**Submission by Reprieve to the Committee on the Rights of the Child on the Draft revised General Comment No. 10 (2007) on children’s rights in juvenile justice**

**08 January 2019**

**Introduction**

Reprieve is a legal services charity based in London, which provides free legal and investigative support to persons facing the death penalty around the world. Reprieve bases this submission on Articles 37 and 40 of the United Nations Convention on the Rights of the Child (“**CRC**”).

**Upholding the prohibition on capital punishment for persons under 18**

The prohibition on the death penalty for persons under 18 is universally accepted. No child should be subject to capital trial and States parties should ensure that no child can be subject to the death penalty under proceedings of any form. The juvenile justice laws of States parties should provide for the absolute prohibition of the death penalty for juvenile offenders in accordance with various international law statutes. This prohibition applies to the imposition of a death sentence as well as execution. The European Court of Human Rights has held that prolonged periods of time spent on death row awaiting execution violates the international legal principles of absolute prohibition of cruel inhuman and degrading treatment, and is violative of several international legal conventions.[[1]](#endnote-1) The special rules for juvenile justice should be geared towards productive reintegration of the child into society. The application of the death penalty on children is anathema to the overriding objective of the CRC to serve the child’s best interests through productive reintegration.

However, a number of States party to the CRC retain the death penalty and children in these States remain subject to capital punishment in breach of Article 37(a) and Article 6 CRC. It is therefore incumbent on the Committee on the Rights of the Child **(“the Committee”)** to assist retentionist State parties in implementing the provisions of the CRC, by ensuring that the prohibition on capital punishment for all persons under 18 at a minimum is reflected holistically and comprehensively in all aspects of the revised draft of General Comment No. 10 (2007) Comment.

To that end, the revised draft of General Comment No. 10 (2007) should incorporate upholding the prohibition at particular junctures, including:

Paragraph 4 on Objectives:

* To provide States parties with guidance and recommendations for the content of this comprehensive juvenile justice policy, with special attention to prevention of juvenile delinquency, the introduction of alternative measures allowing for responses to juvenile delinquency without resorting to judicial procedures, and for the interpretation and implementation of all other provisions contained in articles 37 and 40 of CRC, **with particular regard to the complete abolition of capital punishment for children under all circumstances;**

Paragraph 13, On Dignity should include the following:

* Treatment that takes into account the child’s age and promotes the child’s reintegration and the child’s assuming a constructive role in society. This principle must be applied, observed and respected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies all the way to the implementation of all measures for dealing with the child. It requires that all professionals involved in the administration of juvenile justice be knowledgeable about child development, the dynamic and continuing growth of children, what is appropriate to their well-being, and the pervasive forms of violence against children; this includes upholding the prohibition on the application of the death penalty on juveniles and to refer all children to the relevant, juvenile justice system where appropriate to ensure that no child is subject to a capital trial under any circumstance.

Paragraph 97, On Awareness Raising should include:

It is essential for the quality of the administration of juvenile justice that all the professionals involved, inter alia, in law enforcement and the judiciary receive appropriate training on the content and meaning of the provisions of CRC in general, particularly those directly relevant to their daily practice. This training should be organized in a systematic and ongoing manner and should not be limited to information on the relevant national and international legal provisions. It should include information on, inter alia, the social and other causes of juvenile delinquency, psychological and other aspects of the development of children, with special attention to girls and children belonging to minorities or indigenous peoples, the culture and the trends in the world of young people, the dynamics of group activities, and the available measures dealing with children in conflict with the penal law, in particular measures without resorting to judicial proceedings (see chapter IV, section B, above). **In countries that retain the death penalty, this training must include upholding the prohibition on capital punishment on children with an emphasis on implementing the provisions of juvenile justice to ensure no child is subject to a charge which can carry the death penalty.**

**Increase the minimum age of criminal responsibility**

There is widespread consensus that responsibility should be separated from criminalisation and young offenders should not be subject to punitive criminal law practices. Experts agree that all State parties should aim progressively to increase the minimum age of *criminal* responsibility to at least 18 years and develop innovative and rehabilitative systems for responding to juvenile offenders below that age, with a genuine emphasis on their education, rehabilitation and subsequent reintegration into society.[[2]](#endnote-2)

In a number of States Parties, Reprieve assists persons under the age of 18 sentenced to death and facing execution. These children are above the minimum age of criminal responsibility in the relevant jurisdiction and have thereby been brought into the ambit of the criminal justice system and juvenile justice system. These children have either been sentenced to death under laws which allow the death penalty for children in certain circumstances or have been misidentified as adults and tried in the adult system.

For example, in Saudi Arabia, at least eight men under the age of 18 at the time of offence have been sentenced to death and face imminent execution, despite their age being known to the authorities, at a time when there was no codified minimum age of criminal responsibility.[[3]](#endnote-3)

In Egypt, a low age of criminal responsibility and a subsequent distinction placed on children above the age of 15 enable juveniles to be sentenced to death and face mass trials with adult offenders, rendering the juvenile system ineffective.[[4]](#endnote-4) Under Egypt’s Child Law 12/1996, although a juvenile is defined as a child who has not reached the age of 18 calendar years, there is a further division on children aged 15 years or older. Article 122 of the Child Law grants jurisdiction to the Criminal Court or the Supreme State Security Court to adjudicate over such children in trials alongside adult offenders, thereby allowing for the imposition of criminal punishments including the death penalty which should be absolutely prohibited. An example of Reprieve’s work which highlights the lack of proper mechanisms to ensure that juveniles are not subject to capital trial procedures is the case of Mr. Ahmed Saddouma. Mr Ahmed Khaled Abdelmohsen Mostafa Saddouma is an Egyptian national sentenced to death in a mass trial for offences he is alleged to have committed when he was 17 years old. The authorities were notified of his juvenility; however, no steps were taken to either sever the indictment and transfer him to a juvenile court circuit, or amend the indictment to exclude capital punishment in his case. On 19 February 2018, Mr. Saddouma was among four sentenced to death in a mass trial of 29 persons, with clear disregard to his status as a juvenile. His appeal is currently pending.[[5]](#endnote-5)

In Pakistan, although juveniles under the age of 18 cannot be sentenced to death, however, there have been challenges to the exclusion and its constitutionality, and the status of the exclusion is not certain.[[6]](#endnote-6)

Juvenile offenders continue to be sentenced to death and executed[[7]](#endnote-7) in clear violation of the CRC and ICCPR. Additionally, there is no set process under the Pakistan Penal Code or the Code of Criminal Procedure to determine the age of a prisoner at the time he was convicted.[[8]](#endnote-8) The matter of retrospectively determining a convict’s age at the time of his or her arrest is also more complex due to the fact that many prisoners are held on remand in jails for long periods of time in Pakistan since their initial arrest.[[9]](#endnote-9) The lack of birth registration is especially a problem for juveniles born in rural areas, or orphaned at a young age – as they are less likely to have a proof of age.

In Malawi since 2015, courts have conducted 156 resentencing hearings for prisoners who had received mandatory death sentences prior to the striking down of the mandatory death penalty. When resentencing prisoners in this group who were children at the time of the offence, the Malawi High Court held that the imposition of the death penalty on such a child is a breach of constitutional rights so grave that the appropriate remedy is immediate release. Awaiting execution on death row has a profound impact, especially on juveniles. One such juvenile, Gray Zimba, was tried as an adult for an alleged offence that was committed when he was 17, and sentenced to the mandatory death penalty. In his resentencing hearing the judge ordered his immediate release. In his interview with a Malawi newspaper, he discussed the mental torture he faced on a daily basis while on death row.[[10]](#endnote-10)

The Committee should strive to ensure that States parties uphold the principles enshrined within the CRC, and that no juvenile is sentenced to death, held on death row or executed.

In jurisdictions where there is a lack of conclusive evidence to determine the age of the child or where the law provides for children to be tried with adults, the child, who may be an adolescent over the minimum age of criminal responsibility as set in that jurisdiction but under the age of 18, may be forced into the adult criminal justice system and risk facing the death penalty and execution.

In jurisdictions where there is a lack of documentary evidence relating to age, it is essential that the child should have the benefit of the doubt and the burden of proof should be on the prosecution to prove the age of the child. In jurisdictions which provide for children to be tried with adults in some circumstances, the law should be amended to prohibit this. Where the child is held to be a juvenile, he should be subject to the juvenile justice system, which should be separate from the criminal justice system, and the imposition of the death penalty absolutely prohibited.

The Committee should encourage States parties to ensure that the minimum age of criminal responsibility should be considered as a vehicle to uphold the absolute prohibition on the death penalty. A low minimum age of criminal responsibility increases the pool of people who are brought within the scope of the criminal justice and juvenile justice system and are thereby at risk of being tried with adults and sentenced to death.

To that end, the revised draft of General Comment No. 10 (2007) should be amended as follows:

Objectives should include:

“To ensure that a juvenile offender is not stigmatized under a criminal law system and is treated with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedom of others and which take into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.”

Paragraph 30 of the revised draft of General Comment No. 10 (2007) should be amended to state that:

“The minimum age of criminal responsibility is the age below which children are considered by law not to have the capacity to infringe the criminal law. Children who commit an offence at an age below that minimum cannot be held responsible in a criminal law process. Children at or above the minimum age at the time of the commission of an offence but younger than 18 years (see paragraph xx below) can be formally charged and subject to juvenile justice procedures which are not punitive in nature. However, these procedures, including the final outcome, must be in full compliance with the principles and provisions of the Convention as elaborated in the present general comment. The Committee reminds states parties that the relevant age is the age at the time of the commission of the offence.”

Paragraph 35 of the revised draft of General Comment No. 10 (2007) should be amended with the following addition at its end:

“Children under the juvenile system shall not be subject to capital trial. The death penalty shall not be imposed by States parties under any circumstances for offences committed by persons at the very least below eighteen (18) years of age.”

Although the revised draft of the General Comment addresses the issue of age determination, the same has not been properly implemented, especially as in several States parties, the child is often unable to provide documentary proof to support his claim due to a lack of state mechanisms to assist him. General Comment No. 3 on the African Charter on Humans and Peoples’ Rights is a good example of the way forward in this regard. Paragraph 24 thereof provides that in States which retain capital punishment, “the death penalty shall not be imposed for crimes committed by children, and the burden of proof rests upon the State to prove the age of the defendant”[[11]](#endnote-11) (*emphasis supplied*).

The present draft revised version of the General Comment should also be amended to include a similar provision, in order to ensure that in each case where the age of the juvenile is in dispute, the burden of proof is on the prosecution to establish that the defendant is not a juvenile, and the same should be without any reasonable doubt. In all circumstances, benefit of doubt must be given to the person claiming to be a juvenile, even if the defendant is not able to produce evidence to that effect.

**The upper age limit of juvenile justice (or age of criminal majority)**

Article 1 of CRC defines a child as a human being below the 18 years, unless under the law applicable to the child, majority is attained earlier. States parities that retain the death penalty may rely on Article 1 CRC to adopt either a lower age of majority which allows for persons below the age of 18 to be subject to capital punishment, or to allow for discretion in determining whether a child has attained the age of criminal majority, thereby allowing the application of the death penalty even where the child has not yet attained 18.

With developments in science, recent studies show that certain brain structures and systems, including those involved with higher-order cognition and self-regulation, continue to develop and mature well into an individual’s mid-twenties.[[12]](#endnote-12) The Supreme Court of Kentucky in its recent decisions in *Commonwealth v. Bredhold*, declared Kentucky’s death penalty statute as unconstitutional as applied to youth who were under the age of 21 years, highlighted that individuals in their late teens and early twenties are less mature than older adults in several ways, including a reduced ability to control impulses and consider future consequences, underestimating risk, and emotional and social immaturity. Therefore, they cannot be sentenced to the death penalty.[[13]](#endnote-13) Brain science demonstrates that the late teens and early twenties is a period of the most marked neuroplasticity of the brain, suggesting that individuals within this age group have a strong potential for demonstrating behavioural change.[[14]](#endnote-14) Thus, extensive scientific research has clearly demonstrated that older teenagers and young adults, similar to juveniles, are more capable of change than adults, and their actions are less likely to be evidentiary of an “irretrievably depraved character”,[[15]](#endnote-15) thereby warranting special consideration in criminal sentencing. Brain mutations continue into an individual’s twenties as per several academic studies.[[16]](#endnote-16)

In *Roper v. Simmons*, the American Supreme Court recognized that normative developmental behaviors generally lessen as youth mature and become less likely to reoffend as a direct result of the maturational process.[[17]](#endnote-17) In subsequent cases, the Court also recognized that this maturational process is a direct function of brain growth, citing research showing that the frontal lobe, home to key components of circuitry underlying “executive functions” such as working memory, planning, and impulse control, is among the last areas of the brain to mature.[[18]](#endnote-18) Scientific research since *Roper* has proved that profound neurodevelopmental growth continues even into a person’s mid to late twenties.[[19]](#endnote-19) A longitudinal study sponsored by the National Institute of Mental Health concluded that individuals’ brains are not fully mature or developed until at least 25 years of age.[[20]](#endnote-20) Additionally, research has demonstrated that youth are more likely than adult offenders to be wrongfully convicted of a crime.[[21]](#endnote-21) Specifically, an analysis of known wrongful conviction cases in USA found that individuals under the age of 25 are responsible for 63 percent of false confessions.[[22]](#endnote-22) In light of this brain development research, and the propensity of young adolescents to make false confessions, young offenders are more vulnerable than adult offenders and in need for greater protection.[[23]](#endnote-23)

The death penalty should therefore be absolutely prohibited in cases involving persons aged twenty-five years or below.

The American Bar Association in its recent paper, emphasizes the need to address the issue of late adolescence and the death penalty because of the overwhelming legal, scientific and societal changes that have taken place in the last three decades. In light of scientific research showing newly understood similarities between juvenile and late adolescent brains, as well as the evolution of the law on capital punishment, individuals aged 25 years or younger at the time of the alleged commission of an offence should be exempted from capital punishment.[[24]](#endnote-24)

It is incumbent upon the Committee to reclassify young adults up to the age of 25 as juveniles and ensure the absolute prohibition of the death penalty on any person aged 25 years or below, given the reduced culpability, greater vulnerability, and greater capacity for change of young adults. States parties should provide their juvenile justice systems with tools in order to ensure that young offenders aged 25 years or below are treated with a view towards their productive re-assimilation into society and without a mandate of punitive incarceration.

To that end, paragraph 37 of the revised draft of the General Comment No. 10 (2007) should be amended to state that:

“The upper age limit of the juvenile justice system / criminal majority should be increased to 25 years of age by all States parties. No person under the age of 25 years at the time of the alleged commission of an offence should be subject to criminal procedures. States parties should ensure an absolute prohibition on the application of the death penalty to persons aged 25 years or below.

Every person below the age of 25 years at the time of the alleged commission of an offence has the right to be treated in accordance with the rules of juvenile justice, in a specific and specialized system different from the criminal one applicable to adults.”

This is also in line with the Beijing Rules, which recognize that in general, there exists a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities such as civil majority, marital status etcetera.[[25]](#endnote-25) Several States parties have fixed ages between 21 and 26 for various civil society benefits.[[26]](#endnote-26) The same should be taken into account by States parties in fixing the age of criminal majority as well. Several European countries have adopted broad approaches to the treatment of late adolescents alleged to be in conflict with the law. In States parties including Finland, England, Germany, France, Italy, Sweden and Switzerland, late adolescence is a mitigating factor and allows young offenders to receive similar sentences and rehabilitative correctional housing as their peers below the age of 18.[[27]](#endnote-27)

It is therefore necessary to increase the age of criminal majority to 25 years. In light of the great scope of rehabilitation of such offenders, the Committee should encourage States parties to ensure an absolute prohibition of the death penalty on young offenders below the age of 25 years at the time of the alleged commission of an offence.

Paragraph 45 of the revised draft of the General Comment should be amended with the following addition at the end:

“No child below the age of **at least** 18 and up to 25 years at the time of committing the offence should be subject to capital sentencing procedures. States parties should ensure that the imposition of the death penalty is absolutely prohibited in such cases.

Further, in cases where a child aged 25 years or below commits an offence together with an adult of a group of adults, he should be tried exclusively under the juvenile justice system with a focus on rehabilitation and not retribution, irrespective of the conditions reserved for adults. No child aged 25 years or below should be subject to the criminal law procedures that may be applicable to the accompanying adult or group of adults.”

Paragraph 47 of the revised draft of the General Comment should be amended to state that:

“In cases where a child under the age of 25 years commits an offence together with an adult or a group of adults, the proceedings and provisions of the specialized regime of the juvenile justice system exclusively apply to the child, irrespective of the conditions reserved for adults. No child should be subject to capital trial or criminal law procedures that may be applicable to the accompanying adult or group of adults.”

Accordingly, at a minimum, Paragraph 75 should be amended to state the following:

“Article 37 (a) of CRC reaffirms the internationally accepted standard (see for example article 6 (5) of ICCPR) that the death penalty cannot be imposed for a crime committed by a person who at that time was under 18 years of age. Although the text is clear, there are States parties that assume that the rule only prohibits the execution of persons below the age of 18 years. However, under this rule the explicit and decisive criteria is the age at the time of the commission of the offence. It means that a death penalty may not be imposed for a crime committed by a person under 18 regardless of his/her age at the time of the trial or sentencing or of the execution of the sanction**. Further, there is developing consensus to support extending the prohibition on capital punishment on juveniles to persons up to the age of 21 at the very least. Therefore, retentionist countries must clearly codify the prohibition on the death penalty for all persons who have not yet attained the age of 18 at the time of committing the offence at a minimum.**”

**Need to impose obligations on states parties in cases of miscarriage of justice**

In cases where a juvenile offender is wrongfully tried under criminal law, or wrongfully convicted, especially where such offender is sentenced to death, it should be the obligation of the State parties to ensure immediate release of such offender. The imposition of the death penalty on any juvenile is a breach of constitutional rights so grave that the only appropriate remedy is for the State party to ensure an immediate release of the juvenile and award adequate compensation. Malawi is a leading example of a State which ensures that juveniles who have suffered such grave miscarriage of justice are immediately released. Article 14(6) of the ICCPR provides for compensation to be awarded to the person who has suffered from a miscarriage of justice.[[28]](#endnote-28) The Committee should ensure that the issue of miscarriage of justice is included in the revised General Comment, and States parties are held accountable under the same.

Accordingly, a new paragraph should be added after Paragraph 81 to state the following:

“In cases of wrongful conviction, or where the juvenile offender’s final conviction has been reversed by way of discovery of a new fact or facts which show a miscarriage of justice, States parties should compensate the juvenile as per law. States parties must ensure an absolute prohibition of the death penalty on juvenile offenders. In cases where a juvenile offender has been sentenced to death, States parties should allow for immediate release of the juvenile, as the imposition of the death sentence on a person below the age of criminal majority is a grave violation of international law principles and the juvenile’s fundamental rights.”

The Committee on the Rights of the Child must make the abovementioned amendments to the General Comment on children’s rights in juvenile justice to preserve the spirit of the Convention and safeguard the guarantees provided therein. Reprieve will be willing to extend its support and offer any clarifications in the process of drafting the General Comment.

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For further information on Reprieve’s submission, please contact info@reprieve.org.uk.

1. Soering v. UK, 161 Eur. Ct. H.R. (ser. A) (1989). [↑](#endnote-ref-1)
2. The European Network of Ombudspersons for Children, in its position statement, emphasized the need to increase the minimum age of criminal responsibility to 18 in order to ensure that there is no stigmatization of younger children as criminals, and that the State does not respond to them in a criminal law system which is focused primarily on retribution. *See* European Network of Ombudspersons for Children, Juvenile Justice: Europe’s children’s champions challenge governments to respect young offenders’ rights, 2003.

   Article 26 of the Rome Statute also explicitly bars the jurisdiction of the International Criminal Court over any person who was under the age of 18 at the time of the alleged commission of the offence.

   The treatment of juvenile offenders in a system which criminalises their actions is a breach of the fundamental rights of children and against the principle of ensuring best interests of the child. Setting an arbitrary age under 18 years is a clear violation of Articles 2 and 3 of CRC, which provide for non-discrimination and the principle of best interests of the child respectively.

   The Inter-American Commission on Human Rights in its 2011 Report on Juvenile Justice and Human Rights in the Americas emphasized the need to separate responsibility from criminalisation, in order to warrant that the effect of justice is not punitive, but rather rehabilitative in nature, ensuring due process guarantees and socio-educational development of the children in conflict with law. *See* Report of the Inter-American Commission on Human Rights (IACHR), on Juvenile Justice and Human Rights in the Americas, 2011, Available at: http://www.cidh.org/countryrep/JusticiaJuvenileng/jjtoc.eng.htm.

   The right to non-discrimination and the best interests principle enshrined in Articles 2 and 3(1) of CRC are not compatible with the setting of an arbitrary age below 18, at which juvenile offenders can become subject to criminal law procedures. Removing a juvenile offender from the ambit of the criminal justice system does not mean that the offender will not be responsible for their actions. However, the offender shall be managed under a system, which promotes socio-educational growth and development in order to ensure productive reintegration into society. [↑](#endnote-ref-2)
3. Kingdom of Saudi Arabia, Juvenile Law, Number 113/M, Dated 19/11/1439H (01/08/2018). [↑](#endnote-ref-3)
4. Egypt’s Child Law 12/1996 defines a juvenile as a child who has not reached the age of 18 calendar years under Article 95. Article 94 sets a minimum age of criminal responsibility at 12 but allows for judicial discretion in sentencing children ages 8 to 11. Further, Article 122 places a further division on children aged 15 years or older, granting jurisdiction to the Criminal Court or the Supreme State Security Court to adjudicate over such children in trials alongside adult offenders, thereby allowing for the imposition of criminal punishments including the death penalty which should be absolutely prohibited. [↑](#endnote-ref-4)
5. Human Rights Council Mandates of the Working Group on Arbitrary Detention; Working Group on Enforced and Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Communication addressed to the Government on 6 June 2018, available at: https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23885. [↑](#endnote-ref-5)
6. Human Rights Commission of Pakistan, Current Statistics, 2008: Death Penalty http://www.hrcp-web.org/currentstat.html, Dec. 31, 2008. [↑](#endnote-ref-6)
7. https://www.amnesty.org.uk/shafqat-hussain-pakistan-execution-death-row. [↑](#endnote-ref-7)
8. Sultan Ahmed v Additional Sessions Judge (PLD 2004 SC 758). [↑](#endnote-ref-8)
9. Dr Khaki v Federation of Pakistan 2010 PLD 191. [↑](#endnote-ref-9)
10. Gray Zimba, ‘It’s hard facing the death penalty’, Seven Questions. [↑](#endnote-ref-10)
11. General Comment No. 3 on the African Charter on Humans and Peoples’ Rights, Available at http://www.achpr.org/files/instruments/general-comments-right-to-life/general\_comment\_no\_3\_english.pdf. [↑](#endnote-ref-11)
12. B.J. Casey et al., *Imaging the Developing Brain: What Have We Learned About Cognitive Development?, 9 Trends in Cognitive Sci.* 104-110 (2005); N. Dosenbach, et al., *Prediction of Individual Brain Maturity Using fMRI*, 329 Sci. 1358-1361 (2011); A. Hedman, et al., *Human Brain Changes Across the Life Span: A Review of 56 Longitudinal Magnetic Resonance Imaging Studies*, 33 Hum. Brain Mapping 1987-2002 (2012); State v. O’Dell, 358 P.3d 359, (Wash. 2015) (citing “psychological and neurological studies showing that the parts of the brain involved in behavior control continue to develop well into a person’s 20s”). [↑](#endnote-ref-12)
13. *See* Commonwealth v. Bredhold, Order Declaring Kentucky’s Death Penalty Statute as Unconstitutional, 14-CR-161, (Fayette Circuit Court, Aug. 1, 2017); Commonwealth v. Smith, Order Declaring Kentucky’s Death Penalty Statute as Unconstitutional, 15-CR-584-002, (Fayette Circuit Court, Sept. 6, 2017); Commonwealth v. Diaz, Order Declaring Kentucky’s Death Penalty Statute as Unconstitutional, 15-CR-584-001, (Fayette Circuit Court, Sept. 6, 2017).); A. Cohen, et al., *When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Non-Emotional Contexts*, 4 Psychological Science 549-562 (2016) (“[T]hese findings suggest that young adulthood is a time when cognitive control is still vulnerable to negative emotional influences, in part as a result of continued development of lateral and medial prefrontal circuitry.”); L. Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, Dev. Rev. Vol. 28(1) 78-106 (Mar. 2008) (noting that “rates of risk-taking are high among 18- to 21-year-olds” and explaining that adolescents and young adults are more likely than adults over 25 to engage in risky behaviors). [↑](#endnote-ref-13)
14. Laurence Steinberg, *Age of Opportunity: Lessons from the New Science of Adolescence* (2014). [↑](#endnote-ref-14)
15. Graham v. Florida, 560 U.S. 48 (2010) at 68 (citing *Roper*, 543 U.S. 551 (2005)). [↑](#endnote-ref-15)
16. C. Label and C. Beaulieu, *Longitudinal Development of Human Brain Wiring Continues from Childhood into Adulthood*, Journal of Neuroscience 27 July 2011, 31 (30) 10937-10947Available athttp://www.jneurosci.org/content/31/30/10937.full; C. Label *et al*, *Diffusion tensor imaging of white matter tract evolution over the lifespan*, Neuroimage, 2012 Mar;60(1):340-52, Available at https://www.ncbi.nlm.nih.gov/pubmed/22178809. [↑](#endnote-ref-16)
17. *See* Roper, 543 U.S. 551 (2005); Nat’l Research Council, Reforming Juvenile Justice: A Developmental Approach 91 (Richard J. Bonnie et al. eds., Nat’l Acad. Press, 2013). [↑](#endnote-ref-17)
18. See Miller v. Alabama, 567 U.S. 460, 472 (2012); Graham v. Florida*,* 560 U.S. 48, 68 (2010). [↑](#endnote-ref-18)
19. Laurence Steinberg, *The Influence of Neuroscience on US Supreme Court Decisions about Adolescents’ Criminal Culpability*, 14 Nature Reviews Neuroscience 513, 513-14 (2013); *See* Christian Beaulieu & Catherine Lebel, *Longitudinal Development of Human Brain Wiring Continues from Childhood into Adulthood, 27* J. of neuroscience 31 (2011); Adolf Pfefferbaum et al., *Variation in Longitudinal Trajectories of Regional Brain Volumes of Healthy Men and Women (Ages 0 to 85 Years) Measures with Atlas-Based Parcellation of MRI,* 65 NeuroImage 176. 176-193 (2013). [↑](#endnote-ref-19)
20. Nico U. F. Dosenbach et al., Prediction of Individual Brain Maturity Using fMRI, 329 Sci. 1358, 1358–59 (2010). [↑](#endnote-ref-20)
21. *Understand the Problem*, Bluhm Legal Clinic Wrongful Convictions of Youth, Available at http://www.law.northwestern.edu/legalclinic/wrongfulconvictionsyouth/understandproblem/. [↑](#endnote-ref-21)
22. Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 945 (2004). [↑](#endnote-ref-22)
23. *See* Atkins v. Virgina, 536 U.S. 304, 320-21 (2002) (possibility of false confessions enhances the imposition of the death penalty, despite factors calling for less severe penalty). [↑](#endnote-ref-23)
24. American Bar Association, Death Penalty Due Process Review Project Section of Civil Rights and Social Justice, Report to the House of Delegates, Available at https://www.americanbar.org/content/dam/aba/images/crsj/DPDPRP/2018\_hod\_midyear\_111.pdf. [↑](#endnote-ref-24)
25. United Nations Standard Minimum Rules for the Administration of Juvenile Justice. [↑](#endnote-ref-25)
26. For example, in 1984, the U.S. Congress passed the National Minimum Drinking Age Act, which incentivized states to set their legal age for alcohol purchases at age 21. Further, under the Free Application for Federal Student Aid (FASFA), the Federal Government considers individuals under age 23 legal dependents of their parents. The Affordable Care Act also allows individuals under the age of 26 to remain on their parents’ health insurance. Another example is India where the legal drinking age is fixed at 25 years and the minimum age for the marriage of a male individual is 21 years. [↑](#endnote-ref-26)
27. Ineke Pruin & Frieder Dunkel, *Transition to Adulthood & Univ. of Greifswald, Better in Europe? European responses to young adult offending: Executive summary,* 8-10 (2015). [↑](#endnote-ref-27)
28. Article 14(6), International Covenant on Civil and Political Rights. [↑](#endnote-ref-28)