

10-9647, 10-9646

IN THE

Supreme Court of the United States

10-9647

KUNTRELL JACKSON,

Petitioner,

—v.—

(caption continued on inside cover)

**BRIEF OF JEFFREY FAGAN, DEBORAH BASKIN, FRANK R. BAUMGARTNER, KATHERINE BECKETT, DONNA BISHOP, ALFRED BLUMSTEIN, ROBERT BRAME, TODD R. CLEAR, SIMON A. COLE, PHILIP J. COOK, FRANCIS T. CULLEN, JOHN DILULIO, JR., KENNETH A. DODGE, JAMES ALAN FOX, DAVID GARLAND, MARIE GOTTSCHALK, DAVID A. GREEN, DAVID GREENBERG, CRAIG HANEY, BERNARD E. HARCOURT, KAREN HEIMER, DAVID S. KIRK, MARK A.R. KLEIMAN, LAUREN J. KRIVO, AARON KUPCHIK, CHARIS E. KURBIN, JANET L. LAURITSEN, GLENN CARTMAN LOURY, TERRY A. MARONEY, TRACEY L. MEARES, EDWARD P. MULVEY, DANIEL NAGIN, ANDREW PAPACHRISTOS, RAYMOND PATERNOSTER, JOHN PFAFF, MICHAEL L. RADELET, RICHARD ROSENFELD, ROBERT J. SAMPSON, CARLA SHEDD, SIMON I. SINGER, JONATHAN SIMON, MICHAEL TONRY, VALERIE WEST, JAMES Q. WILSON, CHRISTOPHER WINSHIP, FRANKLIN E. ZIMRING
AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS**

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ON A WRIT OF CERTIORARI TO THE ARKANSAS SUPREME COURT

10-9646

EVAN MILLER,
Petitioner,

—v.—

ALABAMA,
Respondent.

ON A WRIT OF CERTIORARI TO THE ALABAMA COURT OF CRIMINAL APPEALS

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CASES

<i>Graham v. Florida</i> , 130 S. Ct. 2011, 560 U.S. ___ (2010)	1, 37
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005)	1, 37

OTHER AUTHORITIES

Alexia Cooper & Erica L. Smith, Bureau of Just. Stat., U.S. Dep't of Just., NCJ 236018, Homicide Trends in the United States, 1980-2008 (2011)	9, 22, 23
Alfred Blumstein, <i>Youth Guns and Violent Crime</i> , 12 <i>The Future of Children</i> 39 (2002)	11
Alfred Blumstein, <i>Youth Violence, Guns, and the Illicit-Drug Industry</i> , 86 <i>J. Crim. L. & Criminology</i> 10 (1995)	12
Anti-Gang and Youth Violence Control Act of 1996, H.R. 3698, 104th Cong. (1996)	17
Anti-Gang and Youth Violence Control Act of 1996, S. 1991, 104th Cong. (1996).....	17
Avshalom Caspi, et al., <i>Role of Genotype in the Cycle of Violence in Maltreated Children</i> . 297 <i>SCI.</i> 851 (2002)	20

Balanced Juvenile Justice and Crime Prevention Act of 1996, H.R. 3445, 104th Cong. (1996)	17
Barry C. Feld, <i>A Slower Form of Death: Implications of Roper v. Simmons for Juveniles Sentenced to Life Without Parole</i> , 22 Notre Dame J. L. Ethics & Pub. Pol’y 9 (2008).....	17
Bruce Daniels, <i>Juvenile Justice a ‘Top Priority,’</i> Albuquerque Journal, Oct. 8, 1996, at C3	14
Charles Puzanchera & Benjamin Adams, Off. of Juv. Just. and Delinq. Prevention, U.S. Dep’t of Just., NCJ 191052, Juvenile Arrests 2009 (2011)	24, 25
Conduct Problems Research Prevention Group, <i>The Effects of the Fast Track Preventive Intervention on the Development of Conduct Disorder Across Childhood</i> , 82 Child Dev. 331 (2011)	21
David McDowall & Simon I. Singer, <i>Criminalizing Delinquency: The Deterrent Effects of the New York Juvenile Offender Law</i> . 22 Law and Soc’y Rev. 521 (1988)	31, 32
David S. Lee & Justin McCrary, <i>Crime Punishment, and Myopia</i> , 29 (NBER Working Paper Series, Working Paper 11491, June 2005)	35

Elizabeth Becker, <i>As Ex-Theorist on Young 'Superpredators,' Bush Aide Has Regrets</i> , N.Y. Times, Feb. 9, 2001, at A19.....	19
Eric L. Jensen and Linda K. Metsger, <i>A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime</i> , 40 Crime and Delinq. 96 (1994)	32
Franklin E. Zimring, <i>American Youth Violence</i> (Oxford University Press 1998).....	18
Franklin E. Zimring, <i>The Youth Violence Epidemic: Myth or Reality?</i> , 33 Wake Forest L. Rev. 727 (1998).....	18
Franklin Zimring, <i>Crying Wolf Over Teen Demons; Crime: Projecting A New Crime Wave Serves Politicians, Even If It Has No Basis In Reality</i> , Los Angeles Times, Aug. 19, 1996, at 5.....	14
Gene Koprowski, <i>The Rise of the Teen Super- Predator</i> , Washington Times, Oct. 23, 1996, at A17	12
Heather C. West & William J. Sabol, Bureau of Justice Statistics, U.S. Dep't of Justice, NCJ 225619, <i>Prison Inmates at Midyear 2008- Statistical Tables 20</i> (2009)	27
Howard N. Snyder & Melissa Sickmund, Nat'l Center for Juv. Just., U.S. Dep't of Just., <i>Juvenile Offenders and Victims: 2006 National Report</i> (2006)	16, 17, 27

James Alan Fox, <i>A Too-Harsh Law on Juvenile Murder</i> , The Boston Globe, Jan. 25, 2007, at A11	19
James Alan Fox, <i>Abolish life without parole in Mass.</i> , Boston.Com, Sept. 21, 2011	32
James C. Howell, Preventing and Reducing Juvenile Delinquency: A Comprehensive Framework (2d ed. 2009).....	18, 26
James P. Lynch, Off. of Juv. Just. and Delinq. Prevention, U.S. Dep't of Just., NCJ 191052, Trends in Juvenile Violent Offending: An Analysis of Victim Survey Data (2002).....	22, 23
Jarod K. Hofacket, <i>Justice or Vengeance: How Young is Too Young for a Child to Be Tried and Punished as an Adult?</i> , 34 Tex. Tech. L. Rev. 159 (2002)	15
Jason Chien, Dustin Albert, Lia O'Brien, Kaitlyn Uckert & Laurence Steinberg, <i>Peers Increase Adolescent Risk Taking by Enhancing Activity in the Brain's Reward Circuitry</i> , 14 Developmental Sci. F1 (March 2011)	20

Jeffrey Fagan, Aaron Kupchik, & Akiva Liberman, <i>Be Careful What you Wish For: Legal Sanctions and Public Safety Among Adolescent Offenders in Juvenile and Criminal Court</i> , Columbia Law School, Pub. Law Research Paper No. 03-61 (July 2007).....	36
Jessica Short & Christy Sharp, Child Welfare League of Am., <i>Disproportionate Minority Contact in the Juvenile Justice System</i> (2005).....	15
John DiIulio, <i>Defining Criminality Up</i> , Wall St. J., July 3, 1996, at A10	12
John J. DiIulio, Jr., <i>The Coming of the Super-Predators</i> , The Weekly Standard, Nov. 27, 1995, at 23.....	13, 14
John J. DiIulio, Jr., <i>My Black Crime Problem, and Ours</i> , CITY JOURNAL, Spring 1996	12, 14
John J. DiIulio, Jr., <i>Rethinking Crime—Again</i> , Democracy Journal, Spring 2010	19
Juvenile Crime Control and Delinquency Prevention Act of 1996, H.R. 3876 104th Cong. (1996)	17
Juvenile Crime Prevention and Reform Act of 1995, S. 1036, 104th Cong. (1995).....	17
Juvenile Justice and Delinquency Prevention Act of 1996, S. 1952, 104th Cong. (1996)	17

Juvenile Justice and Delinquency Prevention Act, Hearing Before the House Comm. on Economic and Educational Opportunities, Subcommittee on Childhood, Youth and Families, 104th Cong. 90 (1996)	14
Kenneth A. Dodge, <i>Framing Public Policy and Prevention of Chronic Violence in American Youth</i> , 63 Am. Psychologist, 573 (2008).....	15
Lara A. Bazelon, <i>Exploding The Superpredator Myth: Why Infancy Is The Preadolescent's Best Defense In Juvenile Court</i> , 75 N.Y.U. L. Rev. 159 (2000)	12
Laurie Garrett, <i>Murder By Teens Has Soared Since '85</i> , N.Y. Newsday, Feb. 18, 1995.....	14
Magda Stouthamer-Loeber et al, <i>Desistance From Persistent Serious Delinquency in the Transition to Adulthood</i> 16 Development and Psychopathology 891 (2004).....	21
McGowan, et al., <i>Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System</i> , 32 Am. J. Prev. Med. S7 (2007).....	32, 35
Nat'l Res. Council and Inst. of Med., <i>Juvenile Crime, Juvenile Justice</i> (Joan McCord, Cathy Spatz Widom & Nancy A. Crowell, eds., 2001)	11

- Patricia Griffin, Patricia Torbet, & Linda Szymanski, Nat'l Center for Juv. Just., U.S. Dep't of Just., NCJ 1072836, *Trying Juveniles in Criminal Court: An Analysis of State Transfer Provisions* (1998).....17
- Patricia Torbet, et al., Off. of Juv. Just. and Delinq. Prevention, U.S. Dep't of Just., *State Responses to Serious and Violent Juvenile Crime* (1996)16
- Peter Annin, *Superpredators Arrive: Should We Cage the New Breed of Vicious Kids?*, Newsweek, Jan. 22, 199613
- Philip J. Cook & John H. Laub, *After the Epidemic: Recent Trends in Youth Violence in the United States*, 29 *Crime & Just.* 1 (2002)..... 11, 26, 27, 28, 29
- Rachel Aviv, *Annals of Justice: No Remorse: Should a Teen-Ager Be Given a Life Sentence?*, *The New Yorker*, Jan. 2, 2012, at 57.....19
- Richard A. Mendel, Annie E. Casey Foundation, *No Place for Kids: The Case for Reducing Juvenile Incarceration*, 26 (2011).....27, 30, 31
- Robert J. Sampson & John H. Laub, *Crime and Deviance over the Life Course: The Salience of Adult Social Bonds*, 55 *Am. Soc. Rev.*, 609 (1990)21

Robert J. Sampson & John H. Laub, <i>Life-Course Desisters? Trajectories of Crime Among Delinquent Boys Followed to Age 70</i> , 41 <i>Criminology</i> 301 (2003).....	21
Russell J. Skiba, <i>Zero Tolerance, Zero Evidence: An Analysis of School Disciplinary Practice Policy Research Report #SRS2</i> August, 2000	18
Sarah Lawrence & Jeremy Travis, <i>The New Landscape of Imprisonment: Mapping America's Prison Expansion</i> . Research Report of the Urban Institute, Washington D.C. (2004)	18
Scott W. Henggeler et al, <i>Multisystemic Treatment of Antisocial Behavior in Children and Adolescents</i> (1998).....	21
Shay Bilchik, Off. of Juv. Just. and Delinq. Prevention, U.S. Dep't of Just., NCJ 178993, <i>Challenging the Myths</i> (2000) ...	22, 25, 26
Steven N. Durlauf & Daniel S. Nagin, <i>Imprisonment and Crime: Can Both Be Reduced?</i> , 10 <i>Criminology & Pub. Pol'y</i> 8 (2011).....	36
Suzanne Fields, <i>The Super-Predator</i> , Washington Times, Oct. 17, 1996, at A23	12

Terence P. Thornberry, et al., <i>The Role of Juvenile Gangs in Facilitating Delinquent Behavior</i> , 30 <i>Crime and Delinq.</i> 55–87 (1993).....	20
Thomas A. Loughran et al., <i>Estimating A Dose-Response Relationship Between Length of Stay and Future Recidivism in Serious Juvenile Offenders</i> , 47 <i>Criminology</i> 699 (2009)	36
U.S. Dep’t of Just., Fiscal Years 2000-2005 Strategic Plan, Appendix D: Key Facts on Crime and Justice (2000).....	10
Violent and Hard-Core Juvenile Offender Reform Act of 1995, S. 1245, 104th Cong. (1995).....	17
Violent and Hard-Core Juvenile Offender Reform Act of 1996, H.R. 3494, 104th Cong. (1996)	17
Violent and Repeat Juvenile Offender Reform Act of 1996, S. 1854, 104th Cong. (1996)	17
Violent Youth Predator Act of 1996, H.R. 3565, 104th Cong. (1996).....	17
William J. Bennett, John J. DiIulio, Jr., & John P. Walters, <i>Body Count: Moral Poverty...And How To Win America’s War Against Crime and Drugs</i> (Simon & Schuster 1996)	12, 13

INTEREST OF *AMICI CURIAE*

Amici curiae are forty-six academics who submit this Brief in support of Petitioners Evan Miller and Kuntrell Jackson.¹ All *amici* have an interest in, teach classes on, and/or have published peer-reviewed research in the fields of criminology and/or juvenile crime trends in the United States.

Amici write in support of the Petitioners in order to bring to the Court's attention certain data and other information relating to what proved to be a short-lived increase in juvenile crime that led to changes in the treatment of juveniles (i.e. persons under the age of 18) in many states' criminal justice systems. These changes resulted in increased exposure of juvenile offenders to the possibility of sentences of life without parole.

This Court held unconstitutional the execution of juvenile offenders in *Roper v. Simmons*, 543 U.S. 551 (2005), and prohibited sentences of life without parole for juveniles convicted of non-homicide offenses in *Graham v. Florida*, 130 S. Ct. 2011, 560 U.S. ____ (2010). The Court, however, has

¹ The parties have consented to the filing of this brief, and letters of consent have been filed with the Clerk of the Court in accordance with Supreme Court Rule 37.2(a). Pursuant to Rule 37.6, no counsel for any party has authored this brief in whole or in part, and no person or entity, other than the above-mentioned *amici* or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

not ruled on the issues presented in these cases, the constitutionality of sentences of life without parole for juveniles convicted of homicide offenses, including felony homicide.

Amici consist of the following:

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- Donna Bishop is a Professor of Criminal Justice at Northeastern University.
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- Jonathan Simon is the Adrian A. Kragen Professor of Law at UC Berkeley School of Law.
- Michael Tonry is the Russell M. and Elizabeth M. Bennett Chair in Excellence at the University of Minnesota Law School. He is a past President of the American Society of Criminology.
- Valerie West is an Assistant Professor at John Jay College of Criminal Justice.
- James Q. Wilson is an Emeritus Professor of Public Policy at UCLA and former Chairman of the Committee on Law and Justice of the National Research Council/National Academies.
- Christopher Winship is the Diker-Tishman Professor of Sociology at Harvard University.
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SUMMARY OF ARGUMENT

The spike in violent crime by juveniles in the late 1980s and early 1990s triggered widespread fears about the causes and extent of juvenile violence. Many states changed their laws regarding the transfer of juveniles to the adult criminal system in response to this increase in juvenile crime, subjecting juvenile offenders to sentencing regimes

that were originally conceived for adults, including sentences of life without parole.

The fears of a juvenile crime wave that prompted these changes became embodied in the notion of a “juvenile superpredator,” which was reflected in academic and political discourse. Juvenile superpredators were characterized as ruthless sociopaths who lacked a moral conscience and were unconcerned about the consequences of their actions and undeterred by punishment.

However, the fear of an impending generation of superpredators proved to be unfounded. Empirical research that has analyzed the increase in violent crime during the early- to mid-1990s and its subsequent decline demonstrates that the juvenile superpredator was a myth and the predictions of future youth violence were baseless. *Amici* have been unable to identify *any* scholarly research published in the last decade that provides support for the notion of the juvenile superpredator, and the scholar credited with originating that term has acknowledged that his characterizations and predictions were wrong; he is one of the *amici* who submit this brief.

In addition, prison sentences of life without parole, whether discretionary or mandatory, have not been shown to have a deterrent effect on juvenile crime, and the incarceration rates of juveniles pursuant to such sentencing policies demonstrate no causal relationship to the significant reduction in juvenile violent crime since the mid-1990s. There is

no empirical basis for any concern that declaring unconstitutional sentences of life without parole for juvenile offenders would result in an increase in violent juvenile crime.

ARGUMENT

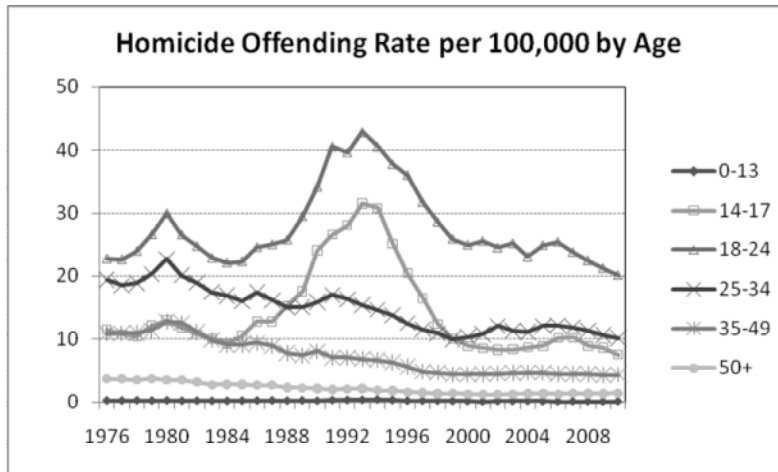
I. Background of the Notion of the Juvenile Superpredator

From the late 1980s to the early 1990s, homicide rates in the United States spiked, taking on the characteristics of an epidemic with a distinct onset and peak. In 1984, the homicide rate in the United States was 7.9 per 100,000 U.S. residents.² This rate increased to a peak of 9.8 per 100,000 in 1991.³

Juveniles (aged 14-17) and young adults (18-24) accounted for the entire increase in the homicide rate, as shown in Figure 1 below. The homicide rate for juveniles increased most dramatically, from approximately 10 per 100,000 in 1985 to a peak of approximately 30 per 100,000 in 1993.

² Alexia Cooper & Erica L. Smith, Bureau of Just. Stat., U.S. Dep't of Just., NCJ 236018, Homicide Trends in the United States, 1980-2008 2 (2011), *available at* <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2221>.

³ *Id.*

Figure 1⁴

As a result, while juveniles constituted less than 10% of all male homicide offenders in 1985, the proportion had doubled to nearly 20% by 1993, as shown in Figure 2 below.

⁴ U.S. Dep't of Just., Fiscal Years 2000–2005 Strategic Plan, Appendix D: Key Facts on Crime and Justice (2000), available at http://www.justice.gov/archive/mps/strategic_2000_2005/tocpdf.htm. The graph in Figure 1 has been updated by Professor James Alan Fox of Northeastern University using the same Bureau of Justice Statistics to include data through 2010.

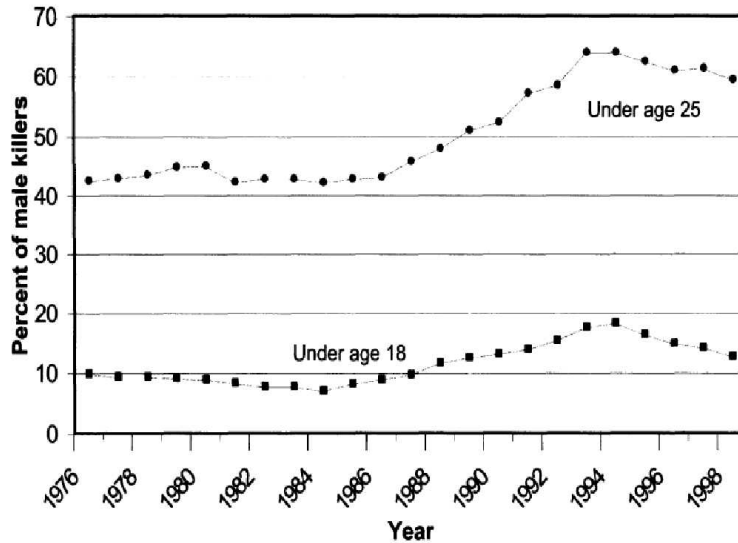
Figure 2⁵

FIG. 8.—Age distribution of suspected male killers, 1976–98. Sources: ICPSR (2001a). See appendix for details.

Studies by the National Research Council and Institute of Medicine and by criminologists have attributed the growth in juvenile violence in the early 1990s to several period-specific factors, including (i) increased gang participation by youths, (ii) involvement of adolescents in violent drug dealing organizations, and (iii) a general increase in lethal violence, especially gun violence.⁶ However, in

⁵ Philip J. Cook & John H. Laub, *After the Epidemic: Recent Trends in Youth Violence in the United States*, 29 *Crime & Just.* 1, 15 (2002).

⁶ Nat'l Res. Council and Inst. of Med., *Juvenile Crime, Juvenile Justice 93–94* (Joan McCord, Cathy Spatz Widom & Nancy A. Crowell, eds., 2001) (gangs); Alfred Blumstein,

response to the increase in juvenile homicide, certain social scientists and commentators argued that changes in the culture and social structure signaled a fundamental transformation in child development that corroded empathy and morality, spawning a new generation of remorseless youths who were feared to be “muggers, killers, and thieves.”⁷ John DiIulio, Jr., then a professor of Politics and Public Affairs at Princeton University, and one of the *amici* who are submitting this brief, is widely credited with having coined the term “superpredator” in the mid-1990s to describe these youths.⁸ The term appeared in numerous articles and books written by Professor DiIulio and others during that period.⁹

Youth Guns and Violent Crime, 12 *The Future of Children* 39, 44–49 (2002) (drugs and guns); Alfred Blumstein, *Youth Violence, Guns, and the Illicit-Drug Industry*, 86 *J. Crim. L. & Criminology* 10 (1995) (guns and drugs).

⁷ William J. Bennett, John J. DiIulio, Jr., & John P. Walters, *Body Count: Moral Poverty...And How To Win America's War Against Crime and Drugs* 26 (Simon & Schuster 1996) (quoting James Q. Wilson, *Crime and Public Policy*, in Wilson and Petersilia, *Crime*, at 507).

⁸ See Lara A. Bazelon, *Exploding The Superpredator Myth: Why Infancy Is The Preadolescent's Best Defense In Juvenile Court*, 75 *N.Y.U. L. Rev.* 159, 165 n.21 (2000).

⁹ See John J. DiIulio, Jr., *My Black Crime Problem, and Ours*, *City Journal*, Spring 1996 (referring to “super-predators”); Gene Koprowski, *The Rise of the Teen Super-Predator*, *Washington Times*, Oct. 23, 1996, at A17; Suzanne Fields, *The Super-Predator*, *Washington Times*, Oct. 17, 1996, at A23 (“The super-predator is upon us.”); John DiIulio, *Defining Criminality Up*, *Wall St. J.*, July 3, 1996, at A10

This literature described juvenile superpredators as:

Radically impulsive, brutally remorseless youngsters, including ever more preteenage boys, who murder, assault, rape, rob, burglarize, deal deadly drugs, join gun-toting gangs, and create serious communal disorders. They do not fear the stigma of arrest, the pains of imprisonment, or the pangs of conscience. They perceive hardly any relationship between doing right (or wrong) now and being rewarded (or punished) for it later. To these mean-street youngsters, the words “right” and “wrong” have no fixed moral meaning.¹⁰

(“[The victim’s] murderer exemplifies the growing threat of juvenile super-predators who maim and murder without remorse or fear.”); Peter Annin, *Superpredators Arrive: Should We Cage the New Breed of Vicious Kids?*, Newsweek, Jan. 22, 1996, at 57; John J. DiIulio, Jr., *The Coming of the Super-Predators*, The Weekly Standard, Nov. 27, 1995, at 23 (“On the horizon...are tens of thousands of severely morally impoverished juvenile super-predators. They are perfectly capable of committing the most heinous acts of physical violence for the most trivial reasons...They fear neither the stigma of arrest nor the pain of imprisonment. They live by the meanest code of the meanest streets, a code that reinforces rather than restrains their violent, hair-trigger mentality.”)

¹⁰ Bennett et al., *supra* note 7, at 27.

In 1995, Professor DiIulio predicted that the number of juveniles in custody would increase three-fold in the coming years¹¹ and that, by 2010, there would be “an estimated 270,000 more young predators on the streets than in 1990.”¹² Criminologist James Fox observed, “[u]nless we act today, we're going to have a bloodbath when these kids grow up.”¹³

The notion of juvenile superpredators gained popularity beyond criminologists and social commentators and entered and was reified in political rhetoric.¹⁴ “This metaphor was successful

¹¹ DiIulio, *The Coming of the Super-Predators*, *supra* note 9 (“Between 1985 and 1991, the number of juveniles in custody increased from 49,000 to nearly 58,000. By my estimate, we will probably need to incarcerate at least 150,000 juvenile criminals in the years just ahead.”).

¹² DiIulio, *My Black Crime Problem*, *supra* note 9.

¹³ Laurie Garrett, *Murder By Teens Has Soared Since '85*, N.Y. Newsday, Feb. 18, 1995.

¹⁴ See e.g., Juvenile Justice and Delinquency Prevention Act, Hearing Before the House Comm. on Economic and Educational Opportunities, Subcommittee on Childhood, Youth and Families, 104th Cong. 90 (1996) (statement of Hon. Bill McCollum, Chairman, Subcommittee on Crime, H. Judiciary Comm.) (“[B]race yourself for the coming generation of ‘super-predators.’”); Bruce Daniels, *Juvenile Justice a ‘Top Priority,’* Albuquerque Journal, Oct. 8, 1996, at C3 (Senator Pete Domenici, who introduced the Juvenile Justice Modernization Act, stated one of the bill’s “key principles” was to “[u]pdat[e] laws to deal with the ‘superpredator,’ the increasingly violent juvenile criminal”) Franklin Zimring, *Crying Wolf Over Teen Demons; Crime: Projecting A New Crime Wave Serves Politicians, Even If It*

in catalyzing policymakers and the public because it readily accessed the public's hidden stereotype of the violent youth as someone who is dangerous, living in a hopeless situation, and not worthy of empathy or support."¹⁵

Throughout the 1990s, state legislatures took action in an environment of hysteria featuring highly publicized heinous crimes committed by juvenile offenders, which created "a looming sense of danger that a 'superpredator' youthful offender is at large."¹⁶ Between 1992 and 1999, nearly every state passed legislation that expanded the treatment of juveniles as adults for purposes of sentencing and punishment:¹⁷

Has No Basis In Reality, Los Angeles Times, Aug. 19, 1996, at 5 ("Bob Dole injected both the term 'superpredators' and alarming projections about 2010 into the presidential campaign.").

¹⁵ Kenneth A. Dodge, *Framing Public Policy and Prevention of Chronic Violence in American Youth*, 63 *Am. Psychologist*, 573, 576 (2008).

¹⁶ Jarod K. Hofacket, *Justice or Vengeance: How Young is Too Young for a Child to Be Tried and Punished as an Adult?*, 34 *Tex. Tech. L. Rev.* 159, 164 (2002).

¹⁷ See Jessica Short & Christy Sharp, Child Welfare League of Am., *Disproportionate Minority Contact in the Juvenile Justice System* 7 (2005), available at <https://www.ncjrs.gov/App/publications/Abstract.aspx?id=235885> ("Between 1992 and 1999, 49 states and the District of Columbia passed laws making it easier for juveniles to be tried as adults through statutory exclusion, mandatory waiver, direct file by prosecutors, or presumptive waiver legislation.").

- Between 1992 and 1995, forty-eight states and the District of Columbia made substantive changes to their laws affecting juveniles who committed violent or serious crimes.¹⁸
- Between 1992 and 1995, legislatures in thirteen states and the District of Columbia adopted or modified statutes that imposed mandatory minimum periods of incarceration for juveniles convicted of certain violent or serious crimes.¹⁹
- Between 1992 and 1997, forty-five states adopted or modified laws that facilitated the prosecution of juveniles as adults in criminal court.²⁰
- By 1999, the majority of states had adopted provisions imposing mandatory transfer of juvenile cases to adult criminal proceedings for certain serious offenses.²¹ These changes

¹⁸ Patricia Torbet, et al., Off. of Juv. Just. and Delinq. Prevention, U.S. Dep't of Just., *State Responses to Serious and Violent Juvenile Crime* xv (1996), *available at* www.ncjrs.gov/pdffiles/statresp.pdf.

¹⁹ *Id.*

²⁰ See Howard N. Snyder & Melissa Sickmund, Nat'l Center for Juv. Just., U.S. Dep't of Just., *Juvenile Offenders and Victims: 2006 National Report* 96 (2006), *available at* <http://www.ojjdp.gov/ojstatbb/nr2006/>.

²¹ See Barry C. Feld, *A Slower Form of Death: Implications of Roper v. Simmons for Juveniles Sentenced to Life Without Parole*, 22 Notre Dame J. L. Ethics & Pub. Pol'y 9, 13 (2008).

included lowering the age of eligibility for prosecution and sentencing in criminal court to 13 years in New York, and as young as 10 elsewhere.²²

In addition, numerous bills were introduced in Congress to address juvenile crime, including one named the Violent Youth Predator Act of 1996.²³ Although the proposed federal legislation was not adopted, the state laws enacted during the 1990s

²² See Patricia Griffin, Patricia Torbet, & Linda Szymanski, Nat'l Center for Juv. Just., U.S. Dep't of Just., NCJ 1072836, *Trying Juveniles in Criminal Court: An Analysis of State Transfer Provisions*, 14-15 (1998), *available at* <http://www.ncjrs.gov/pdffiles/172836.pdf> (table listing the minimum age and offense for which a juvenile can be transferred to criminal court in every state as of 1997); *see also* Snyder & Sickmund, *supra* 20, at 114 (updated figure with minimum transfer age as of 2004).

²³ *See e.g.*, Juvenile Justice and Delinquency Prevention Act of 1996, S. 1952, 104th Cong. (1996); Anti-Gang and Youth Violence Control Act of 1996, S. 1991, 104th Cong. (1996); Violent and Repeat Juvenile Offender Reform Act of 1996, S. 1854, 104th Cong. (1996); Balanced Juvenile Justice and Crime Prevention Act of 1996, H.R. 3445, 104th Cong. (1996); Violent and Hard-Core Juvenile Offender Reform Act of 1996, H.R. 3494, 104th Cong. (1996); Violent Youth Predator Act of 1996, H.R. 3565, 104th Cong. (1996); Anti-Gang and Youth Violence Control Act of 1996, H.R. 3698, 104th Cong. (1996); Juvenile Crime Control and Delinquency Prevention Act of 1996, H.R. 3876 104th Cong. (1996); Juvenile Crime Prevention and Reform Act of 1995, S. 1036, 104th Cong. (1995); Violent and Hard-Core Juvenile Offender Reform Act of 1995, S. 1245, 104th Cong. (1995).

greatly expanded the imposition on juveniles of punishments previously reserved for adults.²⁴

II. Scientific Evidence and Empirical Data Invalidate the Juvenile Superpredator Myth.

The prediction of a juvenile superpredator epidemic turned out to be wrong; in fact, there was no superpredator generation.²⁵ Professor DiIulio,

²⁴ During the same era, zero-tolerance policies were implemented in many public schools, pursuant to which the first offense for weapon-carrying and other infractions was met with immediate expulsion from schools. No scientific evidence has found that zero-tolerance policies or school suspension policies lead to decreases in youth violence. See Russell J. Skiba, *Zero Tolerance, Zero Evidence: An Analysis of School Disciplinary Practice* Policy Research Report #SRS2 August, 2000. Other effects of the superpredator myth included the largest expansion in history in the U.S. prison population, which increased by more than one million between 1980 and 2000. See Sarah Lawrence & Jeremy Travis, *The New Landscape of Imprisonment: Mapping America's Prison Expansion* 1 Research Report of the Urban Institute, Washington D.C. (2004).

²⁵ The methodologies used in predicting the coming of a generation of superpredators have been criticized. See generally James C. Howell, *Preventing and Reducing Juvenile Delinquency: A Comprehensive Framework* 3–16 (2d ed. 2009); Franklin E. Zimring, *American Youth Violence*, 61–63 (Oxford University Press 1998); Franklin E. Zimring, *The Youth Violence Epidemic: Myth or Reality?*, 33 *Wake Forest L. Rev.* 727, 728 (1998) (challenging predictions of a “coming storm” of juvenile superpredators as distortion of statistics and “fundamentally unscientific” guesswork); see also Franklin E. Zimring, *American Youth Violence* (critiquing the use of a temporal spike in youth violence to predict future trends).

the original proponent of the juvenile superpredator notion and a signatory to this brief, has repudiated the idea and “expressed regret, acknowledging that the prediction was never fulfilled.”²⁶

Although the myth of a juvenile superpredator influenced legislation and policy, it was not substantiated by scientific evidence about how children develop. The popular myth suggested that all chronically antisocial youths were hopelessly defective—perhaps even genetically so. Molecular genetic studies, though, have revealed that genes account for very little of the variation in violent behavior, except when interacting with

²⁶ Professor DiIulio has noted that the explicit conclusion of his original analysis even at the time was that “[l]ong prison terms would not deter” the most violent juveniles, and that the proper remedy was more faith-based anti-crime efforts (i.e. “build churches, not jails”) as the best solution. See John J. DiIulio, Jr., *Rethinking Crime—Again*, Democracy Journal, Spring 2010, at 46, 52–53; see also Rachel Aviv, *Annals of Justice: No Remorse: Should a Teen-Ager Be Given a Life Sentence?*, The New Yorker, Jan. 2, 2012, at 57; see also Elizabeth Becker, *As Ex-Theorist on Young ‘Superpredators,’ Bush Aide Has Regrets*, N.Y. Times, Feb. 9, 2001, at A19. Professor James Fox, who urged that Professor DiIulio’s predictions should drive changes in sentencing laws, also has repudiated the notion of the superpredator and is a signatory to this brief. See James Alan Fox, *A Too-Harsh Law on Juvenile Murder*, The Boston Globe, Jan. 25, 2007, at A11 (“It’s time to rethink our rigid juvenile murder law...”).

environmental experiences such as physical maltreatment.²⁷

Another aspect of the juvenile superpredator myth was the belief that antisocial youths prowl in “wolfpacks” and the superpredator exercises a contagious influence on unsuspecting peers, with the implication that he should be quarantined for life. However, a study of juvenile gang members shows that, when juvenile gang members are compared to non-gang member juveniles, gang members only have higher rates of delinquent behavior while they are gang members; juvenile gang members did not have higher rates of delinquent behavior before entering a gang or after they left a gang.²⁸ Also embedded in the juvenile superpredator notion was the belief that the antisocial youth who sets out on a

²⁷ Avshalom Caspi, et al., *Role of Genotype in the Cycle of Violence in Maltreated Children*. 297 *Sci.* 851 (2002).

²⁸ Terence P. Thornberry, et al., *The Role of Juvenile Gangs in Facilitating Delinquent Behavior*, 30 *Crime and Delinq.* 55–87 (1993) (noting that juveniles’ rates of delinquent behavior increased substantially upon entering a gang and then declined significantly once they left a gang). Data do show that juveniles tend, when around peers, to act in ways that differ from how they would act alone. See Jason Chien, Dustin Albert, Lia O’Brien, Kaitlyn Uckert & Laurence Steinberg, *Peers Increase Adolescent Risk Taking by Enhancing Activity in the Brain’s Reward Circuitry*, 14 *Developmental Sci.* F1 (March 2011). The data do not, however, show that the presence of individual, highly deviant youth in those peer groups results in juveniles having higher rates of delinquent behavior even after leaving that group.

deviant path cannot change. Yet research has shown that most antisocial youths outgrow their deviant behavior through the support of specific environmental impacts such as marriage and employment.²⁹ Randomized controlled trials of systematic interventions for high-risk youths have also demonstrated conclusively that the trajectory of antisocial development can be interrupted.³⁰

Moreover, empirical data analyzing crime and arrest rates also show that the juvenile superpredator was a myth. Beginning in the mid-1990s, violent juvenile crime dropped and continued to decrease through the present. The rate at which juveniles committed homicides fell dramatically, so

²⁹ See Magda Stouthamer-Loeber et al., *Desistance From Persistent Serious Delinquency in the Transition to Adulthood* 16 *Development and Psychopathology* 891 (2004); see also Robert J. Sampson & John H. Laub, *Life-Course Desisters? Trajectories of Crime Among Delinquent Boys Followed to Age 70*, 41 *Criminology* 301, 334 (2003) (concluding that there are important differences in adult criminal trajectories that cannot be predicted from childhood); Robert J. Sampson & John H. Laub, *Crime and Deviance over the Life Course: The Salience of Adult Social Bonds*, 55 *Am. Soc. Rev.* 609, 625 (1990) (showing both incremental and abrupt change in delinquent behavior when youths are exposed to conventional social activities of stable employment and marriage).

³⁰ See Conduct Problems Research Prevention Group, *The Effects of the Fast Track Preventive Intervention on the Development of Conduct Disorder Across Childhood*, 82 *Child Dev.* 331 (2011); Scott W. Henggeler et al., *Multisystemic Treatment of Antisocial Behavior in Children and Adolescents* (1998).

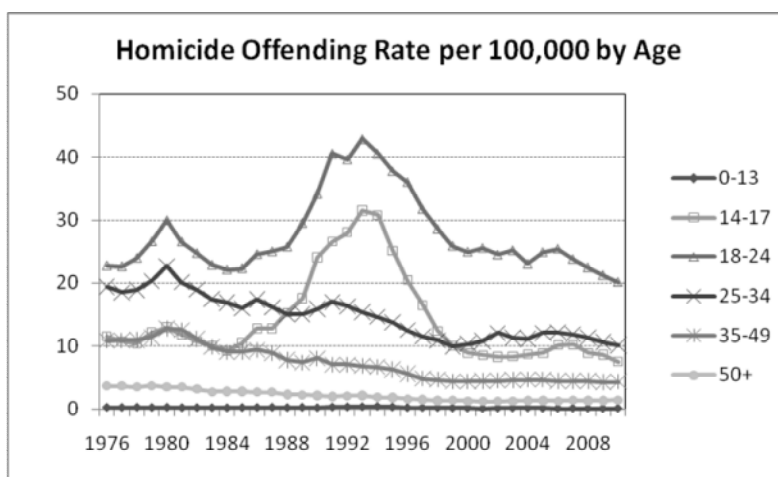
that by 2000, the rate had stabilized at around 9.5 per 100,000, below the 1985 level, as shown in Figure 3.³¹ Similarly, the average age of homicide offenders, which had dropped from 29.6 years in 1980 to 26.4 years in 1994, rose to 28.8 years in 2008.³² According to the National Crime Victimization Survey³³ data, after the mid-1990s, the rate of all serious violent juvenile offending, including homicide, as of the mid-1990s was comparable to that of the prior generation.³⁴

³¹ Cooper & Smith, *supra* note 2, at 4.

³² *Id.* at 5.

³³ NCVS data is collected directly from victims, which means it captures a greater percentage of offending behavior than can be found in police reports; however, it relies on victims to assess the age of offenders. See James P. Lynch, Off. of Juv. Just. and Delinq. Prevention, U.S. Dep't of Just., NCJ 191052, Trends in Juvenile Violent Offending: An Analysis of Victim Survey Data 3 (2002), available at www.ncjrs.gov/pdffiles1/ojjdp/191052.pdf.

³⁴ Shay Bilchik, Off. of Juv. Just. and Delinq. Prevention, U.S. Dep't of Just., NCJ 178993, Challenging the Myths 2 (2000), available at www.ncjrs.gov/pdffiles1/ojjdp/178993.pdf.

Figure 3³⁵

A. Arrest Rates Declined After 1994.

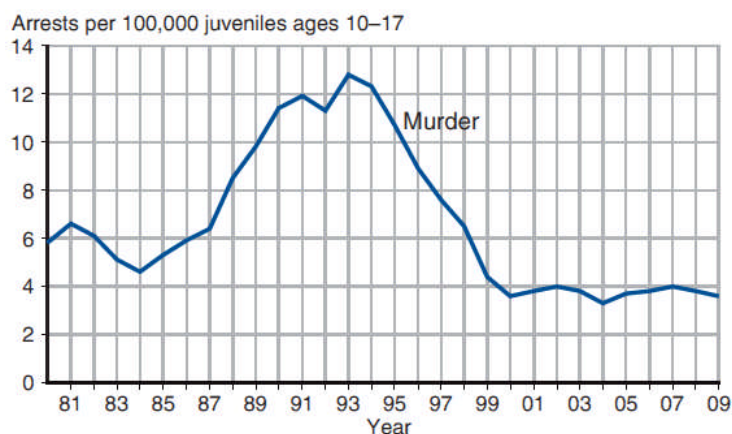
The decrease in juvenile violent crime rates was accompanied by a similar drop in juvenile arrest rates.³⁶ The number of juveniles arrested for violent crimes, which had increased significantly during the late 1980s and early 1990s, fell by nearly 50% between 1994 and 2009 to its lowest levels since

³⁵ Cooper & Smith, *supra* note 2, at 4. This graph has been updated by Professor James Alan Fox of Northeastern University using the same Bureau of Justice Statistics to include data through 2010.

³⁶ Arrest rates generally produce low estimates of offending because many crimes are not reported and many crimes remain unsolved. Furthermore, to the extent that race or gender affect the probability of being arrested, certain groups may be over- or underrepresented. See Lynch, *supra* note 33, at 3.

1980.³⁷ The juvenile arrest rate for murder declined even more dramatically, as shown in Figure 4. Indeed, between just 1992 and 1995 more juveniles were arrested for murder than in the ten years from 2000 through 2009, a period during which the arrest rate remained stable and historically low.³⁸

Figure 4³⁹



The temporary increase in the early 1990s and subsequent decrease since the mid-1990s in juvenile

³⁷ See Charles Puzzanchera & Benjamin Adams, Off. of Juv. Just. and Delinq. Prevention, U.S. Dep't of Just., NCJ 191052, *Juvenile Arrests 2009* 8 (2011), available at www.ojjdp.gov/pubs/236477.pdf.

³⁸ *Id.* at 9.

³⁹ *Id.* at 8

arrests for violent crimes was consistent with the trends for all age groups.⁴⁰

B. The Increase and Decline in Juvenile Homicides Occurred Across Demographic Groups Throughout the United States.

The increase and subsequent decline in juvenile homicides was not specific to any demographic group. The homicide arrest rate for both white and black teenagers peaked in 1994 and then fell through the year 2000.⁴¹ In addition, homicide arrest rates for both males and females have dropped over 65% from their respective peaks in the mid-1990s and are now below the levels of the early 1980s.⁴²

The rise and fall of homicide rates took place nationwide. For example, the fifteen counties (located across the country) with the highest homicide rates for African-American teenagers and young adults in the mid-1980s all experienced a sharp increase in homicide rates for this group by

⁴⁰ Bilchik, *supra* note 34, at 3.

⁴¹ Puzzanchera & Adams, *supra* note 37, at 9. Juvenile arrest rates for all violent crimes similarly increased significantly across racial groups in the late 1980s and early 1990s and then experienced a decline of over 40% by 2009. *Id.* at 8.

⁴² *Id.*

the early 1990s; most of these counties experienced declines in homicide rates by 1998.⁴³

C. Juvenile Crime Rates Have Been Independent of Juvenile Population Trends.

The above-described trends in juvenile violent crime occurred independently of the changes in the overall juvenile population. Changes in the size and racial composition of the juvenile population were an essential argument in the juvenile superpredator forecasts.⁴⁴ Despite a growth in the number of youths, the juvenile violent crime rate has declined since the mid-1990s. The juvenile crime rates and arrest rates increased from 1987 to 1994, a period of slow juvenile population growth; yet, when the juvenile population increased significantly between 1994 and 1997, crime and arrests declined,⁴⁵ providing further empirical support that a generation of juvenile superpredators did not exist. Moreover, the share of the nationwide juvenile population confined in correctional custody declined by 24 percent between 1997 and 2007, from 256 of

⁴³ Cook & Laub, *supra* note 5, at 18. Counties examined in this study were located in the following geographically diverse states: New York, California, Michigan, Maryland, Pennsylvania, Louisiana, Texas, Missouri, Florida, Georgia, Tennessee, Ohio, as well as the District of Columbia.

⁴⁴ See Howell, *supra* 26, at 5.

⁴⁵ Bilchik, *supra* note 34, at 6.

every 100,000 to 194 out of 100,000.⁴⁶ Similarly, the number of new admissions of juveniles to state prisons, which had peaked at over 7,000 in 1996, decreased to just over 4,000 by 2004⁴⁷ and has further shrunk since then.⁴⁸

D. The Behavior of the Cohort of Purported Superpredators After the Mid-1990s Was Similar to Previous and Subsequent Generations.

Data show not only that juvenile violent crime rates declined, but also that the purported generation of juvenile superpredators behaved similarly to the generations that preceded and followed it.⁴⁹

To assess the behavior of this cohort, researchers have compared the victimization rates of persons who were juveniles in the early 1990s to those who were juveniles before and after that

⁴⁶ Richard A. Mendel, Annie E. Casey Foundation, No Place for Kids: The Case for Reducing Juvenile Incarceration 26 (2011), *available at* http://www.aecf.org/OurWork/JuvenileJustice/~media/Pubs/Topics/Juvenile%20Justice/Detention%20Reform/NoPlaceForKids/JJ_NoPlaceForKids_Full.pdf.

⁴⁷ Snyder & Sickmund, *supra* note 20, at 237.

⁴⁸ See Heather C. West & William J. Sabol, Bureau of Just. Stat., U.S. Dep't of Just., NCJ 225619, Prison Inmates at Midyear 2008- Statistical Tables 20 (2009), *available at* bjs.ojp.usdoj.gov/content/pub/pdf/pim08st.pdf.

⁴⁹ Cook & Laub, *supra* note 5, at 21.

period.⁵⁰ In particular, the homicide-victimization rates of black males born in 1969, 1974, 1977, and 1981 were compared to the victimization rate for the same age groups prior to the period of increased crime.⁵¹ As shown in Figure 5, this analysis reveals that each group experienced elevated victimization rates during the era of higher juvenile crime, but that by 1998 the rate for each group decreased to the lower levels previously experienced by those born in 1969.

⁵⁰ *Id.* at 24. Victimization rates were used because they have been highly correlated with offender rates.

⁵¹ *Id.*

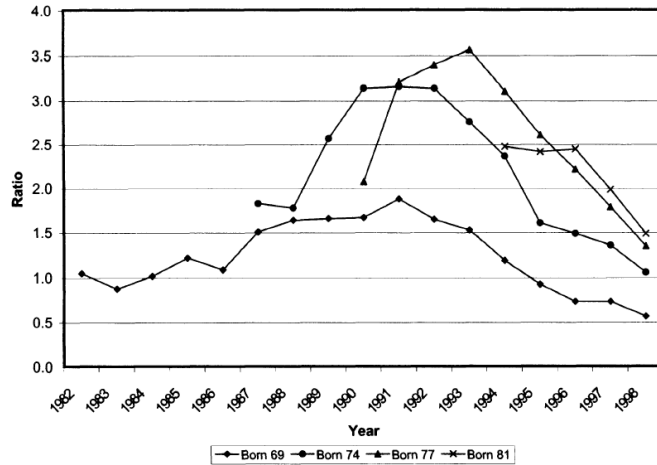
Figure 5⁵²

FIG. 10.—Ratio of homicide victimization rates to pre-epidemic base rate (1976–84), four birth cohorts of black males. Sources: ICPSR (2001a–f); CDC (2001a, c). See appendix for details.

III. The Absence of a Generation of Superpredators Is Not Due to an Incarceration Effect or Deterrent Effect.

The fear of a generation of superpredators has not been borne out, but the laws that were passed in the wake of the increase in temporary juvenile crime that led to the rise of the juvenile superpredator myth continue to exist. Any argument that the harsher criminal penalties for juveniles deterred or incarcerated these purported superpredators is unpersuasive in light of the available research data.

⁵² *Id.* at 25.

A. The Decline in Juvenile Crime Was Not Due to an Incarceration Effect.

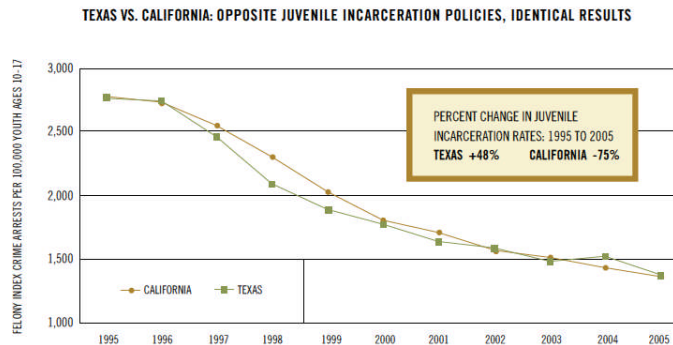
Empirical studies show that the legislative changes undertaken by certain states were not causally responsible for the decline in juvenile homicide rates. While the decline in juvenile crime occurred on a national scale, those states with the greatest decrease in juvenile confinement rates between 1997 and 2007 saw a slightly greater decline in juvenile violent crime rates than the national average.⁵³ There were no differences in states with and without statutes authorizing sentences of life without parole for juveniles, or in states that transferred everyone over the age of sixteen to the jurisdiction of criminal court versus those states that transferred youths more selectively. For example, between 1997 and 2007, Texas greatly increased its incarcerated juvenile population while California decreased its incarcerated juvenile population, yet the rates of juvenile crime in both states were remarkably similar.⁵⁴ In 2007, changes in Texas laws cut its incarcerated juvenile population by half.⁵⁵ Neither the state's overall crime rate nor the number of juvenile arrests has since increased.⁵⁶

⁵³ Mendel, *supra* note 46, at 26.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 27.

Figure 6⁵⁷

Similarly, a study of the effects of New York's Juvenile Offender Law on the rate of serious juvenile crime found minimal impact. New York's legislation, which was enacted in 1978, lowered the age of criminal court jurisdiction to thirteen for murder and to fourteen for rape, robbery, assault, and violent categories of burglary. The study analyzed juvenile arrest rates in New York for the four years prior to the enactment of the law and the six years after. It compared these rates with those for control groups of thirteen- and fourteen-year-olds in Philadelphia and with slightly older offenders in New York.⁵⁸ The study found that the change in law

⁵⁷ *Id.*

⁵⁸ David McDowall & Simon I. Singer, *Criminalizing Delinquency: The Deterrent Effects of the New York Juvenile Offender Law*, 22 *Law and Soc'y Rev.* 521 (1988). While arrest rates are an imperfect measurement of crime rates, they are nonetheless a strong indicator of crime rates. *See id.* at 528. ("The advantage of the arrest data is that they provide age-specific information on crime patterns. . .

had no effect on the levels of serious juvenile crime.⁵⁹ A study of the deterrent effect of an Idaho statute enacted in 1981, which required that juveniles charged with certain serious crimes be tried as adults, also found no impact on the arrest rates between five years before and five years after the passage of the law.⁶⁰

The rate at which juveniles were incarcerated for life without the possibility of parole in different states bore no correlation to the rise and fall in juvenile homicide rates during the late 1980s and early 1990s, which was consistent across the states,

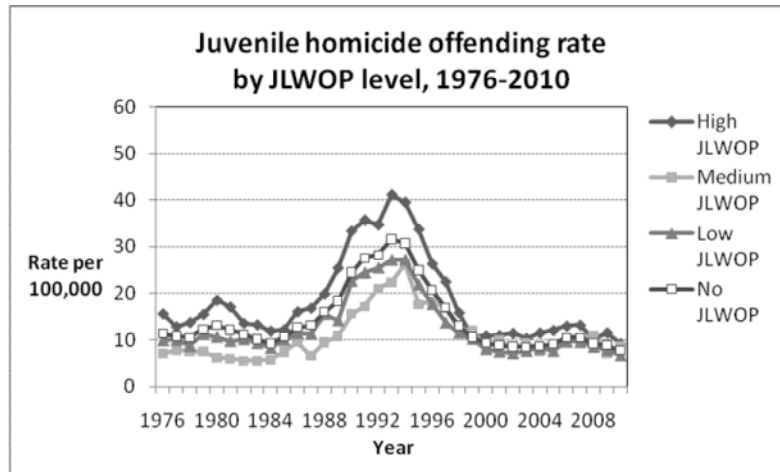
Time series designs can tolerate some measurement bias, as long as this bias does not itself change at the intervention point.”); see also McGowan, et al., *Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System*, 32 *Am. J. Prev. Med.* S7, S19 (2007) (“Nevertheless, arrest rates are among the best available and most commonly used indicators of crime, and thus the best available outcome for assessment in this review.”).

⁵⁹ McDowall & Singer, *supra* note 58.

⁶⁰ Eric L. Jensen and Linda K. Metsger, *A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime*, 40 *Crime and Delinq.* 96 (1994); see also James Alan Fox, *Abolish life without parole in Mass.*, Boston.Com, Sept. 21, 2011, available at http://boston.com/community/blogs/crime_punishment/2011/09/abolish_juvenile_life_without_p.htm (analysis of the 1996 Massachusetts statute that made life without parole mandatory for all juveniles 14 and older convicted of first degree murder showing no subsequent impact on juvenile homicide rates).

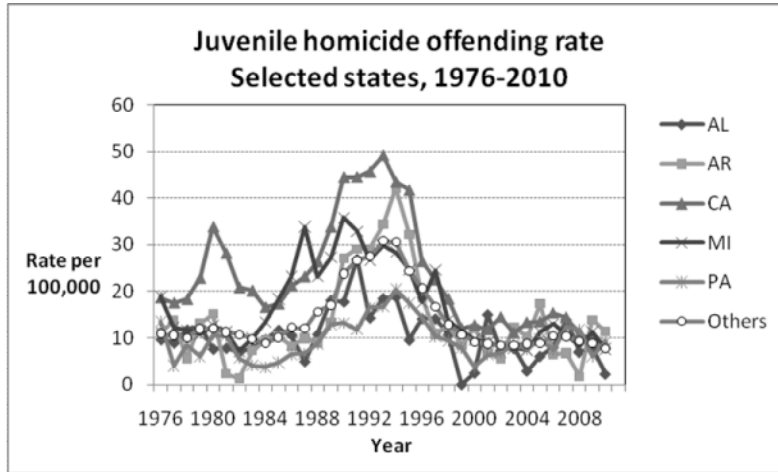
including Alabama and Arkansas. States with large numbers of juveniles incarcerated for life without parole did not see their homicide offense rates decline sooner, faster, or to lower levels than did the states without significant numbers of juveniles sentenced to life without parole.⁶¹ Pennsylvania and Michigan, with relatively higher proportions of juveniles serving sentences of life without parole, experienced trends similar to the rest of the country, as seen in Figures 7 and 8.

⁶¹ “High JLWOP” is defined as more than 50 persons serving a juvenile life without parole sentence, “medium JLWOP” is defined as 25–49 persons serving a juvenile life without parole sentence, “low JLWOP” is defined as fewer than 25 persons serving a juvenile life without parole sentence, and “no JLWOP” means no person is serving a juvenile life without parole sentence. These categories were defined by Professor James Alan Fox.

Figure 7⁶²

⁶² Source of data: Juvenile homicide counts represent the estimated number of homicide perpetrators, ages 14–17, based on the Supplementary Homicide Reports with multiple imputation for missing data and therefore represent estimates. Population data are from the U.S. Bureau of the Census estimates of resident population by state, age, race, and sex. These data were then converted into Figures 7 and 8 by Professor James Fox at Northeastern University.

Figure 8



B. The Decline in Juvenile Crime Was Not Due to a Deterrent Effect.

The fact that juvenile homicide rates were not affected by the rate at which states imposed sentences of life without parole on juveniles is not surprising given that research shows that transferring juveniles to the jurisdiction of criminal courts or lowering the age of majority has no discernable deterrent effect.⁶³ Juveniles experience no spike in crime rate once they turn eighteen, and increased criminal sanctions have no significant correlation with this result.⁶⁴ In fact, there is little

⁶³ David S. Lee & Justin McCrary, *Crime Punishment, and Myopia*, 29 (NBER Working Paper Series, Working Paper 11491, June 2005).

⁶⁴ *Id.*; see McGowan, *supra* note 58, at S15 (“On the basis of strong evidence that juveniles transferred to the adult

evidence that the prospect of longer sentences has a significant deterrent effect on adolescents.⁶⁵ It thus appears that legal changes that increased the rate at which juveniles were transferred to the regular criminal court system did not contribute to the decline of the juvenile homicide rate.

justice system have greater rates of subsequent violence than juveniles retained in the juvenile justice system, the Task Force on Community Preventive Services concludes that strengthened transfer policies are harmful for those juveniles who experience transfer.”); *see also* Jeffrey Fagan, Aaron Kupchik, & Akiva Liberman, *Be Careful What you Wish For: Legal Sanctions and Public Safety Among Adolescent Offenders in Juvenile and Criminal Court*, Columbia Law School, Pub. Law Research Paper No. 03-61, 69 (July 2007) (finding that “transfer to criminal court actually may increase the risk of violent and other serious crime by adolescents and young adults increasing public safety risks for citizens while heavily mortgaging the possibility of reformation or prosocial development for many transferred offenders.”), *available at* <http://ssrn.com/abstract=491202>.

⁶⁵ *See* Steven N. Durlauf & Daniel S. Nagin, *Imprisonment and Crime: Can Both Be Reduced?*, 10 *Criminology & Pub. Pol’y* 8 (2011) (showing that for both adolescents and young adults an increase in the risk of arrest has a greater deterrent effect than the threat of longer prison sentences); *see also* Thomas A. Loughran et al., *Estimating A Dose-Response Relationship Between Length of Stay and Future Recidivism in Serious Juvenile Offenders*, 47 *Criminology* 699 (2009) (showing that there is no effect from incarceration, on future rates of rearrest or self-reported offending for serious juvenile offenders, and that there is no marginal effect for lengthier stays).

CONCLUSION

Extensive research data demonstrate that the notion of a generation of juvenile superpredators, which sought to explain the spike in juvenile crime in the late 1980s and early 1990s, and the predictions by the proponents of the juvenile superpredator myth that juvenile violent crime would continue to increase sharply, were wrong. Instead, juvenile crime rates have dropped significantly across demographic groups throughout the United States since the mid-1990s. The spike in juvenile violence in the early 1990s was a manifestation of an epidemic and not a lasting change in the social, psychological, cultural, or even genetic makeup of American youth. Yet the superpredator myth contributed to the dismantling of transfer restrictions, the lowering of the minimum age for adult prosecution of children, and it threw thousands of children into an ill-suited and excessive punishment regime.

This legislation has been shown to have had no material effect on the subsequent decrease in crime rates. Indeed, states have experienced similar declines in juvenile violent crime rates since the mid-1990s, irrespective of whether their laws provided for prison sentences of life without parole for juvenile offenders. Thus, there is no empirical basis for any concern that applying the reasoning of *Roper* and *Graham* to bar the imposition of sentences of life without the possibility of parole on juveniles would result in an increase in violent juvenile crime.

Amici therefore urge that the Court reverse the judgments in the courts below.

Respectfully submitted,

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January 17, 2012