

PAROLE BOARD CONSIDERATIONS FOR INDIVIDUALS SENTENCED IN ADULT COURT FOR OFFENSE(S) COMMITTED UNDER THE AGE OF 18

This information card is a resource for parole board members at hearings in which an inmate who was sentenced for offense(s) committed under the age of eighteen is being considered for parole. This card provides a brief synopsis of relevant U.S. Supreme Court decisions and related considerations for parole hearings.

YOUTH ARE CONSTITUTIONALLY & DEVELOPMENTALLY DIFFERENT FROM ADULTS

- In four cases, the U.S. Supreme Court has established that “children [under 18] are constitutionally different from adults for purposes of sentencing.” *Miller v. Alabama*, 132 S.Ct. 2455, 2464 (2012); *see also Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016).
- The human brain does not fully develop until a person reaches his or her mid-20s, and the parts of the brain that develop last are the regions that control a person’s ability to weigh risks and consequences, plan ahead, make complicated decisions, and demonstrate self-control. *See* Laurence Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?*, *Issues in Science and Technology* (Spring 2012).
- Therefore these “distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.” *Miller*, 132 S.Ct. at 2465.
- These constitutional and developmental differences apply to all youthful offenders, regardless of the offense(s). All four Supreme Court cases involved serious violent offenses, and three of the four cases involved homicides.

YOUTH AT THE TIME OF THE OFFENSE WEIGHS IN FAVOR OF PAROLE

- Because adolescents are constitutionally and developmentally different from adults, youth at the time of the offense(s) is a mitigating characteristic weighing in favor of release.
- Brain science research shows that “ordinary adolescent development diminishes the likelihood that a juvenile offender [who commits a serious crime] forever will be a danger to society.” *Montgomery*, 136 S.Ct. at 733.
- “The relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside. . . . For most teens, risky or antisocial behaviors are fleeting; they cease with maturity as individual identity becomes settled.” *Roper*, 543 U.S. at 570, citing Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *Am. Psychologist* 1009 (2003).
- Youthful mitigating attributes at the time of the offenses(s) identified by the Supreme Court relevant to parole consideration include, but are not limited to, lack of maturity and underdeveloped sense of responsibility; vulnerability to negative influences and outside pressures; age and its hallmark features, including impetuosity and failure to appreciate risks and consequences; and capacity for change. *See Miller*, 132 S.Ct. at 2464.

INMATES SENTENCED AS YOUTH MUST HAVE A MEANINGFUL OPPORTUNITY FOR RELEASE

- The parole board is responsible for providing an inmate sentenced for offense(s) committed as youth “a meaningful opportunity for release . . . to demonstrate that the bad acts he committed as a teenager are not representative of his true character.” *Graham*, 560 U.S. at 79.
- To ensure a meaningful opportunity for release, the parole board should consider the unique characteristics of youth at the time of the offense(s) and the dynamic factors of growth in an inmate’s life, not just the static facts of the offense(s). *See* page 2 for examples of youth-specific parole considerations.

**EXAMPLES OF PAROLE CONSIDERATIONS FOR INDIVIDUALS
SENTENCED IN ADULT COURT FOR OFFENSE(S) COMMITTED UNDER THE AGE OF 18**

EXAMPLES OF MITIGATING FACTORS AT TIME OF THE OFFENSE(S)

- Reduced culpability due to age and capacity for change
- Immaturity
- Impetuosity
- Failure to appreciate risks and consequences
- Incompetencies associated with youth, including inability to deal with police officers, prosecutors, and/or defense counsel
- Intellectual capacity
- Family and home environment
- Inability to control surroundings
- Trauma history
- School and special education history
- Susceptibility to familial and/or peer pressures
- Any other mitigating factors or circumstances

EXAMPLES OF AN INMATE'S POSITIVE CHANGE DURING INCARCERATION

- Demonstrated growth and maturity, including remorse
- Availability and completion of prison programming
- Academic and/or vocational achievements
- Prison record after the age of twenty-five, when the youthful offender has biologically matured into an adult
- Positive relationships with correctional staff and other inmates
- Other positive personal relationships
- Reentry plan
- Any other examples of positive change during incarceration