AMERICAN PSYCHOLOGICAL ASSOCIATION

APA RESOLUTION on the Imposition of Death as a Penalty for Persons Aged 18 Through 20, Also Known As the Late Adolescent Class

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WHEREAS APA is the leading scientific and professional organization representing psychology in the United States; with more than 133,000 researchers, educators, clinicians, consultants, at all stages of their careers, as well as students among its members.

WHEREAS APA is dedicated to fairness, inclusion, diversity, and to the improvement of the human condition overall, as individuals and as a society, through the development and application of the psychological sciences.

WHEREAS APA is aware of the U.S. Supreme Court (SCOTUS) decision in *Roper v. Simmons* (543 U.S. 551, 568 2005) and notes that the APA *amicus curiae* brief submitted in this case was relied upon and cited often and favorably by SCOTUS in arriving at this landmark decision.

WHEREAS in this same Roper decision, SCOTUS reiterated and reinforced that death as a penalty must be limited to those persons who commit a narrow category of the most serious crimes and whose extreme culpability makes them eligible to be sentenced to death, as the most severe of punishments and most extreme application of the authority of the state (*Roper v. Simmons*, 2005).

WHEREAS in deciding *Roper v. Simmons*, SCOTUS held that adolescents involved in the criminal justice system and under 18 years of age are categorically less culpable than the average criminal, and subsequently ruled that application of death as a penalty to persons under 18 at the time of the offense is unconstitutional.

WHEREAS the conclusion of lesser culpability was based upon three primary findings by the *Roper* court: First, juveniles possess a lack of maturity and an underdeveloped sense of responsibility; second, adolescents who are involved in the criminal justice system are more vulnerable/susceptible to negative influences, such as peer pressure and other outside pressures; and third, the character of adolescents is not as fully formed as that of adults.

WHEREAS APA concludes, based on the current state of the psychological and related developmental sciences, that although the principal reason these three primary findings by the *Roper* court are true and accurate is the level of maturity (or immaturity) of major brain systems at age 17, there is no neuroscientific bright line regarding brain development that indicates the brains of 18- to 20-year-olds differ in any substantive way from those of 17-year-olds (e.g., Bigler, 2021; Casey, Simmons, Somerville, & Baskin-Sommers, 2022; Gur, 2021).

WHEREAS assuming the commission of a crime by a member of the late adolescent class that qualifies as a statutorily defined death-eligible offense, the same youthful and immature characteristics that apply to categorically exempt 16- and 17-year-olds are similarly present in 18- to 20- year olds, rendering them less culpable and less susceptible to any deterrent value of the death penalty, thus failing to further the penological goals of retribution and deterrence.

WHEREAS neuroscientific research demonstrates brain development at age 17 has not become static and there is significant, ongoing brain development in the "late adolescent class" (Somerville, 2016). While some research on continued neurobiological development after 17 was published prior to the *Roper* decision, the question of whether members of the late adolescent class (ages 18 to 20) should be eligible for death as a penalty was not before SCOTUS at the time of the *Roper* decision and thus was not considered.

WHEREAS federal law previously officially recognized the "developmental period of childhood and adolescence" as extending past the age of 17 in binding legislation as early as 2000, extending by law the developmental period of childhood and adolescence to encompass the period up to age 22 (PUBLIC LAW 106–402—OCT. 30, 2000 114 STAT. 1683, the Developmental Disabilities Assistance and Bill of Rights Act of 2000).

WHEREAS as of 2013, the *Diagnostic and Statistical Manual of Mental Disorders* (5th ed.; DSM–5; American Psychiatric Association, 2013) eliminated the age-18 cutoff for the expression and diagnosis of some developmental disorders, recognizing that the developmental period extends to age 18 and beyond.

WHEREAS consistent with this recognition of the extended nature of the developmental period, in 2021, the 12th edition of the American Association of Intellectual and Developmental Disabilities (AAIDD) Manual increased the age of onset criterion

for the diagnosis of intellectual disability (a neurodevelopmental disorder) from age 18 to age 22 (AAIDD, 2021).

WHEREAS much more extensive research has been conducted in developmental science in the years since several of these notable policy changes were enacted, and since the *Roper* decision, that significantly adds to the quantity and quality of existing scientific knowledge.

WHEREAS developmental neuroscience, including research on both the structure and function of brain development, establishes that significant maturation of the brain continues through at least age 20 (e.g., Bigler, 2021; Gur, 2021; McCaffrey & Reynolds, 2021; Somerville, 2016), especially in the key brain systems implicated in a person's capacity to evaluate behavioral options, make rational decisions about behavior, meaningfully consider the consequences of acting and not acting in a particular way, and to act deliberately in stressful or highly charged emotional environments, as well as continued development of personality traits (e.g., emotional stability and conscientiousness) and what is popularly known as "character" (e.g., Casey, Simmons, Somerville, & Baskin-Sommers, 2022; Casey, Taylor-Thompson, Rubien-Thomas, Robbins, & Baskin-Sommers, 2020; Harden & Tucker-Drob, 2011; McCaffrey & Reynolds, 2021; Roberts et al., 2006; Steinberg et al., 2018).

WHEREAS these brain regions are often referred to as executive control systems and include (but not exclusively) the prefrontal cortex and its connections throughout the brain. There is significant development of these brain systems that continues beyond the age of 20 (e.g., Somerville, 2016).

WHEREAS in the context of capital cases where death is a potential penalty, which typically involve crimes that have occurred in situations of high emotional arousal, it is especially noteworthy that current developmental science documents that during emotionally arousing situations, this late adolescent class responds more like younger adolescents than like adults (Figner et al., 2009; Cohen et al., 2016; Steinberg et al., 2008; Icenogle et al., 2019) though — like younger adolescents — show cognitive capacity similar to adults when not under pressure or heightened emotional arousal (Figner et al., 2009; Icenogle et al., 2019; Steinberg et al., 2008).

WHEREAS in considering youth who display more extreme behaviors (e.g., callousness, low empathy), there is emerging empirical evidence of change in the developmental course of these traits, even without intervention. Although a small group of youth show persistently high trajectories of extreme behaviors, the majority who initially show extreme behaviors exhibit decreasing patterns during development (Baskin-Sommers et al., 2015; Hawes et al., 2014).

WHEREAS the fact that neurobiological development in key brain systems associated with behavioral and emotional control continue after the age of 18, determining whether the nature of the crimes committed by members of the late adolescent class and the level of culpability that should be ascribed to them truly constitutes the "worst of the worst" is inherently unreliable. Given the continued psychological development of these group members, predictions about their rehabilitation potential and likely future actions are equally unreliable. There is clear evidence of prolonged development far beyond the age of 17 and into the mid-20s, so that the psychological capacity of members of the late adolescent class to exercise a mature sense of responsibility, and to resist outside pressures is still very much in process (Steinberg et al., 2018). The significant structural and functional changes in the brain at this time corroborate these findings (e.g., Somerville, 2016).

WHEREAS it is clear the brains of 18- to 20-year-olds are continuing to develop in key brain systems related to higher-order executive functions and self-control, such as planning ahead, weighing consequences of behavior, and emotional regulation. Their brain development cannot be distinguished reliably from that of 17-year-olds with regard to these key brain systems (Cohen et al., 2016).

WHEREAS numerous lawmakers, governmental officials, and regulators have recognized multiple ages as demarcation points for independent decision-making and access to forms of employment, positions of authority and public trust, independent decision-making for various lifestyle, medical, and recreational events, and there are currently more than 3,000 laws and government regulations restricting the behavior and actions of persons under the age of 21 years in force in the United States (e.g., see review by Meggitt, 2021) that prohibit those under age 21 from engaging in such diverse activities as: legalized purchases of alcoholic beverages, legalized purchases of marijuana, legalized purchases of tobacco products (19 states); obtaining work as a Federal Marshall, FBI agent, or armed Treasury agent; to engage in blasting or the use of explosives, including operating a fireworks display; to obtain a license to carry a concealed handgun; to obtain a credit card without a cosigner; to act as a foster parent; to serve in the State legislature (32 states); to obtain various professional licenses; nine states require all persons under 21 to wear a helmet when riding a motorcycle; as examples among the more than 3,000 such laws. Such legislative and regulatory precedents also make it reasonable to make distinctions related to crime and punishment in the 18- to 20-year-old population; indeed, some states do so now with regard to retaining juvenile jurisdiction, as well as variables such as inmate housing as a function of age and sentencing restrictions and review. As of this writing in July of 2022, this trend is continuing with more states and local jurisdictions increasing the minimum age to purchase tobacco and also firearms from 18 to 21 years. Much of this restrictive legislation and regulations consider the issues of decision-making in highly stressful and extremely arousing circumstances (sometimes referred to as issues of decision-making during hot-versus-cold cognition) but other laws appropriately grant increasing rights to this age group when evaluating the maturity required to make careful/considered choices such as about personal health care,

voting, and other matters that need not to be made, and typically are not made, rashly in emotionally volatile circumstances as are the criminal actions that make such youth currently eligible for death as a penalty.

WHEREAS the Society for Black Neuropsychology, the Hispanic Neuropsychological Society, and the Asian Neuropsychological Association have concluded that racial factors significantly influence criminal justice system decision-making, resulting in disparate conviction rates, wrongful convictions, and levels of punishment (Ghandnoosh, 2015; Gross, Possley, & Stephens, 2017; Mitchell & MacKenzie, 2004; Nellis, 2016; Rucker & Richeson, 2021; Sentencing Project, 2013; Spohn, 2017; Sweeney & Haney, 1992) across common racial groupings in the United States. Racial factors also affect the system of death sentencing in the United States, where Black persons are perceived as more "deathworthy," evaluated more unfavorably by capital jurors, and are more likely to be sentenced to death and to be executed than their White counterparts, especially when their victims were White (Baldus, Woodworth, Zuckerman, & Weiner, 1998; Beckett & Evans, 2016; Eberhardt, et al., 2006; Keil & Vito, 2006; Lyman, Baumgartner, & Pierce, in press-2022; Lynch & Haney, 2011; Phillips & Marceau, 2020), contributing to minorities' overrepresentation on death row. For example, as recently as 2014, the proportion of Black people on death row was more than three times the proportion of Black people in the national population (Ford, 2014); current statistics demonstrating continued over-representation also can be found at the Death Penalty Information Center website, https://deathpenaltyinfo.org/; as well as individual states' websites, such as the Texas Departmental of Criminal Justice website, where, as of July 1 of 2022, 45.7% of all death row inmates were designated as "Black" (http://www.tdcj.texas.gov/death_row/dr_gender_racial_stats.html), while in 2020, only 12.2% of the general population of Texas is designated as Black.

WHEREAS Black youth are punished more harshly than Whites (Morris & Perry, 2016) and significantly more likely to be perceived incorrectly as older and more responsible (Goff, et al., 2014), and therefore more likely to be treated as if they were adults in criminal proceedings in general. In combination, these race-based differences in treatment impact members of the late adolescent class, placing Black youth more at risk of facing and receiving the death penalty compared with their White peers. In fact, a recent analysis shows that non-White (Black, Hispanic, and "Other") members of the late adolescent class (20 years old or younger at the time of their crime) represent approximately two-thirds of persons in that age group who are sentenced to death, as opposed to a little more than half of non-Whites who were 21 years or older who received death sentences. Moreover, since *Roper*, the racial disproportion in the 18-to 20-year-old late adolescent class has increased, with more than three-quarters of the non-White members of the late adolescent class sentenced to death as opposed to 20% of Whites (Baumgartner, 2022), clearly demonstrating the disproportionately biasing effects, as a function of age, of minority racial status on the LAC when death is sought as a penalty.

WHEREAS in addition to the strong biasing effect of gender of the defendant on whether prosecutors seek death as a penalty (e.g., Shatz & Shatz, 2011), victim race and gender also affect who is sentenced to death (e.g., Baumgartner, Grigg, & Mastro, 2015; Baumgartner, Johnson, Wilson, & Whitehead, 2016; Pierce, Radelet, & Sharp, 2017).

WHEREAS psychological science research also indicates that members of the LGBTQ+ community and those with nontraditional sexual orientations are dealt with more harshly in their interactions with the criminal justice system, including harsher sentencing (Movement Advancement Project, 2016; Nadal, 2021).

WHEREAS historically, SCOTUS has emphasized death as a penalty should be reserved for persons whose crimes and culpability represent the "worst of the worst" (*e.g., Roper v. Simmons,* 543 U.S. 551, 568 2005; *Kennedy v. Louisiana,* 554 U.S. 407, 420, 2008; *California v. Brown,* 479 U.S. 538, 541, 1987) and, given its extreme severity and finality, that the penalty of death is qualitatively different from any other sentence (e.g., *Woodson v. North Carolina,* 428 U.S. 280, 305, 1976; *Lockett v. Ohio,* 438 U.S. 586, 604, 1978). SCOTUS has repeatedly acknowledged that this qualitative difference between death and other penalties calls for a greater degree of reliability when the death sentence is imposed (*California v. Brown,* 479 U.S. 538, 541, 1987).

WHEREAS a review of the scientific literature as noted above indicates that death as a penalty for the late adolescent class is typically based on unreliable determinations of members' current culpability status and even more unreliable predictions of their future potential.

THEREFORE, BE IT RESOLVED that based upon the rationale of the *Roper* decision and currently available science, APA concludes the same prohibitions that have been applied to application of the penalty of death for persons who commit a serious crime at ages 17 and younger should apply to persons ages 18 through 20. The same scientific and societal reasons as given by the *Roper* court in banning death as a penalty for those under the age of 18 apply to the late adolescent class.

THEREFORE, BE IT RESOLVED that it is clear death as a penalty is not applied equally and fairly among members of the late adolescent class. In addition, extraneous factors such as race, ethnicity, and gender (of both the defendant and the victim) influence the discretionary decisions of prosecutors to seek and their success in obtaining death verdicts for defendants who are members of the late adolescent class. When considered in conjunction with neuroscientific evidence of the degree of continuing development of key brain systems that remains to be accomplished in the late adolescent class, these and other status variables act to create biases and prejudices that lead to a higher probability of error by

triers of fact in death penalty cases. In combination, these factors render the application of the death penalty to members of the late adolescent class inherently more unreliable and morally abhorrent in a developed society that is concerned with equality, generally and specifically, in legal justice for all.

THEREFORE, BE IT RESOLVED that APA calls upon the courts and the state and federal legislative bodies of the United States to ban the application of death as a criminal penalty where the offense is alleged to have been committed by a person under 21 years of age.

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