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Taking a Second Look at Juvenile Sentencing

Key Points

- Data show that juvenile offenders have a greater capacity for rehabilitation as they continue to reach developmental maturity and develop skills to rebuild their lives and become contributing members to society.
- Research concerning recidivism and adolescent development supports that juvenile offenders are often rehabilitated well before their parole eligibility, which in Texas is 40 years, the longest of any state.
- Most states have adjusted parole eligibility for juvenile offenders by considering research on adolescents' ability to mature and successfully integrate into parole proceedings and society.
- Research shows significantly lower rearrest rates among adult juvenile offenders in comparison to adult offenders released into communities.

Executive Summary

Research on the cognitive development of adolescents shows that the ability of a juvenile to evaluate potential risks and consequences or to control impulses is not fully developed until their mid-20s. To reflect an adolescent's development accurately, most states have adjusted parole eligibility laws for juveniles who are tried and sentenced as adults. However, Texas' current 40-year minimum eligibility fails to provide once-jvenile offenders with a meaningful opportunity to reenter society as an adult. Texas should enact legislation, often referred to as "second look" legislation, that would provide an earlier shot at parole for these once-juveniles who have demonstrated maturity and rehabilitation since their sentence.

Introduction

As research on adolescent¹ brain development evolves, questions on the ethics and logistics of placing adult-level sentences on juveniles² demand the attention of policymakers in Texas. It is now understood that youths in middle adolescence, aged 14–17, are still developing the ability to weigh future risks and consequences, to control impulses, and to ignore outside influences ([Allen & Waterman, 2019](#)). Brain development coupled with trauma or poor modeling by the child's environment can further hinder a child's ability to make mature decisions and weigh risks and consequences. However, as the brain matures from adolescence into early adulthood, significant opportunity exists for rehabilitation, especially in the case of juvenile offenders.

This understanding of adolescent maturation led to the Supreme Court ruling that juveniles cannot be sentenced to death or life in prison without the possibility of parole for crimes, including homicide offenses ([Roper v. Simmons, 2005](#); [Graham v. Florida, 2010](#); [Miller v. Alabama, 2012](#)). In response, states began to pass reforms, often called "second look" legislation, that redefine sentencing and parole guidelines for juveniles who were certified and sentenced through the adult criminal court; this movement has led to hundreds of individuals being resentenced or released on parole across the nation. Moreover, one study focused on reforms in Pennsylvania found that the state's version of second look reform resulted in both cost savings and extremely low recidivism rates, meaning the state saw little to no threat to public safety ([Daftary-Kapur & Zottoli, 2020](#)).

While Texas took a step in the right direction in 2009 by aligning state statute with the Supreme Court precedents, the state continues to have the nation's

1 The World Health Organization defines adolescence as the phase between childhood and adulthood, ages 10–19 ([World Health Organization, n.d.](#)).

2 Title 3 of the Texas Family Code, the Juvenile Justice Code, defines "child" as a person over the age of 10 but less than 17 ([Section 51.02](#)).

harshes parole eligibility guidelines for juveniles. Juveniles who are tried as adults, often referred to as “juvenile lifers,” can be sentenced to at least 40 years behind bars before the possibility of parole. Because incarcerated individuals have a lower-than-average life expectancy, the U.S. Sentencing Commission (2015, p. 10) considers anything over 39 years a de facto life sentence. The current minimum of 40 years is not aligned with current research on both adolescent development and recidivism among this population of offenders. Texas should revisit current juvenile sentencing and parole laws to provide these individuals with a meaningful opportunity to reenter society.

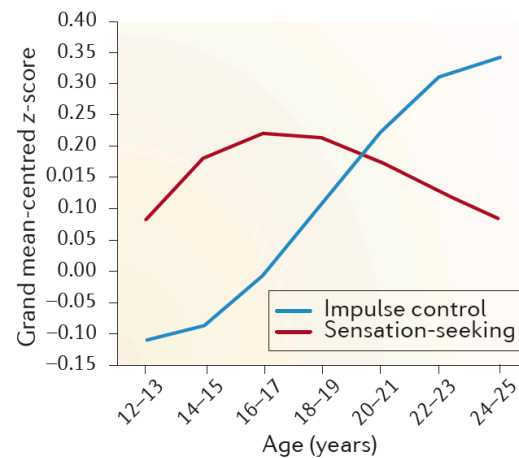
Adolescent Development

Juvenile sentencing and parole reform has the potential to be met with pushback as many perceive these changes to be disregarding personal responsibility and an escape from punishment. However, to appreciate the juvenile sentencing reforms, one must understand the research on adolescent development that has informed these changes—specifically the research on adolescent and young adult decision making—and how this research can be applied to the Eighth Amendment’s prohibition of cruel and unusual punishment, including the precedent that punishment should be graduated and sanctioned based on both the offender and the offense (*Miller v. Alabama*, 2012).

Individuals experience four main developmental changes, which eventually lead to an ability to make more rational decisions. First, through a process known as synaptic pruning, a pre-adolescent mind begins rewiring itself to function in a more “adult pattern” (Steinberg, 2009, p. 742–743). Next, during puberty, around ages 10–13, early adolescence brings changes in dopamine transmission, challenging the mind to find a balance between emotion and impulse, and heightening the experience of rewarding stimuli—even in situations that have significant costs. This stage can be seen in **Figure 1** in the years leading up to the convergence of impulse control and sensation-seeking. Extending well into the later stages of adolescence, the third change experienced by the brain is the development of self-control and greater emotional regulation. This occurs due to strengthening connections between the prefrontal cortex and the limbic system. Once these developmental changes are complete, the final development the brain experiences is an increase in “white matter,” allowing for better evaluation of potential risks, rewards, and consequences during the decision-making process. This is represented in the portion of **Figure 1** where impulse control is higher than sensation-seeking.

Neuroscience research has shown that one’s likelihood of participating in risk-taking situations peaks when an

Figure 1
Sensation-Seeking and Impulse Control



Note. Figure from *The Influence of Neuroscience on US Supreme Court Decisions About Adolescents’ Criminal Culpability*, by Laurence Steinberg, 2013 (<https://www.nature.com/articles/nrn3509>).

individual is around 20 years old, when impulse control begins to outweigh demand for sensation (Steinberg, 2013). Thus, juveniles are far more likely to be reckless than to make logical, informed decisions relative to their behavior. Such risky behavior can sometimes be displayed through criminal activity, both violent and nonviolent. A comparison of delinquent behavior and age is demonstrated in **Figure 2** through the age-crime curve.

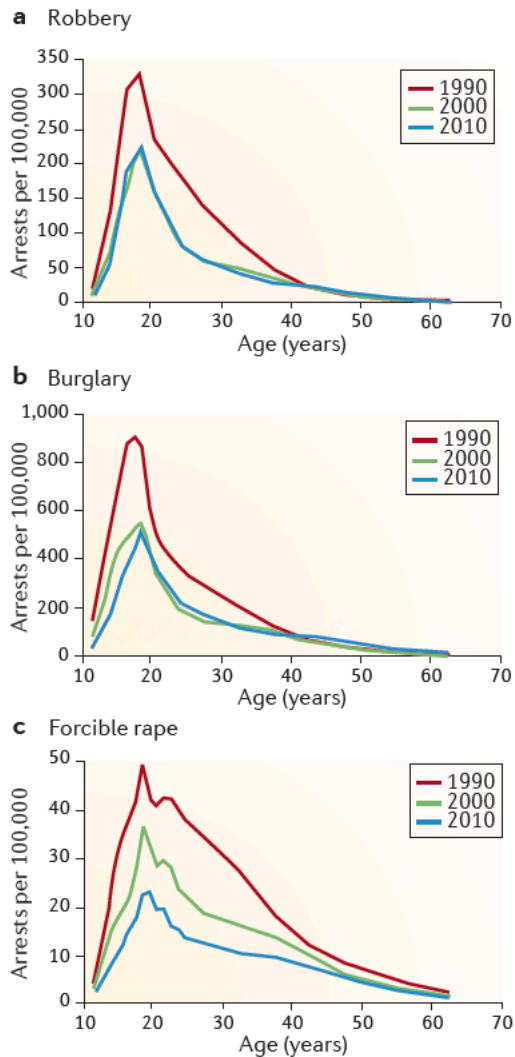
These graphs show that, over three decades, the similar trends between age and arrests remained consistent. The age of adolescence during which arrests are increasing corresponds to the developmental stage that is associated with a heightened desire for sensation and a lower ability to control impulses, as demonstrated in **Figure 1**.

Response to Advancements in Developmental Research

Case Law

Breakthroughs in the understanding of brain development and adolescent behavior triggered questions concerning the appropriateness of some punishments for juveniles, questions that demanded a response from the Supreme Court. In 2005, *Roper v. Simmons* introduced the Court to neuroscientific studies, specifically on how adolescent brain development impacts decision-making skills, during oral arguments over the sentencing of juveniles to the death penalty. Ultimately, the decision was reached that sentencing juveniles to death was cruel and unusual punishment and, therefore, a violation of the Eighth Amendment. Although the opinion in the case

Figure 2
The Age-Crime Curve



Note. Figure from *The Influence of Neuroscience on US Supreme Court Decisions About Adolescents' Criminal Culpability*, by Laurence Steinberg, 2013 (<https://www.nature.com/articles/nrn3509>).

did not mention adolescent behavior directly, it did reference a distinction between adolescent and adult behavior (*Roper v. Simmons*, 2005). Justice Kennedy referenced three attributes that distinguish youth from adults and therefore determine culpability of a child: immaturity with impulsivity, susceptibility to outside agents, and depth of character formation (*Kennedy*, 2005). These characteristics support the idea of penal proportionality as well—that “a punishment is considered cruel if it is judged to be excessive given the nature and circumstances of the crime” (*Steinberg*, 2013, p. 514). This rationale aids in explaining why the Court would deem the death penalty as cruel and unusual for juveniles but not for

adults, given the nature of their prospective mental capabilities and maturation.

With the precedent set in *Roper*, Supreme Court Justices went on to use neurological understanding of the adolescent mind to inform their decisions to an even greater extent in *Graham v. Florida* (2010) and, most recently, in *Miller v. Alabama* (2012). In both decisions, the Court found violations of the Eighth Amendment. In *Graham*, it ruled that it is unconstitutional to sentence an individual under the age of 18 to life in prison without the possibility of parole for any crime other than homicide. In *Miller*, all children 18 or younger were deemed protected from a sentence of life without parole, including those convicted of homicide (*Steinberg*, 2013).

Current Context of “Juvenile Lifers”

Many juvenile individuals were sentenced before *Graham v. Florida* and *Miller v. Alabama*, which means many individuals may continue to spend the majority, if not all, of their life in prison for crimes they committed as juveniles. Nationally, as of 2017, there were 11,745 individuals serving life sentences for crimes they committed before they were 18, a collective that accounts for 5.7% of the total life-sentenced population (*Nellis*, 2017b, p. 16).

These inmates were typically sentenced to one of three types of sentences: life *with* the possibility of parole (LWP), life *without* the possibility of parole (LWOP), and virtual or de facto life sentences (*Nellis*, 2017b, p. 17). Of the 11,745 inmates, 7,346 are serving LWP, 2,310 are serving LWOP sentences, and about 2,089 are serving de facto life sentences. More recent data conducted by the Sentencing Project show that, in 2020, the number of individuals serving juvenile LWOP dropped to 1,465 (*Rovner*, 2021). While numerous states have responded to the Supreme Court guidance by resentencing individuals or adjusting the statutory parole guidelines for juvenile lifers, several states have not, exemplified by the heavy concentration of these prisoners in Texas, California, New York, and Georgia.

In Texas, as of May 2020, there were 1,483 individuals serving life or a sentence of at least 40 years for a crime they committed while under the age of 18 (*Linder et al.*, 2020). Among those, 637 were serving life sentences with the possibility of parole once they have served 40 years. Another 12 were serving life sentences without any possibility of parole—sentenced prior to the protections resulting from *Miller*. Texas has yet to pass any form of relevant retroactive legislation.

Table 1*U.S. Supreme Court Findings on Adolescents' Criminal Culpability*

Case	Year decided	Ruling	Rationale
<i>Thompson v. Oklahoma</i>	1988	Capital punishment found unconstitutional for individuals under the age of 16 years	"Contemporary standards of decency confirm our judgment that such a young person is not capable of acting with the degree of culpability that can justify the ultimate penalty."
<i>Roper v. Simmons</i>	2005	Capital punishment found unconstitutional for individuals under the age of 18 years	"As any parent knows and as the scientific and sociological studies... tend to confirm, [a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young."
<i>Graham v. Florida</i>	2010	Life without parole is found unconstitutional for individuals under the age of 18 years convicted of crimes other than homicide	"No recent data provide reason to reconsider the Court's observations in <i>Roper</i> about the nature of juveniles.... Developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence."
<i>Miller v. Alabama</i>	2012	States may not mandate life without parole for individuals under the age of 18 years, even in cases of homicide	"The evidence presented to us ... indicates that the science and social science supporting <i>Roper's</i> and <i>Graham's</i> conclusions have become even stronger... It is increasingly clear that adolescent brains are not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning ahead, and risk avoidance."

Note. Recreated from *The Influence of Neuroscience on US Supreme Court Decisions About Adolescents' Criminal Culpability*, by Laurence Steinberg, 2013 (<https://www.nature.com/articles/nrn3509>).

Current Texas Law

Certifying Juvenile Offenders as Adults

Adult criminal courts typically do not handle cases executed by juvenile offenders under the age of 17 as the Texas Family Code provides the juvenile court jurisdiction over those offenders. However, juvenile courts have the authority to waive their jurisdiction by "certifying" the juvenile as an adult and transferring them to an adult criminal district court. This process is reserved for offenders who are alleged to have committed serious felony offenses. Juveniles 14 and older can be transferred to the adult system if there is probable cause to believe the juvenile committed a first-degree felony, an aggravated controlled substance felony, or a capital felony. Once a juvenile turns 15, they are eligible for certification for any offense above a state jail felony ([Office of the Attorney General, 2020](#)). If the juvenile court determines certification is in the best interest of justice,

these offenders are given adult-level sentences—leading to those convicted of capital or first-degree felonies becoming "juvenile lifers."

Texas Sentencing and Parole Guidelines

There continues to be debate around the initial sentencing of juveniles sent to the adult system. Particularly, there is concern about juveniles caught up in draconian sentences pursuant to the "law of parties" policy that exists within [Section 7.02\(b\)](#), Texas Penal Code. This statute bases an individual's liability on their relationship to the perpetrator, rather than action and intent. This "provides that conspirators—individuals who agree to commit a felony—may be convicted of any crime perpetrated by their co-conspirators that is in furtherance of their scheme and *should have been anticipated*, regardless of whether the defendant was, in fact, aware of the possibility" ([Levin, 2021, p. 3](#)). Under this statute, "a youth can be held culpable for

Table 2

*Mandatory Time Served Prior to Parole Consideration for Juveniles Sentenced to Life with Parole**

20 Years	25 Years	30 Years	40 Years
Nevada Washington Virginia North Dakota	Utah Wyoming Colorado Louisiana California	Arkansas Georgia Connecticut Massachusetts New Jersey Delaware Alabama	Texas

Note: From *A state-by-state look at juvenile life without parole*, The Associated Press, 2017 (<https://www.seattletimes.com/nation-world/a-state-by-state-look-at-juvenile-life-without-parole/>).

*Not all 50 states have a parole system.

criminal acts that they took no part in and never intended, provided that those acts were ‘reasonably foreseeable outcome’ of some underlying criminal act in which the youth did participate” (Linder et al., 2020, p. 12). For example, if a group of four juveniles robs a convenience store, but only one pulls the trigger of the gun that kills the store clerk, all four may be charged with murder under the assumption that all four individuals held the same intent of murder or were negligent, meaning they were not aware but should have been, that their co-conspirator would commit a murder. Many academics have directed attention to this type of policy’s flawed reasoning; “the theory of ‘transferred intent’ is unjustified as applied to youth, as there is strong evidence that youth cannot reasonably foresee the potential further consequences of their participation in some underlying offense” (p. 12). While the exact number of individuals for whom this applies is unknown due to the lack of classification and tracking of these cases, Texas continues to sentence youth to life in prison under the statute.

In addition to debate on the legality of the law of parties, Texas’ juvenile lifer population is subject to harsh parole eligibility guidelines. In fact, Texas has the harshest parole eligibility guidelines for juvenile offenders of any state, as shown in Table 2. While the state is no longer allowed to sentence juveniles to life without parole, Section 508.145 of the Texas Government Code still mandates that an inmate serving a life sentence for a crime committed in their youth serve 40 years before being eligible to be considered for parole.

However, youth have a better capacity for change as they continue to reach developmental maturity, and research on recidivism and adolescent development supports that juvenile lifers are likely to be rehabilitated long before their

current parole eligibility date (Daftary-Kapur & Zottoli, 2020). Additionally, decreasing the amount of time served prior to parole eligibility does not mean individuals will be automatically released; the Texas Board of Pardons and Parole maintains full control over who does and does not receive early release and determine the conditions of that release.

The Texas Board of Pardons and Parole consists of seven governor-appointed men and women. While they are tasked with an extremely difficult decision, the board uses research-based parole guidelines and tools to assess an individual’s likelihood for successful reentry while also analyzing potential risk to society. Two detailed evaluations—the risk assessment and the offense severity classification—must be considered by the panel prior to granting release (Texas Board of Pardons and Parole, 2021). Additionally, Section 508.117, Texas Government Code, provides victims and their family the right to be informed of a potential release and allows them to participate in the parole process. In addition to the more detailed evaluation done through the risk assessment and offense severity classification, the following factors are also taken into consideration:

- Seriousness of the offense(s),
- Letters of support and/or protest,
- Sentence length/amount of time served,
- Criminal history/other arrest, probation, parole,
- Number of prison incarcerations,
- Juvenile history
- Institutional adjustment (participation in specialized programs),
- Offender age. (Texas Board of Pardons and Paroles, 2013)

This process is critical both to protect the community and to help promote the success of parolees. With these protections in place throughout the evaluation process, waiting for the de facto time of 40 years to allow one to be considered for release provides little to no public safety benefits when many offenders are rehabilitated long before that and have a good chance of obtaining release if given the opportunity to be reviewed by the board.

“Second Look” Legislation in Texas and Beyond

In recent years, the Texas Legislature has introduced legislation to amend the parole eligibility guidelines for juvenile offenders, decreasing the amount of time an individual would need to serve prior to being considered for parole. The reform, commonly referred to as second look, was first filed in 2015 and has since taken on various iterations—with some legislation lowering time-served to 20 years, and other versions lowering it to 30 years ([SB 1083, 2015](#)). In 2021, the 87th Legislature passed second look legislation; the final version of the bill provided individuals convicted as juveniles an opportunity for parole after 30 years rather than 40 ([HB 686, 2021](#)). However, Gov. Abbott vetoed the bill due to “the bill’s language [which] conflicts with jury instructions required by the Texas Code of Criminal Procedure, which would result in confusion and needless, disruptive litigation” ([Office of the Texas Governor, 2021, para. 2](#)). However, Gov. Abbott further added that “further changes to address these issues will allow for meaningful reform on this important matter, and I look forward to working with the House author to accomplish that goal.”

Texas would not be the first state to adopt legislation to resentence juveniles or provide more appropriate parole eligibility guidelines. Following *Miller*, juvenile resentencing has been integrated into the parole proceedings of numerous states across the nation. Most notable among these is Pennsylvania, which leads the country with 88% of individuals resentenced ([Daftary-Kapur & Zottoli, 2020](#)). Michigan successfully resentenced 52% of its juvenile lifers, and estimates show Louisiana has resentenced 15%–22% of their juvenile lifers³.

In 2017, Montclair State University conducted a study on those resentenced inmates formerly serving life in prison in Philadelphia, Pennsylvania. They found that of the 269 inmates examined, 49% were first-time offenders, 48% had one prior adjudication, and only 3% had more than two criminal offenses on their record ([Daftary-Kapur & Zottoli, 2020](#)). Moreover, this study documented the recidivism of the 174 individuals who were resentenced and released

and found that only 3.45% were rearrested; this can be compared to the 30% of persons convicted of homicide that reoffend within two years nationally. Finally, the study concluded that the economic impact of the release of all juvenile lifers would be approximately \$9.5 million in savings in correctional costs over the course of 10 years.

This study helps mitigate concerns that these individuals would be a public safety threat if released before serving 40 years. With such low rearrest rates, especially in comparison to adults eligible to receive parole sooner, disregarding the prospect for second look legislation seems negligent. This negligence has an effect not only on the inmate, as they are forced to stay incarcerated far longer than necessary, but also on the community, as it costs approximately \$25,000 per year per prisoner to care for these individuals in secure facilities ([Levin & Deason, 2021](#)). These costs, both tangible and intangible, necessitate reform.

Recommendation

To better align current parole eligibility provisions with advancements in both developmental research and recidivism outcomes from other states, Texas should pass second look legislation. This legislation should allow inmates serving a sentence for certain capital and first-degree felonies to become eligible for parole consideration when the actual calendar time served equals 20 years, or one-half of the sentence, whichever is less. After serving 20 years, individuals who are in prison for a crime committed as a juvenile would then be well into their 30s—meaning they have reached adult maturation and would be able to exhibit whether they have changed—while still preserving the integrity of the justice system by imposing punishment for the crimes committed. This change should also be retroactive, allowing adults currently serving time in prison for a crime committed as a juvenile to have the opportunity for earlier parole consideration.

Conclusion

Texas has the harshest parole eligibility guidelines for juvenile offenders of any state, which undermines a juvenile so sentenced a meaningful opportunity to reenter society. Most states have adjusted parole eligibility in response to advancements in research on an adolescent’s ability to mature and be meaningful contributors to society—and many have shown great success with extremely low recidivism.

Additionally, while tasked with a difficult decision, the parole board uses research-based parole guidelines and tools to assess each individual’s unique situation—taking

3 Louisiana does not track data on resentencing.

into account the likelihood inmates will successfully reenter society, if their release would pose a risk to public safety, and any victims or family who may be impacted by their release.

The goal of this reform is not to provide an escape from punishment for crimes committed by juveniles, but rather ensure the punishment is appropriate for both the crime *and* the offender. This change would not mandate the

automatic early release of a single individual but simply acknowledge that adolescents' decision-making abilities, as compared to adults, are underdeveloped, and a sooner opportunity for parole allows the board to take this fact into consideration on a case-by-case basis. With earlier parole eligibility, Texas can give adult juvenile offenders who have been rehabilitated a second chance to rebuild their lives and become meaningful contributors to society. ★

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About Right On Crime

Right On Crime is a national initiative of the Texas Public Policy Foundation supporting conservative solutions for reducing crime, restoring victims, reforming offenders, and lowering taxpayer costs.

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