

Governor Bill Haslam
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December 12, 2018

Dear Governor Haslam,

On behalf of Juvenile Law Center, The Atlantic Center for Capital Representation, The Campaign for the Fair Sentencing of Youth, Campaign for Youth Justice, Center for Children’s Law and Policy, The Center on Wrongful Convictions of Youth, The Children and Family Justice Center, The Louisiana Center for Children’s Rights, The Massachusetts General Hospital Center for Law, Brain and Behavior, Phillips Black, Inc., Robert F. Kennedy Human Rights, The Sentencing Project, Southern Poverty Law Center, The Youth First Initiative, and Youth Sentencing & Reentry Project we write to urge you to grant Cyntoia Brown’s request for clemency.

In 2005, Cyntoia Brown was sixteen-years-old, a victim of sex trafficking, and had a Fetal Alcohol Spectrum Disorder diagnosis. She was convicted of first-degree murder and sentenced to a mandatory term of life imprisonment. Although she may request parole after serving 51 years of her sentence, at age 67, her sentence unquestionably deprives her of a “meaningful opportunity to obtain release.”

When Cyntoia was sentenced in 2005, several years before the U.S. Supreme Court’s decisions in *Graham v. Florida*, *Miller v. Alabama*, and *Montgomery v. Louisiana*, life imprisonment was the mandatory minimum sentence available.¹ The sentencing court could not and did not apply current constitutional mandates that youth sentences be proportionate and that sentencers take into account individualized circumstances and the hallmark characteristics of youth.²

Key to the Supreme Court’s decisions in these landmark cases was research on adolescent development and neuroscience, which was never presented to nor considered by Cyntoia’s sentencer.³ These developmental differences impact adolescents’ capacities to foresee and appreciate the consequences of their actions, as well as their ability to make reasoned, independent decisions about the best course of action. Although general cognitive skills strengthen by mid-adolescence, the development of some important cognitive functions lag, as different parts of the brain mature at different rates. Areas involved in more basic functions, such as those involved in sensory information processing and in movement control, develop first⁴ and the parts of the brain responsible for impulse control and foresight are among the last to mature.⁵ Synaptic pruning and myelination—both processes critical in the maturation of the brain—occur relatively late in the prefrontal cortex, the brain region associated with executive functioning, which governs “the capacity . . . to control and coordinate our thoughts and behavior.”⁶

This later development within the prefrontal cortex affects higher-order cognitive functions, such as foresight, weighing risks and rewards, and making decisions that require the simultaneous consideration of multiple sources of information.⁷ Because of this lag, adolescents have difficulty thinking

realistically about future events, i.e. adolescents are both less likely to think about potential long-term consequences, and more likely to assign less weight to those that they *have* identified.⁸

Though studies have shown that older adolescents do not differ significantly from adults in their ability to rationally evaluate risk,⁹ research has also shown that in actual experience, teens still engage in dangerous behaviors, despite understanding the risks involved.¹⁰ This disparity has led researchers to examine differences in decision-making during modes of information processing that are analytic, or “cold,” with those that are experiential, or “hot.”¹¹

Hot cognition is described as thinking under conditions of high arousal and intense emotion. Under these conditions, teens tend to make poorer decisions. The opposite of hot cognition is cold cognition, which is critical and over-analyzing. In cold cognition, circumstances are less intense and teens tend to make better decisions.¹²

Adolescent decision-making is particularly susceptible to influence from emotional and social factors.¹³ In hot emotional contexts, youth decision-making tends to be driven more by the socio-emotional parts of the brain than by the cognitive controls,¹⁴ making adolescents more likely to act emotionally and impulsively without engaging in a formal decision-making process.¹⁵ “Thus, adolescents are more likely than children and adults to make risky decisions in emotionally ‘hot’ contexts[.]”¹⁶

For a youth with Fetal Alcohol Spectrum Disorder (FASD), postnatal brain development does not follow the normal trajectory. Studies have consistently shown that youth with FASD suffer from a wide range of basic executive impairments.¹⁷ At Cyntoia’s post-conviction evidentiary hearing, three different psychologists testified regarding their conclusion that Cyntoia suffered from FASD.¹⁸ In addition to normal developmental lags, Cyntoia’s diagnosis also undoubtedly impaired her executive functioning, including her ability to engage in deliberative thinking and properly assess risks.

In insisting that youth be treated differently than adults when sentencing, the Supreme Court has cautioned against imposing sentences that reflect a premature decision about a juvenile’s incorrigibility.¹⁹ This observation is no less true where the underlying crime is murder and is even more true where a person has demonstrated maturity and rehabilitation post-offense, as Cyntoia has. The Supreme Court requires that any sentence imposed on a juvenile reflect the youth’s ability to change after committing a homicide or non-homicide crime.²⁰ The conclusion that a child must be irretrievably depraved or permanently incorrigible, based on the crime alone, is untenable under the reasoning of *Roper*, *Graham*, *Miller*, and *Montgomery*. In fact, the American Psychological Association stressed:

[T]here is no reliable way to determine that a juvenile’s offenses are the result of an irredeemably corrupt character; and there is thus no reliable way to conclude that a juvenile—even one convicted of an extremely serious offense—should be sentenced to life in prison, without any opportunity to demonstrate change or reform.²¹

A constitutional sentence must provide some opportunity for the offender to show growth and rehabilitation with time and maturity despite the severity of their youthful misconduct. Moreover, the Supreme Court has stated that incarceration that “gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope...” cannot pass constitutional muster.²² The chance to reintegrate fully into society upon release diminishes over time as individuals who serve lengthy sentences

are denied the chance to grow and mature outside prison walls. It also reduces the opportunity to have a fulfilling and meaningful life upon reentry.

When incarcerated during these formative years of a young person's life, individuals are unlikely to be able to conceive and parent children, obtain higher educational degrees and apply their education to gainful employment. Furthermore, the consequences and psychosocial harm of incarcerating children in the adult prison system can be devastating. A meaningful opportunity for release must mean more than release in the twilight of one's life with limited opportunity to experience life outside prison walls or to make meaningful contributions to one's community. This flouting of the U.S. Supreme Court's mandate cannot be allowed to stand. Eighth Amendment jurisprudence has clarified that the constitutionality of a sentence depends on the actual impact of the sentence upon the individual, not how a sentence is labeled.²³ A sentence that merely offers geriatric release or, in the alternative, ensures that Cyntoia will die in prison is a mandatory life sentence that is disproportionate when imposed on a sixteen-year old.

Cyntoia must serve 51 years before she can even request parole. Release is certainly not guaranteed. Nobody is suggesting that Cyntoia avoid responsibility for her actions – indeed she has spent her entire adolescence and young adulthood behind bars and has used that time for maximal personal growth and responsible citizenship. Denying parole eligibility prior to the passage of 51 years does not provide a meaningful opportunity for release to Cyntoia. Allowing her incarceration to a geriatric end point is a cruel and unnecessary squandering of her potential for rehabilitation and future contribution.

We urge you to grant her request for clemency.

Sincerely,

Juvenile Law Center

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Judith G. Edersheim, Founding
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¹ Tenn. Code Ann. § 39-13-202.

² *Miller v. Alabama*, 567 U.S. 460, 471 (2012) (“children are constitutionally different from adults for purposes of sentencing.”). See also *Roper v. Simmons*, 543 U.S. 551, 569-570 (2005); *Graham v. Florida*, 560 U.S. 48, 68-69 (2010).

³ *Graham*, 560 U.S. at 68 (since *Roper*, “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds”); *Miller*, 567 U.S. at 471; see generally Laurence Steinberg, *The Influence of Neuroscience on US Supreme Court Decisions about Adolescents’ Criminal Culpability*, 14 NATURE NEUROSCIENCE 513 (2013); Richard J. Bonnie & Elizabeth S. Scott, *The Teenage Brain: Adolescent Brain Research and the Law*, 22 CURRENT DIRECTIONS IN PSYCHOL. SCI. 158 (2013).

⁴ Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES OF THE UNITED STATES OF AMERICA 8174, 8174 (2004).

⁵ Terry A. Maroney, *The Once and Future Juvenile Brain*, in CHOOSING THE FUTURE FOR AMERICAN JUVENILE JUSTICE 189, 193 (Franklin E. Zimring & David S. Tanenhaus eds., 2014).

⁶ Sarah-Jayne Blakemore & Suparna Choudhury, *Development of the Adolescent Brain: Implications for Executive Function and Cognition*, 47 J. OF CHILD PSYCHOL. & PSYCHIATRY 296, 301 (2006).

⁷ Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANN. REV. OF CLINICAL PSYCHOL. 47, 54 (2009).

⁸ See Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 THE FUTURE OF CHILDREN 15, 20 (2008); see also *Graham*, 560 U.S. at 78 (“Difficulty in weighing long-term consequences; a corresponding impulsiveness; and reluctance to trust defense counsel, seen as part of the adult world a rebellious youth rejects, all can lead to poor decisions by one charged with a juvenile offense.”).

⁹ Dustin Albert & Laurence Steinberg, *Judgment and Decision-making in Adolescence*, 21 J. OF RES. ON ADOLESCENCE 211, 213 (2011).

¹⁰ Mariam Arain, Maliha Haque, Lina Johal, Puja Mathur, Wynand Nel, Afsha Rais, Ranbir Sandhu, & Sushil Sharma, *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRIC DISEASE & TREATMENT 449, 453 (2013).

¹¹ Albert & Steinberg, *supra*, at 212.

¹² Arain et al., *supra*, at 455.

¹³ Sarah-Jayne Blakemore & Trevor W. Robbins, *Decision-Making in the Adolescent Brain*, 15 NATURE NEUROSCIENCE 1184, 1184 (2012).

¹⁴ *Id.* at 1188.

¹⁵ See Albert & Steinberg, *supra*, at 211.

¹⁶ Blakemore & Robbins, *supra*, at 1187.

¹⁷ Novick Brown & Connor, *supra*, at 73-74.

¹⁸ *Brown*, 2014 WL 5780718, at *6-10.

¹⁹ See *Graham*, 560 U.S. at 72.

²⁰ See *id.* at 73. (“Even if the State’s judgment that *Graham* was incorrigible were later corroborated by prison misbehavior or failure to mature, the sentence was still disproportionate because that judgment was made at the outset.”).

²¹ Brief for the American Psychological Association et al. as *Amici Curiae* in Support of Petitioners at 25, *Miller v. Alabama*, 567 U.S. 460 (2012), (Nos. 10-9646 & 10-9647).

²² *Graham*, 560 U.S. at 79.

²³ *Sumner v. Shuman*, 483 U.S. 66, 83 (1987).