

The Court's decision in *Graham* recognized that children "are more capable of change than adults, and their actions are less likely to be evidence of 'irretrievably depraved character' than are the actions of adults. It remains true that '[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.'"

In 2012, EJI lawyers argued two cases at the Supreme Court: *Miller v. Alabama* and *Jackson v. Hobbs*. Evan Miller and Kuntrell Jackson were among hundreds of children condemned to die in prison by judges who were required to impose mandatory life-without-parole sentences, without considering the child's age or circumstances.

On June 25, 2012, the Supreme Court ruled in *Miller v. Alabama* that mandatory life-without-parole sentences for all children 17 and younger convicted of homicide are unconstitutional. The Court wrote that sentencers must consider children's diminished culpability and their "heightened capacity for change," which should make death-in-prison sentences "uncommon."

1. The Court in *Graham* held that non-homicide offenders must have a "meaningful opportunity for release." What does that mean?
2. What factors must a judge consider under *Miller* before deciding what sentence to impose?
3. Does *Miller* require new sentencing hearings for all juveniles sentenced to die in prison? Why or why not?
4. What alternative sentences should be available for juvenile offenders? Have state laws changed in response to *Miller*, and if so, how?
5. Should the Court ban all life-without-parole sentences for all children, regardless of the crime? Why or why not?

### Questions for Further Discussion

1. Does the criminal justice system focus more on rehabilitation or punishment? What should be the focus for juveniles in the criminal justice system? What is the primary objective of incarceration? Should it be different for children?
2. Supporters of sentencing children to life without pa-



EJI's Bryan Stevenson after arguing at the U.S. Supreme Court

role argue that some children deserve to spend the rest of their lives in prison. Do you agree? Why or why not?

3. How does *Roper v. Simmons* apply to life-without-parole sentences for juveniles?
4. What challenges does growing up in a poor, violent neighborhood present for children? What role should these factors play in a sentencing decision?
5. Mandatory sentencing was proposed as a way to ensure fairness in sentencing, but studies show that disparities in sentencing persist. Why is that? What changes would you recommend to make sentencing more fair and equitable?
6. What does America's treatment of children in the criminal justice system reveal about our nation's values?
7. The majority of children sentenced to life without parole are youth of color. What does this racial disparity reveal about the system and about our society? What role does racism play in the criminal justice system and how does that impact the lives of children?
8. Many of the laws that expose children to life-without-parole sentences were fueled by the "politics of fear and anger." How do fear and anger affect criminal justice policies, and what can be done to change that?
9. "Each of us is more than the worse thing we've ever done." What does this mean for the criminal justice system? How does it impact the way children should be treated when they are accused of a crime?
10. Has the media's portrayal of children of color who are accused of crimes changed over the years? How does it influence our perception of children of color and of appropriate sentences for children?



# DISCUSSION GUIDE

## Cruel and Unusual: Sentencing 13- and 14-Year-Old Children to Die in Prison

Across the United States, thousands of children have been prosecuted as adults and sent to adult prisons. EJI is working to end the adult prosecution of any child under the age of 14; to end the placement of any juvenile under age 18 in an adult jail or prison; and to abolish life imprisonment without parole and other excessive sentences imposed on children.

On any given day in America, 10,000 children are housed in adult jails and prisons. Children as young as ten are exposed to prosecution in adult courts. More than 3000 juveniles - some as young as 13 years old - have been sentenced to life imprisonment without the possibility of parole.

The United States is the only country in the world that sentences children to die in prison. In **Cruel and Unusual**, EJI identified 73 cases nationwide in which a sentence of life without parole was imposed on a child who was 13 or 14 years old at the time of the offense. Most of these sentences were mandatory: the court could not consider the child's age or life history. EJI believes these harsh sentences for children are cruel and unusual in violation of the Eighth Amendment to the United States Constitution.

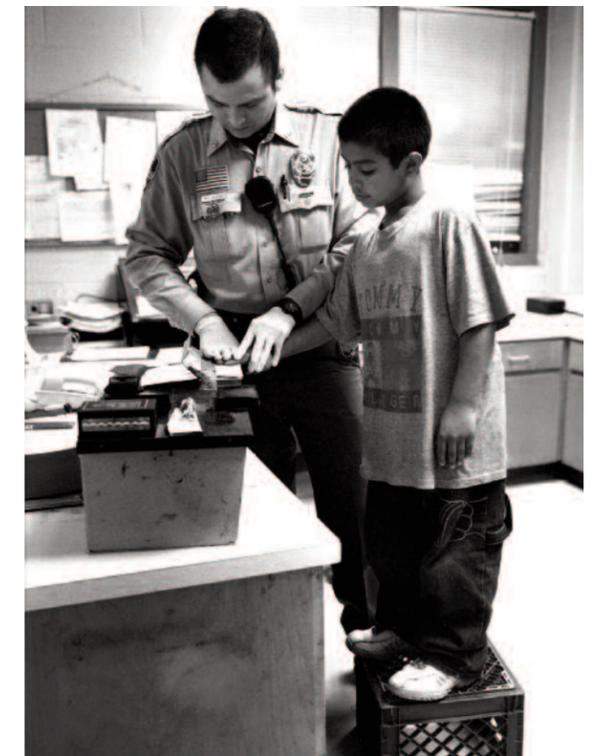
### Young Children Are Different

Young teenagers in most states cannot get married without permission or obtain a driver's license. The law mandates that they must attend school and limits the hours they can work.

The law treats young adolescents differently because they *are* different. Scientists have found that adolescents' brains are anatomically undeveloped in parts of the cerebrum associ-

ated with impulse control, regulation of emotions, risk assessment, and moral reasoning. The neurological development most critical to making good judgments, moral and ethical decisionmaking, and controlling impulsive behavior is incomplete during adolescence.

The United States Supreme Court has recognized these differences between juvenile and adult offenders and concluded that children have "insufficient culpability" to merit the most severe punishment. Because children are more vulnerable to stress and peer pressure, lack the adult ability to resist impulses and risk-taking behavior, and have an inherent capacity to change and reform as they grow up, the Court determined that "juvenile offenders cannot with reliability be classified among the worst offenders."



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1. What laws treat teens differently from adults?
2. Why does the law distinguish children from adults?
3. What are some examples of the ways in which young teens behave differently than adults?

### Underage Prosecution of Children

The law protects children under 14 except when they are accused of a crime. Over the last 25 years, very young children increasingly have been prosecuted as adults and subjected to harsh adult sentences. Children as young as eight have been prosecuted as adults. EJI believes that no child under age 14 should be prosecuted as an adult for any crime.

1. More than a dozen states have no minimum age for trying children as adults. What is the minimum age in your state? What do you think it should be?
2. Can children as young as 10 or 12 be tried fairly in an adult court? Why or why not?
3. What challenges do juveniles face in adult court?

### Imprisoning Children with Adults

As thousands of children have been transferred to adult courts for criminal prosecution, growing numbers of kids have been automatically placed in adult jails and prisons.

Jailing children with adults puts young people at great risk. Children are five times more likely to be sexually assaulted in adult prisons than in juvenile facilities.

Children housed in an adult jail or prison are also much more likely to commit suicide than those in juvenile facilities.



Federal law mandates that children be housed separately from adults. As a result, prison officials often place youth in solitary confinement, which can lead to severe depression, anxiety, and other mental health problems.

1. Joe Sullivan was arrested at age 13, prosecuted as an adult, and sent to an adult prison in Florida. What happened to Joe in prison? What should have been done differently in his case?
2. How does being housed with adults in an adult jail or prison impact a teenager? How does it impact kids with mental illness?
3. What does the story of Ian Manuel tell you about the dangers of putting children in solitary confinement?

### Young Children Sentenced to Die in Prison

**Condemned children share childhoods of neglect and abuse.** Most of the kids who have been sentenced to die in prison for crimes at 13 or 14 come from violent and dysfunctional backgrounds. They have been physically or

sexually abused, neglected, and abandoned; their parents are prostitutes, drug addicts, alcoholics, and crack dealers; they grew up in lethally violent, extremely poor areas where health and safety were luxuries their families could not afford. Their crimes tend to occur in the midst of crisis, often resulting from desperate, misguided attempts to protect themselves.

1. How does trauma, abuse, and neglect impact a child's development?
2. How should a child's background be taken into account when he is accused of a crime?

**Children of color are disproportionately sentenced to die in prison.** The majority of children tried as adults in America are children of color. Of the 73 cases EJI identified involving 13- and 14-year-old children who had been sentenced to die in prison, nearly half (49 percent) were African American. **All** of the children sentenced to die in prison for non-homicide crimes were children of color.

1. What factors contribute to the disproportionate sentencing of children of color?
2. What policies or practices would you change to address this problem?

**Children from poor families are unable to get legal help.** In many of the cases EJI identified, appointed trial and appellate lawyers failed to challenge the excessive sentences imposed on their teenaged clients. Children who cannot afford competent counsel face a dramatically escalated risk of being sentenced to die in prison.

1. Why is competent counsel important in these cases?
2. Why are children who cannot afford a lawyer more likely to be sentenced to die in prison?
3. What should a competent lawyer do when she is representing a child who faces a life-without-parole sentence?

**Children have been sentenced to die in prison for crimes without fatalities.** Of the cases EJI identified, six were sentenced to die in prison for crimes in which no one was killed. All of these kids are children of color.

1. Is it constitutional now to sentence children to die in prison for non-homicide crimes?
2. Why do you think only children of color have been sentenced to life in prison without parole for non-homicide crimes at age 13 or 14?



George Stinney, 14, was the youngest person executed in the United States in the 20th century.

### Challenging Excessive Punishment of Children

EJI has challenged excessive punishments imposed on children, including the death penalty, life imprisonment without parole, and "virtual life" sentences that deny children any meaningful opportunity for release.

In 2005, the United States Supreme Court declared in *Roper v. Simmons* that it is unconstitutional to execute children. Before that ruling, 365 children had been executed in the United States, including 22 since 1985.

1. What reasons did the Supreme Court give in *Roper* for finding that the death penalty for juveniles violates the Constitution?
2. What evidence did the Court use in concluding that children are different from adults?

After the Court banned the death penalty for children, EJI focused on children who had been sentenced to imprisonment until death through life-without-parole sentences.

In 2009, EJI attorneys went to the United States Supreme Court and argued for a constitutional ban on sentencing children to die in prison.

On May 17, 2010, the Court issued a groundbreaking ruling in *Graham v. Florida* barring life-without-parole sentences for juveniles convicted of non-homicide offenses.



Ashley Jones was sentenced to die in prison for a crime when she was just 14 years old.