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Running Head: JUVENILE SENTENCING REFORM

Policy Analysis of Tennessee's 51-to-Life Law: Juvenile Sentencing Reform

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**TABLE OF CONTENTS**

**Abstract**.....1

**Terms**.....2-3

**Introduction**.....4-10

**Juvenile Sentencing: Tennessee Compared to State and International Standards**.....10-12

**Mitigating Qualities Due to Psychological Evidence**.....13-14

**Lack of Brain Development and Diminished Decision-Making Abilities**.....14-18

**Poor Resistance to Peer Influence**.....18-19

**Capacity for Rehabilitation**.....19-22

**Dangers Juvenile Offenders Face in Adult Prison Facilities**.....22

**Rape and Sexual Assault**.....22-23

**Physical Assault and Victimization**.....23-24

**Suicide**.....24-25

**Negative Environmental Influences**.....25-26

**Recidivism**.....26-27

**Implications of the Evidence: The Need for Developmentally-Appropriate Strategies**...27-29

**Policy Proposal**.....29-30

**I. Revising Tennessee’s Transfer Laws**.....30-33

**II. Revising Tennessee’s 51-to-Life Law**.....33-36

**III. Implementing a Case-By-Case Sentencing Model Specific to Juveniles**.....36-38

**Conclusion**.....38-39

**References**.....40-45

## JUVENILE SENTENCING REFORM

### **Abstract**

In the state of Tennessee, juvenile offenders convicted as adults for first-degree murder must receive a minimum sentence of 51 years in prison before becoming eligible for parole. Tennessee's minimum juvenile sentencing guideline is the strictest in the United States. In 2012, the Supreme Court of the United States ruled that sentencing juvenile offenders to life is unconstitutional citing psychological evidence for a juvenile's ability to be rehabilitated in comparison to adults (*Miller v. Alabama*, 2012). Tennessee's 51-year minimum juvenile sentencing standard is a potential violation of this ruling because it has been shown that the life expectancy in prison is unlikely to reach more than fifty years (Patterson, 2013; Wildeman, 2016). Furthermore, Tennessee's minimum sentencing guideline for juvenile homicide offenders appears to disregard psychological evidence that indicates that juvenile offenders should not be treated the same as adults (e.g., Cauffman & Steinberg, 2012; Cohen & Casey, 2013; Mulvey & Schubert, 2012; Scott, Grisso, Levick, & Steinberg, 2015). In this policy analysis, the inadequacy of the current minimum sentencing standard is evaluated, and it is argued as to why this sentencing standard should be substantially lowered. The central thesis of the analysis utilizes empirical evidence gathered from the psychological and legal literatures to support why Tennessee's current policy disregards scientific research. Ultimately, this evidence is used to support the idea that Tennessee's minimum sentencing law for juveniles is inappropriate and to inform alternative proposals.

## JUVENILE SENTENCING REFORM

### Terms

*Adolescent*- someone 12 to 18 years old in the transitional phase from childhood to adulthood

*Adult prison system*- penitentiary or detention center that houses adult offenders (different from a juvenile detention center which typically houses offenders below the age of 21)

*Cognitive behavioral therapy*- therapy in which thought patterns and internalized norms are challenged in order to alter negative behavior patterns

*Cortical development*- the growth and maturation of the lobes in the brain

*Culpability*- responsibility for a fault or action; guilt

*Frontal lobe*- structure in the brain responsible for higher functions and logical reasoning

*Future orientation*- an individual's capacity to accurately think about the future, consider consequences for actions, and planning actions

*Groupthink*- acting or thinking as a group in ways that discourage individual responsibility

*Identity formation*- process of developing a personality and values system in a particular stage of life (usually adolescence)

*Juvenile*- a person below the age of 18 and above the age of 12

*Juvenile offender*- a person below the age of 18 and above the age of 12 who has committed a crime

*Mandatory minimum sentencing*- binding guidelines that judges must follow when sentencing an offender for specific crimes (the lowest punishment that can be received for the crime)

*Mitigation/Mitigating*- the action of reducing the severity or seriousness of something

*Mitigated culpability*- a lessening of responsibility for an action or crime due to circumstances that are out of the control of the party (i.e., juveniles have mitigated culpability because of factors associated with their age)

## JUVENILE SENTENCING REFORM

*Myelination*- insulation process which improves brain processes and allows structures in the brain to communicate more efficiently

*Parole*- the release of a prisoner after a certain amount of time served and on the promise of good behavior

*Peer influence*- pressure from social groups

*Prosecutorial discretion*- decisions (such as pressing charges or determining the court setting) determined by the prosecutor (i.e., the District Attorney)

*Pruning*- the removal of unused material in the brain

*Punitive measures*- seeking punishment; punishment is the main priority

*Recidivism*- when an offender re-offends

*Rehabilitation*- the act of restoring someone from committing negative actions to becoming a productive, safe member of society through court-sanctioned treatments (i.e., prison time, therapy, work order)

*Risk-taking behaviors/Risky behavior*- tendency to engage in behavior that can be dangerous or harmful

*Self-regulation/Self-regulatory abilities*- the ability to control of one's thoughts, actions, and feelings; the ability to inhibit behavior

*Transfer laws/Transfer*- laws that allow or require juvenile offenders to be prosecuted as an adult for more serious offenses (usually subjected to prosecutorial discretion)

### Introduction

In *Miller v. Alabama* (2012), the Supreme Court of the United States (hereafter referred to as the Supreme Court or the Court) ruled that it was an unconstitutional violation of the cruel and unusual punishment provision in the 8<sup>th</sup> Amendment to give juvenile homicide offenders life sentences without the possibility of parole. The Supreme Court reached its decision citing public opinion against this practice, comparing this practice to that of other countries, and, most importantly, by citing psychological evidence including the fundamental differences between frontal lobe development in adult and juvenile offenders as well as the latter having a greater capacity for rehabilitation (*Miller v. Alabama*, 2012). It is important to note that, in 2005, the Supreme Court protected juveniles from receiving the death penalty citing many of the same reasons (*Roper v. Simmons*, 2005). These cases show that the Supreme Court has set precedents for protecting the rights of juvenile offenders on the basis of their unique mitigating qualities. These rulings legally recognize that juvenile offenders should be treated differently than adult offenders when it comes to criminal punishment. Furthermore, these decisions are sensitive to relevant psychological evidence about how to treat juveniles.

Notably, the *Miller v. Alabama* decision only ruled that sentencing juveniles to mandatory life sentences was unconstitutional which has allowed for many inconsistencies about how juveniles should be treated when they are convicted of first-degree murder. However, the Supreme Court warned that harsh, lengthy sentences for juveniles convicted of first-degree murder should be uncommon, because very few juveniles have the maturity and depraved character that would justify a severe sanction (*Miller v. Alabama*, 2012). Many states have responded to this decision with sensitive sentencing standards for juveniles. On the other hand,

## JUVENILE SENTENCING REFORM

the state of Tennessee responded with a seemingly severe sentencing guideline that potentially violates the *Miller v. Alabama* ruling and does not appear to incorporate psychological evidence.

Commonly referred to as the 51-to-life law, this Tennessee law requires that juvenile offenders tried and convicted as adults for first-degree murder be sentenced to a minimum of 51 years before they become eligible for parole. Because of the Supreme Court protections in place for juvenile offenders, this is the only sentencing option for juvenile homicide offenders in Tennessee. The national standard average for life with parole is 25 years (Scott, Grisso, Levick, & Steinberg, 2015). This was the case in Tennessee as well until the 1995 “Truth in Sentencing” legislation, which was a collection of national sentencing legislation, stringently increased sentences for a variety of pre-decided crimes to expedite the sentencing decision process as well as to have a clear standard followed every time. With it, the average of life sentences with parole in Tennessee increased to 51-60 years served depending on behavior credits (Tennessee Code Annotated § 40-35-501(i)).

Tennessee’s sentencing laws are strict because the state government appears to have a vested interest in public safety. The rationality behind this 51-to-life sentence may be based on how dangerous these offenders are perceived to be to the public. Balancing public safety concerns with the desire to punish while also considering offender rehabilitation is a difficult task (Brown, 2012). In this instance, Tennessee is relying primarily on punitive measures to allegedly protect the public. Tennessee’s problem is rational – a juvenile offender who has committed first-degree murder can potentially be very dangerous. Moreover, murder is the most serious offense one can commit, so swift and harsh punishment logically follows this crime. However, these concerns are variable in every situation – especially in the case of how to punish juvenile offenders. Tennessee seemingly does not recognize that juvenile offenders have a



## JUVENILE SENTENCING REFORM

greater capacity to be rehabilitated than do adults as well as mitigated culpability for their crimes because of their status as an under-developed child. Tennessee's 51-to-life law is primarily punitive because this legislation may weigh public safety and the need for a perceived just punishment more heavily than concerns for the actual offender.

This rationale may have something to do with the conservative ideals of the Tennessee populace. Insight into this issue comes from a study conducted in the past about Tennessee residents' opinions on juvenile punishments. In 2000, Moon and colleagues conducted a study with Tennessee residents about their feelings towards the juvenile death penalty, juvenile life imprisonment, and other juvenile punishments. Note that this study was conducted before important Supreme Court decisions banning the juvenile death penalty (*Roper v. Simmons*, 2005) and banning life sentences for juveniles (*Graham v. Florida*, 2010; *Miller v. Alabama*, 2012). The results of the study showed that a majority of Tennessee respondents favored the death penalty for juveniles. Nearly two-thirds of the sample favored juvenile life imprisonment without parole. Finally, four-fifths of the sample favored life sentences for juvenile with work and restitution requirements (Moon, Wright, Cullen, & Pealer, 2000). This study may shine light on the attitudes informing legislation like the 51-to-life law. Tennessee is a conservative, southern state and its residents are often in favor of more conservative agendas – including punitive actions against juvenile offenders (Moon et al., 2000). When faced with the problem of restructuring juvenile sentencing standards, it is likely that Tennessee's legislature attempted to incorporate its constituents' ideals about juvenile punishment as well as attempting to protect public safety.

Tennessee is by no means the only state that consistently transfers children to adult courts or rely on overly-punitive measures to sentence juveniles. The United States has a sordid history

## JUVENILE SENTENCING REFORM

with prosecuting juvenile offenders. Beginning in the 1980s, juvenile violent crimes increased – since then, rates of youth violent crimes have fluctuated (Jordan & McNeal, 2016). Due to this increase in the 1980s and growing public fear, many state legislatures enacted stricter laws to deal with these child “super predators.” “Super predator” is an antiquated term and now-discredited hypothesis about children who are more susceptible to become violent offenders than the rest of the public, specifically this hypothesis targeted black, inner-city teenage males (Jordan & McNeal, 2016; Mears, Hay, Gertz, & Mancini, 2007). The thought was that these children had the physical attributes and presumed negative environmental influences necessary to become violent offenders, so when they are introduced to the justice system at a young age, they should be treated harshly in order to protect the public from their potentially more violent adult lives (Jordan & McNeal, 2016; Shook, 2013). The “super predator” hypothesis has since been discredited, but the legislation spurred by the fear of “super predators” persists today. In the 1980s, many states already had transfer laws on their books, including Tennessee, but after the “super predator” scare, many passed stricter laws that allowed for more youth to be transferred and prosecuted in the adult system (Jordan & McNeal, 2016).

Tennessee’s history with transfer laws demonstrates Tennessee’s tendency for punitive measures and disregard for the unique concerns of juvenile culpability. In Tennessee, juvenile offenders are automatically transferred to adult court if they are 16-years-old at the time of committing the offense of first-degree murder, second-degree murder, rape, aggravated rape, rape of a child, robbery, aggravated robbery, kidnapping, aggravated kidnapping, or any attempt to commit such offenses (Tennessee Code Annotated § 37-1-134). In instances of a child under the age of 16 committing a crime, special consideration is taken to decide whether to transfer the

## JUVENILE SENTENCING REFORM

child to adult court – primarily it is up to prosecutorial discretion, meaning the prosecutor decides to transfer based on precedent and the judges involved approve.

According to Tennessee juvenile sentencing codes, one of the transfer considerations taken into account is whether the community’s interests call for the child to be legally restrained or disciplined, indicating a heavy interest in public protection (Tennessee Code Annotated § 37-1-134(c)). Another consideration is whether the offense was against person or property with more serious transfer considerations given to crimes against a person, which includes the most serious offense against a person, first-degree murder (Tennessee Code Annotated § 37-1-134(b)3). Tennessee’s code mentions that a child transferred to adult court may not be sentenced to the death penalty, which shows that Tennessee incorporated the Supreme Court’s opinion about juvenile death penalties, yet Tennessee has not adopted the Supreme Court’s ruling against juvenile life sentences into its code (Tennessee Code Annotated § 37-1-134(a)1). In summation, according to Tennessee’s transfer laws, juveniles 16 years-old and older will automatically transfer to adult court for violent crimes (i.e., homicide, rape, and aggravated robbery). One important reason that this is concerning is that research has shown that juveniles tried in adult courts are given harsher and longer punishments than adults, in terms of having a higher probability of being sentenced to longer incarceration times (Jordan & McNeal, 2016). This practice not only appears to ignore the unique mitigating qualities of juvenile offenders, but it may also treat juvenile offenders more harshly than adult offenders.

Note that Tennessee has one law for the transfer of juveniles who commit a variety of violent crimes (i.e., homicide, rape, aggravated burglary), but Tennessee has separate sentencing laws for specific crimes (i.e., the 51-to-life law is a specific sentence for first-degree murder). Prior to the 1995 “Truth in Sentencing” reform legislation, Tennessee’s Code Annotated § 40-

## JUVENILE SENTENCING REFORM

35-501(h)(1) detailed the release eligibility of defendants convicted of first-degree murder and sentenced to life in prison. The subsection details that a life sentence amounts to sixty years and that the defendant becomes eligible for release after spending 60% of the sixty-year term. Under this provision, a defendant would become eligible for parole after serving 36 years. After the 1995 legislation, Tennessee amended the code with a new subsection – Tennessee Code Annotated § 40-35-501(i). This new subsection provided that there is no release eligibility for a person convicted of first-degree murder and that the person must serve 100% of their sentence minus credits earned. The subsection also stipulates that no reduction to the sentence can be more than 15% (Tennessee Annotated Code § 40-35-501(i)). When interpreted together, these statutes (§ 40-35-501(h)(1) and § 40-35-501(i)) indicate that a person sentenced under these circumstances is not eligible for parole until 85% of a sixty-year sentence is served – 51 years. In Tennessee, there are only three sentencing options for first-degree murder: the death penalty, life in prison without the possibility of parole, and life with the possibility of parole after 51 years served. For transferred juvenile offenders convicted of first-degree murder, there is only one sentencing option: 51 years of their life spent behind bars before potential consideration for parole.

When juveniles sentenced under the complex 51-to-life law have appealed their convictions, the state of Tennessee has continually upheld its minimum sentencing guideline as constitutional. The state has maintained that the Supreme Court decision in *Miller v. Alabama* does not pertain to the 51-to-life law because the offender retains the possibility for release after serving 51-60 years (e.g., *Cyntoia Denise Brown v. State of Tennessee*). However, studies indicate that this 51-year mandatory sentence may be a life sentence (Patterson, 2013; Wildeman, 2016). It is up for debate whether this law violates the Supreme Court ruling;

## JUVENILE SENTENCING REFORM

however, it seems to not be debatable that this law disregards current psychological evidence that mitigates these offenders' culpability. Currently, there are 119 men and women affected by this law and are serving time in Tennessee prisons because they were sentenced under the 51-to-life law (Associated Press, 2017).

### **Juvenile Sentencing: Tennessee Compared to State and International Standards**

Tennessee's minimum sentencing guidelines for transferred juveniles convicted of first-degree murder are the strictest in the United States. After the *Miller v. Alabama* decision, most of the states in the U.S. had to reconsider their existing laws to make them compliant with the decision and consistent with the protections afforded to juvenile offenders in the Constitution. Many states re-evaluated their minimum sentencing guidelines and edited them to reflect a consideration for the mitigating circumstances surrounding juvenile culpability that the Supreme Court highlighted. For example, many states set minimum standards from anywhere between 5 to 30 years before eligibility for parole. Some states took the opportunity to retroactively apply the decision to resentence inmates who were serving life sentence for crimes they committed as a juvenile. Tennessee is one of the only states that has not retroactively applied the decision – there are 13 inmates who were sentenced to life without the possibility of parole as juveniles currently serving time in Tennessee (Associated Press, 2017). At this point in time, the Supreme Court has not decided to compel states to apply their decision retroactively.

Even when compared to other conservative, southern states whose residents share many of the views that Tennessee residents hold and have also held interests of protecting public safety in high regard, Tennessee's minimum sentence is more strict than other southern states. West Virginia, a geographically southern state that is complex in that it is sometimes conservative and other times liberal in the ideological leanings of the state legislature, amended its sentencing

## JUVENILE SENTENCING REFORM

guidelines in reaction to the *Miller v. Alabama* decision. Alabama, a comparatively conservative, southern state to Tennessee, also amended its sentencing guidelines.

Tennessee varies greatly from West Virginia in terms of juvenile sentencing standards. West Virginia has a history of fluctuating from being a majority conservative state to a majority liberal state. The state provides an interesting example of a relaxed minimum juvenile sentencing guideline as compared to the other southern states. In 2016, West Virginia relaxed its minimum sentencing guidelines for juvenile homicide offenders to 15 years served before eligibility of parole. West Virginia has a history of being less punitive in their justice system exemplified by the state abolishing the death penalty in 1965 (Death Penalty Information Center, 2019). Furthermore, the state resentenced the 7 juvenile offenders that were serving life sentences to include the possibility for parole. In 2014, West Virginia joined 14 states and the District of Columbia to ban life sentences for juvenile offenders (Sheriff, 2015).

Tennessee is also comparable to the conservative, southern state of Alabama. Prior to 2012, Alabama did sentence some juvenile offenders to life without possibility of parole. Alabama had 72 inmates sentenced as juveniles who were serving life sentences, including Evan Miller, whose appeal served as the basis for the Supreme Court's landmark *Miller v. Alabama* decision. At least 20 of these inmates have been resentenced following the *Miller v. Alabama* decision, and the state is working to resentence more (Associated Press, 2017). In 2016, Alabama set the minimum sentencing guideline for juveniles convicted of first-degree murder to 30 years served before the eligibility of parole. Alabama, geopolitically similar to Tennessee, is the sixth highest state in terms of rates of executions (Death Penalty Information Center, 2019). Alabama has a highly punitive justice system – they have executed 56 inmates since 1976 compared to Tennessee's 6 executions (Death Penalty Information Center, 2019). Alabama, like Tennessee,

## JUVENILE SENTENCING REFORM

has yet to ban life sentences without the possibility of parole for juvenile offenders, leaving it technically on the books as an available sentencing option. Yet, despite this history of punitive measures, Alabama's treatment of juvenile offenders reflects a sensitivity to research on the needs of young offenders concerning their mitigated culpability – as made evident by their decreased mandatory minimum sentences.

Aside from state-level political differences, Tennessee's minimum sentencing standard for juveniles sharply contrasts with standards held by other nations. No other democratic country's justice system allows for the sentencing of juveniles to life without the possibility of parole (excluding countries that circumvent democratic justice systems to commit human rights violations) (Sheriff, 2015). Life sentences for juveniles are banned by multiple international covenants, including the International Covenant on Civil and Political Rights, which the United States has signed but not ratified (Sheriff, 2015). The United States has been criticized by members of the United Nations for this policy that no other country in the world practices due to its perceived violation of human rights and mistreatment of children (Gately, 2015).

With the current guidelines, juveniles tried as an adult and convicted of first-degree murder will be sentenced most strictly in the state of Tennessee as compared to anywhere else. This information suggests that Tennessee's minimum sentencing standards are out-of-touch with modern society. With these considerations, it would be reasonable for Tennessee to consider adjusting its sentencing guidelines simply to align more with the standards set by the rest of the world. Furthermore, relaxing this guideline would potentially provide a more uniform sentencing standard within the United States.

### **Mitigating Qualities Due to Psychological Evidence**

Today, psychological evidence has been embraced as an important factor in determining legal issues (Gilfoyle & Dvoskin, 2017). In the past, psychological evidence was rejected as inadmissible in court settings due to its novelty, hard-to-understand jargon, and variability. The Supreme Court's landmark decision in *Brown vs. Board of Education* (1954) marked the first accepted use of psychology as evidence in the legal system. In *Brown vs. Board of Education*, the justices accepted evidence in briefs submitted by psychologists regarding the social science on the effects of racial discrimination (Gilfoyle & Dvoskin, 2017). Since then, psychological evidence has been seriously considered in many legal decisions.

As evidenced by the Supreme Court's *Miller v. Alabama* decision, mitigating psychological circumstances were considered in deciding that sentencing juvenile homicide offenders to life was an unconstitutional violation of their 8<sup>th</sup> Amendment rights. Prior Supreme Court cases set precedents that juvenile offenders have diminished culpability and greater prospects for reform, necessitating less than the most severe punishments (*Graham v. Florida*, 2010; *Roper v. Simmons*, 2005). The Court also acknowledged in these cases that at the heart of retribution is a determination of the offender's blameworthiness, and due to psychological mitigating circumstances, the case for retribution cannot be considered as strong with a minor as with an adult (*Graham v. Florida*, 2010). The Court has consistently implored lower courts to consider the mitigating qualities provided by their youth when sentencing juvenile offenders (*Graham v. Florida*, 2010; *Miller v. Alabama*, 2012; *Roper v. Simmons*, 2005). Following with their past decisions, the Supreme Court decided in *Miller v. Alabama* that imposing life sentences for juvenile homicide offenders is unconstitutional citing psychological evidence for hallmarks of the age of the offender (i.e., brain development and immaturity in regulatory



## JUVENILE SENTENCING REFORM

abilities), failure to resist peer influence, and a greater propensity for reform. This decision highlights the importance of considering the unique attributes of a juvenile offender during sentencing.

Tennessee's 51-to-life law seemingly fails to account for the unique and mitigating qualities of juvenile offenders. This law may be inappropriate because it does not address adolescents' lack of brain development, diminished decision-making abilities, lowered ability to resist peer influence, and their greater ability to be rehabilitated when compared to adult offenders. A substantial amount of research in the field of developmental psychology supports the view that juvenile offenders should be distinguished from adult offenders in ways that mitigate their blame (Cauffman & Steinberg, 2012; Izzo & Ross, 1990; Lamb & Malloy, 2012; Scott et al., 2015; Steinberg & Monahan, 2007).

### **Lack of Brain Development and Diminished Decision-Making Abilities**

One factor that should be considered when dealing with juvenile offenders is their brain maturation. A juvenile's brain is anatomically less-developed than an adult's brain and does not fully mature until adulthood, after 18 years of age; though some scientists contend that the brain does not fully develop until the age of 25 (Beckman, 2004; Lamb & Malloy, 2012; Steinberg & Monahan, 2007). Maturity in the frontal lobe has been correlated with higher cognitive functions, such as decision making and planning (Sowell, Thompson, Tessner, & Toga, 2001). The frontal lobe is underdeveloped in adolescence leading to surges in emotions and reward-seeking behaviors that are sometimes unable to be self-regulated or sophisticatedly inhibited by higher brain functions (Sowell et al., 2001). An understanding of brain development can illuminate explanatory reasons for adolescent crime as well as mitigating circumstances for adolescent culpability.

## JUVENILE SENTENCING REFORM

During adolescence, the brain undergoes a complex process of structural development. Specifically, the adolescent brain undergoes four major physical changes. First, early adolescence signifies an increase in the development of neurotransmitters like dopamine, which is known as the “reward” or “pleasure” neurotransmitter (Casey, Getz, & Galvan, 2008). This increase in dopamine may cause an increase in risk-taking behavior that releases this rewarding feeling (Cauffman & Steinberg, 2012). Second, throughout childhood and especially in adolescence the brain undergoes “pruning,” the removal of unused material in the brain, which leads to more efficient brain processes. Pruning is especially important for the prefrontal cortex which can explain why there is a marked observation of improved executive functions, such as planning and the ability to inhibit behavior, in adolescence as compared to childhood. Third, the adolescent brain undergoes more improvements such as myelination, an insulation process which improves brain processes, such as facilitating enhanced communication between different areas of the brain (Casey et al., 2008). Finally, the frontal lobe region matures which leads to improved and more mature emotional and self-regulatory control abilities (Casey et al., 2008; Cauffman & Steinberg, 2012). Essentially, there is complex and rapid change occurring over time and at different intervals in adolescent brains that affects decision-making and executive functions. These milestones that the brain endures during adolescence is a marked physical difference between juveniles and adults. Criminal behavior in juveniles can be explained by studying these physical milestones. For example, a juvenile’s brain undergoing myelination and pruning indicates that the structures in their brain are not effectively communicating because the passageways of communication are not fully developed yet.

Moreover, during adolescence, cortical development is underway beginning with older regions of the brain and ending with newer regions, with the last regions to mature being the

## JUVENILE SENTENCING REFORM

regions associated with higher-order processes (Gogtay et al., 2004). The frontal lobe and prefrontal cortex, which are responsible for decision-making and the many self-regulatory abilities, does not completely mature until sometime after 18-years of age (Cohen & Casey, 2013; Gogtay et al., 2004; Lamb & Malloy, 2012). A supported theory contends that two systems in the brain (the socioemotional and the cognitive control systems) develop at different rates which shows the socioemotional system, which is linked to sensation seeking, reacting rapidly with no check from the underdeveloped cognitive control system (Lamb & Malloy, 2012, Scott & Steinberg, 2008). Due to an adolescent's changing and maturing brain, they are more prone to surges in emotion and reward-seeking without a sophisticated ability to self-regulate those impulses (Scott & Steinberg, 2008). This dual-systems theory could provide an explanation for adolescent crimes and provide support for their mitigated culpability.

Evidence supports another theory that unequal maturity in the structures of the brain leads to an imbalance in their activity, which then leads to an over-reliance on the already-developed emotional regions of the brain rather than the undeveloped logical regions of the brain (Somerville, Hare, & Casey, 2010). Without the mature decision-making regions of the brain acting in a complementary fashion, a juvenile's behaviors may be less sophisticated, meaning being without the self-regulatory abilities that come with maturation, relative to an adult's behaviors (Somerville et al., 2010; Cohen & Casey, 2013). This theory could also provide an explanation for adolescent crimes and provide more support for their mitigated culpability.

The under-developed brain leads juveniles to have diminished decision-making capabilities due to the lack of maturation in the decision-making structures of the brain. For example, studies have found that adolescents lack a "future orientation," or the ability to consider the long-term effects of their actions, which leads to adolescents assigning less risk to their

## JUVENILE SENTENCING REFORM

actions (Greene, 1986; Scott & Steinberg, 2008). Future orientation influences judgment because it affects the extent to which individuals consider the long-term consequences of their actions in making choices which is especially important regarding a choice with serious consequences, such as breaking a law. When compared to adults, adolescents weigh risks and benefits differently, considering potential gains more importantly than losses (Scott & Steinberg, 2008). There is also evidence linking differences in future orientation to age differences in brain structure and function, especially in the prefrontal cortex (Cauffman & Steinberg, 2012). Adolescents tend to have more immature judgments about social situations, which should be considered when assessing adolescent criminal activity.

Moreover, studies have shown that the capacity to regulate one's emotions and actions increases as one gets older (Scott & Steinberg, 2008). Self-regulatory abilities and social-emotional competence are developed with the prefrontal cortex, which is one of the last structures in the brain to mature (Stuss, 2010). When compared with an adult's ability to self-regulate, adults have a greater capacity to control their behaviors. For example, adolescents are prone to more rapid mood swings which could indicate difficulties with self-control (Scott & Steinberg, 2008). Additionally, studies have indicated that adolescents tend to respond to fearful situations with unchecked activity in the emotional structures of the brain (i.e., the amygdala) whereas adults react with activity in the amygdala, which is where fear activity occurs in the brain, as well as in the frontal lobe indicating that adults reason through the fearful situations and adolescents do not (Baird et al., 1999; Beckman, 2004). These examples show that brain development must be considered when sentencing a juvenile offender. Treating a juvenile as an adult in the justice system does not account for the physical and mental differences between juvenile and adult offenders due to their differing brain development. Adolescent brain

## JUVENILE SENTENCING REFORM

development provides physical evidence for treating juvenile offenders differently and in ways that mitigate their blame for their behaviors.

### **Poor Resistance to Peer Influence**

Another factor that is believed to greatly contribute to adolescent decision-making is the influence from their peers. Note that the Supreme Court cited poor resistance to peer influence in its assessment of juvenile offenders in *Miller v. Alabama*. The Court was not indicating that peer influence may be a factor leading juveniles to commit first-degree murder. However, the Court's decision did indicate that peer influence is a measurable mitigating circumstance that can highlight the differences between adult and juvenile offenders in a way that mitigates juvenile culpability. A juvenile's susceptibility to peer influence appears to be a demonstrable signal of a mitigating quality.

Peer pressure is commonly cited as a reason for adolescent risk-taking and delinquency (Steinberg & Monahan, 2007). Susceptibility to peer influence is highest in adolescence and is likely to influence how an adolescent makes decisions and to engage in anti-social behavior, such as illegal activities (Moffitt, 1993). In many instances of adolescent crime, the offender may commit the crime due to pressure felt from their peers.

One explanation of peer influence stresses the importance of an adolescent's perceived acceptance in a group. As individuals begin to sort themselves into groups, both perceived and actual pressure to adopt the styles, values, and interests of one's friends may intensify as an attempt to foster solidarity and uniformity within the group (Brown, 2004; Steinberg & Monahan, 2007). Attempting to fit in with a group can lead to groupthink or thinking as a group in ways that discourage individual responsibility, which is one of the main causes of criminal behavior in peer groups (Esiri, 2016). Because of a juvenile's diminished decision-making

## JUVENILE SENTENCING REFORM

abilities, they are more susceptible to peer influence and groupthink, which is another possible factor that influences adolescent crime (Esiri, 2016; Steinberg & Monahan, 2007). Peer influence may influence an adolescent's decisions both directly and indirectly. For example, an adolescent may decide on an action because peers have coerced them into doing so or because of the pressures of groupthink or they may do so to earn the perceived approval of their peers (Esiri, 2016; Moffitt, 1993). This is believed to be the explanation as to why juveniles are more likely to commit group crimes than adults (Scott & Steinberg, 2008).

Adolescents are more susceptible to peer influence than adults, meaning their increased susceptibility to peer pressure and groupthink may or may not have long-term consequences when peers are engaging in risky or criminal behavior (Brown, 2004; Steinberg & Monahan, 2007). Resistance to peer influence increases between adolescence and adulthood as a person becomes more independent and the capacity for decision-making matures (Cauffman & Steinberg, 2012). An adult offender has a greater capacity to resist peer influence more so than a juvenile offender due to brain maturation in the frontal lobe, as well as, having greater personal autonomy (Cauffman & Steinberg, 2012). This information may need to be considered when assessing a juvenile's case because they do not appear to have the same mature brain capabilities to resist this pressure that adults have. If an adolescent cannot reasonably be expected to react as an adult would, it does seem reasonable to punish them as if they could.

### **Capacity for Rehabilitation**

It has been well established that most juvenile offenders "age out" of crime (Lamb & Malloy, 2012; Moffitt, 1993). After adolescence, most juvenile offenders do not offend again, meaning few juvenile offenders become adult offenders (Lamb & Malloy, 2012). There is a debate to explain whether offenders will persist in their criminal or antisocial behavior

## JUVENILE SENTENCING REFORM

throughout the remainder of their life. A theory purports that some offenders are life-time persistent offenders due to chronic antisocial behavior beginning in childhood that contributes to a lifelong pathology involving crime (Moffitt, 1993). However, the theory also indicates that most juvenile offenders are only adolescence-limited offenders who simply employ antisocial tendencies in normative ways or whose antisocial behavior desists after their teenage years (Moffitt, 1993). It has been shown that crime peaks in adolescence and rapidly decreases throughout the twenties and declines slowly through the other ages (Hirschi & Gottfredson, 1983). The FBI's Uniform Crime Report (UCR) data shows that the peak age of crime involvement is younger than twenty-five for all crimes except for gambling, and these rates begin to decline during the late teen years for most of these crimes (Federal Bureau of Investigation, 2017). The current practice in the criminal justice system of treating all adolescent offenders as if they are lifetime-persistent offenders, as evidenced by the overly-punitive measures in place, may be inappropriate because the evidence suggests that juvenile offenders will most likely not reoffend as adults (Lamb & Malloy, 2012; Moffitt, 1993). This implies that juvenile offenders naturally rehabilitate and cease criminal behavior, and that they have a great capacity to be rehabilitated. This might indicate that juvenile offenders could be successfully treated with a rehabilitative strategy rather than punitively (Landenberger, & Lipsey, 2005).

In support of this idea, many studies have found that juvenile offenders treated in juvenile detention centers are far less likely to recidivate, or to reoffend, than juveniles treated in adult facilities (Landenberger & Lipsey, 2005; Mulvey & Schubert, 2012). This could indicate that juveniles have a greater capacity to be rehabilitated if they are treated as juveniles rather than as adults. Evidence suggests that juveniles treated in the juvenile justice system with cognitive strategies, such as programs that emphasize cognitive behavioral therapy, show greater decreases

## JUVENILE SENTENCING REFORM

in recidivism than juveniles treated in the adult prison system (Izzo & Ross, 1990; Landenberger & Lipsey, 2005; Redondo, Sanchez-Meca, & Garrido, 1999). Cognitive behavioral therapy (CBT) targets one's thoughts and behaviors and then encourages one to make positive changes to them (Clark, 2010). This style of therapy presumes that a person's thoughts are the result of their environment and experiences, and behavior is influenced by these thoughts, which may at times become distorted and fail to reflect reality accurately (Clark, 2010). CBT targets these thoughts and attempts to change the way a person thinks about certain situations and, in turn, how they behave, which has been found to be effective with samples of juvenile and adult offenders, including violent offenders (e.g., Lambie & Randall, 2013; Lane, Lanza-Kaduce, Frazier, & Bishop, 2002). In most prison CBT programs, offenders improve their social skills, problem-solving, moral reasoning, and self-regulatory abilities (Clark, 2010). Juvenile offenders exposed to CBT-based programs, even violent juvenile offenders, such as those who commit homicide, tend to not reoffend (Lambie & Randall, 2013).

Juvenile rehabilitation programs tend to focus more on educational and counseling opportunities rather than on punishment, which has been shown to reduce recidivism rates of juvenile offenders (Basta & Davidson, 1988; Lane et al., 2002). Studies have shown that violent juvenile offenders treated in juvenile facilities are more successfully rehabilitated due to the prevalence of CBT interventions and educational opportunities provided (Lambie & Randall, 2013; Redondo et al., 1999). The strategies employed in most juvenile detention centers, which focus on rehabilitation and engagement in prosocial activities, offer long-term positive outcomes, meaning the offenders are allowed to become productive members of society (Basta & Davidson, 1988; Moore, Philippe, West, Campbell, & Grubb, 2016). These programs usually offer instruction of trade skills, have classrooms and instructors to aid in obtaining an education, and



## JUVENILE SENTENCING REFORM

have token and reward systems to curb inappropriate behavior. Research has suggested that juvenile offenders decrease or end their criminal behavior once they become more developmentally mature, are taught prosocial behaviors, and as they gain work or school opportunities (Cauffman & Steinberg, 2012; Moore et al., 2016). These findings suggest that using punitive measures with juvenile offenders, such as sending them to adult prisons, is not effective and that more developmentally-appropriate rehabilitative strategies should be employed.

### **Dangers Juvenile Offenders Face in Adult Prison Facilities**

The practice of placing juvenile offenders in adult prison facilities, a practice found in 44 states in the U.S., is a concerning issue that has not been shown to effectively reduce recidivism in these offenders (Austin, Johnson, & Gregoriou, 2000). In Tennessee, any juvenile offender transferred and convicted as an adult will also be housed in adult facilities. Adult prison facilities have been found to have serious detrimental impacts on the juveniles incarcerated in these programs, such as sexual assault, physical assault, suicide, and negative environmental influences (Angell, 2004; Flaherty, 1983; Maitland & Sluder, 1998). This evidence suggests that adult prisons are both physically and mentally dangerous for juveniles and may not be appropriate placements for juvenile offenders.

### **Rape and Sexual Assault**

It is difficult to get accurate data on the incident rates of rapes and sexual assaults in prisons due to under-reporting and variations in reporting (Angell, 2004; Schiraldi & Zeidenberg, 1997). For example, most prisons report rapes as a simple “inmate assaults” effectively under-reporting the actual nature of the assault (Angell, 2004; Schiraldi & Zeidenberg, 1997). In 2004, the rate of sexual assault in adult facilities was 2.91 per 1,000 incarcerated prisoners, although

## JUVENILE SENTENCING REFORM

the actual extent of sexual assault in these facilities is still unknown (Bureau of Justice Statistics, 2004). Five times as many juveniles incarcerated in adult prisons report that they were the victims of attempted sexual assaults or rape as compared to juvenile offenders housed in juvenile facilities (Austin et al., 2000; Schiraldi & Zeidenberg, 1997). A 2004 study showed that 7.7 percent of all victims in substantiated incidents of violence perpetrated by prisoners in adult facilities were under the age of 18 (Bureau of Justice Statistics, 2004). Youthful appearance, small stature, and lack of experience in correctional facilities have been shown to increase the risk of sexual assault by other prisoners because they may be easier targets (Schiraldi & Zeidenberg, 1997).

It is important to note that girls are disproportionately represented among sexual assault victims in prison. Thirty-six percent of all victims in substantiated incidents of sexual violence were female, despite girls representing only fifteen percent of incarcerated juvenile offenders (Schiraldi & Zeidenberg, 1997). Furthermore, girls are much more at risk of sexual abuse by staff than by their peers (Bureau of Justice Statistics, 2004).

### **Physical Assault and Victimization**

Physical assault is common in the prison system, but juveniles in adult prisons are disproportionately the victims of these assaults. Juveniles housed in prisons were nearly twice as likely to report being physically assaulted by staff than by other prisoners (Forst, Fagen, & Vivona, 1989). Moreover, research has suggested that youth in prison are twice as likely to report having been beaten by staff compared to youth in juvenile detention centers (Forst et al., 1989). Juveniles in adult facilities are fifty percent more likely to be assaulted by weapon than those in juvenile facilities (Forst et al., 1989; Schiraldi & Zeidenberg, 1997).

## JUVENILE SENTENCING REFORM

Juveniles in adult prisons also face physical violence from fellow prison inmates, as well as verbal harassment and theft (Maitland & Sluder, 1998). As victims of violence in the prison setting, juvenile offenders then later tend to become perpetrators of violence (Maitland & Sluder, 1998). Often, juvenile offenders are cited as being involved in breaking prison rules for fighting, but this could be because they are often the target of such physical attacks and are defending themselves. Moreover, the prison environment encourages and even requires physically fighting out of self-defense, while normalizing participation in violence at the same time (Maitland & Sluder, 1998).

### **Suicide**

Juvenile offenders housed in adult prison facilities are also more likely to commit suicide than those in juvenile detention centers (Daniel, 2006). The suicide rate for juvenile offenders in adult prison facilities is 7 to 8 times higher than those in juvenile facilities (Daniel, 2006; Flaherty, 1983). Another prior study supported these findings showing that offenders aged 15 to 21 made up only 13 percent of the prison population, yet they accounted for 22 percent of the suicides (Schiraldi & Zeidenberg, 1997). Often, juvenile offenders are placed in isolation so as to “protect” them from the dangers of other prisoners. In solitary confinement, juveniles remain isolated for 23 hours a day with 1 hour for recreation that is also spent in isolation. Forced solitary confinement can lead to physical and emotional issues (Flaherty, 1983). This observation suggests that the practice of sending juvenile offenders to adult prisons facilitates suicide.

It has also been found that rates of suicide in juvenile detention centers are less than rates of adolescent suicides in the general population (Flaherty, 1983). With this consideration in mind, it alludes to the fact that adult prison facilities are extremely dangerous places for youth to be housed. Rates of youth suicide are higher in adult prisons than to those in juvenile facilities

## JUVENILE SENTENCING REFORM

and in the general population, which indicates that adult prisons are not appropriate or healthy for juvenile offenders (Scott et al., 2015).

### **Negative Environmental Influences**

Juveniles transferred to adult prison systems face disruption in their identity formation, relationships, growth in skills and competencies, emotional regulatory abilities, and positive movement into adult status (Mulvey & Schubert, 2012). Evidence suggests that the prison environment challenges one's identity and value systems even for adults and hardened criminals (Mulvey & Schubert, 2012). When an adolescent, who is particularly vulnerable, enters this system during a stage in their life where they are discovering their own identities and values, they are at particular risk for maladjustment (Monahan, Steinberg, Cauffman, & Mulvey, 2009; Mulvey & Schubert, 2012). The adult prison environment does not promote physical or emotional wellbeing, it usually promotes violence and criminal activity by placing juveniles with older criminals who influence them. Placing juveniles in an environment that is not physically or mentally safe harms the adolescent's process of forming a healthy identity and value system, especially when that environment promotes unhealthy values (Mulvey & Schubert, 2012).

Identity formation is a process of finding one's sense of self during adolescence (Collins & Steinberg, 2006). In order to do this, most adolescents discover their personalities and values, or sense of self, through interactions with parents and peers while integrating facets of these interactions into a self-identity (Collins & Steinberg, 2006). An important consideration for this process is that adolescents have access to healthy relationships with parents and peers, as well as the opportunity to make autonomous decisions (Collins & Steinberg, 2006). Adolescents attempting to form their identities in an adult prison face dangers and pressures that prevent healthy identity-formation (Mulvey & Schubert, 2012). Peers in prison consist of criminals who

## JUVENILE SENTENCING REFORM

promote criminal identities and behavior, such as violence, that undermine healthy development (Mulvey & Schubert, 2012). The experience in prison is not intended to foster an adolescent's ability to form a healthy identity, rather it forces adolescents to blend in and conform to unhealthy standards while also subjecting them to unsafe conditions.

Moreover, the prison environment curtails an adolescent's ability to learn vital social and life skills, such as interacting with a romantic partner, managing a household, gaining work-related skills, and job expectations through trial and error in the real world. The prison environment is so highly restrictive and monitored that it effectively prevents these learning opportunities from occurring (Collins & Steinberg, 2006). Prison not only stunts an adolescent's identity formation, but it also prevents an adolescent from learning critical skills necessary for becoming an adult.

### **Recidivism**

One of the main ideas informing the policy of transferring juveniles to adult prison systems was that this harsher punishment would deter these offenders from re-offending. Moreover, the idea was that this harsh punishment would deter other juveniles from committing crimes because they would know the potential harsh repercussions. Prior research has found that transferring youth does not decrease recidivism rates in these offenders (Bishop & Frazier, 2000; Mulvey & Schubert, 2012). In fact, transferred juvenile offenders are more likely to recidivate, recidivate at a greater rate, and to commit a more serious offense later than adolescents in the juvenile justice system (Bishop & Frazier, 2000). Moreover, transferred youth face many hardships when they are released back into the community. A majority of youth released from adult prisons continue to display antisocial tendencies and are often rearrested (Mulvey & Schubert, 2012). Adult prisons do not rehabilitate juvenile offenders or prevent them from re-

offending.

### **Implications of the Evidence: The Need for Developmentally-Appropriate Strategies**

Many facets of how juvenile offenders are treated would benefit from being informed by the evidence base of developmental science. Psychological development continues throughout adolescence and into young adulthood in ways that are relevant to the how an adolescent's culpability is appraised when they have committed a crime. Many of the social and emotional capacities that influence adolescents' judgment and decision-making continue to mature into late adolescence and beyond (Cohen & Casey, 2013; Somerville et al., 2010). Compared to adults, adolescents are more emotionally variable and impulsive, less future-oriented, and more susceptible to peer influence (Moffitt, 1993; Scott & Steinberg, 2008). This scientifically-informed understanding of adolescence does not excuse juvenile offenders from punishment for violent crimes, but it should factor into their culpability. Moreover, the idea that children and adults are different is not new; those under 18 years-old have always been referred to as "minors" and "juveniles" because they are considered something inherently different than adult. Because American laws and precedents show that diminished judgment mitigates criminal responsibility (i.e., mentally challenged individuals found unfit to stand trial), it is reasonable to conclude that adolescents are inherently less blameworthy than adults in ways that should affect decisions about criminal punishment.

Furthermore, developmental science and the dangers present in the adult prison situation should inform how juvenile offenders are punished. It has been shown in a number of ways that adult prison facilities are dangerous and inappropriate placements for juvenile offenders. Moreover, juvenile offenders have a greater capacity for rehabilitation if treated appropriately for their age. It has been established that most juvenile offenders "age out" of crime (Lamb &

## JUVENILE SENTENCING REFORM

Malloy, 2012; Moffit, 1993). Juvenile offenders are not likely to reoffend as adults if treated age-appropriately, such as being kept in juvenile detention centers. Juvenile offenders are less likely to reoffend if they are kept in the juvenile justice system, but they do tend to reoffend if they are transferred to the adult justice system (Mulvey & Schubert, 2012). Juvenile offenders who remain in juvenile facilities are more successfully rehabilitated when treated with cognitive strategies, such as programs that emphasize cognitive behavioral therapy (Izzo & Ross, 1990; Landenberger & Lipsey, 2005).

Additionally, adult prisons are an extremely dangerous place for juvenile offenders, as they are at a substantially higher risk for rape, assault, and committing suicide than those in juvenile detention centers (Schiraldi & Zeidenberg, 1997). The adult prison system is also developmentally and mentally damaging to adolescents, limiting many from developing healthy identities, while potentially even encouraging them to form positive ideas about criminal lifestyles in order to survive the environment (Mulvey & Schubert, 2012). Placing juvenile offenders in adult prisons tends to make these offenders more likely to re-offend in the future upon their release (Mulvey & Schubert, 2012).

Transferring juveniles to the adult system does not appropriately reflect the developmental evidence that adolescents are fundamentally different from adults. Punishing juvenile offenders as adults does not appear to deter future offending, which is allegedly the purported goal of this practice (Mulvey & Schubert, 2012). The current practice of transferring juveniles to the adult system is a physical and mental punishment and not an effective treatment for crime. Regarding the evidence, it is not appropriate to treat juveniles as adults. In fact, it appears to be a cruel and unusual punishment to subject juvenile offenders to the harsh realities of adult prisons. Taken together, the developmental science and studies of the effects of adult

## JUVENILE SENTENCING REFORM

prison on juvenile offenders suggest that transferring juvenile offenders, even violent offenders, is an inappropriate practice (e.g., Izzo & Ross, 1990; Landenberger & Lipsey, 2005; Mulvey & Schubert, 2012). There is a need for the maintenance of a separate juvenile justice system in which adolescents are judged, tried, and punished in developmentally-appropriate ways.

It does not appear that Tennessee's 51-to-life law considers the developmental science that shows the difference between adolescents and adults. The law does not appear to consider the offender's brain development, diminished decision-making abilities, or their greater capacity for rehabilitation into account. It seemingly treats juvenile offenders as just as culpable as adult offenders. Tennessee's practices allow juvenile offenders sentenced under the 51-to-life law to be placed in adult prisons, which may be a cruel and unusual punishment because it does not rehabilitate the offender, it simply subjects them to danger. With evidence of juvenile offenders' ability to be rehabilitated and respecting their mitigated status as adolescents, this law needs to be reformed into a policy that is more age-appropriate and informed by psychological evidence that also attempts to rehabilitate these offenders. Juveniles offenders convicted under Tennessee's 51-to-life law deserve to be treated fairly and appropriately as pursuant to their 8<sup>th</sup> Amendment rights. Moreover, these offenders have the potential to reform their lives and become productive members of society if Tennessee's practices provided them the opportunity to do so. Despite the severe nature of their crimes, these juvenile offenders must be treated with respect and sensitivity due to their status as a child.

### **Policy Proposal**

In Tennessee, the evidence suggests that there is a need for a sentencing policy that embraces a developmental perspective and recognizes that it is counterproductive to ignore the differences between juvenile offenders and adult offenders. To remedy Tennessee's 51-to-life



## JUVENILE SENTENCING REFORM

law and treatment of juvenile offenders, multiple levels of the issue may need to be addressed.

There are three proposed strategies that could be taken to remedy Tennessee's law and treatment of juvenile offenders. These approaches are practical and reflect both the developmental science related to this issue as well as Tennessee's need for punitive action. These three strategies involve:

- I. Revising Tennessee's transfer laws to involve a case-by-case assessment
- II. Revising the minimum sentence for juvenile offenders convicted of first-degree murder in the adult setting (i.e., the 51-to-life law)
- III. Implementing a case-by-case sentencing model for juvenile offenders charged with first-degree murder.

### **I. Revising Tennessee's Transfer Laws**

The main issue contributing to juvenile offenders being sentenced under the 51-to-life law is how easily juveniles are transferred to adult courts and sanctioned as adults. The evidence suggests that no effective change in the treatment of these juvenile offenders can take place if Tennessee's transfer laws are not revisited. It may no longer be feasible to treat any offender under the age of 18 as if they have adult-like culpability. The Supreme Court has recognized that the difference between juveniles and adult offenders is not crime-specific (*Graham v. Florida*, 2010). Tennessee's practice of automatically transferring juveniles to adult courts for first-degree murder charges appears to be crime-specific reasoning. It is the assumption that the nature of the crime negates the need to view the offender's mitigating qualities of youth, which means the state views the crime as something only an adult-like offender can commit and should be punished as such. Tennessee's automatic transfer of juvenile offenders charged with first-degree murder seemingly disregards current psychological evidence that supports separated treatment of

## JUVENILE SENTENCING REFORM

adults and juveniles. There is substantial scientific evidence (i.e., brain development and capacity for rehabilitation) that indicates that juvenile offenders should be treated as delinquent rather than as criminal. Furthermore, Tennessee's automatic transfer law for first-degree murder appears to disregard the Supreme Court's declaration that juveniles cannot be considered among the worst offenders (*Roper v. Simmons*, 2005). This suggests that juvenile offenders should be kept in the juvenile justice system rather than transferred to adult court.

A revision of Tennessee's transfer laws may be appropriate in order to be more sensitive to the needs of juveniles and to recognize their mitigated culpability. Tennessee's transfer laws need to be revised by removing the automatic transfer for certain crimes. Currently, in Tennessee, juveniles older than 16 years of age will automatically be transferred to adult court for violent crimes (i.e., homicide, rape, and aggravated robbery). Special consideration is taken to determine if a child under the age of 16 should be transferred with heavy consideration for public safety (Tennessee Code Annotated § 37-1-134). Removing the automatic transfer of juvenile offenders charged with first-degree murder would prevent juveniles being tried as adults and subjected to the 51-to-life law.

In Tennessee, juvenile offenders convicted in juvenile court for the crime of first-degree murder are typically placed into juvenile detention centers and released upon turning either 18 or 21 years-old (Tennessee Code Annotated § 37-1-137). Most resistance to keeping older juvenile offenders in the juvenile justice system is that they will spend little time compared to their younger counterparts being rehabilitated. For example, if a 17-year-old convicted of first-degree murder is kept in the juvenile justice system, they will be released in anywhere from one to four years. Whereas a 13-year-old convicted for the same crime and kept in the juvenile justice system will be released in anywhere from five to eight years. It seems that the younger offender

## JUVENILE SENTENCING REFORM

would benefit more from the rehabilitative nature of the juvenile justice system as compared to the older offender because they must spend more time there. Moreover, keeping more violent juvenile offenders from juvenile detention centers may be an effort to protect the juveniles housed in these facilities. This idea could be informing much of the legislation behind transfer laws because the time an older juvenile offender would spend in the juvenile justice system may be viewed as insufficient. It should also be noted that in some cases, a juvenile offender may be sentenced to a blended sentence of spending time in a juvenile facility until they are 18 and then being transferred (Tennessee Code Annotated § 37-1-137).

This proposal involves removing the Tennessee transfer law that indicates that those over the age of 16 should automatically be transferred to adult court for certain violent crimes (i.e., Tennessee Code Annotated § 37-1-134). In response to a modern understanding of their mitigating circumstances, juvenile offenders charged with first-degree murder brought before a juvenile court should be assessed on a case-by-case basis to determine if transfer is necessary. Unless there are concerning issues, such as repeated violence while being detained or signs of mental illness, the offender should then be processed and adjudicated within the juvenile justice system. Factors that should be considered include age at the time of the crime, maturity, susceptibility to peer influence, appreciation of risk, capacity for rehabilitation, and the circumstances of the offense. Moreover, juvenile courts should consider the evidence that adult prisons do not reduce recidivism in juvenile offenders (Mulvey & Schubert, 2012). Essentially, the mitigating factors that contribute to a lessening of juvenile offenders' blameworthiness should be considered, and, more times than not, when they are considered and weighed appropriately, the defendant will not need to be transferred to adult court.

## JUVENILE SENTENCING REFORM

Of course, there are circumstances that would make it appropriate to treat juvenile offenders in the adult system, but these circumstances are likely rare. For example, there are juvenile offenders who are potentially extremely dangerous and should not be allowed to return to society, such as mentally disturbed individuals who do not have the capacity to be rehabilitated and cannot be left unsupervised. These cases are rare because the majority of juvenile offenders will grow out of their criminal ways and become productive members of society – if they are given the opportunity to do so (Mulvey & Schubert, 2012). It has been shown that treating juvenile offenders in the juvenile justice system is more effective than the adult system, even for the most serious offenders (Lambie & Randell, 2013; Lane et al., 2002). The evidence supports the idea that juveniles should be treated as juveniles by keeping them in the juvenile justice system.

### **II. Revising Tennessee's 51-to-Life Law**

Tennessee's 51-to-life law for sentencing juvenile offenders has been shown to be inappropriate in many ways. First, the law does not appear to acknowledge scientific evidence that suggests juvenile offenders have mitigated culpability when compared to adult offenders. Second, it may be overly punitive in a way that ignores evidence of these offenders' ability to effectively be rehabilitated in a juvenile detention facility. In fact, the evidence suggests that this law facilitates the recidivism of these offenders by sentencing them to harsh punishments in an adult prison facility. Third, it may be a violation of the protection against cruel and unusual punishment provided in the 8<sup>th</sup> Amendment. The U.S. Supreme Court ruled that giving juveniles life sentences without the possibility of parole is unconstitutional (*Miller v. Alabama*, 2012). While the 51-to-life law gives the possibility of parole after 51 to 60 years served, this is still essentially a life sentence. In the general population, life expectancy is nearly 80 years, but life

## JUVENILE SENTENCING REFORM

expectancy in prison dramatically decreases for each year spent in prison, and the chances of a juvenile offender living past the minimum 51-years in prison is unlikely (Patterson, 2013; Wildeman, 2016). Last, Tennessee's 51-to-life law can be viewed as effectively throwing away the lives of young people, who could otherwise become productive members of society.

Past legislation to decrease the minimum sentence has not gained much traction in Tennessee. In 2016, lawmakers proposed reducing this sentence to 15 years served before the possibility of parole, but the Tennessee legislature rejected the proposal (e.g., Tennessee Senate Bill 2090). This failed bill attempted to introduce a mandatory consideration of the offenders' mitigating qualities, including age at the time of the crime, level of participation in the crimes, impulsivity, family and community environment, ability to appreciate risks, intellectual capacity, and available outcomes from mental health assessments (Tennessee Senate Bill 2090). The inclusion of these provisions is a promising start for Tennessee lawmakers to include more sensitivity for relevant scientific support in favor of juvenile offenders' mitigated culpability. At this time, judges in Tennessee do not have to consider any of these circumstances when sentencing transferred offenders with the exception of age, which is considered solely because a life sentence cannot be imposed on a minor.

It is likely that this bill did not pass because it was viewed as too lenient and not as a severe enough punishment for a severe crime. Tennessee has demonstrated that it favors the interests of the public over the interests of the offender in these cases. However, shown by the psychological evidence available today, Tennessee's current, punitive treatment of these juvenile offenders may not be necessary for the protection of the public (Scott et al., 2015).

Recent movements to release offenders sentenced under the 51-to-life law have garnered state and national attention. The national conversation has highlighted public opinion that this

## JUVENILE SENTENCING REFORM

law is unfair and impractical (Wadhvani & Tamburin, 2019). It has been considered unreasonable that in Tennessee a juvenile offender will be given a 51-year sentence for a crime that would only receive a 15-year sentence in another state. This recent national conversation may lead to real change to this law. For example, during the new term of the Tennessee State Legislature, which began in January 2019, there are plans to push a measure to reduce the minimum sentence to 20 years before the eligibility of parole (Wadhvani & Tamburin, 2019). The measure will be voted on in July of 2019 and is a promising start for Tennessee to fix this issue.

This proposal involves revising Tennessee's current minimum sentencing guidelines for juveniles convicted of first-degree murder, the 51-to-life law, rather than abolishing the guidelines all together. It would most likely not be practical to not have any protections and standards in place at all in the instance that a juvenile offender comes before a court for sentencing for such a crime. Specific guidelines are necessary in sentencing to ensure that no one offender is treated unfairly. Until this reform, it is likely that juvenile offenders convicted of first-degree murder will continue to be transferred to adult courts in Tennessee and subjected to the current sentencing guidelines.

Considering recent attention given to Tennessee's 51-to-life law, the public and legislature appear to be ready to substantially reduce this minimum sentencing requirement. Following the example of other states, lowering the minimum sentence for a juvenile convicted of first-degree murder in an adult court to 15 years served before the eligibility of parole should be considered. Tennessee Code § 40-35-501(h)(1) and subsection 40-35-501(i) should be replaced with a single, clear standard that reduces this sentence to a 15-year mandatory minimum sentence if the offender is tried in adult court. In an attempt to be responsive to the safety needs

## JUVENILE SENTENCING REFORM

of the juvenile population, a provision should be included that allows for a blended sentence, meaning that the juvenile offender would remain in a juvenile detention center until they turn 21-years-old before being transferred to an adult facility. This reduction in the minimum sentencing standard and requirement of a blended sentence would be more responsive to the current developmental science that indicates a juvenile offender should be treated differently than an adult offender (Scott et al., 2015). Furthermore, this reform would potentially maintain Tennessee's interest in punitive justice while also protecting the interests of Tennessee's general public.

### **III. Implementing a Case-By-Case Sentencing Model Specific to Juveniles**

More drastic reform, rather than simply revising current codes, can be taken to fix this problem and potentially ensure the protection of juvenile offenders. Based on the available developmental science (e.g., Casey et al., 2008; Steinberg & Monahan, 2007) and data on rehabilitation (e.g., Gendreau, 1996; Landenberger & Lipsey, 2005), it would be an appropriate action to sentence juvenile offenders convicted of first-degree murder on a case-by-case basis in juvenile court. First, these offenders should remain in the juvenile justice system. It has been repeatedly documented that juvenile offenders, even violent offenders, appear to be more effectively rehabilitated when they are treated in the juvenile justice system (Izzo & Ross, 1990; Lambie & Randell, 2013; Lane et al., 2002). Second, each offender should be subjected to programming within these facilities that targets their developmentally-appropriate needs. For example, one offender may need intensive CBT intervention whereas another inmate may simply need access to educational opportunities. Last, each offender should remain in the juvenile detention center until they are 18- to 21-years-old. Upon their release, they should be subjected to parole and certain requirements based upon their individual needs and case. Only in

## JUVENILE SENTENCING REFORM

conjunction with the most extreme circumstances indicated by the recommendation of professionals working with them, such as psychiatrists and behavior specialists, should a juvenile offender be transferred to an adult prison to continue serving the minimum sentence.

Juvenile justice programs have been shown to be more effective for juvenile offenders because they do not focus solely on punishment, rather they implement rehabilitative strategies. Thus, keeping juvenile offenders in the juvenile justice system would maintain that juvenile offenders would be treated as a juvenile regardless of their crime and provide opportunities for rehabilitation. The goal with treating juvenile offenders should be rehabilitation and so that they can potentially become productive members of society. Treating these offenders on an individualized basis should be required to best treat the individual factors that led to the severe transgression and to prevent recidivism. This proposal requires effort by professional case workers working on an individual basis to determine what strategies should be used with each offender, such as therapies, access to education, and work-training programs.

This individualized effort would potentially allow those working with the offenders to determine when they should be released. If they are treated effectively in the juvenile detention centers, these offenders, in theory, should be eligible for release by their 21<sup>st</sup> birthday because they have had individualized care to promote their rehabilitation. However, this individualized attention would also allow professionals to determine if the offender is dangerous and should be detained longer, triggering the minimum sentence in the adult system.

The heart of this plan is to treat juvenile offenders as juveniles. The evidence suggests that developmentally-appropriate treatment specific to the offender should be required to facilitate rehabilitation and, subsequently, reduce recidivism, while protecting the offenders' Constitutional rights. Implementing this plan in the state of Tennessee, as well as the revisions to



## JUVENILE SENTENCING REFORM

the transfer and sentencing codes, could appropriately incorporate relevant scientific evidence, while including Tennessee's interest in protecting the public, and protecting the rights of the juvenile offenders involved.

### **Conclusion**

The evidence indicates there is a need for juvenile sentencing reform in Tennessee. Tennessee's current practice of transferring juvenile offenders and sanctioning them as adults under the 51-to-life law appears to be unfair, unconstitutional, and unsupported by modern understandings of developmental science. As the U.S. Supreme Court highlighted in its *Miller v. Alabama* decision, when handling juvenile offenders, one must consider the unique mitigating qualities of youth. Tennessee's current juvenile sentencing standards disregard these unique mitigating qualities. It is seemingly necessary for this state to incorporate the Supreme Court's legal reasoning and today's developmental science to reform its policies for sentencing juvenile offenders.

Tennessee should use this information to inform its reformation of multiple areas of juvenile sentencing practices. First, Tennessee should address its current transfer laws that automatically place certain juvenile offenders in adult court. This practice appears to undercut the Supreme Court's ruling and disregards developmental science. Tennessee needs to restructure this law to recognize, due to these offenders' immaturity, most juvenile offenders belong in a separated justice system from adult offenders. Tennessee's transfer laws should also be practiced on a case-by-case basis that allows for the consideration of mitigating qualities of youth. Second, Tennessee should substantially reduce its current minimum sentencing standard for transferred juveniles convicted of first-degree murder from 51-years to a 15-years minimum sentencing standard. Reforming the 51-to-life law is necessary to recognize that juvenile

## JUVENILE SENTENCING REFORM

offenders can reform and should be given the opportunity to do so. Last, Tennessee needs to invest in targeted case-by-case sentencing that incorporates solutions to address the developmentally-appropriate needs of each juvenile offenders. With individualized attention, juvenile offenders may be effectively rehabilitated.

The science suggests that juvenile offenders have a meaningful opportunity to be rehabilitated if they are in a detention center that promotes healthy development, such as the policies usually implemented in juvenile detention facilities. Tennessee has an opportunity to reform its current juvenile sentencing standards that effects the lives of hundreds of offenders. Reforming the current codes and implementing individualized sentencing can be an investment in the futures of these juvenile offenders to become conscientious citizens of Tennessee. Rather than continuing to rely on punitive strategies to mainly punish these offenders, Tennessee has the opportunity to help rehabilitate these people so that they can become productive members of society. Tennessee should stop viewing these offenders as dangerous predators and start recognizing that they are dealing with children who have the ability to reform and who deserve a second chance.

## JUVENILE SENTENCING REFORM

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