REVIVING REHABILITATION AS A DECARCERAL TOOL

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After advocates argued that circumstances attendant to late adolescent offenders make them less culpable for their offenses and better disposed for rehabilitation, the Massachusetts Supreme Judicial Court (SJC) held in January that it is unconstitutional to sentence 18 through 20 year olds to life without parole.[1] Last summer, Connecticut passed legislation providing a "second look" opportunity for parole to those incarcerated for lengthy prison sentences for crimes that they committed before they were twenty-one years old.[2] In 2021, Rhode Island decreased the amount of time that youthful offenders must serve before they become eligible for parole, but its highest court is currently interpreting disputed provisions.[3] Efforts to reduce lengthy sentences for late adolescents are grounded in scientific literature showing that "emerging adults" have great propensity for rehabilitation, rendering extraordinarily long prison sentences inappropriate**.**

Recently, national conversation has focused on reducing the front-end of incarceration, by shrinking police presence and decriminalizing drug and other nonviolent crimes. Back-end decarceral efforts—so called "second look" sentencing and clemency initiatives—are either underappreciated or derided as reforms that legitimate a fundamentally unjust system. While I embrace the need to significantly shrink the quantity of people in prison, sentencing reforms for emerging adults can meaningfully reduce our carceral footprint. Also, disproportionality by race in extreme sentencing suggests that late adolescents are particularly likely to be sentenced based on systemic racism and implicit biases in policing, prosecution, and sentencing, rather than unique characteristics or facts of their crimes. Thus, effective "second look" efforts have the potential to address racial inequities.

This essay explores three state efforts to reduce the carceral terms of late adolescents, evaluating the advocacy strategies and

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[1] Commonwealth v. Sheldon Mattis, 224 N.E. 3d 410 (2024).

[2] Conn. Senate Bill § 952.

[3] R.I. Gen. Law § 13-8-13.

compromises made to achieve meaningful reform. The Supreme Court recognizes that minors are less culpable, less deterrable, and more capable of rehabilitation than adults. Significant research supports extending these findings to "emerging adults"—individuals under the age of twenty-five years old. Should this rehabilitative lens, grounded in science, be effectively harnessed to the "back-end" reforms focused on those who commit crimes prior to the age of twenty-five, the potential decarceral effects can be widespread. In the area of emerging adults and serious crime, criminal law minimalism means coupling the science about late adolescents with effective advocacy strategies to reduce our carceral population.

INTRODUCTION

By the age of 9 both my parents were deceased. Over the next seven years, at the hands of my legal guardian I endured many forms of physical and emotional abuse. By the age of 12, it was common for my stepmother to involve me in her criminal lifestyle of drug use, packaging drugs, and making deliveries. Refusing her demands resulted in beatings. At the age of 16, I took control and decided to escape this life which was devoid of any love support or guidance. I foolishly turned to the streets and eventually a gang, believing it was a solution to a toxic environment that was my home. I was blinded by impulsiveness and inability to comprehend the lifelong consequences that this choice would have. Without ever having been in trouble before, I managed within the span of one year to throw my life away and take away the life of Mr. Ram Piv. I understand the reality that no number of apologies or good deeds will atone for my actions. I have also thought about the amount of pain and heartache that I have caused along with the lasting effects that is has on his family, the community, and my own family. I will live with this for the rest of my life and forever be sorry and remorseful.

I have spent the last twenty years of incarceration facing up to this tragedy by believing in what is the central part of this legislation before you:

> *youth are not beyond change, and they have redemptive qualities which will allow them to become capable of becoming mature adults who are productive contributors of society. During my time incarcerated, I have continuously pursued a path that would allow me an opportunity to one day prove that change is possible and that I do possess the ability to realize my full potential."*[4]

Following Mario Monteiro's testimony, Rhode Island's General Assembly voted to decrease the amount of time that "youthful offenders" serving any sentence other than life without parole (LWOP) must spend in prison before they are eligible for parole, passing what was colloquially known as "Mario's Law."[5] This expressly retroactive legislation included significant compromises and is currently being challenged in the state's supreme court.[6]

Beginning in 2005 with its decision to ban the death penalty for juveniles,[7] the U.S. Supreme Court has repeatedly acknowledged that children are less blameworthy than adults and have a greater capacity for rehabilitation. The Court held in *Graham v. Florida* that imposition of LWOP on juveniles for crimes other than homicide is unconstitutional, holding that children are entitled to a "meaningful opportunity to obtain release."[8] In *Miller v. Alabama*, the Court emphasized that immaturity, vulnerability, and capacity for change of youth require judges to conduct individualized sentencing before imposing that extreme of a penalty.[9]

There are varying approaches and critiques of the back-end decarceral efforts that have followed these cases. For example, some insist that the Roberts Court's juvenile LWOP cases rest on an extremely narrow interpretation of the Eighth Amendment, and ultimately preserve the status quo of mass incarceration.[10] Nevertheless, in the aftermath of the Court's repeated findings that children are different and less culpable,[11] many states initiated dramatic

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[4] Testimony of Mario Monteiro in support of R.I. House Bill 5144, through Rep. Julie Casimiro, (Mar. 4, 2021).

[5] RIGL § 13-8-13(e), known as "Mario's law."

[6] *See infra*, Section II(B).

[7] Roper v. Simmons, 543 U.S. 551 (2005) (finding that the execution of juveniles violated the Eighth Amendment because they are "more vulnerable or susceptible to negative influences and outside pressures, particularly peer pressure").

[8] 560 U.S. 48, 68 (2010).

[9] 567 U.S. 460, 477 (2012) (stating that *Roper* and *Graham* establish that children are constitutionally different from adults). In *Montgomery v. Louisiana*, the Court applied *Miller* retroactively. 557 U.S. 190 (2015).

[10] Sarah Mayeux, *Youth and Punishment at the Roberts Court*, U. Pa. J. Constit. Law (2018); John Stinneford, *The Illusory Eighth Amendment,* 63 AM. U. L. REV. 437, 490 (2013) (noting that the cases where the Court invalidated LWOP punishments affect "only one thousandth of one percent of all felony convictions.").

[11] Stephen St. Vincent, Jody Kent Lavy, Notion that "Kids Are Different" Takes Hold in Youth Justice Policy Reform, JUV. JUST. INFO. EXCH. (Dec. 31, 2012); Montgomery v. Louisiana, 577 U.S. 190 (2016).

sentencing reforms and several have had a significant reduction of youth incarceration.[12] For example, the District of Columbia enacted the Incarceration Reduction Amendment Act (ICRA), which permitted anyone who committed a crime as a juvenile to petition for resentencing after twenty years of their sentence.[13]

When none of the individuals released reoffended, proponents sought to extend ICRA to all individuals who committed crimes before they turned twenty-five.[14] Neuroscience findings show that brain development continues in young people until the age of twenty-five, with these "emerging adults" exhibiting the same immaturity, vulnerability and rehabilitative potential that the Court found significant in *Miller* and *Montgomery*.[15] Despite vigorous protest from the city's mayor, police, and U.S. Attorney's office,[16] the D.C. Council passed an amendment to ICRA, extending resentencing to individuals whose crimes occurred before they turned twenty-five and who had served at least fifteen years incarcerated.[17] Meanwhile, in response to extraordinarily long sentences nationwide, the drafters of the Model Penal Code proposed an unprecedented reform:—permitting any defendant to petition for resentencing based on "changed circumstances" following fifteen years of imprisonment.[18]

Like D.C.'s ICRA, traditional "second looks" include judicial, legislative, and executive efforts that provide an opportunity for reconsideration of lengthy prison sentences. Such initiatives include laws conferring new parole eligibility after shorter terms, requiring parole boards to consider new factors for release, and permitting courts to resentence individuals to shorter periods of incarceration. [19]

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[12] Emily Buss, *Kids Are Not So Different: The Path From Juvenile Exceptionalism to Prison Abolition*, 89 U. Chi. L. Rev. 843 (June 2022).

[13] Madison Howard, *Second Chances: A Look at D.C.'s Second Look Act*, Am. Univ. Wash. Coll. L.: The Crim. L. Practice (May 8, 2021); *see* Deterrence and the Adjustment of Sentences During Imprisonment | American Law and Economics Review | Oxford Academic (oup.com)

[14] Michael Serota, Taking a Second Look at (In)justice, Univ. Chic. Law Rev. Online (Jan. 23, 2020), https://lawreviewblog.uchicago.edu/2020/01/23/taking-a-second-look-at-injustice-by-michael-serota/

[15] Insel & Tabashneck, Ctr. For Law, Brain & Behavior at Mass General Hospital, White Paper on the Science of Law Adolescence: A Guide for Judges, Attorneys and Policy Makers 22 (2022), https://clbb.mgh.harvard.edu/wp-content/upload/CLBB-White-Paper-on-the-SCience-of-Late-Adolescene-pdf (CLBB).

[16] Professor Kathryn Miller details the fierce criticism to extending this bill. *A Second Look for Children Sentenced to Die in Prison*, Oklahoma Law Rev. (2022).

[17] D.C. Code Ann. 24-403.03 (West. 2021).

[18] Model Penal Code: Sentencing 305.6 cnt.a (Am. L. Inst., Tentative Draft No. 2 2011); see Richard F. Frase, *Second Look Provisions in the Proposed Model Penal Code Revisions*, 21 Fed. Sent'g Rep. 194, 196-97 (2009)("The second-look provision, which would go back to a judicial decision maker of some kind in the current draft, is something that is new, that is not based on close examples in existing legislation anywhere in the United States.").

[19] Second Chance Agenda, FAMM, https:///famm.org/secondchanges (reporting pending second look legislation in the states). Although compassionate release,

This essay explores three sentencing reform efforts for emerging adults, examining their critiques, and questioning whether a revived belief in rehabilitation undergirds these reforms. For emerging adults, carceral minimalism includes judicial challenges to the constitutionality of mandatory long sentences,[20] and campaigns seeking to raise the age of juvenile court jurisdiction.[21] These reforms illustrate the strength of leaning into rehabilitation, tracking the newest developments in brain science, and emphasizing public safety in the conversation of decarceral reform. Developments in science mirror the popular appetite for belief in hope and personal change. These developments also offer a practical hook for addressing the moral problem of mass incarceration and its associated costs for governments.

In a reality where we have long and racially disproportionate carceral sentences,[22] "second look" reforms for emerging adults are subject to macro and micro critiques. First, over the past decade, scholars and activists emphasize the need for "non-reformist reforms"—changes that undermine the existing political, social, and economic order, rather than those that invest in marginal improvements.[23] Abolitionists dedicated to ending mass incarceration and dismantling the prison industrial complex, for example, are likely to oppose efforts to improve safety conditions of prisons.[24] Reforms to make policing or prisons more humane are critiqued as "reformist

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which permits incarcerated persons to obtain early release due to a significant medical condition, is not technically a resentencing procedure, scholars consider it in the "Second Look" category. *See* Renagh O'Leary, *Compassionate Release and Decarceration in the States*, 107 Iowa L. Rev. 621, 636-40 (2022).

[20] *See infra* II(A).

[21] Mass. Raise the Age Campaign, https://www.raisetheagema.org/faqs/#top. Unlike traditional sentencing reforms, this latter effort is about identifying those navigating an adolescent transition and preventing them from the harms and collateral consequences of the adult criminal legal system.

[22] *See* Infra I (discussion racial disproportionality of extremely long sentences).

[23] See Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 Yale L. J. 778, 791 (2021) (highlighting that "power-shifting" is integral to the broader movement of abolition and, ergo, should be part of non-reformist reforms); Amna Akbar, *Demands for a Democratic Political Economy*, 134 Harvard L. Rev. F. 90, 97 (categorizing non-reformist reforms as those that "facilitate transformational change"); Mariame Kaba, We Do This 'Til We Free Us: Abolitionist Organizing and Transforming Justice 1, 78 (2021) (arguing that "[e]ven if the criminal punishment system were free of racism, classism, sexism, and other isms, it would not be capable of effectively addressing harm" and highlighting how, for example, "'reforms" that focus on strengthening the police or 'morphing' policing into something more invisible but still as deadly should be opposed;" and Jamelia Morgan, *Responding to Abolition Anxieties: A Roadmap for Legal Analysis*, 120 Michigan L. Rev. 1999, 1200 (2022) (identifying articulations of abolition throughout scholarship and reiterating why reformist reforms will not be successful).

[24] See reformist reforms vs. abolitionist steps to end imprisonment, https://criticalresistance.org/wp-content/uploads/2021/08/CR_abolitioniststeps_antiexpansion_2021_eng.pdf for examples of how abolitionists categorize reformist reforms.

reforms." They could serve to make these problematic institutions marginally more acceptable but thereby legitimatize and prolong their existence.

Thus, the "back-end reforms" described here may be critiqued as "reformist reforms." Indeed, these efforts seem to accept a profoundly flawed criminal legal system and chip away at it instead of abolishing its present form. Professor Jamelia Morgan recently named this challenge, discerning when to pursue so called "reformist reforms" alongside "non-reformist reforms", as "abolition in the interstices," by which she means grappling with the reality that a radically reimagined world is not one that we have now.[25]

In addition, there are critiques specific to reforms attendant to emerging adults. While neurological and psychosocial research clarify that the attributes of children relevant for rehabilitation continue to exist significantly past the age of eighteen, Professor Emily Buss argues that the Court's "kids are different" approach is problematic. Recent developmental science largely drives the calls to extend the ages of juvenile exceptionalism to emerging adults. Buss warns, though, that extending this "youth exceptionalism" framework to emerging adults could obscure the "central role that immaturity plays in most offenders' full criminal careers and preserves a destructive fiction that youthful offenders are a distinctive, more sympathetic, and less corrupt minority among the millions charged with committing crimes."[26] In other words, given most people age out of criminal behavior,[27] emphasizing the neurological or developmental immaturity of "emerging adults" risks artificially making the individuals who commit crimes who are biologically older than that line appear more mature, culpable, or less capable of rehabilitation than they truly are.[28] As

[25]Jamelia S. Morgan, Abolition in the Interstices, LPE Project, https://lpeproject.org/blog/abolition-in-the-interstices/ (Dec. 14, 2023); see Cynthia Godsoe, *A Perfect Storm: Young People, False Confessions & Prosecutorial Involvement*, 58 New England Law Review 1 (2024).

[26] Buss, *Kids Are Not So Different*, 845. Buss suggests a "life-course developmental approach [that] would eliminate incarceration for all offenders still in the process of growing up."

[27] Insel & Tabashneck, Ctr. For Law, Brain & Behavior at Mass General Hospital, White Paper on the Science of Law Adolescence: A Guide for Judges, Attorneys and Policy Makers 22 (2022), https://clbb.mgh.harvard.edu/wp-content/upload/CLBB-White-Paper-on-the-SCience-of-Late-Adolescene-pdf (CLBB) (citing to Off. Juv. Just. Delinq. Prot., *Law Enforcement & Juvenile Crime: Arrests by Offense, Age, and Gender,* U.S. Dept. Just. (Oct. 21, 2019), https://www.ojjdp.gov/ojstatbb/crime/ucr.asp?table_in=1 [https://perma.cc/T6H7–3LWX].

[28] This mirrors the risk of "innocentrism" masking the many wrongs of the system to people who are factually guilty, including excessive punishment and racism. *See* Abbe Smith, *In Praise of the Guilty Project: A Criminal Defense Lawyer's Growing Anxiety About Innocence Projects*, 13 U. PA. J.L. & SOC. CHANGE 315, 325 (2010) (arguing that convictions are "wrongful" also when they come from "demonstrable unfairness, disproportionate punishment, and other punishment, even if the person is factually

Professor Cynthia Godsoe explains, the essential problem of any "line-drawing" in the criminal legal spere is that the system itself is so overly punitive and racially disproportionate that granting certain groups more opportunities for diversion, rehabilitation or other relief, inevitably leaves the harmful system largely intact."[29]

Professor Josh Gupta-Kagan was among the first to connect surging academic arguments for treating young adults less severely than their adult counterparts with general pleas for reducing mass incarceration.[30] Gupta-Kagan cites academic proposals to cap nearly all violent crime sentences at 20 years,[31] repeal mandatory minimum sentences,[32] expand reentry efforts,[33] or reduce the power of prosecutors to leverage punitive plea bargains.[34] He urged linking advances in neuroscience and young adult development with the parallel proposals to halt mass incarceration.

Five years later, despite focus aimed at reducing our carceral footprint and addressing systemic racial disparities, this critical question remains. Can a revived interest in rehabilitation, whether it is spurred by neuroscience about late adolescents, public responsiveness to the shame of mass incarceration, or even the reality of increased state prison costs, spur meaningful reduction in the incarceration of young adults?

These three recent criminal reform efforts do not resolve the debate between abolition and other frameworks for reform. Yet, I argue that reforms "in the interstices,"[35] could substantially limit the reach of our carceral system and, thus, be consistent with a criminal law minimalism.[36] Specifically, this essay aims to understand how stakeholders grappled and compromised with the world that we have

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innocent). For emerging adults, focusing on "second chances" may wrongly presume individuals had a "first chance" that was even remotely equitable.

[29] Godsoe, *A Perfect Storm*, 58 New England Law Review X (2024).

[30] *The Intersection Between Young Adult Sentencing and Mass Incarceration*, 2018 Wisc. L. Rev. 669, 723 (2018).

[31] Marc Mauer, A 20-Year Maximum for Prison Sentences, DEMOCRACY (2016), http://democracyjournal.org/magazine/39/a-20-year-maximum-for-prison-sentences/ [https://perma.cc/W37K-NJXC] (noting the harm to families from lifelong incarceration, how life sentences deprive all prisoners "of the chance to turn his or her life around," and the high cost of incarcerating individuals for life, especially given high health costs of older prisoners.)

[32] Todd R. Clear & Natasha A. Frost, THE PUNISHMENT IMPERATIVE: THE RISE AND FAILURE OF MASS INCARCERATION IN AMERICA 18 (2014).

[33] Clear & Frost, at 163-80.

[34] E.g., Cynthia Alkon, *An Overlooked Key to Reversing Mass Incarceration: Reforming the Law to Reduce Prosecutorial Power in Plea Bargaining*, 15 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 191 (2015).

[35] Jamelia Morgan, Abolitionist in the Interstices, LPE Project (December 14, 2023), https://lpeproject.org/blog/abolition-in-the-interstices/.

[36] *See* Maximo Langer, *Penal Abolitionism and Criminal Law Minimalism: Here and There, Now and Then*, 134 Harv. L. Rev. F. 42, 44 (2020) ("For criminal law minimalism, the penal system still has a role to play in society, but a radically reduced, reimagined, and redesigned role relative to the one it has played in the United States.").

now. In each, rehabilitation was harnessed alongside public safety as justifications for reform. Exploring these efforts suggests practical lessons for other states engaged in reforms targeting emerging adults with the aim of reducing the general carceral footprint.

I. A COMPLICATED COMMITMENT TO ADOLESCENT REHABILITATION

Modern punishment is grounded in various theories, including retribution,[37] deterrence,[38] incapacitation,[39] and rehabilitation—the concept of using punishment to "treat" criminals and stop their criminality.[40] Rehabilitation can be inconsistent with other goals. Thinking of punishment as a means of *helping people stop* committing criminal acts requires a different posture than incarcerating to deter criminal behavior or punish people for wrongdoings.[41] This section focuses on the history, abandonment, and resurgence of rehabilitation as it relates to punishment of juveniles and emerging adults.

A. Retribution Replaces Rehabilitation in Juvenile Sentencing

Rehabilitation was a popular justification of criminal punishment until the 1970s, when it became disfavored for a few reasons. To begin with, some social science suggested that punishment and prisons were not reducing recidivism: in other words, individuals were not being rehabilitated. To the contrary, prisons were notably criminogenic. Second, the premise of rehabilitation is to prevent future crime by *altering the character of the offender*, a theory presuming that people commit crimes because of their character.[42] This theory ignores the social, economic, and societal causes of crime. Finally, the goal of "fixing" individuals who have committed crimes definitionally gives judges, correctional officers, and parole boards tremendous discretion

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[37] Matthew Altman, A THEORY OF LEGAL PUNISHMENT: DETERRENCE, RETRIBUTION, AND THE AIMS OF THE STATE (Routledge 2021).

[38] Deterrence assumes that people are rational actors and will avoid criminal activity if the potential pain of incarceration outweighs pleasure from the crime.

[39] The theory of incapacitation assumes that a small number of offenders commit a disproportionate amount of criminal acts, and seeks to isolate such individuals. James Q. Wilson, *Incapacitation: Locking Up the Wicked*, in CORRECTIONAL THEORY: CONTEXT AND CONSEQUENCES, (Cullen & Johnson eds. 2012), pp. 99, 111-112.

[40] Rehabilitation assumes the decision to commit a crime is determined by various biological, sociological, and psychological factors. Traditionally, rehabilitation justifies punishment when it improves the offender, reduces recidivism, and thereby improves public safety. Paul Gendreau, *Rehabilitation: What Works to Change Offenders*, in CORRECTIONAL THEORY: CONTEXT AND CONSEQUENCES, supra note x.

[41] *See* Joseph Hoffman and William Stuntz, DEFINING CRIMES, Fourth Edition, at 33-35 (discussing the traditional justifications for punishment at common law).

[42] *See* Hoffman & Stuntz at 34-35 (explaining why the rehabilitation justification can be misplaced, and it's hard to imagine the behavior prompting arrest would not reoccur.).

with individuals' lives, deeply susceptible to explicit prejudices or implicit bias. Scholars increasingly question the premise that incarceration can be rehabilitative.[43] Others emphasize its "criminogenic" effect.[44]

Traditionally, the Court's juvenile jurisprudence has been motivated by a combination of paternalism and rehabilitation.[45] In the 1960s, courts developed the doctrine *parens patriae*, believing that adults should make decisions in the best interests of minor children.[46] As the volume of juvenile criminal cases grew, courts abandoned hope for individualized treatment and the system began to resemble adult criminal court. In *Kent v. United States*, the Court solidified the provision of systemic constitutional protections for juveniles, including the notice of charges, rights to and to confront and cross examine witnesses.[47] Then, in the Court's seminal case justifying different treatment for juveniles, concurring Justice Black cautioned against justifying the denial of constitutional protections based on age with the premise of rehabilitation.[48] The Court stressed that unbridled discretion, "however benevolently motivated" was problematic if juveniles get neither the "protections accorded to adults nor the solicitous care and regenerative treatment postulated for children."[49]

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[43] *See, e.g.*, Justin Driver & Emma Kaufman, *The Incoherence of Prison Law*, 135 HARV. L. REV. 515, 560 (2021) ("Though the precise date that the theory died is difficult to pin down, conventional wisdom holds that by the end of the 1970s the prison was no longer understood as a form of treatment.").

[44] *See, e.g.*, Francis T. Cullen, Cheryl Lero Jonson & Daniel S. Nagin, *Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science*, 91 PRISON J. 48S, 60S (2011) ("On balance, the evidence tilts in the direction of those proposing that the social experiences of imprisonment are likely crime generating.").

[45] See, e.g., Martin Guggenheim & Randy Hertz, *Reflections on Judges, Juries, and Justice: Ensuring the Fairness of Juvenile Delinquency Trials*, 33 WAKE FOREST LAW REVIEW 553, 558 (1998) (explaining that the majority in *In re Gault* aimed to "find a jurisprudential basis for affording the essential protections of the adult criminal process while preserving the rehabilitative goals, confidentiality, and other benevolent features of the juvenile court process").

[46] Barry C. Feld, *The Transformation of the Juvenile Court*, 75 Minn. L. Rev. 691, 695 (1996).

[47] 383 U.S. 541 (1966).

[48] *In re Gault*, 387 U.S. at 61 (Black, J., concurring) ("Where a person, infant or adult, can be seized by the State, charged and convicted for violating a state criminal law, and then ordered by the State to be confined for six years, I think the Constitution requires that he tried in accordance with the guarantees of all of the provisions of the Bill of Rights made applicable to the States by the Fourteenth Amendment.").

[49] *In re Gault*, 387 U.S. at 14 and 18.

Juvenile courts were structured to have a broad jurisdiction and employ vast discretion.[50] They are infused with paternalism,[51] and lack the openness or the procedural protections of adult courts.[52] Cynthia Godsoe explains that significant racial disproportionality is present at every stage of the juvenile process, from arrest to sentencing.[53]

During the 1980's and 1990's, state's juvenile courts shifted their focus from rehabilitation to punishment. Their vast and paternalistic scope was coupled with increasingly harsh sanctions, leading one observer to call the system "the worst of both worlds."[54] In the late 1990's, John Dilulio predicted that there would be "a wave of young, violent, remorseless juvenile delinquents known as super-predators [who] would plague the country and increase crime rates."[55] Dilulio's warnings were explicitly racialized.[56] They also coincided with a few highly publicized crimes committed by young adults.[57] State legislatures used the myth and popular images of heinous crime to pass laws that increasingly treated juveniles as adults for sentencing purposes.[58] Such depictions helped convince the public that youth were a threat to everyone.[59] This prediction was false, as was the touted idea of victimization.[60] In fact, media portrayal that "juvenile crime was

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[50] Cynthia Godsoe, *Recasting Vagueness*, 74 WASH. & LEE L. REV. 173 (2017); see also ANTHONY M. PLATT, THE CHILD SAVERS: THE INVENTION OF DELINQUENCY 139 (expanded 40th anniversary ed. 2009); *see* Michael Willrish, CITY OF COURTS: SOCIALIZING JUSTICE IN PROGRESSIVE ERA CHICAGO xxviii (2003) (juvenile court "aimed not merely to punish offenders but to assist and discipline entire urban populations").

[51] Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 110 (1909) (noting that a state acts for "the welfare of its children").

[52] In *Schall v. Martin*, 467 U.S. 253, 263 (1984) (denying juveniles the right to a jury trial and noting that the Constitution does not require the elimination of all difference in treatments of juveniles).

[53] *See* Beale, *You've Come a Long Way*, at 542 (noting racial disproportionality was true "in all relevant offense types and all age categories").

[54] BARRY FELD, BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT 110 (1999).

[55] *See* FELD, BAD KIDS, 189-210 (1999); Matt DeLisi, Brendan D. Dooley, and Kevin M. Beaver, Chapter 2: Super-predators Revisited, Criminology Research Focus pp. 21-30, 21 (2007); The Superpredator Myth, 25 Years Later, Equal Justice Initiative (April 7, 2014), https://eji.org/news/superpredator-myth-20-years-later/.

[56] DiIulio warned that "the trouble will be greatest in [Black, inner] city neighborhoods" and that "not only is the number of young, black criminals likely to surge, but also the black crime rate, both black-on-black and black-on-white, is increasing." John DiIulio, *My Black Crime Problem, and Ours*, City Journal (Spring 1996), available at: https://www.city-journal.org/article/my-black-crime-problem-and-ours.

[57] *Id.*

[58] *Id.*; Terrance T. Allen and Ahmed Whitt, *An Examination of the Relationship Between Media Exposure and Fear of Victimization: Implications of the Superpredator Narrative on Juvenile Justice Policies*, 71 Juvenile and Family Court J. 23, 24 (2020).

[59] Allen and Whitt, *supra* XX, 71 Juvenile and Family Court J. at 24.

[60] The Superpredator Myth, 25 Years Later, Equal Justice Initiative (April 7, 2014), https://eji.org/news/superpredator-myth-20-years-later/. By the 1990's, the violent

rising [in the 1990's] when…it was dropping by unprecedented amounts is perhaps the most egregious distortion perpetrated by the media."[61] In an amicus brief for *Miller* in 2014, John Dilulio himself wrote that their predictions proved wrong.[62]

Responding to this false perception of a rise in teen violence, many state legislatures expanded the circumstances pursuant to which youths could be processed in adult criminal court.[63] Professor Kate Weisburd explains that this shift away from rehabilitation coincided with a dramatic rise in juvenile incarceration rates,[64] and the amendment of stated purposes of juvenile court to incorporate "the goals of public safety, youth accountability, and victims' rights" more heavily.[65]

This increasingly punitive juvenile criminal system disproportionately affects Black youth. That racial disparities emerge at the entry point of our criminal legal system, discretionary policing, need not be reiterated here.[66] Yet, there is evidence that implicit racial bias contributes significantly to sentencing disparities amongst emerging adults.[67] People unconsciously and inaccurately associate Blackness with criminality and violence.[68] Differential treatment of

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crimes committed by young adults fell. In 2000, the homicide rate by juveniles stabilized and returned to that of 1985.

[61] Allen and Whitt, *supra* note X, 24 (2020) (citations omitted).

[62] The Superpredator Myth, (https://eji.org/news/superpredator-myth-20-years-later/.

[63] Kate Weisburd, *Monitoring Youth: The Collision of Rights and Rehabilitation*, 101 Iowa Law Rev. 297, 315 (2015); Terrance T. Allen and Ahmed Whitt, *An Examination of the Relationship Between Media Exposure and Fear of Victimization: Implications of the Superpredator Narrative on Juvenile Justice Policies*, 71 Juvenile and Family Court J. 23, 24 (2020) (highlighting how crime rates actually fell during this time, rather than rise).

[64] Annie E. Casey Found, Reducing Youth Incarceration in the United States (2013), http://www.aecf.org/m/resourcedoc/AECF-DataSnapshotYouthIncarceration-2013.pdf. (explaining that youth confinement peaked in 1995, with 107,637 youth confined on a single day). The number of confined youths has since declined. *Id.*

[65] Henning, *Juvenile Justice* at 22.

[66] Abundant research confirms systemic racism in policing and the entrenched false association between Blackness and criminality profoundly affect the policing of Black men in particular. *See, e.g.*, *See* Elizabeth A. Gaynes, *The Urban Criminal Justice System: Where Young + Black + Male = Probable Cause,* 20 FORDHAM URB. L. J. 621 (1993); Elizabeth Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America.* (HARVARD UNIVERSITY PRESS, 2016); Muhammad, Khalil Gibran, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (HARVARD UNIVERSITY PRESS, 2019). Scholars detail the doctrinal contributors to this reality. *See* Barry Friedman, *Disaggregating the Police Function*, 169 U. PA. L. REV. 925 (2021); Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 CALIF. L. REV. 125 (2017); Anthony C. Thompson, *Stopping the Usual Suspects: Race and the Fourth Amendment*, 74 N.Y.U. L. REV. 956 (1999).

[67] *See* Aliza Hochman Bloom, *Policing Bias Without Intent* (2024 forthcoming).

[68] See Kristin Henning, *Boys to Men: The Role of Policing in the Socialization of Black Boys* (describing how Black parents specially educate their children on how to interact with police), in POLICING THE BLACK MAN: ARREST, PROSECUTION, AND IMPRISONMENT, at 57, 64–65; Gupta-Kagan, *The Intersection Between Young Adult*

Black and white youth reflects research regarding implicit bias, including a "powerful racial stereotype" that Black men are "violence prone."[69] People unconsciously perceive Black youths as older[70] and more criminally threatening[71] than similarly aged white youth. These pernicious associations, even if unconscious, likely influence prosecutorial or judicial decisions regarding sentencing of older adolescents.

Once arrested, prosecutors are more likely to charge Black juveniles as adults,[72] and to charge Black defendants with felony murder,[73] two factors which contribute to racial sentencing disparities. In addition to this disparate treatment by police and prosecutors, there is evidence that Black adolescents receive harsher sentences due to implicit biases of juries and judges. In a study regarding LWOP sentences for youth, when presented with the same serious crime, participants were more likely to find a defendant as culpable as an adult, and therefore to support LWOP punishment, when they were primed to believe that the defendant was Black as opposed to white.[74]

[B. The Court's Juvenile Quartet Revives Rehabilitation]

Meanwhile, in a recent quartet of cases addressing juveniles in the criminal legal system, the Court returned to the rehabilitative premise of juvenile courts. In *Roper v. Simmons*, *Graham v. Florida*, and *Miller v. Alabama*, the Court relied upon substantial scientific evidence

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Sentencing and Mass Incarceration, 2018 Wisc. L. Rev. at 723; Spencer, Charbonneau & Glaser, *Implicit Bias and Policing*, 10 Soc. & Personality Psych. Compass 50, 55 (2016); Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J. Personality & Soc. Psych. 876, 878, 889-91 (2004).

[69] Buck v. Davis, 137 S. Ct. 759, 776 (2010); see *Commonwealth v. Sweeting-Bailey*, 488 Mass. 741, 770 & n.9 (2021) (Budd, C.J., dissenting).

[70] CLBB, citing Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. Personality & Soc. Psych. 526 (2014).

[71] CLBB at 23; Glasgow, Imbriano, Jin, & Mohanty, *Is Threat Detection Black and White? Race Effects in Threat Related Perceptual Decision Making*, 20 Emotion 1495 (2020); Halberstadt et al., *Racialized Emotion Recognition Accuracy and Anger Bias of Children's Faces*, 22 Emotion 403, 404 (2020); Todd et al., *Does Seeing Faces of Young Black Boys Facilitate the Identification of Threatening Stimuli?* 27 Psych. Sci. 384 384-393 (2016); Priest et al., *Stereotyping Across Intersections of Race and Age: Racial Stereotyping Among White Adults Working with Children*, 13 Plus one 1, 3 (2018).

[72] Smith & Levinson, *The Impact of Implicit Racial Bias on the Exercise of Prosecutorial Discretion*, 35 Seattle U. L. Rev. 795, 811-812 (2012).

[73] "Felony Murder" is the homicide charge typically brought when another person dies or is killed during the commission of a felony. Depending on the jurisdiction, all members of a conspiracy can be charged with felony murder for a series of predicate felonies. *See* Albrecht, Data Transparency & The Disparate Impact of the Felony Murder Rule, Duke Dtr. For Firearms Law (Aug. 11, 2020), https://firearmslaw.duke.edu/2020/08/data-transparenty-the-disparate-impact-of-the-felony-murder-rule (study found that 75% of defendants charged with felony murder in Cooke Country, Illinois were Black).

[74] Rattan, Levine, Dweck & Eberhardt, *Race and the Fragility of the Legal Distinction Between Juveniles and Adults*, 7 PLos One 1, 4 (2020).

about developmental differences between adults and youths to hold that capital punishment and LWOP are unconstitutionally cruel and unusual punishments.[75] The Court reasoned that, because youth are particularly capable of rehabilitation, the difference in punishment between youth and adults is justifiable.

As some scholars argue, though, the Court's reaffirmation of the rehabilitative promise of youth was not wholly positive. Professor Weisburd explains that it justified a paternalism in juvenile courts that has enabled problematic practices, ostensibly permitting rehabilitation without incarceration while carrying various downstream negative effects.[76]

[C. Science Supports Rehabilitative Justifications for Emerging Adults]

The reemergence of rehabilitative justifications to separate youths from adults when imposing criminal punishment is further complicated. Because in the almost twenty years since *Roper,* research has indicated that most of the developmental reasons leading the Court to conclude that children were insufficiently culpable to warrant the death penalty and LWOP sentences remain present in "emerging adults."[77] In other words, much of the science the Court used to decide youth cannot receive the death penalty or LWOP sentences also supports the existence of these characteristics well past the age of eighteen. First, emerging adults are also immature and possess an "underdeveloped sense of responsibility" leading them to engage in risky behaviors including crime.[78] This immaturity leads older teenagers to exhibit poor self-control, prioritize short term rewards, and under appreciate the long-term costs to themselves and others of

[75] Miller v. Alabama, 132 S. Ct. 2455 (2012)(holding that mandatory JLWOP is disproportionate for the vast majority of youth whose crimes reflect transient immaturity); Graham v. Florida, 560 U.S. 480 (2010) invalidating juvenile life without parole (JLWOP) for nonhomicide crimes and requiring a meaningful opportunity for release based on demonstrated maturity and rehabilitation); Roper v. Simmons, 543 U.S. 551 (2005) (holding that the death penalty as applied to individuals under eighteen violates the Eighth Amendment).

[76] *Monitoring Youth: The Collision of Rights and Rehabilitation*, 101 Iowa Law Rev. 297, 330 (2015).

[77] The phrase "emerging adulthood" is attributed to Jeffrey Arnett, used in place of young adulthood to avoid any implication that "young adults" had become adults. Emerging Adulthood: The Winding Road from the Late Teens Through the Twenties (2d ed. 2014). *See* Elizabeth S. Scott et al, *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 Fordham L. Rev. 641, 647 (2016).

[78] Shust, *Extending Sentencing Mitigation for Deserving Young Adults*, 104 J. Crim. L & Criminology 667, at 684-89; Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1012 (2003).

criminal choices.[79] Portions of the brain that contribute to decision-making capability continue to develop until twenty-five.[80] Psychological and neurological research show that "[b]iological changes in the prefrontal cortex during adolescence and the early 20s lead to improvements in executive functioning, including reasoning, abstract thinking, planning, anticipating consequences, and impulse control."[81] In *Miller*, the Court had heard from experts arguing that brains are not "fully mature until an individual reaches his or her twenties," and that portions of the brain which improve decision-making and control impulses do not fully develop until then.[82]

Second, the Court reasoned that "juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure."[83] This is partially because children lack the ability to extricate themselves from their home environment, but for poor teenagers, this practical difficulty does not end at the age of eighteen.[84]

Third, the Court emphasized that adolescent character traits are often transitory, and "not as well formed as that of an adult."[85] Significant psychological literature describing 18 and 25 year olds asserts that "identity development continues through the late teens and the twenties."[86] However, some caution that research is more ambiguous about how "transitory" identity is during young adulthood.[87] In addition to rapidly changing identities, data shows that crimes committed by young adults are "a transitory state that they age

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[79] Kathryn Miller, *A Second Look for Children Sentenced to Die in Prison*, 75 Okla. Law Rev. 141 (2022).

[80] *See, e.g.,* Kelsey B. Shust, *Extending Sentencing Mitigation for Deserving Young Adults*, 104 J. Crim. L & Criminology 667, 684-89 (2014) (summarizing developmental data suggesting young adults over 18 are similar to teenagers under 18).

[81] David P. Farrington et al., *Young Adult Offenders: The Need for More Effective Legislative Options and Justice Processing*, 11 CRIMINOLOGY & PUB. POL'Y 729, 733 (2012).

[82] *Miller*, 567 U.S. at 572; Brief for American Psychological Association et al. as Amici Curiae Supporting Petitioners at 5, 9, *Miller v. Alabama*, 567 U.S. 460 (2012) (Nos. 10-9646, 10-9647); Brief for J. Lawrence Aber et al as Amici Curiae Supporting Petitioners at 15-16; *Miller,* 567 U.S. 460 (Nos. 10-9646, 10-9647).

[83] *Roper*, 543 U.S. at 569.

[84] *Id.* (citing Laurence Steinberg & Elizabeth S. Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 AM. PSYCHOLOGIST 1009, 1014 (2003)).

[85] *Roper*, 543 U.S. at 570; Arnett; EMERGING ADULTHOOD: THE WINDING ROAD FROM THE LATE TEENS THROUGH THE TWENTIES (2d ed. 2014), at 473. Developmental psychologist Jeffrey Arnett established "emerging adulthood" to describe the developmental stage during which individuals transition from dependence on parents and others for supervision, financial support, and guidance, into mature adults who engage independently in work, community, and the development and maintenance of new family relationships.

[86] Arnett, *Emerging Adulthood: A Theory of Development From the Late Teens Through the Twenties*, 55 American Psychologist 469, 473 (2000).

[87] Elizabeth S. Scott et al., *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 Fordham Law Rev. 641, 649-650 (2016).

out of."[88] The "age crime curve" illustrates crime rates peak in the late teens and remain high in the early twenties before dropping precipitously in the mid-twenties.[89] The National Institute of Justice found that while just over half of juvenile offenders continue offending "up to age 25," this figure plummets by two-thirds in the following five years."[90] Of course, because young adults commit a disproportionate number of crimes, they also constitute a lopsided number of prison admissions.[91]

Having drawn conclusions from the neuropsychological and developmental research, the Court reasoned that "the distinctive attributes of youth diminish the penological justification for severe punishment."[92] Youth are less culpable, so justifying carceral punishment with retribution is less appropriate. Adolescents are less likely to consider the consequences of their actions, including incarceration, and therefore deterrence is less effective.[93] Meanwhile, the circumstances attendant to youth render complete incapacitation questionable, and "most suggest" the value of rehabilitation.[94]

Since then, developments in neuroscience and psychology undermine the propriety of drawing a line between childhood and adulthood at age eighteen.[95] Research shows a slow maturation in the prefrontal cortex, which controls the brain's executive functions, including impulse control and appreciation of consequences—as compared to other brain regions. This is now understood as a "maturity gap."[96] Imaging demonstrates that this gap persists well into

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[88] John Pfaff, Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform, 190-91 (2017).

[89] The age-crime curve is well-established and "is universal in Western populations." NAT'L INST. OF JUSTICE, FROM JUVENILE DELINQUENCY TO YOUNG ADULT OFFENDING (2014) [hereinafter FROM JUVENILE DELINQUENCY], https://www.nij.gov/topics/crime/Pages/delinquency-to-adult-offending.aspx

[90] As Gupta-Kahn pointed out, this is particularly true for violent crime which draws the lengthiest sentences. *See* Pfaff, supra note XX, at 191; Samantha Buckingham, *Reducing Incarceration for Youthful Offenders with a Developmental Approach to Sentencing*, 46 Loyola L.A. L. Rev. 801, 817 (2013).

[91] In California, 26% of new felony admissions to state prison system were 18- to 24-year-olds. See CAL. DEP'T OF CORR. & REHAB., CHARACTERISTICS OF FELON NEW ADMISSIONS AND PAROLE VIOLATORS RETURNED WITH A NEW TERM: CALENDAR YEAR 2013, at 17 (2014), http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/ACHAR1/ACHAR1d2013.pdf.

[92] *Miller*, 567 U.S. at 479

[93] Id. at 478.

[94] Id. at 472.

[95] *See* Brief of Amici Curiae Juvenile Law Center, Campaign for Fair Sentencing of Youth Et Al. in Support of Respondent Lee Boyd Malvo, (No. 18-217) (August 27, 2019).

[96] *See* MACARTHUR FOUND. RES. NETWORK ON ADOLESCENT DEV. & JUVENILE JUSTICE, LESS GUILTY BY REASON OF ADOLESCENCE 2 (2006), http://www.adjj.org/downloads/6093issue_brief_3.pdf [https://perma.cc/XHB9-2VUD].

a person's twenties.[97] As a result, experts have testified in capital cases that "if a different version of *Roper* were heard today, knowing what we know now, one could've made the very same arguments about eighteen, nineteen, and twenty year olds that were made about sixteen and seventeen-year-olds in *Roper*."[98]

Given these advances, scholars and states have developed diverse proposals for emphasizing rehabilitative possibility of emerging adults.[99] For example, Professor Buss posits that the logical end point of the developmental analysis and related policy reforms set in motion by *Roper, Graham* and *Miller* would be to abandon juvenile exceptionalism. Instead, Buss argues that courts should adopt a unitary criminal legal system that recognizes the science of immaturity and its critical role in criminal offending.[100] Barry Feld proposes a "youth discount" when sentencing young adult offenders, grounded on the basis that young adults are less culpable and more open to rehabilitation. Others propose a "developmental approach to young adult offenders" which focuses on consideration of individuals' relative youth at sentencing, and opportunities to seek parole on an expedited basis.[101]

II. CURRENT DECARCERAL EFFORTS FOR EMERGING ADULTS.

Sentencing reforms focused on emerging adults are not anomalous. Several states have passed "youth offender statutes," which strive to mitigate sentences for certain crimes committed by individuals up to age 25, shield young adults from some of the most severe collateral consequences of convictions, or provide them with rehabilitative services such as education and job training.[102] For

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[97] cite

[98] Kentucky v. Bredhold, No. 14-CR-161, at 2 (Fayette Cir. Ct. Aug. 1, 2017) (quoting testimony of Dr. Laurence Steinberg), https://deathpenaltyinfo.org/files/pdf/TravisBredholdKentuckyOrderExtendingRope [https://perma.cc/9HG4-6MYN].

[99] Other countries consider the biological and developmental immaturity and enhanced rehabilitation potential amongst emerging adults. German courts can sentence eighteen- to twenty-year-olds to a maximum term of ten to fifteen years. In Austria, individuals between eighteen and twenty-one cannot serve more than fifteen years in prison. In Hungary and Bulgaria, life sentences are only permitted for those who were at least twenty at the time of their offense. *See* Sibella Matthews, Vincent Schiraldi & Lael Chester (2018): Youth Justice in Europe: Experience of Germany, the Netherlands, and Croatia in Providing Developmentally Appropriate Responses to Emerging Adults in the Criminal Justice System, Justice Evaluation Journal; https://www.sentencingproject.org/reports/left-to-die-in-prison-emerging-adults-25-and-younger-sentenced-to-life-without-parole/#judicial-and-legislative-recognition-of-emerging-adults.

[100] Buss.

[101] Scott et al at 644.

[102] Scott., *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 Fordham Law Rev. 641, 660-61 (2016); see GA. CODE ANN. § 42-7-1 to

example, California permits earlier parole eligibility for individuals serving long prison sentences for crimes they committed before twenty-three.[103] A growing number of jurisdictions have expanded their youthful offender statutes to include emerging adults,[104] developed "young adult courts,"[105] or created units of probation officers and prosecutor's offices that are tasked to work with young adults on rehabilitative services.[106]

Yet these efforts are criticized from all sides of the political spectrum. Some argue that "second look" sentencing reforms undermine the finality of criminal sentencing, and suggest that finality is necessary to give punishment its deterrent effect.[107] For example, critics of proposed changes to the Model Penal Code argued that potential resentencing opportunities were antithetical to rehabilitation, insisting that finality promotes rehabilitation by "requiring defendants accept their situation and begin to move forward, instead of distracting themselves with litigating aspects of their cases."[108]

Although Massachusetts, Connecticut, and Rhode Island are not alone in reducing carceral sentences of emerging adults, there are states moving in the opposite direction. Often in response to reports of increased crime or one violent crime, some states have called for a return to the punishment levels from the "super predator" era in the 1990s.[109] For example, Republican legislators in Minnesota and Louisiana recently advocated for more severe prison sentences for young people.[110]

-9 (West 2018); MICH. COMP. LAWS § 762.11-.13 (West 2018); S.C. CODE ANN. § 24-19-5 to - 160 (West 2018); W. VA. CODE § 25-4-1 to -12 (West 2018).

[103] S.B. 261, 2015-16 Leg., Reg. Sess. (Cal. 2015) (codified at CAL. PENAL CODE §§ 3051 & 4801(c)).

[104] Colorado / Vermont

[105] *See Young Adult Court*, Orange County Superior Court (last visited Jan. 8, 2024), https://www.occourts.org/system/files/youngadultcourtsummary.pdf.

[106] CONNIE HAYEK, NAT'L INST. OF JUSTICE, ENVIRONMENTAL SCAN OF DEVELOPMENTALLY APPROPRIATE CRIMINAL JUSTICE RESPONSES TO JUSTICE-INVOLVED YOUNG ADULTS 6 (2016), https://www.ncjrs.gov/pdffiles1/nij/249902.pdf [https://perma.cc/PUC5-8Z3E].

[107] *See* Meghan J. Ryan, *Taking Another Look at Second-Look Sentencing*, 81 Brook. L. Rev. 149, 156-57 (2015). Critics of the Model Penal Code proposal emphasized the administrative burden that resentencing hearings place on courts. Richard F. Frase, *Second Look Provisions in the Proposed Model Penal Code Revisions*, 21 Fed. Sent'g Rep. 194, 196-97 (2009); Monday Morning Session-May 17, 2010.

[108] *Miller*.

[109] Phillip Bump, *Crime is Down, Though Fox News Viewers May Not be Aware*, (Dec. 18, 2023) https://www.washingtonpost.com/politics/2023/12/18/crime-fbi-fox-news/.

[110] Walker Orenstein, *New Laws, Tougher Sentences: How Legislative Republicans Want to Address Crime in Minnesota*, Minnesota Post (Apr. 6, 2022) https://www.minnpost.com/state-government/2022/04/new-laws-tougher-sentences-how-legislative-republicans-want-to-address-crime-in-minnesota/; Louisiana Chooses Incarceration Over Rehabilitation for Young People, Southern Poverty Law Center Report, https://www.splcenter.org/louisiana-juvenile-justice-system-reform.

Meanwhile, progressives are concerned that expanding the jurisdiction of juvenile courts, establishing young adult divisions within prisons, even with rehabilitative aims, will increase incarceration. The fear is that these reforms entrench a system that inherently punishes those who lack opportunity.[111]

A. Massachusetts – a Story of Science Driven Advocacy

In 2013, the Supreme Judicial Court (SJC) determined, based on scientific evidence presented, that any sentence of LWOP imposed on individuals who were under eighteen violated the Commonwealth's provision banning cruel and unusual punishment.[112] The Supreme Court had just held that mandatory LWOP sentences for offenses committed by juveniles violated the Eighth Amendment.[113] But the SJC went further in *Diatchenko*, concluding that even discretionary LWOP sentences for those who are juveniles when they commit an offense violates the state constitution. The SJC found that three characteristics differentiate juveniles from adult offenders: lack of maturity, greater vulnerability to negative influences and pressures, and a greater potential for rehabilitation.[114]

Nevertheless, prior to *Commonwealth v. Mattis*, Massachusetts was tied with Louisiana in having the highest percentage of its prison population serving LWOP sentences.[115] According to the Department of Corrections, one in five of the people serving LWOP in Massachusetts were between eighteen and twenty at the time of their crimes.[116]

i. Banning Life Without Parole for Emerging Adults

Sheldon Mattis was convicted of first-degree murder stemming from a shooting that occurred when he was eighteen years old, and Jason Robinson was convicted of first-degree murder for a crime that occurred when he was nineteen years old. Both were sentenced to LWOP. Last year, they argued that circumstances attendant to youth make late adolescent offenders less culpable for their criminal offenses, and better disposed for rehabilitation. They, along with substantial *amici* support, urged the SJC extend *Diatchenko*, and based on the same

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111 *See* Maureen Washburn, *Young Adult Prison Movement Deepens Reliance on Incarceration, Shortchanges Reform*, JUV. JUST. INFO. EXCHANGE (Apr. 17, 2017).
112 *Diatchenko v. District Attorney for the Suffolk Dist.*, 466 Mass. 655, 658-659 (2013).
113 *Miller*, 567 U.S. 460, 474 (2012) (prohibiting mandatory LWOP sentences for homicide offenders under 18).
114 *Diatchenko*, 466 Mass. at 670.
115 https://www.sentencingproject.org/app/uploads/2022/08/No-End-in-Sight-Americas-Enduring-Reliance-on-Life-Imprisonment.pdf#page=14. In 2020, more people in Massachusetts were serving life sentences than the entire state prison population in 1970.
116 Brief of Amici Curiae, Boston University Center for Antiracist Research, et al.

scientific findings and carceral justifications, to categorically bar the imposition of LWOP on emerging adults.[117]

A group of racial justice centers presented and contextualized the stark racial disparity in the Commonwealth's imposition of LWOP sentences for eighteen to twenty-year-olds. Massachusetts is tied only with Louisiana in having the highest proportion of its prison population serving LWOP.[118] In fact, twenty percent of people serving LWOP in Massachusetts were eighteen to twenty at the time of their offense. More than a quarter of Black people sentenced to LWOP are there for an offense committed as late adolescents. Black people comprise 6.5% of the Massachusetts population and 29.9% of its prison population, yet 35.5% of the people serving LWOP.[119] Amici persuasively argued that this overrepresentation of Black people among those sentenced to LWOP for offenses committed as emerging adults illustrates systemic racism and implicit bias. For example, false associations between Blackness and criminality, even when unconscious, influence prosecutorial and judicial determinations regarding late adolescents.[120] These biases contribute to racial disparities in sentencing, and counsel against a discretionary approach to LWOP for eighteen to twenty-year-olds.

Advocates presented additional practical arguments, arguing that sentencing so many young people to LWOP results in the confinement of a larger aging population.[121] In addition, LWOP sentences, by definition, disproportionately affect emerging adults because they will serve more time in prison than older adults would on the same life sentence.[122] And most critically, advocates advanced persuasive evidence of reduced levels of recidivism among those paroled from life sentences, which could be counterintuitive. Studies have shown that individuals paroled from LWOP sentences, those that were convicted of serious and violent crimes, are the *least likely* to recidivate by incurring new arrests, convictions, or imprisonment than those sentenced for less serious offenses.[123]

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[117] *Mattis*, 18-20 years old.

[118] Brief of Amici Curiae, Boston University Center for Antiracist Research, et al. at 14 (citing Ashley Nellis, The Sentencing Project, No End in Sight: America's Enduring Reliance on Life Imprisonment 16 (2021)).

[119] *See* Brief of Amici Curiae, Boston University Center for Antiracist Research, et al. at 28 (citing sources); Henning, *The Reasonable Black Child: Race, Adolescence, and the Fourth Amendment,* 67 AM. U. L. REV. 1513 (2018).

[120] *Id.*

[121] *See* Brief of Former Massachusetts Judges as Amici Curiae in Support of Appellants, *Mattis v. Commonwealth*; Brief of Boston University Center for Antiracist Research, et al.; https://www.sentencingproject.org/app/uploads/2022/08/No-End-in-Sight-Americas-Enduring-Reliance-on-Life-Imprisonment.pdf#page=25

[122] Katy Naples-Mitchell, *Mass. Highest Court Decision Shows How Neuroscience Can Shape the Treatment of Young Offenders*, Cognoscenti (Jan. 25, 2024).

[123] *State Level Recidivism Data Supports Low Levels of Reoffending for Violent Crime,* The Sentencing Project; https://www.sentencingproject.org/app/uploads/2022/08/A-New-Lease-on-Life.pdf#page=14

Additionally, experts in adolescent brain development and behavior reasoned that the imposition of LWOP sentences for emerging adults should be unconstitutional.[124] They emphasized a scientific consensus, reasoning that the attributes of adolescence that the SJC found decisive in *Diatchenko* apply with equally compelling force to emerging adults. For example, they note that biological, neurological, and developmental studies show exceptional capacity for change in late adolescence.[125]

Finally, several retired Massachusetts Judges asked the SJC to extend *Diatchenko* to emerging adults, warning the court that if judges retain the discretion to impose LWOP for this age group, there will continue to be disparate and arbitrary sentencing.[126] They referenced jurisdictions conducting *Miller* hearings, now constitutionally required to determine if an LWOP sentence is warranted for a juvenile, and lamented the lack of principled instruction on several factors including "circumstances of the offense," "family and home environment" and "potential for rehabilitation."[127] Only a ban on LWOP for emerging adults would prevent the punishment's arbitrary imposition.

Meanwhile the Commonwealth, and a few state district attorneys, opposed a categorical extension of *Diatchenko.*[128] Their first argument resounded in separation of powers: they urged the SJC to refrain from exercising the legislative function of defining a crime and its punishment. They argued that Petitioners Mattis and Robinson were seeking an inappropriate judicial evaluation of brain science, and warned that, given constantly changing scientific development, a categorical extension would set Massachusetts on an unstable path.[129] Finally, they urged the SJC to consider negative practical implications, such as the potential judicial burden of resentencing hearings.

After considering the case for a year, the SJC determined, in a 4-3 split, that the Massachusetts Constitution bars people under twenty-one from an LWOP sentence.[130] Based upon contemporary standards of decency informed by an updated scientific record, the court held that LWOP sentences for emerging adults constitute "cruel or unusual punishment" because emerging adults have developing brains, and both diminished culpability and a greater capacity for

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[124] *See* Brief of Amici Curiae, Neuroscientists, Psychologists and Criminal Justice Scholars, at 15, Commonwealth v. Mattis, No. SJC-11693.

[125] *Id.* at X.

[126] *See* Brief of Amici Curiae Retired Massachusetts Judges, the Boston Bar Association, and the Massachusetts Bar Association in Support of Appellants, at 29-35, Commonwealth v. Mattis, No. SJC-11693.

[127] *Miller,* 567 U.S. at 477-78.

[128] When the lower court's Judge Ullman found application of LWOP unconstitutional for 18–20-year-olds, the Suffolk District Attorney did not appeal. In a peculiar procedural move, however, a few other District Attorneys filed an amicus brief opposing the extension of *Diatchenko. See* Brief of Amici Curiae for the Eastern District Attorney, Commonwealth v. Mattis, No. SJC-11693.

[129] *Id.* at 22.

[130] *Mattis*, 224 N.E. 3d 410 (2024).

rehabilitation than older adults.[131] This historic decision accepts the lower court's core findings of fact regarding the brain science of emerging adults— they "(1) have a lack of impulse control similar to sixteen and seventeen year olds in emotionally arousing situations, (2) are more prone to risk taking in pursuit of rewards than those under eighteen years and those over twenty-one years, (3) are more susceptible to peer influence than individuals over twenty-one years, and (4) have a greater capacity for change than older individuals due to the plasticity of their brains."[132]

In addition, the court reasoned that emerging adults are treated differently in other areas of law and regulation.[133] The Department of Youth Services (DYS) is statutorily authorized to maintain custody of young people adjudicated as youthful offenders up to twenty-one years of age.[134] In 2018, the state legislature authorized the state Department of Correction to "establish young adult correctional units." These units provide "targeted interventions, age-appropriate programming and a greater degree of individual attention" emerging adults ages 18 to 24.[135] The SJC also took notice that the state's legislature had formed a Task Force on Emerging Adults in the Criminal Justice System, whose report concluded that emerging adults "are a unique population that requires developmentally tailored programming and services."[136] The dissenting justices disagreed, noting that the legislature has drawn a line between childhood and adulthood at eighteen, and objective indicia of contemporary standards of decency "demonstrate support for . . . treating individuals within this age range as adults in our criminal justice system when they commit murder in the first degree."[137]

Finally, the SJC acknowledged that the *mandatory* nature of LWOP in the Commonwealth is an outlier—merely ten states *require* eighteen through twenty-year-olds who are convicted of first-degree murder to be sentenced to LWOP.[138] The *Mattis* majority recognized that it is not entirely alone. The Supreme Court of Washington, considering evolving standards of decency, brain science, and precedent, concluded that mandatory LWOP sentences violated the state constitution when imposed on individuals under twenty-one

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131 *Id.* The SJC found the punishment was unconstitutional pursuant to art. 26 of the Massachusetts Declaration of Rights. "Consequently, we conclude that a sentence of life without the possibility of parole for emerging adult offenders violates art. 26."

132 *Mattis* 224 N.E. 3d at XX; *see* Steinberg, *A Social Neuroscience Perspective on Adolescent Risk Taking*, 28 Developmental Rev. 78, 82-84, 85-89 (2008).

133 *Mattis*, 224 N.E. 3d at XX.

134 *Commonwealth v. Terrell*, 486 Mass. 596, 599-600 (2021). The sentencing structure permits "dual" sentences for young adult offenders, requiring they remain in the DYS custody until age twenty-one before beginning their "adult" sentence. G.L.C. 119, § 58(b).

135 G.L.C. 127, § 48(B) (a).

136 Report of the Task Force on Emerging Adults in the Criminal Justice System (Feb. 26, 2020), 2020 Senate Doc. No. 2840, at 10.

137 *Mattis*, 224 N.E. 3d at 442 (Lowy, J. with Cypher and Georges, dissenting).

138 Mattis 224 N.E. 3d at *XX.

when they committed a crime. [139] Similarly, the Michigan Supreme Court held that mandatory life without parole for 18-year-olds violates its state ban on cruel or unusual punishment.[140] Like Massachusetts' article 26, Michigan's analogue has been interpreted more broadly than the Eighth Amendment and guarantees proportionate punishment. Michigan reasoned that because "the Eighth Amendment dictates that youth matters in sentencing," and because science has shown that eighteen-year-olds possess the same attributes of youth as do juveniles, mandatorily sentencing an eighteen-year-old to LWOP is "unusually excessive imprisonment and thus a disproportionate sentence that constitutes 'cruel or unusual punishment'" under the state's constitution.

Following this decision, Mr. Mattis and Mr. Robinson alongside approximately 200 individuals will be eligible for parole.[141] To be sure, the SJC did not diminish the severity of their crimes or suggest the emerging adults should be paroled as soon as they have served the statutorily designated portion of their sentence. Instead, they must be granted a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation" before the parole board.[142] If a person's offense occurred before July 25, 2014, their sentence will now be life with the possibility of parole after fifteen years. If their offense occurred after that date, the sentence will be the possibility of parole between twenty and thirty years. The state's public defender agency (CPCS) is working with the Parole Board to identify prisoners newly eligible, and the Director of the Parole Advocacy Unit at CPCS indicated their intent to confirm that impacted people have a trained advocate.[143] Although advocates hope that parole will move quickly, the parole board currently has one vacancy and typically has hearings planned months in advance.[144]

Mattis and Robinson, along with their advocates and allies, effectively harnessed substantial scientific evidence and statistical evidence of rehabilitation and reduced recidivism by paroled emerging adults. They persuaded the SJC that late adolescents continue to develop in profound ways irreconcilable with the conclusion that they necessarily "pose an ongoing and lasting danger to society."[145] This

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139 *In re Monschke*, 197 Wash. 2d 305, 325-26 (2021).

140 *People v. Parks*, 510 Mich. 225, 234, 255 (2022).

141 Sarah Betancourt, *What Happens Now That Massachusetts Has Banned Life Without Parole for Emerging Adults,* WGBH News (Jan. 17, 2024); https://www.wgbh.org/news/local/2024-01-17/what-happens-now-that-massachusetts-has-banned-life-without-parole-for-emerging-adults.

142 *Diatchenko* (citing *Graham*, 560 U.S. at 75).

143 *Id.*

144 Tim McGuirk emphasized the Board's commitment to public safety and individualized determinations: "Parole is granted when the Board determines that an individual can serve the remainder of their sentence in the community without violating the law, and that their release is not incompatible with the welfare of society."

145 *Diatchenko* (citing *Graham*, 560 U.S. at 75).

advocacy was grounded in science and harnessed effective evidence that extending banning LWOP for emerging adults would be consistent with public safety in Massachusetts.

ii. The Ongoing "Raise the Age" Campaign

During the year that observers anxiously awaited the outcome of *Mattis*, state legislators introduced a bill proposing raising the age of juvenile court jurisdiction to include eighteen- to twenty-year-olds.[146] The bill proposes making this change over a five-year period to permit the pertinent state agencies to adjust their programming and staffing needed to accommodate a growing population.

Unlike traditional "second look" reforms, this proposal excludes individuals convicted of first- or second-degree murder.[147] Individuals serving LWOP comprise only a small percentage of incarcerated eighteen- to twenty-year-olds in Massachusetts. The harms that result from involvement in the adult criminal legal system, including severe collateral consequences and the lack of developmentally appropriate rehabilitation programs spur high rates of recidivism for this population.

Advocates argue that "Raise the Age" will result in emerging adults being held accountable in a developmentally appropriate setting that better promotes rehabilitation by addressing the root causes of criminal behavior. They emphasize two strategic points as part of their comprehensive public campaign.[148] They insist that raising the age of juvenile jurisdiction will improve public safety and decrease crime. In 2013, Massachusetts raised the age of juvenile jurisdiction to include seventeen-year-olds, and, since that time, crimes committed by juveniles have declined by 60% in the Commonwealth.[149] Currently, the Department of Corrections states that offenders between the ages of eighteen and twenty-four in adult prisons demonstrate the highest rates of recidivism.[150] Advocates expect that moving emerging adults to developmentally appropriate settings will reduce that rate.

Second, the bill's proponents argue that incarcerating emerging adults in adult prisons increases toxic exposure and recidivism, whereas keeping this group away from adult prisons can foster true rehabilitation. They rely on a study of individuals who have been

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[146] Senate Bill 942, *An Act to Promote Public Safety and Better Outcomes for Young Adults* https://malegislature.gov/Bills/193/S942/Cosponsor

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[148] Celtics .

[149] https://www.raisetheagema.org/faqs/#top; https://massterlist.com/2023/09/12/massachusetts-criminal-justice-system failing-young-adults-bill-would-treat-offenders-18-to-21-as-juveniles/

[150] [need citation]

adjudicated for serious, violent offenses.[151] It concluded that two factors most correlated to the desistence or persistence in criminal offending are: (1) belief in the legitimacy of authority and (2) meeting adolescent developmental milestones on time. Young people discharged from DYS have lower recidivism rates than young adults incarcerated in the general adult population.[152]

As Deputy Director of the Center for Juvenile Justice Sana Fadel, a primary supporter of this campaign, explains, individuals aged eighteen to twenty-one serving time in adult prison are offered "little-to-no rehabilitation that sets them up for a high potential of reoffending."[153] Young adults incarcerated in Massachusetts' adult prisons have a 55% reconviction rate, while teens leaving the Department of Youth Services have a 22% rate of reconviction.[154]

Meanwhile, "Raise the Age" opponents do not dispute the science. Instead, they are concerned that the bill permits young adults to avoid necessary punishment and overwhelms juvenile facilities. Because of the decline in youth crime, supporters insist that the system has the capacity to serve emerging adults. They note that the juvenile system has increased access to diversion programs, criminal record protection, and educational and rehabilitative programming—all of which will lower recidivism.

The SJC's decision in *Mattis* provides a template for how advocates can rely on the science of brain development in emerging adults and evidence of rehabilitation contributing to public safety. Harnessing these two factors, Massachusetts has, at a minimum, changed the way that young adults who commit the most serious crimes are punished in the Commonwealth. The advocacy and record in the case suggest a blueprint for reimagining the role of rehabilitation in the decarceral conversation.

B. Connecticut – a Story of Legislative Compromise

Like many other states, Connecticut lengthened its prison terms for all individuals in the 1980's.[155] Harsher sentences meant many people who committed violent crimes as teenagers or emerging

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[151] https://static1.squarespace.com/static/5d6e84547e7c7d000106c704/t/6478dc3933b8d418651aafb5/1685642297771/FACT+SHEET+Pathways+to+Desistance.pdf

[152] 46% of formerly DYS committed youth were rearraigned compared to 76% of 18–24-year-old's discharged from Houses of Corrections; and the re-conviction rate is 26% compared to 55%.

[153] Erin Tiernan, *Massachusetts criminal justice system 'failing' young adults, bill would treat offenders 18 to 21 as juveniles*, (Sept. 12, 2023), https://massterlist.com/2023/09/12/massachusetts-criminal-justice-system failing-young-adults-bill-would-treat-offenders-18-to-21-as-juveniles/

[154]

[155]

adults received extraordinarily long sentences. Presently, about 700 people in the state are serving LWOP sentences, and even though only 13% of the state's population is Black, *most* of the individuals serving LWOP are Black.[156]

On October 1, 2023, Connecticut's Bill 952 went into effect (becoming Law 23-169), expanding parole eligibility for individuals serving long sentences who committed criminal offenses between the ages of eighteen and twenty-one.[157] Pursuant to this reform, the Board of Pardons and Paroles will consider parole for those who have served most of their sentence. Specifically, an individual sentenced to ten to fifty years will be eligible for parole after serving the greater of twelve years or 60% of their sentence.[158] Passing this bill was a long term effort, stewarded by Senator Gary Winfield, co-chair of the legislature's judiciary committee, who has driven prior criminal justice reforms.[159] A few advocates mentioned that S.B. 952 would not have passed without Senator Winfield's incredible persistence. The law was supported by advocacy efforts by Yale Law School's Challenging Mass Incarceration and Criminal Justice Advocacy Clinics and championed by many other important state advocates.[160]

Connecticut has a Democratic super majority, sometimes referred to as a "Blue trifecta state," and has been comparatively progressive regarding criminal justice reforms.[161] According to several activists, there remains a strong tradition of bipartisan cooperation. The state's legislative culture is collegial and solicitous of bipartisan support on the sessions' agenda of proposed bills, despite the Democratic supermajority. This culture explains, at least partially, why criminal justice reforms are successful.

In 2015, Connecticut passed Public Act 15-84, which retroactively eliminated LWOP sentences for individuals who committed crimes prior to eighteen, required courts to consider the mitigating aspects of youth when sentencing juveniles to serious felonies, and established automatic parole eligibility for anyone who committed a crime prior to turning eighteen.[162] In pushing for S.B. 952, advocates, including Yale Law School's students, repeatedly presented

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156 https://www.sentencingproject.org/app/uploads/2022/08/No-End-in-Sight-Americas-Enduring-Reliance-on-Life-Imprisonment.pdf

157 https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2023&bill_num=952
https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2023&bill_num=952

158 https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2023&bill_num=952. And if their sentence exceeds 50 years, they are eligible for parole after 30 years.

159 [Sen. Winfield's involvement in police accountability in 2020, 2012 DP]

160 [I interviewed four advocates involved in the efforts to pass S.B. 952. I cannot name them or their organizations so need editors to decide what convention here.]

161 CT Bill 1584 (2015).

162 CT 15-84, *An Act Concerning Lengthy Sentences for Crimes Committed by a Child or Youth Convicted of Certain Felony Offenses* (2015).

research to state legislators showing that adolescent brain development continues through the age of twenty-five, and that lengthy incarceration stifles the capacity for growth and maturation.[163] Thus, by the time that S.B. 952 was introduced, advocates found that even the more reluctant state representatives were acclimated to years of hearing about scientific advancements regarding emerging adults and the increased opportunities for rehabilitation.[164]

In fact, Connecticut had already recognized these implications of emerging adult brain science in areas of the criminal legal system. In 2022, the Board of Pardons and Paroles commuted the sentences of eleven individuals who committed crimes before they were twenty-five.[165] In their commutation decisions, the Board referenced adolescent brain development studies illustrating that human brains are not fully developed until an individual's late twenties. But by the time state legislators were debating Bill 952, the recent rise in commutations was under attack.[166] In Connecticut, the power to commute a prison sentence is vested in the Board of Pardons and Paroles; there is no direct role for the Governor. The state GOP staged a large protest in response to the increased use of clemency by the state's Board.[167] Accompanied by families of victims of violent crimes, Republican state legislators publicly asked Governor Lamont to stop the commutations. Lamont removed Carleton Giles, a former police officer, as chairman of the Board.[168] The Board subsequently ceased all commutations.

For the state's many criminal justice advocates seeking to reduce Connecticut's carceral population, Governor Lamont's and the Board's decisions were discouraging. The recent rise in clemency had overwhelmingly benefitted people of color. The Board identified that nearly two-thirds of the individuals who received commutations in 2022 were Black, and one quarter were Latinx. The Board, under Giles's leadership, attempted to dampen criticism by announcing that

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[163] *See, e.g.*, Joette Katz, Testimony in Support of S.B. 952; *From Juvenile Delinquency to Young Adult Offender*, National Institute of Justice (2014), available at: https://nij.ojp.gov/topics/articles/juvenile-delinquency-young-adult-offending.

[164] YLS advocacy for Bill 1584; repeated efforts with neuroscience.

[165] Kelan Lyons, *Parole Board Shortens Sentences of 11 Men Who Committed Crimes When They Were Young*, C.T. MIRROR (Jan. 21, 2022, 5:00 AM), https://ctmirror.org/2022/01/21/parole-board-shortens-sentences-of-11-men-who-committed-crimes-when-they-were-young/.

[166] *See* Alex Putterman, *Commutations of long prison sentences in CT put on hold as board reviews policy*, CT INSIDER (Updated April 20, 2023 at 4:45 PM), https://www.ctinsider.com/news/article/commutations-ct-put-hold-board-reviews-policy-17908933.php; Jamiles Lartey, *Connecticut Normalized Clemency. Not Anymore*, THE MARSHALL PROJECT (May 6, 2023 at 12:00 PM), https://www.themarshallproject.org/2023/05/06/connecticut-incarceration-clemency-commutation-pardon-justice-reform.

[167] Kelon Lyons*, Connecticut Governor Scrambles Pardons Board and Halts Clemency*, (April 28, 2023); https://boltsmag.org/connecticut-governor-scrambles-board-of-pardons-and-paroles-clemency/.

[168] Giles, a Black man, was painted as the architect of the Board of Parole's decision to release more prisoners than it previously had. This was unfounded.

it would no longer hear commutations from people serving life without release sentences. Statistics showed that, even in 2022, more than three-quarters of applicants were denied commutation. Critically, the bulk of state prisoners who were granted commutations in 2022 were sentenced as juveniles or young adults to extremely long prison terms. Thus, the Parole Board seemed to remain receptive to the legislative advocacy occurring on the science on developing brains in young adults. Representative Steven Stafstrom, the Democratic co-chair of the Judiciary Committee, noted that the 2022 commutations applied to emerging adults were often for sentences from the late 1990s that would not be given today. Further, commutation only corrected extremely long sentences based upon today's understanding of appropriate punishment.

Advocates suggested that the attack on commutations ultimately helped passing the parole eligibility bill, because even the legislators who disapproved of executive commutation, wanted to leave an avenue for young adults to obtain relief from extreme sentences.

Connecticut had also recently established a mentorship program in its prisons, whereby individuals serving long sentences who had effectively changed and improved themselves mentored those with shorter sentences.[169] Those mentors illustrated their impact in disrupting cycles of crime and how they could be doing similar work outside of prison. Advocates highlighted this reform during the floor debates on Bill 952.[170] This served to humanize rehabilitation for members of the legislative chambers.

i. Two critical compromises

Despite Connecticut's history of reform in juvenile sentencing and its eventual passage, S.B. 952 was controversial when introduced.[171] The Yale Law School clinic was motivated by obtaining relief for their clients who had committed their offenses between the ages of eighteen and twenty-five and were serving lengthy sentences. During the floor debate about 952, though, several Republican senators raised concern about young adult crime. They cited rising car thefts since the start of the COVID-19 pandemic, and a perception that youth crime was rising in Connecticut.[172] Given the proposal affected emerging adults with the most severe sentences, for crimes

169 *See* Maurice Chammah, *The Connecticut Experiment*, THE MARSHALL PROJECT (April 8, 2018 at 5:00AM), https://www.themarshallproject.org/2018/05/08/the-connecticut-experiment (a pilot program called TRUE at Cheshire Correctional Institution).

170 Testimony of Ray Boyd to Senate Judiciary Committee, (March 22, 2023); https://ct-n.com/ctnplayer.asp?odID=21617

171 Jaden Edison, *Monitor* article

172 House debate on CT 952 from the day it passed as amended, https://ct-n.com/ctnplayer.asp?odID=21869

other than car theft, this pushback was irrational. However, it demonstrated a real fear for public safety.

Additionally, a decade prior to these discussions, a tragic crime befell one state representative.[173] Although this history was not related to expanding parole eligibility, advocates noted that several state legislators were opposed to extending parole opportunities for young adults because of the trauma and pain from that tragedy.

In any session, legislative members are fighting to address bills presented by every committee, budgets, and other state priorities needing to be addressed within the session. The House Democratic Co-chair typically wants to negotiate a deal with the ranking member of the other side; all committees have bipartisan chairs. The Senate debated Bill 952 first, and urged to get it raised in the House within the limits of the session.[174] Even after the Senate passed the bill, House Republicans tried to kill it and the State Attorney opposed the measure.

The law ultimately represented significant compromise for its sponsors and primary advocates. As written and initially proposed, the bill would have expanded the possibility for parole to individuals who committed serious crimes between the ages of eighteen and twenty-five. Advocates pushed for the bill to include individuals who had committed their crimes up until the age of twenty-five, soliciting testimony from experts on that age range.[175] Professor Miriam Gohara explained that, even when they believed it would be unlikely to be passed as applicable for individuals up to twenty-five years old, advocates continued to try to expand the age range. This was both to establish a record about the related science for emerging adults and represent impacted persons and their families.[176] Advocates persisted in seeking applicability to individuals up to twenty-five years old among allies, some of whom were concerned about the scarcity of resources and practical challenges of a reform that would make so many incarcerated people eligible for a second-chance sentencing.

By the time of the floor debate, S.B. 952 was restricted in scope, though. First, it was amended to cover individuals who committed their offenses between the ages of eighteen and twenty-

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[173] *Connecticut town finds hope, healing 10 years after gruesome Petit family murders*, ABC News (July 21, 2017, 10:59 AM), https://abcnews.go.com/US/connecticut-town-finds-hope-healing-10-years-gruesome/story?id=48708022. A former state legislator, and town manager, Bill Petit, suffered a horrific home invasion during which his family members tragically died. Several advocates noted that this heinous crime contributed to other legislators' critique of S.B. 952.https://abcnews.go.com/US/connecticut-town-finds-hope-healing-10-years-gruesome/story?id=48708022

[174] Debate on the Connecticut Senate Floor following amendments: https://ct-n.com/ctnplayer.asp?odID=21880

[175] *See, e.g.*, Testimony of Robin Walker Sterling, Darnell Epps, Dr. Kathryn Thomas submitted to the Connecticut Judiciary Committee, https://ct-n.com/ctnplayer.asp?odID=21617

[176] Gohara interview

one.[177] Second, eligibility dates for when the crimes had to have been committed for the expanded parole eligibility to apply were adjusted. Originally, the triggering crime had to occur before October 1, 2015. Upon being abruptly amended, it had to occur before October 1, 2005.[178] This meant that for emerging adults serving incredibly long sentences for crimes they committed between 2005 and 2015, there was no longer recourse.

Many advocates were enraged by this concession, viewing it as an irrational limit to the bill's relief. Others justified this change by explaining that, because Connecticut had undergone substantial criminal legal reform around 2005, its criminal laws became fairer at that time.[179] Professor Gohara feared this amendment would cause the reform to fail for lack of continued consensus amongst its many advocates. Yale pushed the revised bill, despite its compromised scope, because it provided relief for various impacted people. Their continued support illustrates rejecting of what Carol Steiker calls "an insistence on transformation or nothing,"[180] and persevering as a decision to focus on reducing existing suffering.

ii. Advocacy by directly impacted families

While it is true that science on emerging adults had been introduced to the state legislature annually since the 2015 reform,[181] several advocates believe that the persistent testimony and advocacy from individuals directly impacted by S.B. 952 was the most effective strategy for convincing state legislators and for its ultimate passage.

Powerful narratives came from those who were impacted by the potential reform, particularly family members of young adults who are incarcerated, and formerly incarcerated individuals themselves.[182] Deb Martinez, a sister of one of the impacted individuals, was among the strongest personal advocates for the passage of 952. She repeatedly met with legislators, urging them to pass the bill, and attended every day of the legislative session.[183]

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177 Bill 952 Amendment Schedule, https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2023&bill_num=952

178 https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2023&bill_num=952

179 Cite changes. https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2023&bill_num=952

180 Carol S. Steiker, *Keeping Hope Alive: Criminal Justice Reform During Cycles of Political Retrenchment*, 71 FLA. L. REV. 1363, 1394 (2019) ("[A]n insistence on transformation or nothing seems to me unrealistic and even cruel in its willingness to decline to support real reductions in human misery. After all, first steps are often the only way to get to a second step").

181 [searching citation here]

182 Testimony of Donald Freitag; Deborah Martinez; Ray Boyd.

183 https://ct-n.com/ctnplayer.asp?odID=21880

Aside from making difficult compromises, 952 supporters used strategic messaging to persuade legislators. They presented the reform as providing hope and opportunity for rehabilitation to a population that could rehabilitate.[184] Various impacted people provided powerful testimony. Ray Boyd, a formerly incarcerated person who leads a reentry program in New Haven, emphasized the importance this bill would have and that it would motivate inmates looking for a second chance at life.[185] Donald Freitag discussed the rehabilitation of his son who had completed ten years of a thirty-year sentence, emphasizing that this bill would provide young offenders with hope and an impetus to keep improving themselves and rehabilitating.

In addition to making compromises, the bill's supporters used strategic messaging. They presented the reform as providing hope and opportunity to a population that could rehabilitate.[186] Advocates reinforced that this reform was not automatic, it represented a process where parole has discretion to make individual determinations. Connecticut's Bill 952 passed and was signed by the Governor on June 28, 2023.[187]

Connecticut's expansion of parole opportunities for individuals sentenced for crimes they committed as late adolescents exemplifies the success of a rehabilitation narrative, coupled with repeated exposure of directly impacted persons to state legislators. Advocates' persistence with Bill 952/Law 23-169, even when confronted with significant legislative opposition and compromise, illustrates a decision to focus on easing the suffering of many presently incarcerated for extraordinarily long periods.[188]

C. Rhode Island – a Story of Reform and Backlash

In 2021, the Rhode Island legislature amended its Youthful Offender Act with the intent to permit parole consideration for individuals serving extremely long sentences who had committed their crimes before the age of twenty-two.[189] The amendment applies to all youthful offenders who committed their offenses at any time on or after January 1, 1991.[190] It permits parole eligibility after a person serves

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[184] [white paper from the bill; floor testimony of impacted persons]
[185] Testimony of Ray Boyd to Senate Judiciary Committee, (March 22, 2023).
[186] [white paper from the bill; floor testimony of impacted persons]
[187]https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2023&bill_num=952
[188] *See* Harawa, *In the Shadows of Suffering*, supra XX; *see also* Steiker, *Keeping Hope Alive*, 71 Fla. L. Rev. at 1394.
[189] After considering enaction of legislation providing an earlier chance for parole to individuals who committed their crimes while they were juveniles or emerging adults, the General Assembly added R.I.G.L. §13-8-13(e), governing time when parole may be issued for "life prisoners and prisoners with lengthy sentences."
[190] The eligibility date is purposely after the murders of Craig Price.

twenty years of incarceration.[191] It thus reduces the years that individuals need to spend in prison before having the *opportunity* to convince the parole board that they have been rehabilitated and can meaningfully contribute to society pursuant set terms and conditions.

Understanding this legislation requires acknowledging the state's peculiar history with juvenile crime and options for reform.

Rhode Island is a small state where pain from gruesome murders in the late 1980's left much of the community especially fearful of violent youth criminality. In 1989, Craig Price was convicted of murdering a family in Warwick and a young woman two years prior.[192] At the time of Price's conviction, a juvenile offender could only receive juvenile detention until their twenty-first birthday. Public outcry from these events triggered the state to amend its sentencing scheme, permitting juvenile offenders of any age to be waived into adult court and subject to adult sentencing, including LWOP.[193]

In *Miller*, the Supreme Court left open the possibility for states to have discretionary LWOP for juvenile offenders, but "took pains to make clear that all such sentences are now suspect."[194] In 2019, the Rhode Island Attorney General, Peter Kilmartin, publicly opposed enacting legislation that would eliminate juvenile LWOP. He believed doing so "preclude[d] the use of the LWOP sentencing statute for the as-yet unknown juvenile criminal who commits and unimaginably horrific crime."[195] Since, advocates have sought an amendment to Rhode Island's code to codify *Miller* and prohibit LWOP for juveniles, as Massachusetts had.[196] They insisted that, while Craig Price remained imprisoned, "the constitutionally protected right of juvenile offenders to be free from cruel and unusual punishment has been circumvented for fear of having to face another gruesome juvenile killer and the desire to have the option to keep that juvenile in prison for life."[197]

Others advocates argued that given the trauma from the Price murders, and the reality that LWOP was rarely imposed,[198] it should focus juvenile sentencing reform efforts elsewhere. Indeed, *Miller* also

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191 R.I.G.L. §13-8-13(e), effective July 6, 2021.

192 Mark Arsenault, *'Into Another World'- Craig Price's Story*, Providence Journal (Mar. 7, 2004).

193 John J. Cloherty, III, *The Serious Juvenile Offender in the Adult Criminal System: The Jurisprudence of Rhode Island's Waiver and Certification Procedures*, 26 Suffolk U.L. Rev. 407, 407-08 (1992). The legislature passed the "Craig Price Legislation" in 1990.

194 Perry Moriearty, *Miller v. Alabama and the Retroactivity of Proportionality Rules*, 17 U. Pa. J. Const. L. 929, 956 (2015).

195 Letter from Peter Kilmartin, R.I.A.G. to Dominick J. Ruggerio, President R.I. Senate (June 5, 2017).

196 *See* Mackenzie McBurney, *Paying the Price: Eliminating Life Without Parole Snetences for Juveniles in Rhode Island*, 23 Roger Williams Law Review 3 (2018); *see Diatchenko*, 466 Mass. at 670.

197 McBurney, *Paying the Price*, at 578-89.

198 As one advocate noted, the Supreme Court's approval of the juvenile sentencing scheme in *Kentucky v. Jones*, 140 S Ct. 123 (2019) made it likely that Rhode Island's JLWOP scheme would pass constitutional review.

recognized that "young minds are different" applies with equal force outside of the LWOP context. The Court specifically noted that "none of what [*Graham*] said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime specific."[199]

i. The road to Mario's Law

Rhode Island's 2021 expansion of parole consideration reflects the state's history and characteristics. It also reveals compromises that went into its passage. The amendment was colloquially named "Mario's law," after Mario Monteiro.[200]

When he was 17 years old, Mario Monteiro caused a death while using a firearm, and was convicted for murder in the first degree and discharge of a firearm during the commission of a crime of violence. He was tried as an adult. The sentencing judge was statutorily required to impose a consecutive life sentence.[201] When Monteiro began serving his sentence, it was the longstanding practice of the Parole Board and Rhode Island Department of Corrections to determine an initial parole eligibility date for those serving consecutive sentences, including consecutive life sentences, by aggregating the statutory minimum term for consecutive life sentence, which was then fifteen years for each of Monteiro's consecutive life sentences, totaling thirty years).

While serving his sentence, Mr. Monteiro engaged in significant rehabilitative efforts, including earning a high school diploma, working towards his associate degree, and becoming an anti-gang advocate and mentor to prisoners.[202] In 2016, Monteiro learned about a pending version of this reform, which would allow individuals incarcerated for crimes committed before they turned eighteen to argue for parole eligibility after fifteen years of incarceration. Monteiro along with his friend, Marvin Rubio, contacted family, legislators, and advocacy organizations. They argued that juveniles sentenced as adults merited parole review after fifteen years.[203] Eager to garner support for

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[199] *Miller*, 567 U.S. at 473.

[200] *See https://thepublicsradio.org/article/from-inside-prison-activist-mario-monteiro-is-pushing-to-change-juvenile-sentencing-laws-; https://rhodeislandcurrent.com/briefs/marios-law-namesake-given-chance-for-parole/*

[201] Monteiro's conviction was affirmed on appeal. *State v. Monteiro*, 924 A.2d 784, 794 (2007); see R.I.G.L. §11-47-3.2(c)(providing that also provided that a person "sentenced to life under subdivision (b)(3) or (b)(4) of this section may be granted parole.").

[202]https://www.providencejournal.com/story/news/politics/courts/2023/05/19/judge-rules-in-favor-of-mario-monteiro-in-youthful-offender-parole-case-marios-law/70231913007/

[203] Sophie Rudin, *From Inside Prison, Mario Monteiro is Pushing to Change Juvenile Sentencing Laws*, (Aug. 7, 2020) https://thepublicsradio.org/article/from-inside-prison-activist-mario-monteiro-is-pushing-to-change-juvenile-sentencing-laws-

the reform, they cited similar laws in other states, scientific researching showing teenagers do not appreciate the consequences of their actions, and the Supreme Court's caselaw requiring juveniles be treated differently than adults.[204]

At that time, someone like Monteiro serving two consecutive life sentences would become eligible for parole only after serving thirty years. With R.I.G.L. §13-8-13(e), those who committed crimes before the age of twenty-one would be eligible for an initial consideration for release on parole to the community after twenty years and upon terms set by the state's parole board.

Notably, Rhode Island is one of seven states that does not have a "single subject rule," and can pass bills encapsulating various topics.[205] After workshopping versions of the bill, including in the judiciary committee, Rhode Island's House Speaker put "Mario's Law" in a state budget article. During the final hearing, legislators had only a few questions. By putting it in a state budget article, it also was not subject to amendments, only an up or down vote.[206]

This did not protect the bill from compromise. First, the law contained a counterintuitive carve out for LWOP. The broadened parole eligibility does not apply to individuals who are sentenced to LWOP.[207] Price's well-known and troubling crimes made it politically untenable to include LWOP sentences in this bill. This compromise made sense, given the dearth of LWOP sentences in the state as compared to Massachusetts, where it was mandatory for first degree murder.[208] This exception illustrates how, much like in Connecticut, particularly gruesome or remarkable crimes committed by emerging adults impact the memory, reputation, and psychology of a community.

ii. Resistance to Reform's Implementation

When Mr. Monteiro was brought before the Parole Board in December 2021, he had served 20 years, and the new subsection (e) had taken effect.[209] Recognizing Monteiro's rehabilitative efforts, the Board unanimously granted him parole in December 2021.

The Board, however, provided alternative dispositions: immediate parole on paper to his consecutive life sentence, or deferred parole to the Community in December 2022 based on "the existing legal debate" as to whether Subsection (e) meant he was eligible for

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[204] *Id.*

[205] Find definition of single subject rule

[206] [Mike DiLauro / Advocates]

[207]

[208] There are currently no juveniles serving LWOP in Rhode Island.

[209] Indeed, the Board acknowledged that Monteiro "became eligible to see the Parole Board this year due to new legislation in Article 13 [of the Budget Act adding Subsection (e) impacting youthful offenders." *See* ACLU final brief, filed February 19, 2024.

parole to the community.[210] The Board ultimately acceded to the RIDOC's contrary interpretation, and Monteiro was paroled to his consecutive life sentence.

Mr. Monteiro challenged this position, arguing that the interpretation was "absurd and illogical" and contrary to the express terms of the law reform. The reform extends parole review to "any offense" committed by a youthful offender after that person has served twenty years. The state argued that the new youthful-offender provision did not apply to Mr. Monteiro's second consecutive life sentence. They insisted that it represented an impermissible legislative encroachment into an area for judicial discretion.

The trial court disagreed, finding Monteiro met the standards of parole to the community under Subsection (e). Judge Nugent concluded that if the legislature had intended to separate multiple sentences, it would have specified that the reform applied to "any single offense." Also, parole was not "modifying" a sentence because the individual remains subject to that underlying sentence, and the reform simply affords discretion to the parole board (part of the executive branch) to determine whether parole is appropriate in any given case. Judge Nugent cited the Supreme Court's recent recognition that juveniles lack full culpability and have rehabilitative potential.[211]

Nevertheless, the State Attorney is currently challenging the legality of R.I.G.L. §13-8-13(e) in the Rhode Island Supreme Court as applied to Mario Monteiro and three other petitioners.[212] In opposing this reform's application to Mr. Monteiro and three other criminal defendants serving multiple sentences,[213] the State Attorney General makes two arguments: one grounded in statutory interpretation, and one grounded in separation of powers.

The state first argues that the reform does not apply to anyone serving more than one sentence.[214] The state argues that the plain language of §13-8-13(e) applies to individuals convicted of *a single offense* and, thus, should not apply to individuals serving multiple sentences.[215] The plain and ordinary meaning of "offense" suggests that the Rhode Island General Assembly intended the subsection to apply to individuals serving a single sentence, and, had they intended otherwise, they would have used "offense or offenses."[216] In addition to clear meaning, the state also argues that its interpretation is clear

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[210]https://www.providencejournal.com/story/news/politics/courts/2023/05/19/judge-rules-in-favor-of-mario-monteiro-in-youthful-offender-parole-case-marios-law/70231913007/

[211] [Nugent opinion]

[212] *See Rhode Island v. Joao, Keith Nunez, Pablo Ortega, Mario Monteiro*, Brief of Petitioner-Appellant State of Rhode Island (January 8, 2024).

[213] Keith Nunes, Pablo Ortega, Joao Neves

[214] Brief of Attorney General

[215] Mario Monteiro v. State of Rhode Island, Prebrief of the State of Rhode Island

[216]

contextually.[217] It insists that its interpretation of 13-8-13(e), as applying only to people serving a single sentence, is consistent with parole statutes as a whole in that it would require people serving two sentences to be paroled from one to the next. Interpreting this provision to apply to individuals serving consecutive life sentences would, according to the state, conflict with other provisions of the statute that specifically address consecutive sentences.[218]

Second, the state argues that this reform violates the state's "separation of powers" doctrine by interfering with the judiciary's sentencing function.[219] Citing their state constitution, the state argues "[i]t is well settled that the General Assembly cannot rightfully exercise judicial power." Applying 13-8-13(e) to individuals serving life and a consecutive sentence would be an impermissible exercise of judicial power by the legislate.[220] In short, the argument is that only the judiciary has the power to reduce a sentence.

Advocates for the reform to parole eligibility, and those who represent Mr. Monteiro and others affected by the law, are enraged by the state's current legal challenge. They insist that the law was passed in recognition of the fact that, as the Supreme Court has repeatedly emphasized, "even when they commit terrible crimes," juveniles lack the culpability of adults and should be given a second chance.[221]

Advocates argues that the State Attorney General's (and Department of Corrections's) position is illogical. Interpreting Rhode Island's reform to require parole to consecutive sentences risks circumventing the statutory intent to provide meaningful opportunities for release and makes it likely that many individuals will continue to serve unconstitutionally disproportionate sentences. If a person like Mr. Monteiro, who was sentenced to life and a consecutive sentence before the reform passed, were eligible for parole after serving twenty years but not before they began serving the consecutive sentence, it would "effectively operate to nullify" the statute's terms and "defeat its purposes," given most people serving a single life sentence were already eligible for parole after twenty years of incarceration prior to the Amendment.[222]

[*What do the RI reform and backlash show*?]

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[217] *See Rhode Island v. Joao, Keith Nunez, Pablo Ortega, Mario Monteiro*, Brief of Petitioner-Appellant State of Rhode Island, 27-30 (citing *State v. Hazard*, 68 A.3d 479, 485 (R.I. 2013)).

[218] *Id.* at 30-31.

[219] Rhode Island Superior Court Decision (May 17, 2023).

[220] *See Rhode Island v. Joao, Keith Nunez, Pablo Ortega, Mario Monteiro*, Brief of Petitioner-Appellant State of Rhode Island, 31 (citing R.I. Constitution Art. V).

[221] *Miller*; *see* Position of the ACLU of Rhode Island, https://www.riaclu.org/en/news/aclu-challenges-states-absurd-position-marios-law-allowing-early-release-juvenile-offenders.

[222] ACLU Petition in the case.

III. EMBRACING REHABILITATION TO MINIMIZE CARCERAL FOOTPRINT

Dwayne Betts cautions against framing *Roper*, *Graham*, *Miller* and *Montgomery* as "watershed" cases, and urges recognizing them as one step towards more sensible sentencing for juveniles. Indeed, this quartet has not resulted in a significant reduction in the length of juvenile prison sentences,[223] and cabining judicial analysis to death sentences or LWOP ignores "what other prison term for a juvenile might be unjust."[224]

Nevertheless, these cases, and the scientific research since, have moved us towards asking critical questions about how much time in prison is sufficient. Just, as Betts argues, cabining reform in juvenile sentencing to LWOP sentences drastically underachieves meaningful decarceral impact, so too does drawing a line at eighteen. Instead, there are a few reasons to think that second look reforms aimed at emerging adults, between the ages of 18 and 25, will be successful in generating major decarceral reform.

First, despite the critiques, the Court's repeated findings that children are less culpable and have a greater capacity for change do provide support for states seeking to alter the default extremely long sentences for young adults. In the reforms described, the significant advances in neuroscience and adolescent development were effective.[225] To be sure, there is debate about the extent to which development brain science should be the foundation for the decarceral change. Some, recognizing the possibility of science to evolve, emphasize the tenuousness of relying primarily on the development of brains in emerging adults.[226] Nevertheless, the science since the Court's juvenile quartet strongly supports the view that emerging adults are less culpable and more capable of rehabilitation.

Moreover, evidence showing reduced recidivism among those paroled from life sentences as emerging adults, combined with research showing criminal behavior declines after late teenage years,[227]

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[223] *What Break Do Children Deserve? Juveniles, Crime, and Justice Kennedy's Influence on the Supreme Court's Eighth Amendment Jurisprudence*, 128 YALE L.J.F. 743 (2019). Twenty-one states and D.C. have banned LWOP sentences for children—and this figure has quadrupled in the last five years. States that Ban LWOP Children, Campaign for Fair Sentencing for Youth (2018), https://http://www.fairsentencingofyouth .org/media -resources/states-that-ban-life

[224] *Id.*

[225] *See supra*, Sections XX

[226] *See, e.g.,* Terry A. Maroney, *The False Promise of Adolescent Brain Science in Juvenile Justice*, 85 Notre Dame L. Rev. 89 (2013); *but see* Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* 29 (2008) (arguing that scientific knowledge about adolescent development "should be the foundation of the legal regulation of juvenile crime.").

[227] *See* Caitlin V.M. Cornelius et al., *Aging Out of Crime: Exploring the Relationship Between Age and Crime with Agent Based Modeling*, Soc'y for Computer Simulation

powerfully support the argument that releasing emerging adults is compatible with public safety.

Third, these reforms embody public opinion, and a widespread belief in self-improvement, second chances, and hope. This narrative, coupled with science and evidence of reduced recidivism, was operative in all three states' reforms.

These reforms reveal massive compromise and illustrate the power of unique state histories in criminal sentencing reform. But even in the manner that they were limited, these efforts could encourage the generation of more decarceral efforts.

CONCLUSION

Benjamin Levin persuasively explains that the question with criminal minimalism is not *whether* we should minimize, but how and what principles should guide that minimizing.[228] At its best, Levin argues, a minimalist view merely begins conversations, pushing scholars and policymakers to ask critical questions of what we should minimize and how. Excavating these three recent efforts forces us to confront why we sentence emerging adults to long sentences, what science and crime data justifies doing so, and whether we are compelled by the theory of rehabilitation. It also illustrates practical political strategies that have worked to reform sentencing and will help other actors seeking to minimize the breadth of their carceral states.

Scholars have recently argued that "the penal system still have a role to play in society, but a radically reduced, reimagined, and redesigned role relative to the one it" has now.[229] We must destabilize the perception that transformative change in the criminal legal system is incompatible with reforms that relieve present suffering of impacted persons and their families.

Int'l 1 (2017), http://scs.org/wp-content/uploads/2017/06/6_Final_Manuscript.pdf

[228] *Criminal Law Minimalisms*, 101 Wash. Univ. L. Rev. 6 (2024).

[229] *See, e.g.*, Carol S. Steiker, *Keeping Hope Alive: Criminal Justice Reform During Cycles of Political Retrenchment*, 71 FLA. L. REV. 1363, 1394 (2019). As Professor Trevor Gardner explains in the introduction to this issue, scholars have put forward excellent frameworks for promoting criminal law minimalism. *See* Rubenstein and Sapir; Harawa.