detailed below, the principles articulated in *Atkins* and *Simmons* apply equally to both chronological juveniles and mental age juveniles. An adult with the mental age of a juvenile “shares this trait of reduced culpability.” James Fife, *Mental Capacity, Minority and Mental Age in Capital Sentencing: A Unified Theory of Culpability*, 28 HAMLINEL. REV. 237, 275 (2005). The failure to recognize that, for purposes of the death penalty, the mental age juvenile is no different than the chronological age juvenile creates a “logical inconsistency in capital punishment jurisprudence,” which “would mark a deliberate escalation of the arbitrariness of death sentencing in the United States.” Id. As a judge on the United States Court of Appeals for the Eleventh Circuit stated, the issue of whether mental age juveniles are eligible for execution in light of Simmons is an issue that “must be addressed.” *Henyard v. McDonough*, 459 F.3d 1217, 1249 (11th Cir. 2006) (Barkett, J., concurring).

At the time of the crime, Mr. Client was only two months past his 21st birthday. See Exhibit 46__, Jarrell Client’s Birth Certificate. Particularly in light of his cognitive impairments, including his post-traumatic stress disorder and his educational deficits, however, Mr. Client was rendered the equivalent of an individual under the age of eighteen. Like juveniles and intellectually disabled individuals, Mr. Client demonstrates a “diminished capacity[y] to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reaction of others.” *Atkins*, 536 U.S. at 318-21; *Simmons*, 543 U.S. at 570-71. These deficits render Mr. Client insufficiently morally culpable for the death penalty and ineligible for execution. The Eighth and Fourteenth amendments to the United States Constitution and La. Const. Art. I, §§ 2, 20 prohibit Mr. Client’s execution because he had the mental age of a juvenile when the crime was committed. Accordingly, this Court should reverse Mr. Client’s death sentence.
A. The Brain Does Not Cease to Mature Until the Early 20s in Those Relevant Parts That Govern Impulsivity, Judgment, Planning for the Future, Foresight of Consequences, and Other Characteristics That Affect Moral Culpability

The American Medical Association, the American Psychiatric Association, the American Society for Adolescent Psychiatry, the American Academy of Child and Adolescent Psychiatry, the American Academy of Psychiatry and the Law, the National Association of Social Workers, the Missouri Chapter of the National Association of Social Workers, and the National Mental Health Association filed an amicus brief in Simmons. This amicus brief provided a comprehensive explanation of the scientific data documenting that the adolescent brain is physiologically under-developed in areas that control impulse, foresee consequences, and temper emotions. Moreover, the studies show that the brain does not cease to mature until the early 20s in those relevant parts of the brain that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable. Because the subjects of some of these studies included individuals who were the same age or older than Mr. Client, the conclusions and arguments made in the amicus brief are equally applicable to him.

As detailed in the Simmons amicus brief, the adolescent brain differs from the adult brain. Moreover, serious psychological disturbances exacerbate the already existing vulnerabilities of youth, and result in substandard levels of functioning:

Anyone who remembers being a teenager, who has been the parent or caretaker of a teenager, or who has observed adolescent behavior, knows intuitively that adolescents do not think or behave like adults. These behavioral differences are pervasive and scientifically documented. Teens (including, again, the oldest of minors) are different. Their judgments, thought patterns and emotions are different from adults’, and their brains are physiologically underdeveloped in the areas that control impulses, foresee consequences, and temper emotions. They handle information processing and the management of emotions differently from adults.

. . . Cognitive experts have shown that the difference between teenage and adult behavior is not a function of the adolescent’s inability to distinguish right from wrong. Nor is it a function, as early studies suggested, of an inability to conduct any cost-benefit analysis at all. Rather, the difference lies in what scientists have characterized as ‘deficiencies in the way adolescents think,’ an inability to perceive and weigh risks and benefits accurately.

Adolescents’ cognitive deficiencies are compounded by ‘deficiencies in adolescents’ social and emotional capability. . . . ‘[O]berved differences in risky decision-making between adolescents and adults’ reflect ‘differences in capabilities, and not simply priorities.
Researchers have found that the deficiencies in the adolescent mind and emotional and social development are especially pronounced when other factors – such as stress, emotions, and peer pressure – enter the equation. These factors affect everyone’s cognitive functioning, but they operate on the adolescent mind differently and with special force.

The interplay among stress, emotion, and cognition in teenagers is particularly complex – and different from adults. Stress affects cognitive abilities, including the ability to weigh costs and benefits and to override impulses with rational thought. But adolescents are more susceptible to stress from daily events than adults, which translates into a further distortion of the already skewed cost-benefit analysis. . . .

In sum, the conclusion of the scientific research is that, for a variety of interrelated reasons, adolescents as a group are less able than adults to moderate risky behavior or control impulses. . . .

Modern brain research technologies developed a body of data in the late 1990s . . . that provides a compelling picture of the inner workings of the adolescent brain. Adolescents’ behavioral immaturity mirrors the anatomical immaturity of their brains. To a degree never before understood, scientists can now demonstrate that adolescents are immature not only to the observer’s naked eye, but in the very fibers of their brains.

Amicus Brief of AMA, APA, et al. filed with the U.S. Supreme Court in Roper v. Simmons, No. 03-633. In particular, Magnetic Resonance Imaging studies prove that physiological brain development and maturation continue into the 20s. In effect, those portions of the brain that make normal, healthy people morally culpable for criminal behavior remain undeveloped until a normal, healthy individual is in his early 20s.

B. Post-Simmons Research Has Continued To Increase the Consensus in the Scientific Community That the Human Brain Does Not Fully Mature Until At Least the Age of 25

Scientific research that has been conducted since Simmons was decided places the age of adult maturity much higher than had previously been considered. Despite the fact that brain development during young adulthood has not long been the subject of extensive scientific study, a consensus is growing in the scientific community that the human brain does not reach a full level of maturity until a person reaches at least the age of 25. Accordingly, the evolving standards of decency that mark the progress of a maturing society now require the protection offered to those under eighteen years of age to be extended to any young adult who is aged 25 or under at the time of the commission of the offense. This is a necessary, consistent and imperative extension of the laudable decision in Simmons not to exact such extreme punishment
on those who are not considered to be fully mature and, thus, fully morally responsible for their actions.

1. The National Institute of Child Health and Development

In a 2006 study entitled *Anatomical Changes in the Emerging Adult Brain*, funded by a grant from the National Institute of Child Health and Development, Dartmouth College researchers Abigail Baird and Craig Bennett sought to define when human maturity sets in. The study was aimed at identifying how and when a person’s brain reaches adulthood. They learned that, anatomically significant changes in brain structure continue to occur after age 18: “The brain of an 18-year-old is still far from resembling the brain of someone in their mid-twenties. When do we reach adulthood? It might be much later than we traditionally think.” The changes found to take place in the brains of individuals well beyond the age of 18 were localized to regions of the brain known to integrate emotion and cognition. Specifically, these are areas that take information from our current body state and apply it for use in navigating the world. This is only the beginning in our full understanding of the transition to true adulthood and maturity, but already there is further evidence that supports the findings of this study.

2. The Young Adult Development Project

The Young Adult Development Project was created by the Massachusetts Institute of Technology [hereinafter “MIT”] in 2005 to analyze, distill, and disseminate key findings about young adults’ development. Defining “young adulthood” as the years between 18 and 25, the project focused on identifying research conclusions about which there is widespread agreement across disciplines and researchers. Their findings, therefore, can truly be seen as representing respected and widespread views within the scientific community. Findings made public by MIT state, “According to recent findings, the human brain does not reach full maturity until at least the mid-20s. . . . The specific changes that follow young adulthood are not yet well studied, but it is known that they involve increased myelination and continued adding and pruning of neurons.”

Researchers at MIT described with great precision what changes take place in the minds of young adults and how these changes affect the mental processes involved in committing

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1 The official website of the Young Adult Development Project is http://hrweb.mit.edu/worklife/youngadult/.
capital offenses. These changes, therefore, are highly relevant for determining whether individuals whose brains are not fully developed can constitutionally be put to death. According to researchers, “At the same time that young adults are experiencing new levels of sophistication in thinking and emotional regulation, their brains are undergoing changes in precisely the areas associated with these functions. While it is not possible to determine cause-and-effect, brain and behavior are changing in parallel.” Specifically, the following changes have been documented:

- **Prefrontal cortex:** The most widely studied changes in young adulthood are in the prefrontal cortex, the area behind the forehead associated with planning, problem-solving, and related tasks. At least two things affect the efficiency in its functioning:
  1.  *myelination:* the nerve fibers are more extensively covered with myelin, a substance that insulates them so signals can be transmitted more efficiently, and
  2.  *synaptic pruning:* the “briar patch” of connections resulting from nerve growth are pruned back, allowing the remaining ones to transmit signals more efficiently.

- **Connections among regions:** At the same time, the prefrontal cortex communicates more fully and effectively with other parts of the brain, including those that are particularly associated with emotion and impulses, so that all areas of the brain can better be involved in planning and problem-solving.

- **“Executive suite”:** “The cluster of functions that center in the prefrontal cortex is sometimes called the ‘executive suite,’ including calibration of risk and reward, problem-solving, prioritizing, thinking ahead, self-evaluation, long-term planning, and regulation of emotion. . . . It is not that these tasks cannot be done before young adulthood, but rather, that it takes less effort and hence is more likely to happen.”

  “As a number of researchers have put it, ‘the rental car companies have it right. The brain isn’t *fully* mature at 16 when we are allowed to drive, or at 18 when we are allowed to vote,  

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or at 21, when we are allowed to drink, but closer to 25 when we are allowed to rent a car.”

Indeed, “the reason that car rental rates are so much lower for people age 25 and over is that this is the age, statistically speaking, when drivers become much safer.” Accordingly, car insurance rates drop when one reaches 25: “Since drivers 25 and over are responsible for far fewer accidents and claims, most people see their insurance premiums drop when they turn 25.”

According to the research findings, “Consensus is emerging that an 18-year-old is not the same person he or she will be at 25, just as an 11-year-old is not the same as he or she will be at 18. They don’t look the same, feel the same, think the same, or act the same.” That this recent information sheds new light on the law as applied in *Roper v. Simmons* is self-evident. The scientific data shows that the lack of maturity found by the U.S. Supreme Court to be present in individuals under the age of 18 extends much further than was previously thought. This fact requires the law to be extended in order to prevent an arbitrary distinction from being drawn at a certain chronological age despite the evidence that older individuals are no less deserving of protection from the ultimate penalty than 17 year olds.

C. Because Mr. Client Suffered From Significant Mental Impairments That Substantially Exacerbated the Already Existing Vulnerabilities of Youth, He Functioned at a Sub-Standard Level at the Time of the Crime

The aforementioned scientific data, when considered in conjunction with the evidence presented in this petition, shows that as of March 31, 1998, there was little difference between Mr. Client and a 17-year-old or younger offender eligible for *Simmons* relief. As of the date of the offense, Mr. Client was 21 years old by only 2 months. Exhibit 46. Notwithstanding his chronological age, physiologically and developmentally, Mr. Client was mentally similar to a juvenile because his development had been stunted by long-term exposure to psychological trauma as a result of the environment of fear and violence in which he was raised. *See Exhibit ___45___, Declaration of Dr. June Cooley. As detailed elsewhere in this petition, Mr. Client

3 *See* http://hrweb.mit.edu/worklife/youngadult.brain.html#cortex.


5 *Id.*

6 *See* http://hrweb.mit.edu/worklife/youngadult.brain.html#cortex.
was raised by a father with severe war-related Post-Traumatic Stress Disorder and a mother who had experienced a number of serious traumatic events in her own life, including childhood abuse, poverty, and the amputation of her arm as a result of cancer. See Claim _____. In addition, Mr. Client was exposed to pervasive neighborhood violence and criminal activity among the older members of his family. Much like a juvenile, Mr. Client’s educational deficits made him even more vulnerable to the influences of others. Ultimately, as Dr. June Cooley concluded, Mr. Client’s psychological development was greatly inhibited as a result of his genetic dispositions and his exposure to repeated trauma. See Exhibit 45_____, Declaration of Dr. June Cooley.

Not only could Mr. Client not be expected to transcend his own psychological and biological capacities, he cannot be presumed to have operated at standard levels for adolescents because his cognitive deficits and mental impairments rendered him exceptionally immature as a matter of cognitive development, psychological development, and anatomical development, making him indistinguishable from 17 year olds or younger persons who are afforded Simmons protection. “It is unfair to hold someone to a standard of conduct which she [or he] cannot attain given her current condition.” Fife, 28 HAMLINE L. REV. at 260-61. Nonetheless, that is what will happen in Mr. Client’s case if the constitutionality of executing adults with the mental age of a juvenile is not resolved.

D. Executing Mr. Client Does Not Serve the Recognized Purposes of the Death Penalty

The only difference between an adult with the mental age of a juvenile and a chronological juvenile is bodily age. In Simmons, the Court reiterated that “[y]outh is more than a chronological fact. It is a time and condition of life when a person may be more susceptible to influence and to psychological damage.” Simmons, 543 U.S. at 569 (quoting Eddings v. Oklahoma, 455 U.S. 104, 115 (1982) (internal quotes omitted). That time and condition of life likewise exists in the mental age juvenile, who, by definition, suffers from an inability to function at a mental level greater than a chronological juvenile.

As Judge Barkett stated in her concurring opinion in Henyard v. McDonough:

[The] characteristics identified by the Court as those which diminish the culpability and thus militate against the imposition of the death penalty for children under the chronological age of 18 as well as the mentally retarded appear equally present in those with a mental age of less than eighteen years. The mere
fact of a borderline, or even high IQ in an adult defendant with a mental age of a child does not necessarily render that defendant any more culpable than a chronological child with a high IQ. It is not an inability to understand that one is breaking the law that factors against death sentences for children and the mentally retarded - - even a small child realizes she is breaking the rules. It is the child’s inability to understand why the rules exist, to appreciate the consequences of breaking them for herself and for society, and to consistently make judgments based on the foregoing which factor against sentencing children to death. As with children and the mentally retarded, mental age is not the result of a failure to abide by an expected standard, but an incapacity to evaluate and comprehend it. The mere fact of a defendant’s chronological age should not qualify a defendant for death where the measures of capacity render him lacking in culpability.

_Henyard_, 459 F.3d at 1248-49 (Barkett, J., concurring) (emphasis added).

An adult such as Mr. Client who has the mental age of a juvenile functions at the same mental level as a chronological age juvenile. Thus, each of the culpability, retributive, and deterrent reasons for not executing chronological age juveniles applies with equal force to the mental age juvenile. Because _Simmons_ made clear that these reasons make executing juveniles unconstitutional, the same result must be reached with regard to adults whose culpability is equivalent to that of a chronological juvenile.

The _Simmons_ Court held that, where there is diminished culpability, the penological justifications of retribution and deterrence are not served by the imposition of the death penalty:

> Retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity. As for deterrence, it is unclear whether the death penalty has a significant or even measurable deterrent effect on juveniles, as counsel for the petitioner acknowledged at oral argument.

543 U.S. at 571. The same consideration is equally applicable to Mr. Client. His neurological, physiological and psychological deficits are exactly the characteristics that the Supreme Court has identified as warranting an exemption from the death penalty under _Simmons_ and _Atkins_. His under-developed brain, coupled with serious psychological disturbances that exacerbated his vulnerabilities, left him with “diminished capacit[y] to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reaction of others,” _Atkins_, 536 U.S. at 318.

Imposing a death sentence in the case of a mental age juvenile such as Mr. Client serves no legitimate penological purpose and risks injecting the arbitrariness in capital sentencing
IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re
TIEQUON AUNDRAY COX,
On Habeas Corpus.

Case No.

CAPITAL CASE
Related to Automatic Appeal
Case No. S004711 (Closed);
Habeas Corpus Case Nos.
S044014 (Closed), S082898
(Closed), and S227186 (Pending)

Los Angeles County Superior
Court Case No. A-758447

FOURTH PETITION FOR WRIT OF HABEAS CORPUS

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re
TIEQUON AUNDRAY COX,
On Habeas Corpus.

Case No.

CAPITAL CASE

Related to Automatic Appeal
Case No. S004711 (Closed);
Habeas Corpus Case Nos.
S044014 (Closed), S082898
(Closed), and S227186 (Pending)

Los Angeles County Superior
Court Case No. A-758447

FOURTH PETITION FOR WRIT OF HABEAS CORPUS

TO: THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF
JUSTICE OF CALIFORNIA AND TO THE HONORABLE
ASSOCIATE JUSTICES OF THE SUPREME COURT OF
THE STATE OF CALIFORNIA.

Petitioner Tiequon Aundray Cox, through counsel the Habeas Corpus
Resource Center (HCRC), by this verified Petition for Writ of Habeas
Corpus, petitions this Court for a writ of habeas corpus and sets forth the
following facts and causes for the issuance of the writ:

I. INTRODUCTION

Mr. Cox was arrested at age eighteen. He was charged, convicted,
and sentenced to death before age twenty-one. More than thirty years later,
he has spent almost two-thirds of his life on California’s Death Row.
During that time, our own understanding of the frailties of youth has developed such that we now know that crimes committed by teenagers are characterized by impetuosity, risk-seeking, and peer influence – all of which are precipitated by ongoing neurological development. These factors indicate that a teenager who commits a crime cannot be judged fully culpable under the law and must therefore be excluded from those whose lives may be taken by the state. Mr. Cox’s right to an individualized sentencing determination in full consideration of his youth and its inherent shortcomings was further denied by California’s failure to mandate both that youth be considered in mitigation, and that the jury must find a sentence of death appropriate beyond a reasonable doubt.

II. JURISDICTION

Mr. Cox is unlawfully confined and restrained of his liberty at San Quentin State Prison, San Quentin, California by Scott Kernan, Secretary, California Department of Corrections and Rehabilitation and Ronald Davis, Warden, San Quentin State Prison. Mr. Cox is confined pursuant to the judgment in Los Angeles County Superior Court Case Number A-758447, rendered on April 30, 1986. Mr. Cox previously challenged his convictions and death sentence in this Court, by filing on December 22, 1994, a Petition for Writ of Habeas Corpus (First Petition), Case No. S044014; a Petition for Writ of Habeas Corpus (Second Petition) on October 15, 1999, Case No. S082898; and a Petition for a Writ of Habeas Corpus (Third Petition) on June 19, 2015, Case No. S227186. No other applications, petitions, or motions have been made in this Court with respect to Mr. Cox’s detention and restraint.
III. INCORPORATION BY REFERENCE

To avoid duplication of voluminous material already possessed by this Court, the trial court, and respondent, Mr. Cox hereby requests that this Court incorporate by reference the certified record on appeal and all of the briefs, motions, orders, and other documents and material on file in People v. Cox, Case No. S004711 (Closed); Habeas Corpus Case Nos. S044014 (Closed), S082898 (Closed), and S227186 (Pending), and People v. Cox, Los Angeles County Superior Court Criminal Case No. A-758447. See In re Reno, 55 Cal. 4th 428, 444, 484 (2012) (holding habeas petitioner need not request judicial notice of all documents from prior proceedings in capital cases because this Court routinely consults prior proceedings irrespective of formal request).

Mr. Cox incorporates by reference all exhibits filed in support of this Petition and the facts contained in those exhibits and re-alleges the material in these documents to avoid wholesale repetition of all facts contained therein, while allowing their consideration as if each of the facts and conclusions in the exhibits was repeated in each relevant allegation in this Petition. In re Fields, 51 Cal. 3d 1063, 1070 n.2 (1990); In re Rosenkrantz, 29 Cal. 4th 616, 675 (2002).

IV. PROCEDURAL HISTORY

A. Procedural History and Factual Background at Trial

1. The factual and procedural history set forth in the First Petition and Second Petition are hereby incorporated by reference. First Petition at 12-16; Second Petition at 2-6.
B. Procedural History in This Court

The procedural history in this Court contained in the First and Second Petitions are hereby incorporated by reference. First Petition at 6-7; Second Petition at 16-19.

As previously noted, Mr. Cox, represented by attorney Sharon Jones, filed a First Petition on December 22, 1994. After the parties submitted informal briefing upon this Court’s order, the Court denied the petition on the merits and, as to some claims, on procedural grounds as well, on July 23, 1997.

On October 15, 1999, Jean Sternberg and Shonda Hollinger of the Habeas Corpus Resource Center filed a Second Petition on behalf of Mr. Cox in this Court.1 On November 10, 1999, this Court vacated its prior order appointing counsel Sharon Jones and then appointed the Habeas Corpus Resource Center as counsel for Mr. Cox in both postconviction and clemency proceedings. The Court ordered informal briefing on the Second Petition and thereafter denied the petition on the merits and, as to some claims, on additional procedural grounds, on February 13, 2002.

Mr. Cox, through counsel the Habeas Corpus Resource Center, filed a Third Petition on June 19, 2015. This Court ordered informal briefing -- the Attorney General filed an Informal Response on July 17, 2015, and Mr. Cox filed an Informal Reply on September 21, 2015.

The filing of the instant Petition does not constitute a waiver,

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express or implied, of any applicable privilege or protection including, but not limited to, the privilege against self-incrimination, the attorney-client communication privilege, and the work product privilege. See Cal. Evid. Code § 955; Bittaker v. Woodford, 331 F.3d 715 (9th Cir. 2003); People v. Ford, 45 Cal. 3d 431 (1988).

V. TIMELINESS AND POTENTIAL APPLICABILITY OF PROCEDURAL BARS

As defined in In re Reno, 55 Cal. 4th at 510-11, Mr. Cox identifies potential procedural bars and those facts and circumstances demonstrating their inapplicability to the claims raised in this Petition, and addresses the timeliness of this Petition.

No claim presented herein has been presented to the Court in any of Mr. Cox’s prior habeas corpus petitions. Despite not having previously brought these claims, the successive-petition procedural bar outlined in In re Clark, 5 Cal. 4th 750, 767-69 (1993) is inapplicable to these claims, because the claims rely upon recent factual and/or legal developments such that no claim could have been presented in an earlier proceeding.

In Claim One, Mr. Cox relies on a number of facts, including recent data concerning the imposition of the death penalty as well as recent abolition and disuse of the death penalty in multiple states, recent developments in cognitive, behavioral, and other science, as well as recent California legislative enactments recognizing ongoing cognitive and behavioral development continuing past the age of majority. As these factual bases did not exist in their entirety at the time of Mr. Cox’s prior habeas petitions, this claim could not have been raised previously, and because some of these developments occurred in the last year, Mr. Cox has demonstrated due diligence in pursuing this claim. See In re Clark, 5 Cal.
4th at 775 (requiring successive habeas litigants to demonstrate due diligence in developing new factual bases).

Claim Two, in addition to relying on those scientific developments underpinning Claim One, springs from the United States Supreme Court’s recent decision in *Montgomery v. Louisiana*, __ U.S. __, 136 S. Ct. 718 (2016), which declared that its earlier decision in *Miller v. Alabama*, __ U.S. __, 132 S. Ct. 2455 (2012), while procedural, must be applied retroactively to guarantee that youth is considered as a factor in mitigation of the appropriate penalty. In so doing, the *Montgomery* Court elided its earlier holding in *Teague v. Lane*, 489 U.S. 288 (1989), and noted that the distinction between procedure and substance for retroactivity cannot be used to defeat a challenge to a sentencing scheme that denies a defendant full consideration of youth as a factor in mitigation. The Court’s decision in *Montgomery*, which was published on January 27, 2016, announced a retroactively applicable change in law,\(^2\) and as Mr. Cox’s claim applying

\(^2\) On direct appeal, Mr. Cox asserted a claim that the instructions in his case failed to delineate which of the listed penalty phase factors should be considered as aggravating as opposed to mitigating evidence. Appellant’s Opening Brief at 225-237, *People v. Cox*, 53 Cal. 3d 618 (1991) (No. S004711). This Court, in its decision, expressly addressed the lack of guidance with regards to consideration of age as a factor in either aggravation or mitigation under Penal Code section 190.3 (i) and found that age, in particular youth, was not necessarily a factor in mitigation, but that both sides were free to argue “the same factor in its favor.” *Cox*, 53 Cal. 3d at 675. To the extent this Court determines that question of the lack of guidance regarding consideration of youth as a factor in mitigation was decided on direct appeal, neither the procedural bar outlined in *In re Walteus*, 62 Cal. 2d 218 (1965), nor that outlined in *In re Miller*, 17 Cal. 2d 734, 735 (1941), serve to limit this Court’s consideration of the instant claim. A claim previously raised on direct appeal may be reconsidered by this Court where the constitutional error claimed “is both clear and fundamental, and strikes at the heart of the trial process,” or “when there has been a change in the law affecting the petitioner.” *Reno*, 55 Cal. 4th at 478 (citing *In re Harris*, 5 Cal. 4th 813, 824, 841 (1993)) (discussing
Montgomery and challenging the lack of charging and sentencing guidance under Penal Code section 190.3 is filed less than a year after the decision, Mr. Cox has exercised due diligence in bringing this claim. See In re Clark, 5 Cal 4th at 775 (noting claims of retroactively applicable change of law not barred where asserted as promptly and reasonably as possibly).

Claim Three similarly relies upon the Supreme Court’s recent decision in Hurst v. Florida, __ U.S. __, 136 S. Ct. 616 (2016), which clarified that a jury must make every factual finding necessary to impose the death penalty. Prior to the Hurst decision, this Court has repeatedly rejected claims that California’s sentencing scheme, which fails to require the jury to find beyond a reasonable doubt that death is the appropriate sentence, violates the requirements of Ring v. Arizona, 536 U.S. 584 (2002) and Apprendi v. New Jersey, 530 U.S. 466 (2000). See, e.g., People v. Ward, 36 Cal. 4th 186, 221 (2005); People v. Samuels, 36 Cal. 4th 96, 137 (2005). As the decision in Hurst constitutes new law that demonstrates the applicability of Ring and Apprendi to California’s sentencing scheme, this claim is not barred under Clark. Mr. Cox brings this claim less than one year from the Supreme Court’s January 12, 2016 decision in Hurst – demonstrating due diligence in bringing this claim.

Furthermore, the claims raised in this Petition fall under an announced exception to the bar outlined in Clark, because Mr. Cox asserts in each exceptions to application of Waltreus bar). Similarly, the Miller bar is inapplicable to claims implicating “a fundamental error of constitutional magnitude” or claims that the petitioner was sentenced under an invalid statute. Reno, 55 Cal. 4th at 497 (citing Clark, 5 Cal. 4th at 798). As Mr. Cox’s instant claim is based on the Supreme Court’s recent decisions in Miller, 132 S. Ct. 2455, and Montgomery, 136 S. Ct. 718, challenges the constitutionality of section 190.3 when applied to post-majority teenagers, and asserts that his sentence of death obtained on the basis of California’s unconstitutional capital sentencing scheme violated his constitutional rights, neither procedural bar is applicable.
claim that he was convicted under invalid statutes that subjected him to
capital punishment in violation of the Sixth, Eighth, and Fourteenth
Amendments to the United States Constitution. See Reno, 55 Cal. 4th at
476 (“The fourth and final of the Clark exceptions permits consideration of
a delayed claim that alleges the petitioner was convicted under an invalid
statute”) (citing Clark, 5 Cal. 4th at 798), 497 (“[P]etitioner can avoid the
preclusive effect of the Miller rule if he can allege facts showing that a
claim implicates a fundamental error of constitutional magnitude . . . or that
he was convicted or sentenced under an invalid statute.”).

All three claims are timely in that they are presented without
substantial delay and rely upon facts and/or law that could not have been
known earlier. See In re Reno, 55 Cal. 4th at 461-62 (noting for habeas
petitions filed outside presumptive timeliness deadlines, petitioner must
show lack of substantial delay between when he knew or should have
known existence of the claim and time of filing). As demonstrated in the
preceding paragraphs, each claim relies on new legal developments and
both Claims One and Two are supported through recent factual and
scientific developments. These facts and developments are necessary to the
claims in this Petition, and were not previously available because they did
not yet exist. See Reno, 55 Cal. 4th at 462 (noting a lack of substantial
delay in a successive habeas petition is shown where facts were not, and
could not, have reasonably been known earlier). Based upon the necessity
of these factual and legal developments to Mr. Cox’s claims, he has
demonstrated the lack of a substantial delay in bringing these claims. In the
alternate, should this Court determine that any claim is substantially
delayed, good cause exists to excuse the delay because the factual and legal
bases for these claims have developed in recent months and are now ripe
VI. CLAIMS FOR RELIEF

A. Claim One: Evolving Standards of Decency That Mark the Progress of Maturing Society Demonstrate That Executing Teenaged Offenders is a Relic of the Past.

The shifting landscape of the death penalty in the United States over the last few decades demonstrates increasing societal awareness about the need to make punishment proportional to not only the crime, but the unique individual. With each passing decision, the United States Supreme Court has staked out the ways in which a maturing society’s legislative and popular actions reflect an ever-evolving standard of decency. This evolution tracks scientific developments that have improved our understanding of the brain, psycho-behavioral development, and vulnerabilities during development. Scientific research and clinical studies continue to move the benchmark for full cognitive and behavioral development – we now know that teenagers undergo continuing neurological development and are correspondingly limited in their capacities for higher reasoning and self-control. Incomplete development and concomitant behavioral shortcomings limit the culpability of teenagers and also demonstrate their capacity for change and maturation in ways that

3 Should respondent assert that any claim asserted in this Petition is untimely or successive, this Court should appoint separate, conflict-free counsel to investigate and present any meritorious arguments that current or former habeas counsel provided inadequate representation related to these claims. Appointment of conflict-free counsel would assist this Court to ensure it has all available information when determining whether there is good cause justifying delayed and/or successive presentation of these claims.
render the imposition of capital punishment grossly disproportionate and lacking justification in violation of the Eighth and Fourteenth Amendments.

Mr. Cox, who was just eighteen years old at the time of the capital crime, was developmentally and chronologically more akin to those already categorically exempted from the death penalty than to fully matured adults for whom a death sentence may be deemed proportionate. Evolved science, including clinical research and neuroimaging, dovetails with shifting public opinion and shows that ongoing maturation limits the culpability of teenagers like Mr. Cox who were not mature and fully culpable under the law at the time of their crimes. As such, Mr. Cox’s sentence of death is grossly disproportionate, serves no legitimate purpose, and constitutes cruel and unusual punishment in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments.

1. The facts and allegations, supporting exhibits, and citations contained in Claim Two of this Petition are incorporated by this reference as if fully set forth herein.

Marked Trends in the Ways in Which the Death Penalty is Imposed Demonstrate a National Consensus Shifting Away from Sentencing Teenagers to Death.

2. Shortly after the entry of Mr. Cox’s death judgment, the United States Supreme Court recognized that fifteen and sixteen years olds could not be executed because of their susceptibility to both the influence of others and psychological damage. *Thompson v. Oklahoma*, 487 U.S. 815, 834 (1988). More than a decade later, in short succession, the Supreme Court exempted the intellectually disabled and teenagers below age eighteen from execution – announcing that diminished capacities rendered the permissible purposes of capital punishment (retribution and deterrence) inapplicable to these classes of offenders. *Roper v. Simmons*, 543 U.S. 551, 571 (2005); *Atkins v. Virginia*, 536 U.S. 304, 305 (2002). Scientific
research over the past decade has further refined our understanding of neurobiology, psychology, and other behavioral sciences, and the Supreme Court has responded – categorically excluding groups from receiving the most severe punishments and announcing increased recognition of potential rehabilitation for younger offenders. *See Miller v. Alabama, ___ U.S. ___, 132 S. Ct. 2455 (2012)* (finding mandatory life without parole for juveniles unconstitutional); *Graham v. Florida, 560 U.S. 48 (2010)* (finding life without parole unconstitutional for juvenile offenders convicted of non-homicidal crimes). Our societal understanding of ongoing development and limitations of teenaged offender culpability has continued to evolve following the *Miller* decision. As evidenced by both psycho-behavioral studies and brain imaging, teenagers continue to develop and mature behaviorally past age eighteen. Evolved standards of decency thereby demonstrate that civilized standards require exempting eighteen and nineteen year olds from the death penalty because of their limited culpability and capacity for change.

a. The sentencing practices of those states that still authorize the death penalty demonstrate a shift in societal understanding about the maturity and culpability of post-majority teenagers in favor of categorically exempting these teenagers from execution. *See Graham, 560 U.S. at 66-67* (noting regardless of statutory language, actual sentencing practices are relevant to determine community consensus under evolving standards of decency analysis); accord *Miller*, 132 S. Ct. at 2473; see also *Penry v. Lynaugh*, 492 U.S. 302, 334 (1989) (noting import of actual sentencing practices to demonstrate contemporary values and national consensus).

1) While death sentences across the United States have been declining, the imposition of the death penalty on teenagers, namely eighteen and nineteen year olds, has been declining at a far greater rate, Ex.
2 ¶¶ 8-11, 18 & Table 1 – demonstrating an evolved standard of decency against the imposition of capital punishment on teenaged populations.

2) At least three of the twenty-nine states that continue to authorize the death penalty have not imposed a death sentence on a teenager in at least five years. Ex. 2 at Table 4 & n.1.

3) Amongst the five states that have imposed the death penalty on teenagers in recent years, three of them have sentenced teenagers to death at a far lower rate than in previous years. Ex. 2 at Table 4 & n.1. This decline is at a greater rate than the overall decline in imposition of the death penalty nationwide, even when one controls for a decreased rate of homicides amongst this population. Ex. 2 at ¶ 11 & Table 4. Only California and Florida show an increase in the rate of sentencing teenagers to death, and California does so despite a decrease in the overall homicide offender rate amongst this population. Ex. 2 at ¶¶ 14-15 & Table 4.

b. Those states where execution is no longer possible due to repeal or abolition of the death penalty also demonstrate community consensus in favor of categorically exempting particularized classes from execution. Roper, 543 U.S. at 564; Atkins, 536 U.S. at 315-16. Consideration of those states where the death penalty has fallen into disuse or is not an available penalty further demonstrates a national consensus in rejection of the death penalty for teenagers.

1) Nineteen states and the District of Columbia have abandoned the death penalty all together.4 In the last decade alone, six states have either abolished the death penalty or declined to reinstate it

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4 Alaska, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.
following state court rulings on the constitutionality of the state’s capital scheme.⁵

2) In at least fourteen states, the death penalty, while statutorily authorized, has fallen into disuse – a trend demonstrating that evolving standards of decency disfavor executions, including the execution of teenagers. Eleven states, including California, have not carried out an execution in more than a decade.⁶ Seven states, while statutorily authorizing the death penalty, have not sentenced a defendant to death in five years or more.⁷

c. Reference to international law is also instructive as to what is considered cruel and unusual. *Roper*, 543 U.S. at 575; *Atkins*, 536 U.S. at 317 n.21; *Trop v. Dulles*, 356 U.S. 86, 102-03 (1958). Trends in international law further demonstrate that the death penalty as a whole, and particularly as applied to teenagers, is disfavored and outside of established standards of decency.

1) 102 countries⁸ prohibit the death penalty for any

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⁵ New Jersey (December 17, 2007); New Mexico (March 18, 2009); Illinois (July 1, 2011); Connecticut (Abolished April 25, 2012); Maryland (May 2, 2013); *Rauf v. Delaware*, 2016 WL 4224252 (Aug. 2, 2016).

⁶ Arkansas (last execution November 28, 2005); California (January 17, 2006); Colorado (October 13, 1997); Kansas (June 22, 1965); Montana (August 11, 2006); Nevada (April 26, 2006); New Hampshire (July 14, 1939); North Carolina (August 18, 2006); Oregon (May 16, 1997); Pennsylvania (July 6, 1999); Wyoming (January 22, 1992).

⁷ New Hampshire (last sentence of death in 2008); Montana (1996); Nebraska (2010); Colorado (2010); Utah (2008); Wyoming (2004); Idaho (2010).

⁸ Albania, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Bhutan, Bolivia, Bosnia-Herzegovina, Bulgaria, Burundi, Cambodia, Canada, Cape Verde, Colombia, Cook Islands, Congo, Costa Rica, Cote D’Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Dominican Republic, Ecuador, Estonia, Finland, Fiji, France,
crime, and an additional six countries prohibit capital punishment for all but crimes committed in times of war or other limited circumstances.\textsuperscript{9} Thirty-two additional countries have abolished capital punishment in practice in that they have not executed anyone in the past ten years and have either a policy or practice of not carrying out executions.\textsuperscript{10}


\textsuperscript{9} Brazil, Chile, El Salvador, Israel, Kazakhstan, and Peru. Death Penalty Information Center, \textit{Abolitionist and Retentionist Countries} (October 24, 2016), http://www.deathpenaltyinfo.org/abolitionist-and-retentionist-countries.


3) Four additional countries, while not abolishing the death penalty, recognize the continuing maturation of teenagers, and prohibit execution of those below age twenty.\(^{11}\)

d. Trends in death penalty imposition across the United States and worldwide demonstrate evolution in those standards that mark a maturing society towards the exemption of teenagers, including those past the age of majority, from eligibility for execution. Even in those increasingly few states and countries where the ultimate punishment remains in use, evolving standards of decency recognize the limited culpability and increased potential for rehabilitation of teenagers as demonstrated by the ways in which capital punishment is imposed. To the extent teenagers are sentenced to death, the practice is truly unusual, cruel, and in violation of the Eighth Amendment. *See Atkins*, 536 U.S. at 317 (finding where evidence demonstrates execution of a class is against national consensus, imposition of capital punishment on few members of this class is cruel and unusual).

*The Vulnerabilities and Limited Culpability of Teenagers Parallel*

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Those Outlined in Roper and Thus Demonstrate the Need for Categorical Protection from Execution.

3. In addition to examining capital-sentencing statutes and trends, the Eighth Amendment requires the Court to undertake independent evaluation of the particular vulnerabilities of the individuals at issue and to determine whether the death penalty can no longer be constitutionally imposed, in light of the acceptable goals of capital punishment. *Graham*, 560 U.S. at 67; *Roper*, 543 U.S. at 568; *Atkins*, 536 U.S. at 319. The same rationales on which the Supreme Court has repeatedly relied to categorically exempt others from severe sentences apply with equal force to eighteen and nineteen years-olds. Teenagers such as Mr. Cox are less blame-worthy than fully-developed adults due to a multitude of general differences, each of which demonstrate that teenagers of any age cannot be classified nor sentenced as among the worst offenders. *See Roper*, 543 U.S. at 569.

a. Teenagers, even those beyond the age of majority, demonstrate impaired decision-making abilities. Eighteen and nineteen year olds, like younger teenagers, are more likely than adults to underestimate the number, seriousness, and likelihood of risks. Ex. 1 at ¶ 13; *see also Roper*, 543 U.S. at 569 (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)) (finding juvenile behavioral limitations “often result in impetuous and ill-considered actions and decisions,” and finding juveniles should be exempted from death penalty eligibility).

b. Older teenagers continue to engage in the same sensation-seeking behavior pursued by younger adolescents and are more likely to focus on the perceived reward of a given action while simultaneously discounting the risks. Ex. 1 at ¶ 14. This increased proclivity towards sensation-seeking behavior is particularly pronounced in eighteen and nineteen year olds. Ex. 1 at ¶ 14.
c. Similarly, these teenagers continue to demonstrate the decreased ability to control their impulses demonstrated by younger adolescents and are correspondingly more short-sighted and less planful than adults. Ex. 1 at ¶ 15; see also Roper, 543 U.S. at 569 (noting juveniles demonstrate “a lack of maturity and an underdeveloped sense of responsibility,” which supports exempting them from capital punishment).

d. At the same time, eighteen and nineteen year olds, like younger adolescents, continue to undergo emotional and behavioral development and controls, which mature at a slower rate than overall cognitive development. Ex. 1 at ¶ 16; see also Graham v. Florida, 560 U.S. 48, 68 (2010) (noting portions of the brain responsible for behavioral maturity continue to develop throughout the teenage years). This gap between emotional and cognitive maturity that persists beyond the teenage years, renders teenagers more impulsive and reward-focused than adults, and such behaviors are exacerbated in emotionally laden situations. Ex. 1 at ¶ 16; see also Roper, 543 U.S. at 571 (noting immaturity of juveniles as one factor justifying exemption from capital punishment). Teenagers remain more susceptible to peer pressure and the negative influence of others. Ex. 1 at ¶ 20; see also Roper, 543 U.S. at 569 (citing Eddings v. Oklahoma, 455 U.S. 104, 115 (1982)) (noting juveniles are more susceptible to negative influences of their peers – a fact weighing in favor of exempting this class of individuals from capital punishment).

e. Like younger teenagers, eighteen and nineteen year olds demonstrate increased plasticity or capacity for behavioral change such that criminal conduct during this period is not an appropriate indicator of future criminality or delinquent behavior. Ex. 1 at ¶ 22; see also Graham, 569 U.S. at 68 (noting transient immaturity of youthful offenders renders even expert psychologists unable to identify those offenders “whose crime
reflects unfortunate yet transient immaturity,” versus those who are irreparable); *Roper*, 543 U.S. at 570 (finding character of a teenager less fixed and more transitory than that of an adult as a factor favoring juvenile exemption from capital punishment).

f. These factors that are the hallmark of youth also exacerbate the negative effects of detrimental, mitigating life experiences, including the defendant’s family background and his overall mental and emotional development. *Miller*, 132 S. Ct. at 2467 (citing *Eddings*, 455 U.S. at 115-16).

g. Together, these limitations significantly diminish the purposes of capital punishment – retribution is not proportional where a sentence of death is inflicted on one who is less blameworthy or culpable, whereas teenaged limitations on the ability to conduct cost-benefit analysis in risky situations render deterrence of limited utility. *See Graham*, 569 U.S. at 71; *Roper*, 543 U.S. at 571-72.

**Laws Throughout the United States Demonstrate a Trend Towards Recognizing the Vulnerabilities of All Teenagers in Light of Their Continuing Maturation and Development.**

4. Other statutory provisions, which reflect legislative recognition that individuals, by virtue of their youth, are less mature or responsible than fully-developed adults demonstrate a national consensus in favor of recognizing such limitations in the capital context. *Thompson*, 487 U.S. at 823-25; *Eddings*, 455 U.S. at 115-16. Statutory protections both in California and across the United States similarly reflect an evolved understanding of the ongoing neurological and psycho-behavioral development of teenagers that continues past the age of majority and diminishes teenage responsibility.

a. Across the United States, statutory schemes reflect the consensus that maturation and development continue beyond age eighteen,
and thus teenagers and young adults beyond the age of majority are in need of additional legal protections:

1) Multiple states recognize that teenagers beyond age eighteen continue to require supervision and support, and state statutes continue to provide those supports and protections to juveniles until at least age twenty-one:

   a) Many states retain supervisory control and custody of young adults in juvenile facilities and courts until age twenty-one.12

   b) Foster care services also remain available until the age of twenty-one.13

   c) Multiple states restrict the rights of young adults to adopt or foster children before age twenty-one, and some states require that an adoptive parent be at least twenty-five.14

   d) Prior to age twenty-one, many states provide additional protections and supervision for young adults receiving inheritance and other bequests, as well as limitations on access to credit cards.15

2) Additionally, a multitude of states prohibit teenagers and young adults from engaging in potentially risky and harmful behavior:

   a) Young adults below age twenty-one are not permitted to purchase or consume alcohol and may only work in establishments serving or selling alcohol in limited circumstances and with

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12 Ex. 4 at 67
13 Ex. 4 at 67-69
14 Ex. 4 at 72-74
15 Ex. 4 at 75; see also 15 U.S.C. 1637 (federal law restricting provision of credit cards to those under twenty-one).
b) They are similarly not permitted to gamble, or in some states, even enter gambling establishments.\(^{17}\)

c) Most states also prohibit those under age twenty-one from obtaining concealed carry permits or purchasing handguns and ammunition.\(^{18}\)

d) Some states restrict the types of driver’s licenses that may be held, or the nature of cargo or persons that may be transported prior to age twenty-one.\(^{19}\)

e) States also restrict the types of employment (including public office) and licenses young adults may hold prior to age twenty-one.\(^{20}\)

b. California law, like laws across the United States, recognizes the continuing need to protect and provide support to teenagers past the age of eighteen. A multitude of statutes provide for continued court and agency supervision in criminal and civil contexts, while additional laws prohibit young adults from engaging in risky or dangerous behaviors that are otherwise permissible for fully-developed adults.

1) California law outlines the rehabilitative potential and limited culpability of teenagers and young adults. Those individuals previously committed as juveniles, remain under the jurisdiction of the

\(^{16}\) Ex. 4 at 77-81

\(^{17}\) Ex. 4 at 81-83

\(^{18}\) Ex. 4 at 81-87

\(^{19}\) \textit{E.g.}, Ex. 4 at 87; \textit{see also} 49 C.F.R. §§ 390.3, 391.11 (requiring commercial drivers to be at least twenty-one years of age to transport passengers or hazardous materials intrastate, and to drive commercial vehicles interstate).

\(^{20}\) \textit{E.g.}, Ex. 4 at 87
juvenile court and are permitted to remain in juvenile facilities until age twenty-one, Cal. Welf. & Inst. Code §§ 208.5, 1769, and young adults prior to age twenty-one may be committed to a juvenile facility even for crimes committed past the age of majority. Cal. Welf. & Inst. Code § 1731.5.

2) Similarly, in recognition of the continuing support and guidance needed by wards of the state, those between the ages of eighteen and twenty-one may petition the juvenile court to continue guardianship and accompanying placement and supervision protections. Cal. Welf. & Inst. Code § 388.1; see also Cal. Welf. & Inst. Code § 450 (a) (providing that individuals up to twenty-one may be considered within the “transition jurisdiction of the juvenile court”).

3) Young adults remain eligible for the same health coverage or public assistance provided to children and teenagers until at least age twenty-one. Cal. Welf. & Inst. Code §5868.2 (defining individuals between ages fifteen and twenty-one as “adolescents in transition” and eligible for continuing mental health services); Cal. Welf. & Inst. Code § 11464 (extending public assistance benefits to dependents under twenty-one); Cal. Welf. & Inst. Code §14132.88 (providing dental coverage for those under twenty-one).

4) California law also recognizes the limited capacity of teenagers and young adults to navigate complex legal matters. Young adults may also petition the court, prior to age twenty-one, for a guardian to assist in preparation of a petition regarding their status as a juvenile immigrant. Cal. Prob. Code § 1510.1.

5) State law recognizes the limited capacity and maturity of teenagers and young adults and prohibits them from serving as a responsible adult for a dependent parent, Cal. Welf. & Inst. Code § 16501.27; staff at a short-term residential treatment center, Cal. Health &

6) Correspondingly, California law prohibits teenagers and young adults from participating in potentially risky behaviors. Those below age twenty-one may not purchase tobacco products, remain in a bar, or consume alcohol. Cal. Bus. & Prof. Code §§ 22952, 25658, 25658.5, 25665; Cal. Penal Code § 308; see also Cal. Pub. Util. Code § 5384.1 (charter-party carriers may not transport individuals below age twenty-one without a designee aged twenty-five or older).

7) Teenagers and young adults below age twenty-one are prohibited from purchasing handguns, ammunition to be used in a handgun, or explosives. Cal. Health & Safety Code § 12082; Cal. Penal Code §§ 27510, 29610, 30300(a)(2). Those younger than twenty-one are also prohibited from driving a motorcycle without completing an additional safety program, Cal. Veh. Code § 12509.5, or transporting hazardous materials, Cal. Veh. Code § 12515.

8) Prior to age twenty-one, individuals may not serve as peace officers with the California Highway Patrol, Cal. Veh. Code § 2256, and may not gamble or work in a licensed gambling establishment, Cal. Bus. & Prof. Code § 19941.

c. More recently, in the wake of the Miller and Montgomery decisions, the California legislature has enacted additional protections for youthful criminal defendants in non-capital cases, and has repeatedly recognized that the frailties of youth requiring such protections extend beyond the age of majority.

1) Following Miller, the California legislature amended Penal Code section 2905 to require that all offenders below age twenty-two

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be classified at lower custody facilities “whenever possible.” Cal. Penal Code § 2905(b)(1). The Assembly focused on the “neurological and developmental changes [that] are occurring in people who are in their late teens through early adulthood. The Legislature recognizes that these factors enhance the prospect that, as development progresses and youth mature into adults, these individuals can become contributing members of society.” Assem. Bill No. 1276 (2013-2014 Reg. Sess.).

2) Again, in 2013, the California Legislature provided additional protections for teenagers by providing mandatory hearings before the Board of Parole Hearings (“Board”) for youthful offenders and requiring the Board to examine youth as a factor in mitigation. Cal. Penal Code § 3051. Once again, the Senate outlined the diminished culpability and greater potential for rehabilitation of teenagers, noting that such considerations continue beyond the age of majority; “[r]ecent scientific evidence on adolescent development and neuroscience” and shows that “certain areas of the brain, particularly those that affect judgment and decision-making, do not fully develop until the early 20’s.” Assem. Appropriations Comm., 3d reading analysis of Sen. Bill No. 260 (2013-2014 Reg. Sess.) as amended Sept. 3, 2013 (emphasis added); see also Assem. Appropriations Comm., 3d reading analysis of Sen. Bill No. 260 (2013-2014 Reg. Sess.) as amended Sept. 3, 2013 (“the fact that young adults are still developing means that they are uniquely situated for personal growth and rehabilitation”) (emphasis added).

Recent scientific evidence on adolescent and young adult development and neuroscience shows that certain areas of the brain—particularly those affecting judgment and decision-making—do not fully develop until the early to mid-20s. Various studies by researchers from Stanford University (2009), University of Alberta (2011), and the National Institute of Mental Health (2011) all confirm that the process of brain development continues well beyond age 18.

This research has been relied on by judges and lawmakers. The US and California Supreme Courts have recognized in several recent opinions that adolescents are still developing in ways relevant to their culpability for criminal behavior and their special capacity to turn their lives around.\textsuperscript{22}


4) California embraced the Supreme Court’s holdings in \textit{Graham} and \textit{Miller}, recognized teenaged limitations on self-control and increased capacity for change, and provided juveniles sentenced to life without the possibility of parole the opportunity to submit for re-examination of their sentences in light of youth as a compelling mitigating factor. Cal. Penal Code § 1170.17. In so doing, the Senate recognized that behavioral and neurological development continued beyond age eighteen:

\begin{quote}
The evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of
\end{quote}

\textsuperscript{22} Multiple sponsors and supporters of Senate Bill 261 additionally outlined the wealth of evidence that cognitive brain development is ongoing into adulthood, that such ongoing development is relevant to criminal behavior and culpability determinations, and that these differences must be recognized during sentencing proceedings. \textit{See} Sen. Comm. on Public Safety, analysis of Sen. Bill No. 261 (2015-2016 Reg. Sess.) Apr. 28, 2015, pp. F-G.
consequences, and other characteristics that would make people morally culpable . . . Indeed, age 21 or 22 would be closer to the “biological” age of maturity.


d. As in California and throughout the United States, international law similarly recognizes the transitory nature of late teenager and young adult behavior, and includes teenagers past the age of majority in a group separate from fully-developed adults for purposes of criminal charging, trial, and/or sentencing.23

e. Local, national, and international trends demonstrate a consistent shift towards the recognition of the limited capacity and

23 See Strafgesetzbuch [StGB] [Penal Code] §§ 34(1), 36 (Austria outlines age eighteen to twenty-one as a mitigating factor for sentencing and sets a maximum sentence of twenty years for those below age twenty-one, instead of life imprisonment); Juvenile Courts Act (Zakon o sudovima za mladež), “Narodne novine” (Official Gazette) No. 111/1997 (Croatia granting juvenile court jurisdiction of offenders younger than twenty-one); Jugendgerichtsgesetz [JJA] [Juvenile Courts Act], § 105(1) (Germany provides examination for those up to age twenty-one to determine if based upon moral and psychological development, juvenile court jurisdiction is more appropriate); 1978 évi. IV. Büntető Törvénykönyv (Act IV of 1978 on the Criminal Code) § 40 (Hung.) (Hungary exempting those below age twenty from life imprisonment); Powers of Criminal Courts (Sentencing) Act 2000, c. 6 § 60 (Eng.) (England providing for diversion or alternate sentencing for those below age twenty-one); Criminal Justice Act 2003, c. 44, § 269(5), sch. 21 (Eng.) (England prohibiting those below age twenty-one from receiving a sentence of life without parole); Current Law Eur. Consult Ass., Recommendation of the Comm. of Ministers, 853d Sess. 2003 (Sept. 24, 2003), https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805df0b3 (“reflecting the extended transition to adulthood, it should be possible for young adults under the age of 21 to be treated in a way comparable to juveniles and to be subject to the same interventions, when the judge is of the opinion that they are not as mature and responsible for their actions as full adults”).
responsibility for all teenagers. In many contexts, state and federal
governments provide additional protections for the support and care of
these teenagers. Within the criminal context, in the state of California and
on a national and international scale, governments recognize that the
limited capacity and responsibility of these teenagers, coupled with their
potential for change, translates into diminished culpability and
blameworthiness and a corresponding abatement of harsher punitive
measures.

5. Mr. Cox was eighteen years old at the time of the crime, and
therefore was under the influence of the impetuousness of youth,
susceptibility to peer influence, and transient personality relied upon time
and again to demonstrate diminished culpability, as outlined above.
Accordingly, he is constitutionally ineligible for the death penalty. Mr.
Cox, by virtue of his youth, had diminished culpability at the time of the
crime, and thus, there is no permissible penological purpose for the
imposition of capital punishment. As such, his execution would result in a
fundamental miscarriage of justice.

B. Claim Two: California’s Capital Sentencing Scheme
Unconstitutionally Fails to Protect a Post-Majority Teenaged
Defendant’s Right to Jury Consideration of Youth as an
Unquestionably Mitigating Factor.

As established in Claim One, eighteen and nineteen year olds demonstrate
the continued immaturity and ongoing development that this Court and the
United States Supreme Court have repeatedly acknowledged as a hallmark
of lesser culpability and requiring exemption from the most severe
punishments. The Supreme Court has recently recognized that the
mitigating force of youth, even where not completely exempting
individuals from the gravest punishments, must still be considered and
weighed by the decision-maker in mitigation. California’s capital sentencing scheme, however, fails to state that youth is a mitigating factor that must be considered as such by the fact-finder. *See* Cal. Penal Code § 190.3.

Mr. Cox’s continual confinement under sentence of death is unlawful because his sentence resulted from a scheme that failed to require his jury to consider his youth as a mitigating factor, in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

1. At the time of the capital crime, Mr. Cox was eighteen years old. Recent scientific developments and Supreme Court precedent demonstrate that the hallmarks of youth, including a lack of maturity, increased impetuosity, susceptibility to peer influence, and increased capacity for change, render teenagers like Mr. Cox less culpable than a fully-developed adult. *See* Claim One, *supra*. Even if this Court determines that all teenagers need not be exempted from capital punishment as discussed above, California’s capital sentencing scheme, presently and at the time of Mr. Cox’s trial, fails to provide that youth must be considered in mitigation – a detriment that particularly impacts teenagers whose crimes are often a product of the frailties of youth. Given new and clearly established precedent by the Supreme Court providing that youth is an unquestionably mitigating factor that must be considered as such during sentencing, California’s failure to appropriately outline and define youth in Penal Code section 190.3 renders the statute unconstitutional.

*The Supreme Court’s Evolved Understanding That Youth Must Be Considered as a Factor in Mitigation Requires Procedural Protections to Vindicate This Substantive Right.*

2. As discussed above, the Supreme Court’s precedent has tracked scientific developments regarding brain development and accompanying
behavioral maturation. See Claim One, supra. So, too, as science has demonstrated the unquestionable correlation between youth and culpability, the Supreme Court’s jurisprudence regarding the ways in which youth must be considered during sentencing has evolved. While initially the Supreme Court drew a distinction between those who must be categorically exempted from the death penalty because of their chronological age, and those who could be protected adequately by procedural safeguards allowing consideration of their youth, the Court has more recently eroded such a fine demarcation between substance and procedure, finding that certain procedures are necessary to protect the substantive right that youth must matter in sentencing.

a. In accordance with the bedrock precedent that “death is different,” the Court first grappled with youth as a mitigating factor by finding, in accordance with Woodson v. North Carolina, 428 U.S. 280, 305 (1976), and Lockett v. Ohio, 438 U.S. 586, 604 (1978), that the sentencing authority could not be precluded from considering a defendant’s background and upbringing. Eddings v. Oklahoma, 455 U.S. 104, 114 (1982). The Eddings Court noted that information pertaining to the defendant’s troubled background and childhood was particularly salient in mitigation in light of the defendant’s youth at the time of the crime:

[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly “during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment” expected of adults.

Eddings, 455 U.S. at 116 (citing Bellotti v. Baird, 443 U.S. 622, 635
Ultimately, the *Eddings* Court found that so long as the sentencing authority was not precluded from considering youth as a factor in mitigation, the teenaged defendant’s rights were properly protected and vindicated. *Eddings*, 455 U.S. at 116-17.

b. As the Court’s understanding of the mitigating power of youth continued to evolve, so too did the procedural safeguards required to insulate the less culpable from potential execution. In 1988, the Supreme Court cited concerns that inadequate procedure had resulted in haphazard and arbitrary sentencing when examining the rare instances in which fifteen year olds were sentenced to death and concluded, in part based on such concerns, that all defendants below age sixteen need be categorically excluded from capital punishment. *Thompson v. Oklahoma*, 487 U.S. 815, 831-33, 837 (1988) (citing *Furman v. Georgia*, 408 U.S. 238, 309 (1972)).

c. Shortly thereafter, the Court continued to draw distinctions between the procedural versus substantive role of youth in capital sentencing. In *Johnson v. Texas*, 509 U.S. 350, 368 (1993), the high court examined capital sentencing for non-categorically exempted young offenders, and held that the defendant’s rights had not been violated as long as jurors were not foreclosed from considering youth as a mitigating factor. The *Johnson* Court, however was unconcerned that some jurors might view youth as an aggravating rather than mitigating factor. 509 U.S. at 368.

d. The Court next extended categorical protections to juveniles under the age of eighteen in *Roper v. Simmons*, 543 U.S. 551, 572-73 (2005), after finding that the procedural protections guaranteed in *Johnson*, would be inadequate to protect juveniles from the disproportionate, wanton, and arbitrary imposition of capital punishment.24

24 The *Roper* Court noted that instructing fact finders as to the mitigating force of youth was insufficient to protect juveniles from
In so doing, the *Roper* Court found that the “metonymic” application of youth as an aggravator or mitigator, which it had found permissible in *Johnson*, was inappropriate in the substantive and categorical context; for all juveniles, youth must be considered in mitigation, and the inadequacy of procedures to effectively vindicate this right supported exempting juveniles from capital punishment. See *Roper*, 543 U.S. at 573 (finding juveniles need be exempted from capital punishment as “[i]n some cases a defendant’s youth may be counted against him”).

e. While *Thompson*, 487 U.S. 815, and *Roper*, 543 U.S. 551, categorically exclude groups of teenagers from capital punishment, *Eddings*, 455 U.S. 104, and *Johnson*, 509 U.S. 350, both concerned the procedural ways in which youth may be presented as a mitigating factor for disproportionate imposition of capital punishment, because susceptibility to rehabilitation was sufficiently opaque to even trained psychiatrists, and therefore could not be appropriately identified by lay jurors. *Roper*, 543 U.S. 573 (“If trained psychologists with the advantage of clinical testing and observation refrain, despite diagnostic expertise, from assessing any juvenile under 18 as having antisocial personality disorder, we conclude that States should refrain from asking jurors to issue a far graver condemnation – that a juvenile offender merits the death penalty.”).

25 As outlined below, California characterizes age (and by proxy youth) under section 190.3 as a metonym capable of being considered either in aggravation or mitigation based on evidence and the jury’s own morality and experience. *People v. Lucky*, 45 Cal. 3d 259, 302 (1988). This rationale was relied on by this Court in denying Mr. Cox’s claim on direct appeal, more than twenty-five years ago, that youth must be considered as a factor in mitigation. See *People v. Cox*, 53 Cal. 3d 618, 675 (1991). The Supreme Court’s decisions in *Miller* and *Montgomery*, mandating that sentencers must consider youth as a factor that weighs against sentencing such individuals to the harshest punishments, demonstrate that this Court’s prior reasoning no longer accurately reflects the appropriate role of youth in a sentencing decision. See *Montgomery v. Louisiana*, __ U.S. __, 136 S. Ct. 718, 733 (2016) (citing *Miller v. Alabama*, __ U.S. __, 132 S. Ct. 2455, 2469 (2012)).
the jury’s consideration. Whereas the Johnson Court was focused only on procedure and thereby found that youth could, in some instances, be appropriately considered an aggravating factor, the Roper Court found that for those individuals below age eighteen, no procedural safeguard was adequate and expressly rejected that youth could ever be considered a factor in aggravation. The Court’s distinct procedural and categorical lines of precedent resulted in a tension in the ways in which youth must be considered – either as necessarily mitigating or as a “metronymic” factor capable of being aggravating or mitigating upon the whim of the particular jury.

f. The evolution of the Court’s understanding about the role of youth and its behavioral manifestations has continued on the coattails of scientific testing and research. The biological underpinnings outlined in Claim One demonstrate that youth is unquestionably mitigating – a sentiment echoed recently in Miller, 132 S. Ct. at 2469, 2473, wherein the Court mandated a procedure to protect a juvenile homicide defendant’s right to have his youth considered as a factor in mitigation. The Court merged the procedural and categorical exclusion lines of “youth consideration” cases most recently in Montgomery, 136 S. Ct. at 734, highlighting that the procedures outlined in Miller, guaranteeing considering of youth as a factor in mitigation, were retroactive as the procedural rule was necessary to vindicate a substantive right.

g. The Court’s evolutionary journey, most recently announced in Montgomery, rejects the “metonymic” consideration of youth as either an aggravator or a mitigator, and mandates that the sentencing authority must consider “youth and its attendant characteristics” only as a mitigating factor denoting decreased culpability and increased capacity for rehabilitation. Montgomery, 136 S. Ct. at 733-35. The Montgomery Court announced that
states must provide sufficient procedural protections to guarantee that youth will be considered as a mitigating factor. *Montgomery*, 136 S. Ct. at 734-35.

3. The need for process to ensure that youth is appropriately considered as a factor in mitigation applies with equal force to post-majority teenagers who exhibit those frailties of youth relied upon by the Supreme Court to exempt juveniles from the death penalty and require youth to be made a formal and particularized sentencing consideration. *See* Claim One, *supra*. The requirement of heightened reliability in the capital sentencing procedures renders the need for specific consideration of youth as mitigation more apparent.26

*California’s Statute, Which Fails to Designate Youth as a Factor in Mitigation, Unconstitutionally Denies Capitally Charged Teenagers a Substantive Right During the Penalty Phase of Trial.***

4. A death sentencing scheme that fails to require youth, where applicable, to be weighed as a factor in mitigation does not comport with contemporary standards of decency as required by *Miller* and *Montgomery*. *See Miller*, 132 S. Ct. at 2471 (mandating a sentence “considering an offender’s youth and attendant characteristics” in mitigation).

   a. At the time of Mr. Cox’s trial (and presently), California’s capital sentencing regime required juries to consider a list of aggravating and mitigating factors.27 Penal Code section 190.3(i) lists “[t]he age of the

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26 The finality of imposition of a sentence of death requires a corresponding heightened “reliability in the determination that death is the appropriate punishment in a specific case.” *Woodson*, 428 U.S. at 305.

27 Penal Code sections 190.3(a) through (j) outline a series of factors, including age, which may be considered by the jury during sentencing. Some factors, including age, may be considered by the jury either in aggravation or mitigation. Penal Code section 190.3(k), the so-called “catch-all” provision, which allows the jury to consider any other evidence
defendant at the time of the crime” as one factor the jury should consider, but does not delineate that age, in particular youth, shall be considered a mitigating factor. This Court has held that section 190.3’s failure to define age, or more specifically youth, as a mitigating factor is appropriate because “the word ‘age’ in statutory sentencing factor (i) is used as a

28 The metonymic and ambiguous role of youth under sentencing factor (i) also impacts capital case charging decisions in Los Angeles County, which relies on the provisions of Penal Code section 190.3 to determine whether otherwise death-eligible individuals should be capitally charged. Ex. 30. While across the board, Los Angeles accounts for more death row inmates than any other county in the United States, the arbitrary role of geography is all the more pronounced when examining death sentences imposed on teenagers. See Death Penalty Information Center, The 2% Death Penalty: How a Minority of Counties Produce Most Death Cases at Enormous Costs to All 8 (2013). As outlined in Claim One, California is one of only five states that in recent years has continued to sentence teenagers to death, and one of only two states that continues to inflict the death penalty on teenagers at a greater rate than in previous years. Claim One, supra; Ex. 2 at ¶¶ 12-15 & Table 4. Just as it is overrepresented in the imposition of the death penalty across all age groups, Los Angeles County is an aberration nationwide in that it continues to increase the rate at which it sentences teenagers to die, while other counties and states have decreased death penalty imposition against teenagers. Ex. 2 at ¶¶ 16-17 & Table 6. Los Angeles County’s divergent death-sentencing behavior against teenagers, in light of Penal Code section 190.3’s ambiguous definition of youth as a factor in capital charging and sentencing decisions, underscores the need for a clear definition of the role youth must play as a factor in mitigation.
metonym for any age-related matter suggested by the evidence or by 
common experience or morality that might reasonably inform the choice of 
penalty.” Lucky, 45 Cal. 3d at 302. This reasoning no longer comports 
with dictates of the Eighth Amendment. California’s continuing failure to 
define youth as solely mitigating and pronouncement that jurors should 
merely determine, based upon their experience and morality, whether youth 
or age in a particular case is aggravating or mitigating, does not comport 
with contemporary standards of decency.

b. The structure of a capital sentencing scheme, while largely 
left to the states to formulate, must nevertheless meet contemporary 
standards manifested by legislative actions across the United States.29 See 
Woodson, 428 U.S. at 294-300 (examining other state statutory schemes to 
determine whether mandatory death sentence for first-degree murder 
departed from contemporary standards); see also Roberts v. Louisiana, 428 
substituted discretionary sentencing for mandatory death sentences” in 
finding mandatory scheme outside of societal norms).

c. California’s sentencing statute is an outlier in capital 
schemes across the United States in that it fails to protect the mitigating 
force of youth as a sentencing factor. Of the thirty states still imposing 
capital punishment, twenty-one expressly define age or youth as a

29 Capital sentencing procedures must also comport with due-process 
standards, which, like evolving standards of decency, rely upon 
examination of procedures in other states. See District Attorney’s Office for 
whether DNA testing procedures are similar to those of other states in order 
to determine procedural adequacy of Alaska statute); Herrera v. Collins, 
trial motions to determine whether statute “transgresses a principle of 
fundamental fairness”).
mitigating factor.\textsuperscript{30} Five of the remaining states limit those factors which the jury may consider in aggravation – outlining that youth, where offered, must therefore be considered mitigating.\textsuperscript{31} California’s statute does not provide either of those protections necessary to further the substantive right to have youth considered solely as a factor in mitigation, and infliction of the death penalty upon teenagers absent this protection violates the Eighth Amendment’s requirement that a capital sentence be imposed in accordance with contemporary standards of decency.

5. California’s sentencing scheme, both presently, and at the time of Mr. Cox’s trial, does not define youth or the way in which the jury must consider it during the penalty phase. Given the evolution of the Supreme Court’s understanding of youth and the important role it plays in contextualizing the crime charged as well as the defendant and his rehabilitative potential, youth can no longer be characterized as an ambiguous factor left to the discretion of the jury. While nearly all other capital sentencing states provide protections to guarantee that the jury will consider youth appropriately, California does not effectively vindicate this substantive right. As such, Mr. Cox and others who were teenagers at the


time of the capital crime and whose sentencing authorities were not
instructed that youth was a mitigating factor, are entitled to reversal of the
death sentence and a penalty phase in which the jury is properly instructed
as to the mitigating role of youth. Alternately, Mr. Cox, who was eighteen
at the time he was charged with a capital crime committed alongside an
older, more mature and experienced co-defendant, was prejudiced by the
lack of an instruction compelling the jury to consider youth and its
incumbent characteristics as a factor in mitigation, such that he is entitled to
a new penalty phase proceeding.

C. Claim Three: Mr. Cox Was Denied a Beyond-a-Reasonable-
Doubt Determination of Each Fact Necessary to Sentence
Him to Death in Violation of His Constitutional Rights.

Mr. Cox’s sentence is void because the California death penalty
statutory scheme permitted his jury to impose a sentence of death without a
beyond a reasonable doubt finding that the aggravating circumstances
outweigh the mitigating circumstances and without a unanimous, beyond a
reasonable doubt finding as to the existence of aggravating factors. The
lack of such findings violates his rights to trial by a fair and impartial jury,
to be free from the infliction of cruel and unusual punishment, to an
individualized sentence, and to due process, as guaranteed by the Fifth,
Sixth, Eighth, and Fourteenth Amendments to the United States
Constitution and their California Constitutional analogues.

1. The United States Supreme Court has repeatedly held that the
Fifth, Sixth, and Fourteenth Amendments require any fact—other than a
prior conviction— that increases the statutory maximum penalty for a crime
be proved to a unanimous jury beyond a reasonable doubt. Cunningham v.
In capital cases, the Court held that this principle applies to “an aggravating circumstance necessary for imposition of the death penalty.” *Ring v. Arizona*, 536 U.S. 584, 609 (2002). Recently, the United States Supreme Court expanded this mandate and applied it to Florida’s death penalty scheme, striking down the statute because it vested weighing of aggravating and mitigating factors with the trial judge. *Hurst v. Florida*, 136 S. Ct. 616, 619 (2016). The Court held that the Sixth Amendment requires a jury to find each fact necessary to impose a death sentence. *Id*. The Court’s decision in *Hurst* renders California’s death penalty statute, which permits a jury to impose a death sentence *without* finding that the factors in aggravation outweigh the factors in mitigation beyond a reasonable doubt, and without finding a factor in aggravation beyond a reasonable doubt, unconstitutional.

**The Determination That the Factors in Aggravation Outweigh the Factors in Mitigation Is a Fact Necessary to Impose the Death Penalty and Must Be Found Beyond a Reasonable Doubt by a Unanimous Jury.**

2. The United States Supreme Court held in *Apprendi* that “any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt.” 530 U.S. at 490. In *Apprendi*, a factual finding under New Jersey’s hate-crime statute – that the defendant committed the charged offense to intimidate individuals because of race – increased the statutory maximum penalty. Because the factual finding at issue increased the

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32 See *People v. Banks*, 59 Cal. 4th 1113, 1207 (2014) (holding that the state need not prove beyond a reasonable doubt that the aggravating circumstances outweigh the mitigating circumstances); *People v. Manibusan*, 58 Cal. 4th 40, 99-100 (2013) (same); *People v. Prieto*, 30 Cal. 4th 226, 275 (2003) (same).
statutory maximum penalty, it functioned as an element of the crime and had to be proved beyond a reasonable doubt to a unanimous jury. *Apprendi*, 530 U.S. at 477, 490, 494. It mattered little to the Court whether the factual findings were called elements or sentencing factors, “the relevant inquiry [being] one not of form but of effect – does the required finding expose the defendant to a greater punishment than that authorized by the jury’s guilty verdict?” *Apprendi*, 530 U.S. at 494.

3. In *Ring*, the United States Supreme Court applied the holding of *Apprendi* to Arizona’s death penalty scheme, overruling *Walton v. Arizona*, 497 U.S. 639 (1990), which allowed a sentencing judge to find the aggravating circumstance “necessary for the imposition of the death penalty.” *Ring*, 536 U.S. at 609. The statute set life imprisonment as the maximum penalty a defendant convicted of first-degree murder could receive. A defendant could not be sentenced to death unless a judge made further findings: 1) the presence of aggravating circumstances, and 2) a determination that the mitigating circumstances did not call for leniency. *Ring*, 536 U.S. at 592-93 (citing Ariz. Rev. Stat. Ann. §§ 13-703(F), 13-

33 The requirement that a determination be made by a jury necessarily includes the requirements that the jury be unanimous and that the determination be made beyond a reasonable doubt. *See Hurst*, 136 S. Ct. at 621 (stating that the Sixth Amendment in conjunction with the Due Process Clause, “requires that each element of a crime be proved to a jury beyond a reasonable doubt”); *see also Ring*, 536 U.S. at 602 (describing the right to a jury as a right to “a jury determination that [the defendant] is guilty of every element of the crime with which he is charged, beyond a reasonable doubt” (citation omitted)); *Apprendi*, 530 U.S. at 477 (“[T]rial by jury has been understood to require that ‘the truth of every accusation . . . be confirmed by the unanimous suffrage of twelve of the defendant’s equals and neighbors.’”); *Rauf v. State*, No. 39, 2016, 2016 WL 4224252, at *2 (Del. Aug. 2, 2016) (per curiam) (holding that if the finding that the aggravating circumstances outweigh the mitigating circumstances is to be made by a jury, the jury must find so unanimously and beyond a reasonable doubt).
Because the finding of an aggravating circumstance increased the statutory maximum and exposed the defendant to a greater punishment than authorized absent the additional findings, it was an element of a greater offense, to be accorded Sixth Amendment protection. 536 U.S. at 609. Thus, Ring made clear that Apprendi’s guarantees – a beyond a reasonable doubt determination by a unanimous jury – applied to defendants facing the death penalty no less than they applied to noncapital defendants. 536 U.S. at 589.

4. Most recently, in Hurst, the United States Supreme Court applied the principles of Apprendi and Ring to strike down Florida’s death sentencing scheme, holding that a jury must find not only the facts that expose a defendant to a capital sentence, but also each fact necessary to impose a sentence of death. 136 S. Ct. at 619. In Florida, all first-degree murder is a capital offense. 136 S. Ct. at 620 (citing Fla. Stat. § 782.04(1)(a) (2010)). During the penalty phase, the jury makes a sentencing recommendation. Notwithstanding this recommendation, the judge makes the final decision after finding 1) that “sufficient aggravating circumstances exist,” and 2) “that there are insufficient mitigating circumstances to outweigh aggravating circumstances.” 136 S. Ct. at 620, 622 (citing Ring, 536 U.S. at 608 n.6 and Fla. Stat. § 921.141(3)). Because the trial court alone made the “critical findings necessary to impose the death penalty,” 136 S. Ct. at 622, the Court deemed the jury’s role in providing an advisory sentence immaterial to the constitutional question. It concluded that where the weighing of facts in aggravation and mitigation is a pre-requisite to imposing a death sentence, the Sixth Amendment requires the state to prove, to a jury, beyond a reasonable doubt both that the aggravating circumstances exist and that they outweigh the mitigating circumstances. Hurst, 136 S. Ct. at 621-22. The Court explicitly rejected
the State’s claim that the weighing process did not fall within the ambit of Ring and Apprendi, 136 S. Ct. at 622, making clear that the findings necessary to impose a death sentence are those findings that in fact authorize a death sentence. Hurst, 136 S. Ct. at 623 (overruling Hildwin v. Florida, 490 U.S. 638, 640-41 (1989) and Spaziano v. Florida, 468 U.S. 447, 457-65 (1984), which “summarized earlier precedent to conclude that ‘the Sixth Amendment does not require that the specific findings authorizing the imposition of the sentence of death be made by the jury’” (emphasis added)).

5. As subsequent court opinions demonstrate, Hurst laid to rest any argument that Apprendi and Ring’s protections only apply to those findings that expose a defendant to the death penalty, and indeed overruled prior decisions to the contrary. See Hurst v. State, No. SC12-1947, 2016 WL 6036978, at *10 (Fla. Oct. 14, 2016) (concluding, after reviewing Hurst v. Florida, that the facts necessary to impose the death penalty include not only the existence of an aggravating circumstance, but also the determination that the aggravating circumstances outweigh the mitigating circumstances); see also Perry v. State, No. SC16-547, 2016 WL 6036982, at *7 (Fla. Oct. 14, 2016) (construing Hurst “to require the penalty phase jury . . . unanimously find beyond a reasonable doubt that each aggravating factor exists, that sufficient aggravating factors exist to impose death, and that they outweigh the mitigating circumstances found to exist” (emphasis omitted)); Rauf, 2016 WL 4224252, at *2 (per curiam) (holding that the Sixth Amendment requires that a jury “find that the aggravating circumstances found to exist outweigh the mitigating circumstances” because it is a finding critical to the imposition of a death sentence). The impact of Hurst is clear: the weighing determination, if a necessary precondition to sentencing a defendant to death, must be accorded Fifth,
Sixth, and Fourteenth Amendment protections as set forth in *Apprendi* and *Ring*.34

*California’s Death Penalty Scheme Violates the Fifth, Sixth, and Fourteenth Amendments Because It Does Not Require a Beyond a Reasonable Doubt Determination That the Aggravating Circumstances Outweigh the Mitigating Circumstances.*

6. Like the statute struck down in *Hurst*, California’s death penalty statute also conditions a death sentence on the determination that the aggravating circumstances outweigh the mitigating circumstances. In California, when a jury returns a verdict of first-degree murder and finds a special circumstance to be true, the penalty range increases to either life imprisonment without the possibility of parole or death. Cal. Penal Code § 190.2(a). Just as in Florida, without any further findings, the maximum punishment the defendant can receive is life imprisonment without the possibility of parole.35 To impose a sentence of death, the trier of fact must make a weighing determination – that “the aggravating circumstances outweigh the mitigating circumstances.” Cal. Penal Code § 190.3. This weighing determination made by California juries is a fact necessary to impose the death penalty within the meaning of *Apprendi*, *Ring*, and *Hurst*.

34 Justice Sotomayor, the author of the majority opinion in *Hurst*, three years earlier opined that *Apprendi* and *Ring* applied to a sentencing scheme that required a finding that the aggravating factors outweigh the mitigating factors before a death sentence could be imposed. *Woodard v. Alabama*, 134 S. Ct. 405, 410-11 (2013) (Sotomayor, J., dissenting from denial of certiorari).

35 *See People v. Banks*, 61 Cal. 4th 788, 794 (2015) (finding life imprisonment without the possibility of parole is the “mandatory lesser sentence for special circumstance murder” when the prosecutor does not seek the death penalty); *see also Sand v. Superior Ct.*, 34 Cal. 3d 567, 573 (1983) (same); *People v. Ames*, 213 Cal. App. 3d 1214, 1217 (1989) (holding life imprisonment without the possibility of parole is the sentence when a defendant pleads guilty, admits a special circumstance, and the death penalty is eliminated by plea bargain).
Like the statute at issue in Hurst, California’s statute requires the sentencer make additional findings – after a defendant is exposed to the possibility of a death sentence – to impose the death penalty. In Florida, as stated above, the sentencer must find that “there are insufficient mitigating circumstances to outweigh aggravating circumstances.” Hurst, 136 S. Ct. at 622 (quoting Fla. Stat. § 921.141(3)). In California, the sentencer must find that “the aggravating circumstances outweigh the mitigating circumstances.” Cal. Penal Code § 190.3. As made clear in Hurst, these additional findings are facts “necessary to impose a sentence of death.” Hurst, 136 S. Ct. at 619. Because California’s weighing determination is necessary to impose the death penalty, it must be accorded protection as outlined in Apprendi, Ring, and Hurst: a unanimous, beyond a reasonable doubt determination by a jury. California’s failure to require that the weighing determination be made beyond a reasonable doubt violates Apprendi, Ring, and Hurst.

**California’s Death Penalty Scheme Violates the Fifth, Sixth, and Fourteenth Amendments Because It Does Not Require That a Jury Unanimously and Beyond a Reasonable Doubt Find the Existence of Aggravating Circumstances.**

7. California has also denied Mr. Cox his rights to trial by jury and due process under the Fifth, Sixth, and Fourteenth Amendments by failing to require that the jury find unanimously and beyond a reasonable doubt each aggravator it relied upon. See, e.g., Banks, 59 Cal. 4th at 1207 (holding that the state need not prove beyond a reasonable doubt the existence of each aggravating circumstance); People v. Anderson, 25 Cal. 4th 543, 589 & n.14 (2001) (holding that jurors need not agree on the existence of any specific aggravating factor or crime). Hurst established that each fact necessary to impose a death sentence must be accorded protections. 136 S. Ct. at 619. California juries must find that the aggravating factors outweigh the mitigating factors in order to impose a
death sentence. Cal. Penal Code § 190.3. By implication, California juries must therefore find that at least one aggravating factor exists in order to impose the death penalty. Thus, the existence of each aggravating factor must be found true beyond a reasonable doubt by a unanimous jury. See Hurst, 136 S. Ct. at 477, 490, 494.

This Court’s Conclusion That the Weighing Determination Falls Outside the Scope of Apprendi and Ring’s Protections is Irreconcilable with Hurst.

8. This Court has repeatedly held that the weighing determination—whether aggravating circumstances outweigh the mitigating circumstances—is a “fundamentally normative assessment . . . that is outside the scope of Ring and Apprendi.” People v. Merriman, 60 Cal. 4th 1, 106 (2014) (quoting People v. Griffin, 33 Cal. 4th 536, 595 (2004)) (citations omitted); accord Prieto, 30 Cal. 4th at 262-63. Hurst makes clear this holding does not comport with controlling federal law. Hurst clarified that the determination that the aggravating circumstances outweigh the mitigating circumstances is a “fact necessary to impose a sentence of death,” because it is necessary to authorize a death sentence. See Hurst, 136 S. Ct. at 621. Thus, this Court’s conclusion that California’s weighing provision is outside the scope of Apprendi and Ring cannot survive Hurst.

9. Mr. Cox is mindful that the defect in California’s scheme differs in some respects from the defect in the Florida and Arizona schemes at issue in Hurst and Ring. See People v. Rangel, 62 Cal. 4th 1192, 1235 n.16 (2016) (distinguishing California’s law from that invalidated in Hurst on the grounds that, unlike Florida, the jury’s “verdict is not merely advisory”). Apprendi, Ring, and Hurst, however, guarantee three

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36 In addition, unlike Florida, California requires a jury unanimously to
conjunctive, necessary rights: the right to a jury determination, the right to a unanimous decision, and the right to a beyond a reasonable doubt determination of each fact necessary to impose the death penalty, the latter of which California denies defendants facing the death penalty. The failure to provide one of these rights renders a scheme unconstitutional. Accordingly, Mr. Cox’s sentence must be reversed.

VII. CONCLUSION

Mr. Cox was eighteen years old at the time of the crime charged. By the age of twenty, he had been sentenced to death and was transferred to San Quentin’s Death Row, where he has spent the last three decades of his life. Today, we recognize that teenagers like Mr. Cox exhibit those same limitations that weighed in favor of exempting juveniles from a sentence of death. Because of the impetuousness, impulsivity, and lack of rationality of youth, teenagers like Mr. Cox are far less culpable and far less worthy of death than adults. These same factors demonstrate the great potential for rehabilitation beyond the teenage years and eviscerate the penological purposes of the ultimate punishment. As such, Mr. Cox and others who were eighteen or nineteen at the time of the crime charged must be exempted from being sentenced to die.

California, in recognition of a teenager’s limited culpability and great capacity for behavioral change, has recognized the need to exempt teenagers of all ages from severe punishments. California’s failure to grant commensurate protections to eighteen and nineteen year olds in the capital context and its failure to safeguard the right to just consideration of the mitigating force of youth in determining whether a teenage should live or find that the aggravating circumstances outweigh the mitigating circumstances. Cal. Penal Code § 190.4(b).
die, renders California’s capital sentencing scheme – the scheme under which Mr. Cox was convicted – unconstitutional.

California’s sentencing scheme similarly failed to protect Mr. Cox’s right to jury’s factual finding beyond a reasonable doubt during the sentencing phase. As such, at a minimum, Mr. Cox is entitled to have his sentence of death vacated and his case remanded for a new penalty phase proceeding.
PRAYER FOR RELIEF

WHEREFORE, petitioner respectfully requests that this Court:

1. Order respondent to show cause why Mr. Cox is not entitled to the relief sought;

2. Incorporate by reference the certified record on appeal and all of the briefs, motions, orders, and other documents and material on file in People v. Cox, California Supreme Court Case No. S004711 (Closed); Habeas Corpus Case Nos. S044014 (Closed), S082898 (Closed), and S227186 (Pending), and People v. Cox, Los Angeles County Superior Court Criminal Case No. A-758447;

3. Order the Los Angeles County District Attorney to disclose all files not previously provided that pertain to Mr. Cox’s case and grant Mr. Cox leave to conduct additional discovery, including the right to take depositions, request admissions, propound interrogatories, issue subpoenas for documents and other evidence, and afford Mr. Cox the means to preserve the testimony of witnesses;

4. Order an evidentiary hearing at which Mr. Cox will offer this and further proof in support of the allegations herein;

5. Permit Mr. Cox a reasonable opportunity to supplement the proof in support of the claims presented here and to supplement the petition to include claims that may become known as a result of further investigation and information that may hereafter come to light and similarly provide Mr. Cox with notice and an opportunity to cure any perceived pleading defects;

6. Issue an order to provide Mr. Cox notice and an opportunity to respond, to the extent this Court considers rationales other than those proffered by respondent in any Informal Response to evaluate the merits of
Mr. Cox’s claims;

7. Issue an order to show cause and an evidentiary hearing to permit Mr. Cox to prove the inadequacy, inconsistent application, and unfairness of any procedural bars respondent urges this Court to impose, should this Court be inclined to accept the application of those procedural bars;

8. Issue a reasoned opinion explaining this Court’s rationale and legal and factual bases for granting or denying each of Mr. Cox’s claims;

9. After full consideration of the issues raised in this petition, considered cumulatively and in light of the errors alleged on direct appeal, vacate the judgment and sentences imposed upon Mr. Cox in Los Angeles County Superior Court Case No. A-758447; and

10. Grant Mr. Cox such further relief which is appropriate and just in the interest of justice.

Dated: November 4, 2016

Respectfully submitted,

HABEAS CORPUS RESOURCE CENTER

By: ________________________________
Miro F. Cizin

______________________________
Rachel Cohen

______________________________
Talia MacMath
Attorneys for Petitioner
Tiequon Aundray Cox
VERIFICATION

Miro F. Cizin declares as follows:

I am an attorney admitted to practice in the State of California. I represent petitioner Tiequon Aundray Cox herein, who is confined and restrained of his liberty at San Quentin State Prison.

I am authorized to file this petition for writ of habeas corpus on petitioner’s behalf. I make this verification because petitioner is incarcerated in a county different from that of my law office. In addition, many of the facts alleged are within my knowledge as much or more than petitioner’s.

I have read the petition and know the contents of the petition to be true.

Executed under penalty of perjury on November 4, 2016, at San Francisco, California.

________________________________________
Miro F. Cizin
CERTIFICATE AS TO LENGTH

I certify that this Fourth Petition for Writ of Habeas Corpus contains 13,621 words, verified through the use of the word processing program used to prepare this document.

Dated: November 4, 2016

Respectfully submitted,

HABEAS CORPUS RESOURCE CENTER

By: ______________________________

Miro F. Cizin
PROOF OF SERVICE

1. I am over 18 years of age and not a party to this action. I am a resident of or employed in the county where the mailing took place.

2. My business address is: Habeas Corpus Resource Center, 303 Second Street, Suite 400 South, San Francisco, California 94107.

3. Today, I mailed from San Francisco, California the following document(s):

   - Fourth Petition for Writ of Habeas Corpus;
   - Exhibits in Support of Fourth Petition for Writ of Habeas Corpus, Volume 1 (Exhibits 1-4)

4. I served the document(s) by enclosing them in a package or envelope, which I then deposited with the United States Postal Service, postage fully prepaid.

5. The package or envelope was addressed and mailed as follows:

   Jamie L. Fuster, Deputy Attorney General
   Office of the Attorney General
   300 South Spring Street
   Los Angeles, CA 90013-1230
   Counsel for Respondent

As permitted by Policy 4 of the California Supreme Court’s Policies Regarding Cases Arising from Judgments of Death, counsel intends to complete service on Petitioner by hand-delivering the document(s) within thirty calendar days, after which counsel will notify the Court in writing that service is complete.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: November 7, 2016

Carl Gibbs
Miscellaneous
## Appendix 1

### Youth Executions
(persons ages 18-21 at the time of the offense)

<table>
<thead>
<tr>
<th>State</th>
<th>Total</th>
<th>Black (age at time of offense) [year of execution]</th>
<th>Hispanic (age at time of offense) [year of execution]</th>
<th>White (age at time of offense) [year of execution]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>1</td>
<td>Singleton (20) [2004]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delaware</td>
<td>1</td>
<td></td>
<td></td>
<td>Jackson III (20)[2011]</td>
</tr>
<tr>
<td>Indiana</td>
<td>3</td>
<td></td>
<td></td>
<td>Johnson (20) [2005] Lambert (20) [2007] Woods (19) [2007]</td>
</tr>
<tr>
<td>Mississippi</td>
<td>2</td>
<td></td>
<td></td>
<td>Wilcher (19) [2006] Puckett (18)[2012]</td>
</tr>
<tr>
<td>Missouri</td>
<td>2</td>
<td></td>
<td></td>
<td>Roberts (19) [2001] Kreutzer (20) [2002]</td>
</tr>
<tr>
<td>S. Carolina</td>
<td>2</td>
<td>Young (19) [2000] Ivey (18) [2009]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>S. Dakota</td>
<td>1</td>
<td></td>
<td></td>
<td>Page (18) [2007]</td>
</tr>
</tbody>
</table>
Persons under 18 at the time of the offense were executed since 2000, but are not included above, because the execution of such persons is now unconstitutional. These executions were 1 white man in Oklahoma (Hain, 17 years old at offense, executed in 2003); 2 white men in Virginia executed in 2000, both 17 years old at offense (Roach and Thomas); and 6 black men executed in Texas (In 2000, Graham and McGinnis; in 2001, Mitchell; and in 2002, Patterson, Jones, and Beazley).

|----------|----|------------------|----|----|----|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|

ALL STATES | 143 | 68 | 21 | 54 |

NOTE

* Twenty-two additional jurisdictions retained the death penalty on the books during all or some years since 2000, but executed no one who was 18, 19, or 20 at the time of the offense: Arkansas, California, Colorado, Connecticut, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maryland, Montana, Nebraska, Nevada, New Hampshire, New Mexico, Oregon, Pennsylvania, Tennessee, Utah, Washington, Wyoming, and the Federal Government.

** Daniel Juan Revilla and Bobby Lee Ramdass are both listed in the Clark County Prosecutor’s data as “white.” Research indicates that Daniel Juan Revilla’s father was Hispanic (Victorino Revilla, Jr.) and his mother was white (Judith Fitch). Bobby Lee Ramdass is not only clearly a black man (or mixed race) as seen by the photograph on the link from the website, but also is reported to be a black male by a number of research sources. Rodrigo Hernandez is listed on the Clark County Prosecutor’s list as “white,” but in the linked file as “Hispanic,” which is consistent with his appearance and the other identifying information.