

WHAT HB 11-1287 ACCOMPLISHES

PART I-

- This bill will abolish life without parole sentences for all juveniles.
- Colorado passed legislation in 2006 that abolished juvenile life without parole sentences (known as JLWOP), however, it only has a prospective application.
- This means that there are 48 juveniles who were charged as adults and sentenced to mandatory life without parole before 2006 ***are still serving a JLWOP sentence without any possibility for parole.***
- Of great concern is the disproportionate number of kids of color who were sentenced to life without parole.
  - *2/3rds of the former juveniles serving this sentence of persons of color.*
  - *33% are African American; only 4% of Colorado's entire population are African American.*
- The upcoming bill will offer these 48 former juveniles an opportunity for parole after serving 40 calendar years of their sentence.
  - *\*Note that this legislation does not guarantee parole, but solely provides the possibility for parole eligibility.*
- The recent Supreme Court decision *Graham v. Florida* held life without parole sentences for juveniles convicted of non-homicide offenses unconstitutional because it deprives juveniles of the opportunity to demonstrate maturity and reform.

PART II-

- The bill allows former juveniles serving adult prison sentences to be eligible for a graduated transition process into community corrections
- The program would be available to former juveniles who were directly filed in adult court and who are within at least 10 years of their parole eligibility date.
- ***Juvenile offenders who are directly filed in adult court are never afforded a hearing to determine if they are appropriate candidates for adult sentencing. The mandatory sentences schemes are created for adults, without contemplation of juveniles who may be subject to the mandatory sentence as a result of direct file.***
- Anyone eligible for the graduated transitional program must apply to the executive director of the Department of Corrections and be approved before starting the process.
- The process will start by moving the former juvenile to a lower security Department of Corrections facility. If the individual is successful there, the process allows for a structured transition into Community Corrections.
- The Community Corrections programs introduce the former youth, who have likely never lived on their own, to responsibilities and challenges associated with success on the outside, while remaining on inmate status and in a controlled environment.
- Throughout this process the former juvenile will remain on "inmate status," receive specialized case management, and be subject to consequences if unsuccessful.
- The Community Corrections programs have a high success rate and penal experts find that the programs enhance public safety.
- Community corrections programs work very collaboratively with the rest of the criminal justice system, including probation and parole services.

SUPPORTING SUPREME COURT QUOTES

A life without parole sentence improperly denies the juvenile offender a chance to demonstrate growth and maturity. Incapacitation cannot override all other considerations, lest the Eighth Amendment's rule against disproportionate sentences be a nullity. *Graham v. Florida*, 130 S. Ct. 2011, 2029 (2010).

An offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed. *Graham v. Florida*, 130 S. Ct. 2011, 2031 (2010).

Life in prison without the possibility of parole gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope. Maturity can lead to that considered reflection which is the foundation for remorse, renewal, and rehabilitation. *Graham v. Florida*, 130 S. Ct. 2011, 2032 (2010).

To justify life without parole on the assumption that the juvenile offender forever will be a danger to society requires the sentencer to make a judgment that the juvenile is incorrigible. The characteristics of juveniles make that judgment questionable. *Graham v. Florida*, 130 S. Ct. 2011, 2029 (2010).

...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. *See* Brief for American Medical Association et al. as Amici Curiae 16-24; Brief for American Psychological Association et al. as Amici Curiae 22-27.

Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of “irretrievably depraved character” than are the actions of adults. *Roper*, 543 U.S., at 570, 125 S.Ct. 1183. It remains true that “[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.” *Ibid.* *Graham v. Florida*, 130 S. Ct. 2011, 2026-27 (2010), as modified (July 6, 2010).

*Roper* established that because juveniles have lessened culpability they are less deserving of the most severe punishments. As compared to adults, juveniles have a “ ‘lack of maturity and an underdeveloped sense of responsibility’ ”; they “are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure”; and their characters are “ not as well formed.” These salient characteristics mean that “[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Roper v. Simmons*, 543 U.S. 554, 570-73 (2005).

*Roper* noted that “the same characteristics that render juveniles less culpable than adults suggest ... that juveniles will be less susceptible to deterrence.” *Ibid.* Because juveniles' “lack of maturity and underdeveloped sense of responsibility ... often result in impetuous and ill-considered actions and decisions,” *Johnson v. Texas*, 509 U.S. 350, 367, 113 S.Ct. 2658, 125 L.Ed.2d 290 (1993), they are less likely to take a possible punishment into consideration when making decisions. *Graham v. Florida*, 130 S. Ct. 2011, 2028-29 (2010).

Accordingly, **“juvenile offenders cannot with reliability be classified among the worst offenders.”** Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of “irretrievably depraved character” than are the actions of adults. *Graham v. Florida*, 130 S. Ct. 2011, 2026 (2010).

...the limited culpability of such offenders; and the severity of these sentences all lead the Court to conclude that the sentencing practice at issue is cruel and unusual. *Graham v. Florida*, 130 S. Ct. 2011, 2026 (2010).

SUPPORTING BRAIN SCIENCE

Adolescent brain development has become an increasingly accurate field of research in recent years due to the development of magnetic resonance imaging (MRI) procedures. Prior to the use of MRI technology, the only major studies that had been performed involved post-mortem (cadaver) tissue, since X-rays and other means of testing were deemed potentially harmful to youth. MRI technology allows for the same subject to be tracked from infancy into adulthood.

According to studies using advances in MRI technology, the area of the brain (frontal lobe) that is most related to decision making, planning, risk-assessment, judgment, and other factors generally associated with criminal culpability is also one of the last to fully mature. Goldberg, Elkhonon, *The Executive Brain, Frontal Lobes and the Civilized Mind*, (2001).

According to research conducted by Lawrence Steinberg, a noted Professor of Psychology at Temple University, “changes in the socioemotional system at puberty may promote reckless, sensation-seeking behavior in early and middle adolescence, while the regions of the prefrontal cortex that govern cognitive control continue to mature over the course of adolescence and into young adulthood. This temporal gap between the increase in sensation seeking around puberty and the later development of mature self-regulatory competence may combine to make **adolescence a time of inherently immature judgment**. Thus, despite the fact that in many ways adolescents may appear to be as intelligent as adults (at least as indexed by performance on tests of information processing and logical reasoning), their ability to regulate their behavior in accord with these advanced intellectual abilities is more limited.” Lawrence Steinberg, *Adolescent Development and Juvenile Justice*, A.R.C.P. 2009. 5:47–73 at 55.

“The evidence is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable.” Gur, Ruben C., Ph.D. Declaration of Ruben C. Gur. *Patterson v. Texas*. Petition for Writ of Certiorari to US Supreme Court, J. Gary Hart, Counsel. (2002).

“The cortical regions that are last to mature... are involved in behavioral facets germane to many aspects of criminal culpability. Perhaps most relevant is the involvement of these brain regions in the control of aggression and other impulses, the process of planning for long-range goals, organization of sequential behavior, consideration of alternatives and consequences, the process of abstraction and mental flexibility, and aspects of memory including ‘working memory.’... If the neural substrates of these behaviors have not reached maturity before adulthood, it is unreasonable to expect the behaviors themselves to reflect mature thought processes.” [Emphasis Added].<sup>6</sup>

Scientific and academic research continues to confirm post-*Roper* that adolescents are categorically less mature and more prone to engage in risky behaviors than adults. *Graham v. State of Florida*, 2009 WL 2236775 (U.S.), 12 (U.S.,2009)

The adolescent brain is plastic, rendering adolescents highly susceptible to outside influences (including peer pressure and environmental stresses) yet capable of enormous change through rehabilitation. *Graham v. State of Florida*, 2009 WL 2236775 (U.S.), 22 (U.S.,2009)

Research confirms that risky or antisocial behavior in adolescence is fleeting. Only a small proportion of adolescents who engage in illegal activities continues to commit offenses as adults. As noted above, neurological studies show that adolescent brains are still learning, developing, and creating new connections, which in turn suggests that juveniles are likely to be more responsive than adults to rehabilitation. In short, “it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.” *Graham v. State of Florida*, 2009 WL 2236775 (U.S.), 28-29 (U.S.,2009) quoting *Roper v. Simmons*, 543 U.S. 554 (2005).