TESTIMONY OF BRYAN A. STEVENSON

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Subcommittee on Crime, Terrorism and Homeland Security

Juvenile Justice Pipeline and the Road Back to Integration

Dear Members of Congress, My name is Bryan Stevenson, I am the founder and director of the Equal Justice Initiative, a non-profit law organization in Montgomery, Alabama.

I come before this Committee in support of proposals to strengthen protections for children who are arrested and accused of crimes in this country. I specifically urge this Committee to support a complete ban on life imprisonment without parole sentences imposed on children under the age of 18. Consistent with state trends around the country, United States Supreme Court precedent, and international law, such a ban would advance our understanding and care of children in our society.

Similarly, there is a need for new federal protections that create an enforceable ban on the placement of any child in any adult jail or prison in this country. Thousands of children are currently housed in adult facilities and suffer abuse, sexual violence and increased risk of suicide each day.

Finally, this Congress should adopt new laws that increase the age at which children can be prosecuted as adults for any crime in the federal system. In support of these proposals, I offer this testimony.

THE EQUAL JUSTICE INITIATIVE

EJI challenges the death penalty and excessive punishment, including excessive adult sentences imposed on children, and provides reentry assistance to formerly incarcerated individuals. For over three decades we have worked with communities that have been marginalized by poverty and discouraged by unequal treatment. EJI is committed to changing the narrative about race in America. EJI recently launched an ambitious national effort to create new spaces, markers, and memorials that address the legacy of slavery, lynching, and racial segregation, which shapes many issues today.

EJI provides research and recommendations to assist advocates and policymakers in the critically important work of criminal justice reform. EJI publishes reports, discussion guides, and other educational materials in support of efforts by policymakers to build healthier communities. Our work with children includes providing legal assistance to juveniles condemned to die in prison; challenging the placement of youth in adult jails and prisons; and challenging the prosecution of very young children as adults. This work has focused especially on young adolescents.

EJI has represented dozens of young adolescents all around the country in challenging their excessive adult sentences, as well as during resentencing

proceedings and at parole hearings. I was counsel for the petitioners before the United States Supreme Court in *Miller v. Alabama* (2012) 567 U.S. 460 [132 S.Ct. 2455, 183 L.Ed.2d 407], as well as *Sullivan v. Florida*, No. 08-7621, the companion case to *Graham v. Florida* (2010) 560 U.S. 48 [130 S.Ct. 2011, 176 L.Ed.2d 285]. These cases each involved young adolescents. EJI also filed an amicus brief in *Montgomery v. Louisiana* (2016) 136 S.Ct. 718 [193 L.Ed.2d 599], another case involving children sentenced to life without parole, which highlighted the cases of two young adolescents.

Our reentry work has also concentrated on the special needs of people who entered prison before the age of eighteen, who, because they have never lived outside of prison as adults, face unique challenges in rejoining society. EJI provides employment, daily supervision, counseling from licensed mental health professionals, and educational programming for clients who entered state prison as children.

ENDING EXCESSIVE PUNISHMENT OF CHILDREN

I. Science Has Demonstrated That Young Adolescents, Because of Their Developmental Status, Have Immature Judgment, Greater Vulnerability to Negative Influences, and a Heightened Capacity for Change.

Contemporary psychological, sociological, and neurological studies

converge[1] to demonstrate that children's changeability, immature judgment, underdeveloped capacity for self-regulation, vulnerability to negative influences and outside pressures, and lack of control over both their own impulses and their environment peak during the early teenage years. This is the onset of the crucial developmental period of adolescence, bringing radical transformations that include the stressful physical changes of puberty (increases in height and weight and sex-related physiology), followed later by progressive gains in capacity for reasoned, mature judgment, impulse control, and autonomy.[2]

A "rapid and dramatic increase in dopaminergic activity within the socioemotional system around the time of puberty" drives the young adolescent toward increased sensation-seeking and risk taking; "this increase in reward seeking precedes the structural maturation of the cognitive control system and its connections to areas of the socioemotional system, a maturational process that is gradual, unfolds over the course of adolescence, and permits more

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[1] The convergence of research across multiple disciplines makes this scientific consensus particularly strong. (See Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?* (2009) 64 Am. Psych. 739, 744.)

[2] Geier & Luna, *The Maturation of Incentive Processing and Cognitive Control* (2009) 93 Pharmacology, Biochemistry & Behav. 212, 212 (hereafter Geier & Luna); see also Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations* (2000) 24 Neuroscience & Biobehavioral Rev. 417, 434–436 [discussing radical hormonal changes in adolescence] (hereafter Spear).

advanced self-regulation and impulse control."[3] "The temporal gap between the arousal of the socioemotional system, which is an early adolescent development, and the full maturation of the cognitive control system, which occurs later, creates a period of heightened vulnerability to risk taking during middle adolescence."[4] "This imbalance . . . results in poor regulation of emotions and a tendency to focus on the immediate rewards of choices, while discounting long-term costs . . . increas[ing] inclinations to engage in risky behavior, including offending."[5]

These biological and psychosocial developments explain what is obvious to parents, teachers, and any adult who reflects back on his or her own teenage years: young teenagers lack the maturity, independence, and future orientation that adults, and even older teens, have acquired over the course of adolescence. While many 18-year-olds are starting to think about their future careers and families, younger teens are fixated on what video to post on their TikTok

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[3] Steinberg et al., *Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model* (2008) 44 Dev. Psych. 1764, 1764 (hereafter Steinberg, *Dual Systems Model*).

[4] Steinberg, *Adolescent Development and Juvenile Justice* (2009) 5 Ann. Rev. Clinical Psych. 459, 466 (hereafter Steinberg, *Adolescent Development*).

[5] Scott et al., *Brain Development, Social Context, and Justice Policy* (2018) 57 Wash. U. J. L. & Pol'y 13, 28–29 (hereafter Scott, *Justice Policy*); see also Shulman et al., *The Dual Systems Model: Review, Reappraisal, and Reaffirmation* (2016) 17 Dev. Cognitive Neuroscience 103, 106 [positing that "late adolescents are less biologically predisposed to risk taking than middle adolescents"] (hereafter Shulman).

accounts that day.[6] Among adolescents, young teens have the least capacity to imagine consequences, regulate their wildly shifting emotions, and resist peer pressure. Yet they also have the most capacity for change, precisely because they are at the beginning of the most intense period of rapid growth in their lifetimes.[7]

A. Young Adolescents Are Especially Susceptible to Risk-Taking Impulses and Negative Peer Influences.

Early teenagers' propensity for risk-taking exacerbates their decision-making difficulties. It is universally recognized that adolescence is characterized by risk-taking behavior; contemporary neurological science establishes that this is a function of physical brain development as well as a socially scripted phase of the passage from childhood to maturity.[8] In some ways, risk-taking is an essential part of adolescent development, because "increased sensation seeking

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[6] TikTok is a popular smartphone application for making and sharing short videos. (Herman, *TikTok is Rewriting the World*, N.Y. Times (Mar. 10, 2019), https://www.nytimes.com/2019/03/10/style/what-is-tik-tok.html.)

[7] Spear, *supra*, 24 Neuroscience & Biobehavioral Rev. at p. 428 ["[A]dolescence is second only to the neonatal period in terms of both rapid biopsychosocial growth as well as changing environmental characteristics and demands . . . ."]; see also *id.* at pp. 428–429 [finding that stress is elevated in early adolescents, incidence of depression is often highest, and teens experience sleep problems, great extremes in mood, and peak anxiety and self-consciousness].

[8] See, e.g., Steinberg, *Risk Taking*, *supra*, 16 Current Directions Psych. Sci. at p. 56-58; Geier & Luna, *supra*, 93 Pharmacology, Biochemistry & Behav. at p. 218; Kelley et al., *Risk Taking and Novelty Seeking in Adolescence* (2004) 1021 Annals N.Y. Acad. Sci. 27, 27.

. . . encourages adolescents to explore their environment and to develop a sense of identity and autonomy."[9] Neurodevelopmental studies[10] have suggested that heightened risk taking in adolescence is associated with greater activation of reward-sensitive brain regions that make "individuals more attentive, sensitive, and responsive to actual and potential rewards."[11]

Risk-taking behavior is so common in adolescence that researchers understand "criminal offending as a specific instance" during young adolescence of "the more general inclination of young adults to engage in risky activity."[12] For the purpose of understanding young adolescent behavior relative to that of adults, and even older teens, the critical observations are that (1) most adolescent risk-taking is a group phenomenon and (2) young adolescents are the

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[9] Scott, *Justice Policy*, *supra*, 57 Wash. U. J. L. & Pol'y at p. 21; see also Crone & Dahl, *Understanding Adolescence as a Period of Social-Affective Engagement and Goal Flexibility* (2012) 13 Nature Rev. Neuroscience 636, 642; Ellis et al., *The Evolutionary Basis of Adolescent Behavior: Implications for Science, Policy, and Practice* (2012) 48 Dev. Psych. 598, 601.

[10] In brain imaging studies, when presented with images of rewarding stimuli, such as smiling faces, adolescents gave a stronger response in reward-processing regions than children or adults did. (See Galvan et al., *Risk-Taking and the Adolescent Brain: Who is at Risk?* (2007) 10 Dev. Sci. F8, F11.) Other studies utilizing, for example, "self-report scales that assess characteristics such as thrill- or novelty-seeking, or behavioral tasks that assess responsiveness to rewarding stimuli (such as monetary rewards)" and "gambling tasks in which individuals must learn to discriminate between gambles that are likely to be rewarding . . . and those that are likely to be costly" have shown similar results. (Scott, *Justice Policy*, *supra*, 57 Wash. U. J. L. & Pol'y at pp. 22–23.)

[11] Scott et al., *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy* (2016) 85 Fordham L.Rev. 641, 646–647.

[12] *Id*. at p. 646.

most vulnerable to peer-group influence.

Parents, teachers, and observers of teenagers the world over know that social interactions and affiliations with peers take on an out-sized importance in adolescence. Teens spend about one-third of their waking hours talking with peers (but only 8% with adults).[13] While all adolescents are more peer-oriented than adults, research indicates that vulnerability to peer pressure, especially for boys, increases during early adolescence to an all-time high around age 14.[14] The need to fit in with the peer group—to impress peers with daredevil antics and smart-alecky comments—exerts enormous influence on the behavior of young adolescents, more so than during pre-adolescence or late adolescence.[15] Researchers have found that "a network of brain systems governing thinking about social relationships undergoes significant changes in adolescence in ways that increase individuals' concern about the opinion of other people, particularly peers."[16] During this period of development, teenagers are more sensitive to

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[13] Spear, *supra*, 24 Neuroscience & Biobehavioral Rev. at p. 420.

[14] Steinberg & Silverberg, *The Vicissitudes of Autonomy in Early Adolescence* (1986) 57 Child Dev. 841, 846, 848; Mann, *supra*, 12 J. Adolescence at pp. 267-68, 274; Steinberg, *Risk Taking*, *supra*, 16 Current Directions Psych. Sci. at p. 57; Reppucci, *Adolescent Development and Juvenile Justice* (1999) 27 Am. J. Cmty. Psych. 307, 318 (hereafter Reppucci).

[15] Steinberg, *Social Neuroscience*, *supra*, 28 Dev. Rev. at p. 92.

[16] Scott, *Justice Policy*, *supra*, 57 Wash. U. J. L. & Pol'y at p. 24; see also Blakemore, *Development of the Social Brain in Adolescence* (2012) 105 J. Royal Soc'y Med. 111, 112; Blakemore & Mills, *Is Adolescence a Sensitive Period for Sociocultural Processing?* (2014) 65 Ann. Rev. Psych. 187, 189.

praise and rejection than children or adults, "making them potentially more susceptible to peer influence, and responsive to threats."[17] This is arguably why teenagers are "more likely to offend in groups" than adults and "take more risks in the presence of peers than when they are alone or with an adult"—the increased awareness of peers makes "approval especially important in group situations."[18] The presence of peers increases risk-taking among teenagers even when they are given information about the likelihood of positive or negative outcomes.[19] Moreover, teenagers who are rejected by their peers often engage in risky behavior "to fit in with a group" that "may draw a teen to engage in behaviors, including illegal activity, even when they know better."[20]

Indeed, extreme vulnerability to peer influence (especially when it is to do something bad) is a defining characteristic of young adolescence, reflected in the fact that it is statistically aberrant for boys to refrain from minor criminal

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[17] Scott, *Justice Policy*, *supra*, 57 Wash. U. J. L. & Pol'y at p. 24; see also Dreyfuss et al., *Teens Impulsively React Rather than Retreat from Threat* (2014) 36 Dev. Neuroscience 220, 220; Guyer et al., *Probing the Neural Correlates of Anticipated Peer Evaluation in Adolescence* (2009) 80 Child Dev. 1000, 1000.

[18] Scott, *Justice Policy*, *supra*, 57 Wash. U. J. L. & Pol'y at p. 25.

[19] Smith et al., *Peers Increase Adolescent Risk Taking Even When the Probabilities of Negative Outcomes are Known* (2014) 50 Dev. Psych. 1564, 1567–1568.

[20] Cohen & Casey, *supra*, 18 Trends Cognitive Sci. at p. 64.

behavior during this period.[21] Peer pressure is so strong in young adolescence that "affiliation with antisocial peers is the factor most predictive of juveniles' involvement in criminal activity."[22]

Peer pressure heavily impacts young adolescents' decisions to offend because of the "dynamic interaction between a still-maturing individual and her social context."[23] Neurodevelopmental researchers have found that social environment greatly impacts the developing brains of young adolescents and heavily influences their decisions to take risks.

Critically, the tendency for young adolescents to engage in risk-taking behavior increases in emotionally and socially arousing contexts.[24] "In emotionally charged situations," adolescent brains are "even less capable of adequately regulating emotions and actions, resulting in a teen exercising less self-control in making a risky decision, even when he or she knows better."[25] So the combination of a negative environment, an adolescent's proclivity for reward-seeking, and an emotionally charged situation can lead to especially reckless

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[21] Spear, *supra*, 24 Neuroscience & Biobehavioral Rev. at p. 421; Reppucci, *supra,* 27 Am. J. Cmty. Psych. at p. 319.

[22] Scott, *Justice Policy*, *supra*, 57 Wash. U. J. L. & Pol'y at pp. 47–48.

[23] *Id.* at p. 13.

[24] Smith et al., *Impact of Socio-Emotional Context, Brain Development, and Pubertal Maturation on Adolescent Risk-Making* (2013) 64 Hormones & Behav. 323, 325–326.

[25] Cohen & Casey, *supra*, 18 Trends Cognitive Sci. at pp. 63–64.

decision-making.[26]

The added pressure of a threatening context or the presence of peers further undermines "rationality and contribut[es] to impulsive decisions."[27] Because risk-taking behavior can manifest in many ways, a teenager living in a "high-crime neighborhood with many antisocial peers is more likely to get involved in criminal activity" than "if he were a member of a close-knit and highly competitive basketball team, [where] the interaction of peer influence and reward-seeking might lead to the sort of risk-taking on the basketball court that is socially accepted."[28]

Young adolescents are in such an early developmental stage that their environment can influence them to the point that it "shape[s] the trajectory" of their lives.[29] The adolescent brain is "malleable" and "plastic," an adaptability that allows them to respond to their environment, and if their social environment encourages risk-taking, they are more likely to engage in those

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[26] Scott, *Justice Policy*, *supra*, 57 Wash. U. J. L. & Pol'y at p. 37.

[27] *Ibid.*; see also Cohen et al., *When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts* (2016) 27 Psych. Sci. 549, 559–560; Forbes et al., *Neural Systems of Threat Processing in Adolescents: Role of Pubertal Maturation and Relation to Measures of Negative Affect* (2011) 36 Dev. Neuropsychology 429, 446-47; Kassin, *The Psychology of Confessions* (2008) 4 Ann. Rev. L. & Soc. Sci. 193, 204.

[28] Scott, *Justice Policy*, *supra*, 57 Wash. U. J. L. & Pol'y at pp. 16–17; see also Steinberg, *The Influence of Neuroscience on U.S. Supreme Court Decisions Involving Adolescents' Criminal Culpability* (2013) 14 Nature Rev. Neuroscience 513, 513–518.

[29] Scott, *Justice Policy*, *supra*, 57 Wash. U. J. L. & Pol'y at p. 17.

behaviors.[30]

Social context is as out of a teenager's control as is "other aspects of brain development, including the inclination toward reward-seeking or the tendency to make impulsive choices when aroused."[31] Young adolescents are unable to extricate themselves from social contexts—whether it be their homes, neighborhoods, or schools—where they are likely to get into trouble or get involved in criminal behavior.[32] Denied the rights and privileges that accrue at age 18, all adolescents have less ability than adults to free themselves from morally toxic or dangerous environments. Still, the younger teens are worst off. State and federal laws meant to protect young teens from exploitation and from their own underdeveloped sense of responsibility—including restrictions on driving, working, and leaving school—operate conversely to disable adolecents from escaping an abusive parent, a dysfunctional or violent household, or a dangerous neighborhood.

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[30] *Ibid.*

[31] *Id.* at p. 63.

[32] Steinberg & Scott, *Less Guilty by Reason of Adolescence* (2003) 58 Am. Psych. 1009, 1014; Scott & Steinberg, *Blaming Youth* (2003) 81 Tex. L.Rev. 799, 817. The U.S. Supreme Court has adopted this position in its Eighth Amendment opinions. (See *Roper v. Simmons* (2005) 543 U.S. 551, 569 [125 S.Ct. 1183, 1195, 161 L.Ed.2d 1]; *Miller v. Alabama* (2012) 567 U.S. 460, 471 [132 S.Ct. 2455, 2464, 183 L.Ed.2d 407]; *Montgomery v. Louisiana* (2016) 136 S.Ct. 718, 733 [193 L.Ed.2d 599].)

B. Young Adolescents Have Not Yet Begun to Imagine Their Futures and Thus Have the Capacity to Change and Mature.

Young teens, to a much greater extent than adults or older teens, are unable to fully envision who they want to be or what they want to achieve in the future. The flip side of young adolescents' underdeveloped sense of self is that they have, relative to older individuals, more potential to change and develop positive character traits as they grow up. Just as a young adolescent can be particularly susceptible to negative influences, the malleability and plasticity of their still-developing brains means that young teens are also especially responsive to positive interventions.[33]

A typical teenager who acts irresponsibly in reaction to a thrilling impulse or peer pressure is not irretrievably depraved or permanently flawed. Nothing about his character is permanent, and he has years of development ahead, during which he can (and, in most cases, will) grow into a moral, law-abiding adult.[34]

> Dozens of longitudinal studies have shown that the vast majority of adolescents who commit antisocial acts desist from such activity as they mature into adulthood and that only a small percentage—between five and ten percent, according to most

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[33] Scott, *Justice Policy*, *supra*, 57 Wash. U. J. L. & Pol'y at p. 63.

[34] Steinberg, *Risk Taking in Adolescence: What Changes and Why* (2004) 1021 Annals N.Y. Acad. Sci. 51, 55.

> studies—become chronic offenders. Thus, nearly all juvenile offenders are adolescent limited. . . . [M]ost juvenile offenders mature out of crime (and [] most will desist whether or not they are caught, arrested, prosecuted or sanctioned).[35]

Most teens grow out of their risky behavior as a part of the maturation process.[36] Typically, the ability to resist peer influence and to regulate internal impulses matures in middle or late adolescence.[37] Moreover, at the same time that an adolescent's brain is developing, "reducing impulsivity and the inclination to engage in risk-taking," his social context is also changing because his friends' and peers' brains are developing too, and thus "he is no longer surrounded by sensation-seeking individuals, inclined, as he was, to make impulsive choices when emotionally aroused."[38]

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The U.S. Supreme Court has recognized that adolescents, as a class, lack the maturity, autonomy, and self-governing capacity of adults. (*Miller v.*

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[35] Steinberg, *Adolescent Development, supra,* 5 Ann. Rev. Clinical Psych. at p. 66.

[36] Spear, *supra*, 24 Neuroscience & Biobehavioral Rev. at p. 421; Reppucci, *supra*, 27 Am. J. Cmty. Psych. at p. 319.

[37] Cohen & Casey, *supra*, 18 Trends Cognitive Sci. at p. 64 ["[D]iminished self control is transient and will continue to develop as underlying circuitry becomes fine tuned with experience and time."].

[38] Scott, *Justice Policy*, *supra*, 57 Wash. U. J. L. & Pol'y at p. 45; see also Sweeten et al., *Age and the Explanation of Crime, Revisited* (2013) 42 J. Youth & Adolescence 921, 935.

Alabama (2012) 567 U.S. 460, 471 [132 S.Ct. 2455, 2464, 183 L.Ed.2d 407]; *Roper v. Simmons* (2005) 543 U.S. 551, 569-71 [125 S.Ct. 1183, 1195-96, 161 L.Ed.2d 1]; *Eddings v. Oklahoma* (1982) 455 U.S. 104, 115-16 [102 S.Ct. 869, 877, 71 L.Ed.2d 1].) As is readily observable and widely accepted, the youngest adolescents are the least mature, most susceptible to internal impulses and external influences, and have the greatest capacity for change.[39]

II. POLICIES MUST CONFORM TO THE NEEDS OF CHILDREN AND PUBLIC SAFETY

A. The Characteristics of Young Adolescents Demonstrate that Keeping These Youth In Juvenile Court Promotes Public Safety, Emphasizes Rehabilitation, and Reduces Wasteful Spending on Prisons.

As discussed at length above, young adolescents have tremendous capacity for rehabilitation. Indeed, one of the most salient features of young adolescence is an enormous potential for change. Young teens are so early in their developmental trajectory that nearly everything about them has yet to be determined. As a result, not only are young adolescents capable of change, they *will* change as an inevitable part of growing up.[40] As the Supreme Court has

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[39] See, e.g., Steinberg et al., *Age Differences in Future Orientation and Delay Discounting* (2009) 80 Child Dev. 28, 28, 39–40; Steinberg & Monahan, *Age Differences in Resistance to Peer Influence* (2007) 43 Dev. Psych. 1531, 1540; Steinberg, *Dual Systems Model*, *supra*, 44 Dev. Psych. at pp. 1775–1776.

[40] Spear, *supra*, 24 Neuroscience & Biobehavioral Rev. at p. 421; Seagrave & Grisso, *supra*, 26 Law & Hum. Behav. at p. 229;

recognized, "the relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside." (Roper v. Simmons (2005) 543 U.S. 551, 570 [125 S.Ct. 1183, 1196, 161 L.Ed.2d 1 [quoting Johnson v. Texas (1993) 509 U.S. 350, 368 [113 S.Ct. 2658, 2669, 125 L.Ed.2d 290]].) Young adolescents' heightened capacity for change indicates that their treatment in the juvenile system furthers the intent of appropriate care for children and public safety.

First, because young adolescents are especially likely to be rehabilitated, keeping these youth in the juvenile system is consistent with the goal of emphasizing rehabilitation. Young adolescents, because they still have so much growing to do, are best able to take advantage of the opportunities offered by the juvenile system, and are especially susceptible to the positive influences that they can provide.[41]

Further, because young adolescents are still changing and changeable, it also promotes public safety for them to remain in the juvenile system. While theoretically, in some circumstances, public safety might be served by harsh

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Reppucci, *supra*, 27 Am. J. Cmty. Psych. at p. 319.

[41] See *supra* Section I.C; see also Scott, *Justice Policy*, *supra*, 57 Wash. U. J. L. & Pol'y at p. 61.

sentences that deter criminal behavior, the effectiveness of adult sentencing as a deterrent for young adolescents is questionable due to their immature development. As the Supreme Court has recognized, "'the same characteristics that render juveniles less culpable than adults'—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment." (*Montgomery v. Louisiana* (2016) 136 S. Ct. 718, 733 [193 L.Ed.2d 599] [quoting *Miller v. Alabama* (2012) 567 U.S. 460, 472 [132 S.Ct. 2455, 2465, 183 L.Ed.2d 407]). Young adolescents, who have the greatest deficits in future orientation and capacity to weigh risks and consequences (see *supra* Section I.A), are especially unlikely to take potential adult punishment into account to modify their behavior.

Public safety is best served by a system that reduces recidivism so fewer crimes are committed in the future. Here again, because of young adolescents' innate capacity for change, these youth are especially capable of rehabilitation. Indeed, several studies have shown that teens who are tried as adults have higher rates of recidivism than those who remain in juvenile court, even after controlling for other factors, including the seriousness of the offense.[42]

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[42] Redding, *Juvenile Transfer Laws: An Effective Deterrent to Deliquency?* (2010) Office of Juvenile Justice & Delinquency Prevention, 5–8; Fagan et al., *Be Careful What You Wish For: Legal Sanction and Public Safety among Adolescent Felony Offenders in Juvenile and Criminal Court* (2007) 69–72; Myers,

Researchers have also found that juvenile experiences in correctional facilities "can have a critical impact on whether [adolescents] successfully navigate the transition to productive adulthood."[43] Heightened plasticity in the adolescent brain can make "the brain susceptible to positive influence" but can equally make "it vulnerable to toxic experiences."[44] For young adolescents involved in the criminal legal system, correctional facilities are the social contexts in which they experience a critical developmental period.[45] If their correctional experiences are "harmful," particularly if adolescents are exposed to violence and social isolation, incarceration is "likely to be particularly damaging at this stage of life."[46]

A positive "maturation process" during adolescence depends on several conditions of a teenager's social context: (1) the presence of an "authoritative" adult who provides guidance and structure, (2) membership within a "pro-social peer group," and (3) participation in activities that "promote autonomous

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The Recidivism of Violent Youths in Juvenile and Adult Court: A Consideration of Selection Bias (2003) 1 Youth Violence & Juv. Just. 79, 80.

[43] Scott, *Justice Policy*, *supra*, 57 Wash. U. J. L. & Pol'y at p. 57.

[44] *Id.* at p. 59.

[45] *Id.* at p. 70.

[46] *Id.* at p. 59.

decision-making and critical thinking."[47] Juvenile correctional facilities can create these conditions by "foster[ing] the relationship between the young offender and one or more authoritative adults," limiting the influence of "antisocial peers" and encouraging engagement with "pro-social peers," and teaching social, educational, and vocational skills so that adolescents can make their own decisions and think critically.[48]

These conditions are far less likely to exist in adult prisons. In adult correctional facilities, the relationships between guards and the incarcerated have been described as "hostile and distant" and adult inmates may feel less responsible "to care for and provide positive adult guidance to juvenile prisoners."[49] Moreover, adolescents serving sentences in adult prisons are "surrounded by antisocial peers and adults" during a lot of "unstructured time."[50] These experiences in the correctional setting can determine the trajectory of the adolescent offender's future life.[51]

While many young adolescents tried as adults can and do overcome these

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[47] *Id.* at p. 57.

[48] *Id.* at pp. 71–72.

[49] *Id.* at p. 60.

[50] *Ibid.*

[51] *Id.* at p. 61.

obstacles to become productive citizens, the evidence shows that the juvenile system achieves this goal far more successfully. Therefore, keeping young adolescents in the juvenile system is consistent with protecting children and promoting public safety.

For the same reasons, it is also not necessary to waste taxpayer dollars on incarcerating young teens for decades in the adult system, and prohibiting transfer of young adolescents is also consistent with other federal laws and research.

In light of the scientific and societal consensus on the vulnerabilities and disabilities of young adolescents, keeping young adolescents in the juvenile justice system is consistent with and furthers public safety by emphasizing rehabilitation, and reducing costs for the adult prison system.

The needs of children in our criminal justice system have long been undermined by false narratives about the status and vulnerabilities of children. Policies that embrace the misguided view that some children aren't children must be changed to promote healthy communities that reflect what science, best practices in the field and most parents can clearly recognize.