Juvenile Law Center — Fighting for the rights and well-being of youth

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Senate Bill 293

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Good afternoon, my name is Danielle Whiteman and I am a Zubrow Fellow and attorney at Juvenile Law Center, the first public interest law firm for children in the country. Based in Philadelphia, Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems. For over forty years, we have fought to ensure that justice system involved youth are sentenced fairly. The legislation that is being proposed today is critical in advancing this goal. Decades ago, legislatures around the country began removing the intent requirement from felony murder statutes.[1] As a result, thousands of individuals—many of whom were youth—have faced life sentences under an application of accomplice liability, even where the murder that occurred was "accidental, unforeseeable, or committed by another participant."[2] Hundreds of individuals who did not kill or intend to kill are serving life sentences for crimes they committed as juveniles.

In both *Roper v. Simmons,* 543 U.S. 551 (2005) and *Graham v. Florida*, 560 U.S. 48 (2010), the United States Supreme Court recognized that individuals "who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of such punishments than [those who commit murder],"[3] and that "because juveniles have lessened culpability they are less deserving of the most serious forms of punishment."[4] The Court explained that while the harm caused by serious nonhomicide crimes "may be devastating in their harm," in the case of a juvenile offender who did not kill or intend to kill, "age and the nature of the crime [must] bear on the analysis."[5] The Supreme Court has also noted that lengthy sentences are "especially harsh for a juvenile offender, who will on average serve more years and a greater percentage of his life in prison than an adult offender."[6]

The United States is the only country where children are sentenced to die in prison. We currently have approximately 2,000 children who were mandatorily sentenced to life imprisonment without the possibility of parole. Of those 2,000, Pennsylvania has the dubious distinction of holding the largest population in the world, with over 525 children in the Commonwealth serving life without parole sentences; nearly 300 of these children are from

Philadelphia. Senate Bill 293, which establishes liability only by a showing of intent, could provide relief to anywhere from ten to fifteen percent of these 500-plus children. Of those who could be eligible under Bill 293, 85% are youth of color who are consistently over-represented in second-degree murder convictions.

Since 2012, when the United States Supreme Court ruled that mandatorily sentencing children to life without parole is unconstitutional, the Commonwealth has been working to resentence individuals who are serving these sentences. These children, who are now adults, have served anywhere from 20 to 45 years of their lives in prison. The resentencing hearings provide an opportunity for the court to consider, for the first time, the reduced culpability of these individuals, not only due to their youth at the time of the offense but also based on the facts and circumstances surrounding their involvement.

Felony murder is justified by a theory of 'transferred intent,' which posits that an individual's intent to commit an underlying felony can be "transferred" to the killing because a reasonable person would know that death is a possible result of participating in a dangerous felony crime.[7] However, this rationale fails when applied to juveniles. United States Supreme Court Justice Breyer explained in his concurring opinion in *Miller v. Alabama*, 567 U.S. 460 (2012) that "the theory of transferring a defendant's intent is premised on the idea that one engaged in a dangerous felony should understand the risk that the victim of the felony could be killed…. Yet the ability to consider the full consequences of a course of action and to adjust one's conduct accordingly is precisely what we know juveniles lack [the] capacity to do effectively."[8]

The Supreme Court has repeatedly noted that adolescents have "[d]ifficulty in weighing long-term consequences" and "a corresponding impulsiveness."[9] Neuroscience shows that adolescents' risk assessment and decision-making capacities differ from those of adults in ways that are particularly relevant to felony murder cases.[10] First, adolescents are more likely to engage in risky behaviors and less likely to appreciate potential long-term consequences, because although adolescents have the capacity to reason logically, they "are likely less capable than adults are in *using* these capacities in making real-world choices, partly because of [a] lack of experience and partly because teens are less efficient than adults at processing information."[11] Because adolescents are less likely to perceive potential risks, what is "reasonably foreseeable" to an adult is likely not "reasonably foreseeable" to a child.

Second, adolescents often exhibit sensation-seeking characteristics that reflect their need to seek "varied, novel, [and] complex . . . experiences [as well as a] willingness to take physical, social, legal and financial risks for the sake of such experience."[12] The need for this type of stimulation leads adolescents to engage in risky behaviors, and as they have difficulty suppressing reaction to emotional stimulus, they often display a lack of self-control.[13]

Finally, and perhaps most relevant in the context of felony murder, adolescents have difficulty thinking realistically about what may occur in the future.[14] This lack of future orientation means that adolescents are both less likely to think about potential long-term consequences and more likely to assign less weight to those that they *have* identified, especially when faced with

the prospect of short-term rewards.[15] These differences often cause adolescents to make different calculations than adults when they participate in criminal conduct.

Adolescents' willingness to act as accomplices in "inherently dangerous" felonies more accurately reflects the impulsiveness, failure to exercise good judgment, and inability to accurately assess risks that the Supreme Court has recognized are common.[16] Thus holding an adolescent liable for murder because he or she should have been able to "reasonably foresee" the same risks as an adult is nonsensical, and the theory of "transferred intent" is unjustifiable when juveniles are not found to have killed, intended to kill, or foreseen that life would be taken.[17]

For example, Aaron Phillips was seventeen when he participated in an unarmed robbery at the request of his adult co-defendant. The co-defendant planned the crime, chose the house to rob and told Aaron to wait a few minutes before knocking on the door and asking for directions. Aaron followed these instructions. When the homeowner opened the door the co-defendant grabbed him from behind. Aaron reached into the victim's pockets, grabbed his wallet, and fled. His co-defendant then knocked the elderly victim to the ground. After 18 days of medical complications stemming from a prior condition and the incident, the victim died. Aaron was charged and convicted of felony murder. In recognition that Aaron likely did not presume that an unarmed robbery could lead to the victim's death, Aaron was originally offered a plea with a minimum of 4 years. However, without understanding that he could potentially receive a life sentence, Aaron went to trial and was sentenced to life without the possibility of parole. Aaron served three decades before a being granted a resentencing hearing and his ultimate freedom.

Similarly, Ricky Olds was only 14 years old when he and his co-defendants stopped at the cigar store to get some late-night snacks. He picked up a bag of potato chips, paid for them and walked out of the store behind his co-defendant and another patron, a postal worker. His co-defendant pointed a gun at the postal worker and Ricky immediately ran to the car, unsure of what was happening. His co-defendant pulled the trigger and entered the car seconds after Ricky. The judge at the sentencing noted the unfairness of imposing the same sentence on Ricky as his co-defendant, but an all-white jury had convicted both of second-degree murder so the sentence was mandatory. Ricky served almost four decades before being released.

When judges were afforded the opportunity to determine whether juveniles like Aaron and Ricky were culpable because they actually intended to assist in a homicide or whether they were culpable merely because the people they were with committed homicide, they reduced their sentences. These new sentences demonstrate a disapproval of sentencing individuals, particularly youth, to life under the felony-murder rule.

We urge you to pass this bill to ensure that youth throughout the state no longer face unconstitutionally disproportionate sentences for felony murder. Thank you for allowing me the opportunity to express my support for Senate Bill 293.

[1] Guyora Binder, *Making the Best of Felony Murder*, 91 B.U.L. Rev. 403, 415-17 (2011). *See also* Emily Keller, *Constitutional Sentences for Juveniles Convicted of Felony Murder in the Wake of Roper, Graham & J.D.B.*, 11 CONN. PUB. INT. L.J. 297, 304-05 (2012).
[2] Keller at 302-03.
[3] *Graham v. Florida*, 560 U.S. 48, 50 (2010).
[4] *Id.* at 60 (citing *Roper v. Simmons*, 543 U.S. 551, 569 (2005).
[5] *Graham*, 560 U.S. at 60.
[6] *Id.*
[7] Keller at 305.
[8] *Miller v. Alabama*, 567 U.S. 460, 492 (2012) (Breyer, J., concurring) (citations omitted).
[9] *Graham*, 560 U.S. at 78. *See also* Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 THE FUTURE OF CHILDREN 15, 20 (2008).
[10] *See* Keller at 312-16.
[11] *See* Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 THE FUTURE OF CHILDREN 15, 20 (2008).
[12] MARVIN ZUCKERMAN, BEHAVIORAL EXPRESSIONS AND BIOSOCIAL BASES OF SENSATION SEEKING 27 (1994).
[13] The Supreme Court recognized this in *Roper* and *Miller*, stating that adolescents "have a 'lack of maturity and an underdeveloped sense of responsibility,' leading to recklessness, impulsivity, and heedless risk-taking." As a result, it is unsurprising that "adolescents are overrepresented statistically in virtually every category of reckless behavior." *Roper*, 543 U.S. at 569 (quoting Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 DEV. REV. 339, 339 (1992)).
[14] *See* Brief for the American Psychological Association *et al*. as *Amici Curiae* Supporting Petitioners at 11-12, *Graham v. Florida*, 560 U.S. 48 (2010) (Nos. 08-7412, 08-7621).
[15] Scott & Steinberg at 20; *Graham,* 560 U.S. at 78.
[16] *See Miller*, 567 U.S. at 471; *see also Roper*, 543 U.S. at 569.
[17] *See Graham*, 560 U.S. at 69.