

Testimony of Samantha Buckingham  
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In Support of SB 966, 967, 968, 969, 1008

I am faculty at Loyola Law School in Los Angeles, California, a graduate of Stanford Law School, and a visiting clinical law professor at Harvard Law School. I have dedicated over twenty years to working with children and adults in the juvenile and criminal justice system.

Through my work at Loyola Law's Center for Juvenile Law and Policy, or CJLP, I am the Director of a Juvenile Justice Clinic. CJLP is a legal services organization dedicated to the direct representation of young people and the protection of the rights of children both locally and nationally. Through my work at CJLP, I have provided specialized juvenile indigent defense training across the United States, have created a juvenile trial skills training program, have trained judges, prosecutors, and probation officers on adolescent development and being trauma-informed, and have provided testimony to U.S. Congress on issues related to juvenile justice such as the use of solitary confinement and the school-to-prison pipeline. I have also published numerous law review articles about the impact of adolescent development on the treatment of youthful offenders.

Within the Juvenile Justice Clinic, I teach substantive classes on trial skills and juvenile law and I supervise law students representing clients in delinquency proceedings in Los Angeles. In addition, I teach Criminal Procedure and a seminar course on issues in criminal justice. Before joining the faculty at Loyola, I was a trial attorney at the Public Defender Service for the District of Columbia ("PDS"). At PDS, I represented three categories of clients: 1) children charged in delinquency court, 2) children charged as adults with serious and violent felonies, including homicide, and 3) adults charged with serious and violent felonies, including homicide. Prior to becoming a lawyer, I taught high school and ran an after-school volunteer program at the Maya Angelou Public Charter School in Washington, D.C. As a teacher, I worked with many youth who had been adjudicated delinquent and had spent time in juvenile correction facilities.

My testimony will address, through a trauma-informed lens, how an understanding of adolescent development has shaped U.S. Supreme Court jurisprudence on juvenile justice and revolutionized the way we as a society conceive of the vulnerability, diminished culpability, and incredible potential for positive change adolescents possess.

Adolescence is defined today as spanning from twelve through the mid-twenties.<sup>1</sup> This period of youth offers tremendous opportunity for learning, growth, and transformation.

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<sup>1</sup> LAURENCE STEINBERG, AGE OF OPPORTUNITY: LESSONS FROM THE NEW SCIENCE OF ADOLESCENCE, 5, 8–11 (2014) (referring to adolescence as the period between ten to twenty-five years of age and explaining how adolescence rivals ages zero to three in peak neuroplasticity).

The legislation before you today is consistent with science and research driving a national trend in reducing transfer of young people to adult court, increasing protections for young people in the court system, and enhancing opportunities for rehabilitation

The Supreme Court made a number of rulings in juvenile justice the past 15 years. In 2005, in the case *Roper v. Simmons*, the Court ruled that juveniles cannot be subject to the death penalty and created a categorical ban.<sup>2</sup> *Roper*'s holding was based in adolescent brain development and developmental psychology. The depth of our understanding of the basic principles of development has continued to grow since the *Roper* holding. In 2010 the Supreme Court decided in *Graham v. Florida* that juvenile non-homicide offenders cannot be subject to sentences of life without the possibility of parole ("LWOP").<sup>3</sup> Next, in *J.D.B. v. North Carolina* in 2011, the Supreme Court established greater constitutional protections for children subjected to interrogations, stating that a suspect's age is relevant to the Miranda custody analysis.<sup>4</sup> In 2012, the Court decided *Miller v. Alabama*, holding that a sentencing scheme that mandates LWOP for juvenile homicide offenders is prohibited and courts must consider the offender's age and the factors attendant to it.<sup>5</sup> Most recently in *Montgomery v. Louisiana* in 2016, the Court established retroactivity of the *Miller* case.<sup>6</sup>

There are three reasons, *repeatedly recognized by the US Supreme Court*, based in neuroscience and developmental psychology establishing **why children are** different from and **categorically less culpable than adults**:

**First**, youth are **less mature** than adults.<sup>7</sup> They are **impetuous, impulsive**, and fail to consider the **consequences** of their actions *before* they act.<sup>8</sup> When youth do consider the

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<sup>2</sup> *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>3</sup> *Graham v. Florida*, 130 S. Ct. 2011 (2010).

<sup>4</sup> *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011).

<sup>5</sup> *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

<sup>6</sup> *Montgomery v. Louisiana*, 136 S. Ct. 718, 732–33 (2016);

<sup>7</sup> Brief for the Am. Psychological Ass'n et al., as Amici Curiae Supporting Petitioners at 8–9, *Graham v. Florida*, 130 S. Ct. 2011 (2010) (No. 08-7412, No. 08-7621), 2009 WL 2236778; see Emily Buss, *Rethinking the Connection between Developmental Science and Juvenile Justice*, 76 U. CHI. L. REV. 493, 495 (2009) (reviewing ELIZABETH S. SCOTT & LAURENCE STEINBERG, *RETHINKING JUVENILE JUSTICE* (2008) (stating that adolescents are psychosocially immature which makes them lack the ability to control their emotions and more likely to be attracted to risky behavior)).

<sup>8</sup> Brief for the Am. Med. Ass'n et al., as Amici Curiae in Support of Neither Party at 6–7, *Miller v. Alabama*, 132 S. Ct. 2455 (2012) (No. 10-9646, No. 10-9647), 2012 WL 121237; Brief for the Am. Psychological Ass'n et al., as Amici Curiae Supporting Petitioners, *supra* note 120, at 11 (discussing a study showing adolescents weigh risks and rewards differently than adults and therefore are more likely to engage in risky behavior); Spear, *supra* note 105, at 421–23 (arguing adolescents are greater risk takers and discussing studies supporting the theory); Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 DEVELOPMENTAL REV. 339, 343–44 (1992) (stating that reckless behavior is a normative part of adolescent actions).

future implications of a course of action, they *do not accurately weigh pros and cons*.<sup>9</sup> Instead, young people tend to *minimize or underestimate the potential of dangerous, risky, and negative consequences while simultaneously overestimating potential rewards, especially peer recognition*.<sup>10</sup> Not only are youth impulsive generally, neuroscience has shown that for those youth who have suffered trauma, brain structures that regulate emotion, behavior, and impulsivity are less developed and function irregularly.<sup>11</sup> The limited decision-making abilities of youth are even more impaired in response to stress and peer pressure.<sup>12</sup>

**Second**, young people are particularly **susceptible to pressure**.<sup>13</sup> Youth are **vulnerable to psychological harm** and they do not have control over their environment.<sup>14</sup> When youthful susceptibility to pressure is understood in the context of trauma exposure, we see that trauma is just the type of psychological harm that the Supreme Court has described as mitigating the culpability of youthful offenders.<sup>15</sup> Indeed, traumatic responses and symptoms are often the same exact behaviors that are punished as delinquent acts. Children who have been victims of repeated trauma, chronic stress, toxic stress, abuse, and neglect may act out themselves to have a sense of control over the chaos and violence that they have come to expect will naturally

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<sup>9</sup> Brief for the Am. Psychological Ass'n et al., as Amici Curiae Supporting Petitioners, *supra* note 120, at 8–9, 11–12; *see also* Elizabeth Cauffman et al., *Age Differences in Affective Decision Making as Indexed by Performance on the Iowa Gambling Task*, 46 DEVELOPMENTAL PSYCHOL. 193, 204 (2010) (discussing study showing that adolescents are less able to weigh choices and make better decisions).

<sup>10</sup> Brief for the Am. Med. Ass'n et al., as Amici Curiae in Support of Neither Party, *supra* note 121, at 6–7, 12; Brief for the Am. Psychological Ass'n et al., as Amici Curiae Supporting Petitioners, *supra* note 120, at 8–9; *see* ELIZABETH S. SCOTT & LAURENCE STEINBERG, *RETHINKING JUVENILE JUSTICE* 40–41 (2008) (explaining cognitive control and discussing a study showing adolescents have less cognitive control and instead choose immediate rewards); *see also* Buss, *supra* note 120, at 4 (stating that adolescents are psychosocially immature which makes them lack the ability to control their emotions and more likely to be attracted to risky behavior); Lucy C. Ferguson, *The Implications of Developmental Cognitive Research on “Evolving Standards of Decency” and the Imposition of the Death Penalty on Juveniles*, 54 AM. U. L. REV. 441, 457 (2004) (stating that adolescents are more “susceptib[le] to peer influence when making decisions and conducting cost-benefit analyses, lack realistic risk- assessment abilities, and are not as future-oriented as are adults”).

<sup>11</sup> WEIS, *supra* note 74, at 1.

<sup>12</sup> Brief for the Am. Med. Ass'n et al., as Amici Curiae in Support of Neither Party, *supra* note 121, at 13; *see* Spear, *supra* note 105, at 423 (arguing that adolescents may perform worse in stressful situations based upon scientific studies).

<sup>13</sup> Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 DEV. PSYCHOL. 625, 626–34 (2005) (discussing study finding that peer influence has a much greater effect on the risky behavior of adolescents and young adults than it does on mature adults).

<sup>14</sup> *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (“[J]uveniles have less control, or less experience with control, over their own environment.”).

<sup>15</sup> *Roper*, 543 U.S. at 570 (“Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment.”).

occur.<sup>16</sup> Further, chronic traumatic stress causes youth to develop an oversensitive warning system which means that youth genuinely feel threatened and overreact in situations where they have misperceived threats.<sup>17</sup>

Trauma exposure is prevalent amongst juvenile justice involved youth. Between 75%–93% of children entering the juvenile justice system report that they have experienced at least one traumatic event as compared to 34% of all children in the U.S. report experiencing at least one traumatic event.<sup>18</sup> In a study of nearly 2,000 youth arrested and detained in Cook County, Chicago over a three-year period, the Northwestern Juvenile Project found that 92.5% of participating youth had experienced at least one trauma, and 84% had experienced more than one trauma.<sup>19</sup> The most frequently experienced traumas among this population were witnessing violence (seeing or hearing someone get badly hurt or killed), having been personally threatened with a weapon, and being in a situation where they thought that they or someone close to them was going to be badly hurt or die.<sup>20</sup> Overall, more than one in ten children held in detention had PTSD in the year prior to the study interview.<sup>21</sup> Further youth serving JLWOP sentences are have a high exposure to abuse and violence with about 80% reporting witnessing violence in their homes and 54% witnessing violence in their community on a weekly basis.

**Third**, young people possess the **potential to change and grow**.<sup>22</sup> They have the capacity to learn from their mistakes.<sup>23</sup> As their immature brains develop, youth acquire greater capabilities to improve good decision-making and planning, and need feedback and support to help them learn from their mistakes to improve in the future.<sup>24</sup> As trauma sufferers, youth

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<sup>16</sup> See WEIS, *supra* note 74, at 1; Henry R. Cellini, *Child Abuse, Neglect, and Delinquency: The Neurological Link*, 55 JUV. & FAM. CT. J. 1, 7 (2004) (describing how children who have been victims of chronic trauma in their lives, for instance growing up amidst abuse and violence, may seek to provoke violence so as to have some control over the chaos of their lives); JAMES GARBARINO, LOST BOYS: WHY OUR SONS TURN VIOLENT AND HOW WE CAN SAVE THEM, 80–82 (1999).

<sup>17</sup> WEIS, *supra* note 40, at 1.

<sup>18</sup> ADAMS, *supra* note 71, at 2; ANGELA WEIS, JOHN HOWARD INST., INCARCERATED YOUTH & CHILDHOOD TRAUMA at 1, <http://www.thejha.org/trauma> (last visited Mar. 22, 2016). Further, when adults are studied, those who have been exposed to trauma constitute upwards of 93% of criminal offender population.

<sup>19</sup> ABRAM ET AL., *supra* note 17, at 5–6.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Roper v. Simmons*, 543 U.S. 551, 570 (2005); see generally FRANKLIN E. ZIMRING, THE CHANGING LEGAL WORLD OF ADOLESCENCE (1982) (proposing that the best response to juvenile crime is to let adolescents grow up and grow out of it).

<sup>23</sup> See, e.g., *Miller v. Alabama*, 132 S. Ct. 2455, 2455(2012); *Graham v. Florida*, 130 S. Ct. 2011, 2011 (2010); *Roper v. Simmons*, 543 U.S. 551, 570 (2005).

<sup>24</sup> Emily Buss, *What the Law Should (and Should Not) Learn from Child Development Research*, 38 HOFSTRA L. REV. 13, 60–61 (2009).

demonstrate resiliency—an ability to thrive in the face of adversities caused by traumatic events.<sup>25</sup> Youthful offenders’ brains can heal and repair from the damage of trauma with appropriate and timely treatment.<sup>26</sup>

**Nueroplasticity is an important concept in brain development.** The brain’s plasticity—its ability to change in response to experience—is at its peak during adolescence, a period that is currently defined as spanning from twelve through the mid-twenties.<sup>27</sup> Since even the most recent Supreme Court decisions in *Roper*, *Graham*, and *Miller*, our contemporary understanding of the **length of adolescence** and **the plasticity** of the youthful brain has served to highlight **the enormity of the opportunity for redemption recognized by the Court.**<sup>28</sup> Youthful offenders are the ones with the **greatest capacity to learn from their experiences, biologically heal, and incorporate changes** in their behavior in the future. The plasticity of the brain, or its ability to change and adapt based on various stimuli, is critical to brain development.<sup>29</sup>

Throughout adolescence, youth have a heightened ability to grow in response to learning opportunities.<sup>30</sup> Indeed, youth between the ages of twelve and eighteen experience a wave of plasticity that **rivals the period of brain development from ages zero to three**, meaning that during this period their brains are most able to adapt and develop new patterns of thought and behavior which will lead to lifelong success.<sup>31</sup> During this time period, while youth are experiencing development in their thinking and planning skills, and their brains are at the peak of plasticity, youth will grow when they have an opportunity to make decisions on matters important to them, reflect upon the impact of those decisions, and learn from the feedback and support of caring adults.<sup>32</sup>

With youthful offenders, the criminal justice system can and must focus on offering opportunities for redemption, purposeful growth, and rehabilitation. In the third mitigating factor of youth the Supreme Court recognizes that children have personalities that are more “transitory” and less “fixed.”<sup>33</sup>

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<sup>25</sup> BUFFINGTON, DIERKHISING & MARSH, *supra* note 3, at 11.

<sup>26</sup> Eva J. Klain and Amanda R. White, *Implementing Trauma-Informed Practices in Child Welfare*, from the ABA Center on Children and the Law (November 2013) at 3-5.

<sup>27</sup> LAURENCE STEINBERG, AGE OF OPPORTUNITY: LESSONS FROM THE NEW SCIENCE OF ADOLESCENCE, 5, 8–11 (2014) (referring to adolescence as the period between ten to twenty-five years of age and explaining how adolescence rivals ages zero to three in peak neuroplasticity).

<sup>28</sup> STEINBERG, *supra* note 16, at 8–11 (referring to adolescence as the period between ten and twenty-five years of age and explaining how adolescence rivals ages zero to three in peak neuroplasticity).

<sup>29</sup> WEIS, *supra* note 75, at 1.

<sup>30</sup> STEINBERG, *supra* note 16, at 45.

<sup>31</sup> *Id.* at 8–11.

<sup>32</sup> Buss, *supra* note 134, at 60–61.

<sup>33</sup> *Roper v. Simmons*, 543 U.S. 551, 570 (2005).

Youth outgrow risk-taking and criminal behavior simply by growing up. Numerous studies show that, as risk-taking behavior peaks in adolescence, so does criminal activity. Risk-taking **declines after adolescence**.<sup>34</sup> Only a small percentage – **five to ten percent** – of juvenile offenders become “chronic” youthful offenders who continue offending into adulthood.<sup>35</sup> The VERY large majority of youthful offenders do not grow up to become adult criminals. Instead, they are capable of parting with their criminal behavior and integrating successfully into society, even without intervention.<sup>36</sup>

**In Sum, children and adolescents up to the age of 25 have an incredible opportunity to grow and learn from their environment.<sup>37</sup> Their mistakes, even serious and illegal conduct, are not reflective of lifelong character flaws.<sup>38</sup> They should be kept in the juvenile justice system and receive treatment during their adolescence in order to have an opportunity to learn from their mistakes and mature into positive, pro-social adults.**

*I am happy to provide further information, research, and references at your request. I appeared in person to testify in support of the bills because I am so incredibly supportive of the reform opportunity in Oregon.*

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<sup>34</sup> Elizabeth Cauffman, et al., How Developmental Science Influences Juvenile Justice Reform, 8 Irvine L. Rev. 21, 26 (2018).

<sup>35</sup> *Id.*; Marsha Levick et al., *The Eight Amendment Evolves: Defining Cruel and Unusual Punishment Through the Lens of Childhood and Adolescence*, 15 U. PA. J.L & SOC. CHANGE 285, 298 (2012) (citing a three-year study that followed over a thousand serious male offenders charged with felonies and only found 8.7% of the participants to be “persistent” offenders).

<sup>36</sup> *Id.*

<sup>37</sup> LAURENCE STEINBERG, AGE OF OPPORTUNITY: LESSONS FROM THE NEW SCIENCE OF ADOLESCENCE, 5, 8–11 (2014) (referring to adolescence as the period between ten to twenty-five years of age and explaining how adolescence rivals ages zero to three in peak neuroplasticity).

<sup>38</sup> Justice Kennedy famously pronounced, “[I]t does not follow that courts taking a case-by-case proportionality approach could with sufficient accuracy distinguish the few incorrigible juvenile offenders from the many that have the capacity for change.” *Graham v. Florida*, 560 U.S. 48, 77 (2010).