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A Second Chance at Success: Using “Second Look” Laws to Modify Sentences of Juvenile Offenders

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Comments

A Second Chance at Success: Using “Second Look” Laws to Modify Sentences of Juvenile Offenders

Sophia M. Adams*

ABSTRACT

“Second look” sentencing laws allow incarcerated individuals to petition to have their sentences reexamined and potentially reduced after they have served a significant period of incarceration. This rehabilitative relief is conditioned upon an offender showing that they have made meaningful positive changes while incarcerated and would not pose a threat to their community if released. Implementing second look laws is particularly appropriate in the context of offenders who have committed crimes as juveniles. The U.S. Supreme Court has recognized that juvenile offenders are less culpable than their adult counterparts and psychological science supports this conclusion. This Comment examines and compares recent second look laws from Washington, D.C., Oregon, California, Delaware, and Florida and suggests that a federal second look law could serve as a model for states to adopt. An ideal federal law would: (1) extend eligibility to all individuals who committed a

* J.D. Candidate, Penn State Dickinson Law 2024. Thank you to the *Dickinson Law Review* members who helped edit this Comment and to my parents, Sean Adams and Cindy Kroll-Adams, for their continuous support.

crime under the age of 25; (2) require an offender to serve 10 years of incarceration before becoming eligible for review; (3) provide opportunities for re-application every 5 to 10 years and allow at least 2 applications; (4) include a list of factors for the court to consider when making its resentencing decision; (5) require that the state give notice of the second look policy to offenders before they become eligible; and (6) guarantee a right to counsel for indigent individuals.

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INTRODUCTION

Of the approximately 1.2 million individuals incarcerated in the United States,¹ over 770,000 are serving sentences of 10 years or longer.² Many states have responded to calls for reform³ by passing “second look” laws that allow offenders to have their sentences reevaluated after they serve a certain number of years in prison and demonstrate meaningful efforts towards rehabilitation.⁴ While second look laws have potential for widespread application to most offenders, providing a second chance to individuals sentenced for juvenile crimes is a particularly worthy opportunity for reform. In *Roper v. Simmons*,⁵ the Supreme recognized that juveniles are less culpable for their crimes than adults because they tend to exhibit a “lack of maturity and an underdeveloped sense of responsibility,” are more susceptible to negative influences, and have less well-developed character than adults.⁶ Subsequent juvenile cases⁷ and psychological research reports⁸ indicate a general consensus that imposing harsh penalties on juvenile offenders is inappropriate and that rehabilitation is possible.

Today’s second look laws vary substantially in their requirements for determining an individual’s eligibility for relief. States’ policies differ regarding age requirements for commission of an offense, the length of time an offender must serve before becoming eligible for

1. See E. ANN CARSON & RICH KLUCKOW, BUREAU OF JUST. STAT., NCJ No. 307149, PRISONERS IN 2022 – STATISTICAL TABLES 1 (2023), <https://tinyurl.com/4p2ef5b6> [<https://perma.cc/PY2C-QCUK>] (“The U.S. prison population was 1,230,100 at year-end 2022.”).

2. NAZGOL GHANDNOOSH & ASHLEY NELLIS, THE SENT’G PROJECT, HOW MANY PEOPLE ARE SPENDING OVER A DECADE IN PRISON? 1 (2022), <https://tinyurl.com/3n3tfnx6> [<https://perma.cc/5JFU-T4C9>].

3. Nicole D. Porter, *Top Trends in Criminal Justice Reform, 2022*, THE SENT’G PROJECT (Dec. 14, 2022), <https://tinyurl.com/yc2ym2pz> [<https://perma.cc/K88K-7NTD>].

4. See, e.g., D.C. CODE § 24-403.03 (2023); OR. REV. STAT. § 420A.203 (2019); CAL. PENAL CODE § 1170(a)(1) (Deering 2023); DEL. CODE ANN. tit. 11, § 4204A(d) (2023); FLA. STAT. § 921.1402 (2023).

5. *Roper v. Simmons*, 543 U.S. 551 (2005).

6. *Id.* at 569.

7. See *infra* Section I.B.

8. See *infra* Section I.C.

a second look, whether an offender may make multiple applications for relief, and the availability of procedural safeguards like notice and counsel.⁹ Under this inconsistent scheme, individuals incarcerated in different states may have significantly different access to second look relief. If the federal government adopted a model second look law, states could use it as a template to create more consistent policies that provide juveniles with a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.”¹⁰

This Comment compares second look laws from Washington, D.C., Oregon, California, Delaware, and Florida to propose a universal model that could be adopted at the national level as a template for states to follow. A model second look law would: (1) apply to all individuals who committed a crime under the age of 25; (2) require an offender to serve 10 years of incarceration before becoming eligible for review; (3) provide opportunities for re-application every 5 to 10 years and allow at least 2 applications; (4) include a list of factors for the court to consider when making a resentencing decision; (5) require that the state give notice of the second look policy to offenders before they become eligible; and (6) guarantee a right to counsel for indigent individuals.

In addition to proposing model legislation, this Comment addresses common concerns surrounding second look laws including their impact on crime victims and community safety. Finally, this Comment considers how to ensure that all eligible incarcerated people can meaningfully engage with second look programs and examines the viability of extending second look relief to offenders of all ages.

I. BACKGROUND

A. *History of the Treatment of Minors in the Criminal Legal System*

During the 18th century, English common law generally shielded children under the age of seven from criminal prosecution.¹¹ Apart from this protection provided for the youngest of children, the common law did not distinguish between children and adults.¹² As a result, children between the ages of 7 and 14 were prosecuted and

9. See *infra* Part II.

10. *Graham v. Florida*, 560 U.S. 48, 75 (2010).

11. Mae C. Quinn & Levi T. Bradford, *Invisible Article III Delinquency: History, Mystery, and Concerns About “Federal Juvenile Courts,”* 27 WASH. & LEE J. C.R. & SOC. JUST. 71, 76 (2020).

12. KATHI MILLIKEN-BOYD & JAMES WINDELL, SENTENCING YOUTH TO LIFE IN PRISON: JUSTICE DENIED 8 (2022).

punished in largely the same manner as adults.¹³ Children as young as ten years old were even executed.¹⁴ The English common law's "harsh handling"¹⁵ of juvenile offenders traveled with settlers to early colonial America and was perpetuated throughout the late 1700s as a new legal system was established.¹⁶

By the early 19th century, a significant portion of Americans had collectively concluded that imprisonment was the most effective way to handle criminal offenders of all ages, and this attitude led to the start of a "prison-building boom."¹⁷ During this period, incarceration was seen as a rehabilitative way to place all juvenile and adult offenders in a neutral environment where they could study and reflect in solitude.¹⁸ However, by the mid-1800s, many had realized that the prison environment was not well-suited for rehabilitation.¹⁹ At the same time, concerns about handling juvenile delinquents and adults in a single legal and penal system increased.²⁰

To respond to these concerns, states began creating houses of refuge and reform schools for troubled and delinquent children.²¹ These institutions aimed to remove juveniles from adult prisons and rehabilitate them through education and apprenticeships that prepared them to become law-abiding adults.²² The process for placing children in houses of refuge or reform schools was informal; a minor could be sent to one of these institutions for mere delinquent behavior as well as for an actual criminal offense.²³ There were also significant racial disparities in what types of children were sent to rehabilitative institutions.²⁴ While white children were often afforded this opportunity, children of color were commonly dismissed as "irredeemable" and sentenced to imprisonment in traditional adult facilities.²⁵

13. *Id.* at 8–9.

14. *Id.* at 9.

15. *Id.* at 8.

16. Quinn & Bradford, *supra* note 11, at 76–77.

17. MILLIKEN-BOYD & WINDELL, *supra* note 12, at 8. This desire for an expanded system of policing and prisons sought to establish a comprehensive theory of corrections and promote order following the country's significant geographical expansion, industrialization, and population growth. See SAMUEL WALKER, POPULAR JUSTICE: A HISTORY OF AMERICAN CRIMINAL JUSTICE 78–79 (2d ed. 1998).

18. MILLIKEN-BOYD & WINDELL, *supra* note 12, at 8.

19. *Id.*

20. *Id.*

21. ASHLEY NELLIS, A RETURN TO JUSTICE: RETHINKING OUR APPROACH TO JUVENILES IN THE SYSTEM 8 (2016).

22. *Id.* at 8–9.

23. *Id.* at 9.

24. *Id.* at 10.

25. *Id.*

In 1899, the establishment of the first juvenile court in Cook County, Illinois significantly altered the American legal landscape.²⁶ The creation of a criminal court specializing solely in the cases of children under the age of 18 signified a growing belief that children were fundamentally less culpable than adults and deserved different legal treatment.²⁷ The establishment of the first juvenile court also marked the beginning of the “child-saving” movement that created a unique opportunity for the court to guide children away from crime via private and informal proceedings.²⁸ The juvenile court’s special ability to intervene in a child’s life for their own welfare was justified using the British doctrine of *parens patriae*, which recognized a state’s inherent power to act in the place of a parent.²⁹

Juvenile courts gained popularity during the early 20th century and a large majority of states established at least one juvenile court by 1917.³⁰ These courts had jurisdiction over all children under the age of 18 who were charged with a criminal offense.³¹ Judges were afforded the discretion to decide what cases to pursue and how non-legal factors should be considered.³² Like houses of refuge and reform schools, early juvenile courts handled both general delinquency and crime, operating without the strict requirements of due process which were considered to inhibit a collaborative and flexible court environment.³³

Beginning in the 1960s, a series of Supreme Court decisions ended this period of flexibility and established that the formal procedures and safeguards used in adult courts were also necessary in

26. MILLIKEN-BOYD & WINDELL, *supra* note 12, at 8–9.

27. *Id.* at 9. See *infra* Section I.C (describing psychological research on juvenile culpability).

28. See NELLIS, *supra* note 21, at 11–14.

29. SHAY BILCHIK, U.S. DEP’T OF JUST., JUVENILE JUSTICE: A CENTURY OF CHANGE 2 (1999), <https://tinyurl.com/3vetju67> [<https://perma.cc/KKQ3-VKTM>] (“The doctrine was interpreted to mean that, because children were not of full legal capacity, the State had the inherent power and responsibility to provide protection for children whose natural parents were not providing appropriate care or supervision.”). In industrial America, increased rates of child abandonment, neglect, and abuse led to a higher prevalence of juvenile crime, and many courts adopted the assumption that unfit parents could not adequately address their children’s delinquent behaviors. See MARK INGRAM & JOHN RYALS, JR., RFK NAT’L RES. CTR. FOR JUV. JUST., FAMILY ENGAGEMENT AND JUVENILE JUSTICE: THE EVOLUTION OF PARENS PATRIAE 2 (2020), <https://tinyurl.com/3knjwshz> [<https://perma.cc/LPK3-WM3R>].

30. NELLIS, *supra* note 21, at 15.

31. BILCHIK, *supra* note 29, at 2. In addition to gaining jurisdiction over criminal matters, juvenile courts also often handled noncriminal matters involving truancy, incorrigibility, and other status offenses (violations of laws regulating a particular class of people—in this context, juveniles). See NELLIS, *supra* note 21, at 16.

32. BILCHIK, *supra* note 29, at 2.

33. Quinn & Bradford, *supra* note 11, at 81.

juvenile courts.³⁴ First, the Court held in *Kent v. United States*³⁵ that a juvenile must be afforded counsel and a hearing that meets the standards of due process before the entry of a waiver of their right to be tried in juvenile court.³⁶ The Court explained this conclusion by noting that the *parens patriae* philosophy of the juvenile courts does not justify “procedural arbitrariness.”³⁷

Juvenile trial rights were further solidified when the Supreme Court decided *In re Gault*³⁸ in 1967.³⁹ There, a teenage boy charged with juvenile delinquency alleged that the Arizona Juvenile Code unconstitutionally denied him his procedural due process rights guaranteed by the Fifth Amendment.⁴⁰ The Court confirmed the applicability of due process to juvenile offenders and abandoned the conception that juveniles benefit from informal court procedures, noting instead that juveniles are likely to resist rehabilitative efforts if they feel that they are not treated fairly by the court.⁴¹ Specifically, the Court held that juveniles have a constitutional right to receive notice of the charges against them,⁴² have the assistance of counsel,⁴³ exercise the privilege against self-incrimination,⁴⁴ and confront and cross-examine witnesses.⁴⁵

In 1970, the Supreme Court decided *In re Winship*,⁴⁶ a case challenging New York’s then-existing policy of using a preponderance of the evidence standard when adjudicating juvenile delinquency cases.⁴⁷ The Court again extended an adult constitutional safeguard to children and held that the more stringent requirement of proof beyond a reasonable doubt was required in juvenile criminal proceedings.⁴⁸

A shift in public opinion on the lenient treatment of juvenile offenders began to take hold in the 1980s.⁴⁹ This period was characterized by concerns that the court system’s new gentler approach to punishing young people would result in higher rates of juvenile crime

34. *Id.* at 83.

35. *Kent v. United States*, 383 U.S. 541 (1966).

36. *Id.* at 561–62.

37. *Id.* at 554–55.

38. *In re Gault*, 387 U.S. 1 (1967).

39. See Quinn & Bradford, *supra* note 11, at 84.

40. *In re Gault*, 387 U.S. at 4.

41. *Id.* at 26–28.

42. *Id.* at 33.

43. *Id.* at 41.

44. *Id.* at 55.

45. *Id.* at 56.

46. *In re Winship*, 397 U.S. 358 (1970).

47. *Id.* at 358–60.

48. *Id.* at 367.

49. BILCHIK, *supra* note 29, at 4.

and violence.⁵⁰ These concerns were perpetuated by the media's distortion of crime rates and frequent characterization of juvenile delinquents as violent "superpredators" whose criminal behaviors would likely persist into adulthood.⁵¹

By the end of the 20th century, the cultural shift from promoting the rehabilitation of juveniles to focusing on punishment had become ingrained in the laws of the majority of states.⁵² States passed laws to make it easier to transfer minors to adult courts, prevent the sealing of juvenile records, and establish mandatory minimum sentences for juvenile crimes.⁵³ At the national level, Congress passed the Violent Crime Control and Law Enforcement Act,⁵⁴ which provided funding to build more prisons and lowered the age for eligibility for removal to adult court from 15 to 13 for certain offenses.⁵⁵

More recently, there has been yet another shift from being "tough" on juvenile crime back towards a rehabilitative approach.⁵⁶ This shift was motivated in part by academic and medical guidance on how to best address juveniles' particular needs.⁵⁷ The trend toward a gentler approach to juvenile crime is noticeable in states that choose to place young offenders in institutions that are less prison-like and more focused on individualized care.⁵⁸ Second look laws that could reduce sentences of the incarcerated appear to be well-suited for accomplishing the goal of rehabilitation.⁵⁹

50. *Id.* See also NAT'L RSCH. COUNCIL & INST. OF MED., JUVENILE CRIME, JUVENILE JUSTICE 25 (Joan McCord et al. eds., 2001) ("News accounts of serious crimes committed by children and adolescents and criminologists' warnings of a coming tide of vicious juveniles—sometimes referred to as superpredators . . .—have encouraged a general belief that young people are increasingly violent and uncontrollable and that the response of the juvenile justice system has been inadequate.").

51. See NELLIS, *supra* note 21, at 41–44. An early example of media mischaracterization can be found in the 1989 case of the Central Park Five, a group of teenagers falsely convicted of the rape of a jogger. Salim Muwakkil, *Fooled by Stereotypes of Superpredators*, CHI. TRIB. (Oct. 21, 2002, 12:00 AM), <https://tinyurl.com/ym5kyu67> [<https://perma.cc/WRT9-ZB55>]. Despite the lack of any physical evidence that the teens were involved, they were convicted on the basis of coerced confessions. *Id.* They were described by the media as "wilding" and dehumanized as a "wolfpack." *Id.* All five teens were later exonerated by DNA evidence. *Id.*

52. See MILLIKEN-BOYD & WINDELL, *supra* note 12, at 10. Between 1990 and 1996, 40 states passed laws allowing the transfer of minors to adult courts, eliminating protections for juvenile records, and establishing mandatory minimum sentences for juvenile crimes. *Id.*

53. *Id.*

54. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (codified as amended at 34 U.S.C. §§ 12101–12643).

55. NELLIS, *supra* note 21, at 53.

56. See *id.* at 77.

57. See *id.*

58. See *id.*

59. See *infra* Part II.

B. Key Supreme Court Decisions on Punishment of Juvenile Offenders in a Modern Context

Since the turn of the 21st century, the Supreme Court has addressed the issues of juvenile punishment and culpability on multiple occasions.⁶⁰ In *Roper v. Simmons*,⁶¹ the Court reconsidered the previously-rejected contention that sentencing minor offenders to death was unconstitutional.⁶² The Court held that imposing the death penalty for crimes committed before the age of 18 is an impermissible violation of the Eighth Amendment's prohibition on cruel and unusual punishment.⁶³ Significantly, the Court recognized that juveniles have traditionally been regarded as less culpable than adults for three reasons: Young people (1) tend to exhibit a "lack of maturity and an underdeveloped sense of responsibility,"⁶⁴ (2) are more susceptible to negative influences and pressures,⁶⁵ and (3) have less well-developed character than adults.⁶⁶ The Court also referenced evidence of a national consensus against imposing the death penalty on juveniles⁶⁷ and noted that "the United States now stands alone in a world that has turned its face against the juvenile death penalty."⁶⁸

Five years later, in *Graham v. Florida*,⁶⁹ the Supreme Court addressed an Eighth Amendment challenge to the practice of sentencing juveniles to life in prison without parole for nonhomicide offenses.⁷⁰ Like in *Roper*, the Court examined whether a national consensus had developed on the issue and found that only 11 U.S. jurisdictions authorized life without parole for juveniles convicted of nonhomicide crimes.⁷¹ Even within those jurisdictions, this specific penalty was rarely imposed.⁷² The Court also noted that life sentences for juveniles did not significantly further the penological goals of retribution, deterrence, incapacitation, and rehabilitation.⁷³

60. See Joshua Rovner, *Juvenile Life Without Parole: An Overview*, THE SENT'G PROJECT (Apr. 7, 2023), <https://tinyurl.com/2jwp2fsj> [<https://perma.cc/496J-THKV>].

61. *Roper v. Simmons*, 543 U.S. 551 (2005).

62. *Id.* at 555–56.

63. *Id.* at 575.

64. *Id.* at 569.

65. *Id.*

66. *Id.* at 570.

67. *Id.* at 564.

68. *Id.* at 577.

69. *Graham v. Florida*, 560 U.S. 48 (2010).

70. *Id.* at 52–53.

71. *Id.* at 64.

72. *Id.*

73. *Id.* at 71. While *Graham* severely limits the imposition of life without parole on juvenile offenders, this sentence may still be imposed for homicide offenses in some states. See Rovner, *supra* note 60. Further, many states allow juveniles to be sentenced to serve a term of years longer than the natural human lifespan, which

These findings, combined with *Roper's* judgment that juveniles are inherently less culpable, led the Court to conclude that the Eighth Amendment prohibits the imposition of a sentence of life without parole on a juvenile offender who committed a nonhomicide offense.⁷⁴ Additionally, the Court made it clear that states must provide juvenile offenders with a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."⁷⁵ States' responses to the Court's announcement of this requirement varied, but many states ultimately implemented bare-minimum policies.⁷⁶

In *Miller v. Alabama*,⁷⁷ the Supreme Court extended further protection to minors by holding that mandatory sentences of life without parole for individuals convicted of homicide who were under the age of 18 at the time of the crime violate the Eighth Amendment.⁷⁸ The Court reasoned that mandatory sentencing schemes impermissibly limit the factfinder from considering an offender's age.⁷⁹ Later, in *Montgomery v. Louisiana*,⁸⁰ the Court clarified that the rule from *Miller* applies retroactively.⁸¹

Most recently, in the case of *Jones v. Mississippi*,⁸² the Supreme Court addressed whether a sentencer is required to make a formal finding that a juvenile is "permanently incorrigible," i.e., incapable of reform, before imposing a sentence of life without parole for a homicide offense.⁸³ The Court rejected this requirement, noting that the question of factfinding had already been addressed in *Montgomery* when it was decided that "a finding of fact regarding a child's incorrigibility . . . is not required."⁸⁴ Taken together, these cases create a scheme for the imposition of juvenile punishment which recognizes that young people are "constitutionally different"⁸⁵ than adults.

functionally amounts to a life sentence. *Id.* The Sentencing Project conducted a survey showing that 1,465 people were serving juvenile life without parole sentences in 2020. *Id.*

74. *Graham*, 560 U.S. at 75.

75. *Id.*

76. Megan Annitto, *Graham's Gatekeeper and Beyond: Juvenile Sentencing and Release Reform in the Wake of Graham and Miller*, 80 BROOK. L. REV. 119, 121–22 (2014).

77. *Miller v. Alabama*, 567 U.S. 460 (2012).

78. *Id.* at 465.

79. *Id.* at 474.

80. *Montgomery v. Louisiana*, 577 U.S. 190 (2016).

81. *Id.* at 206.

82. *Jones v. Mississippi*, 141 S. Ct. 1307 (2021).

83. *Id.* at 1311.

84. *Id.* at 1313 (citing *Montgomery*, 577 U.S. at 211).

85. *Miller v. Alabama*, 567 U.S. 460, 471 (2012).

C. *Psychological Findings Relating to Minors*

At the beginning of the 20th century, state and local leaders interested in child protection began to acknowledge research showing the psychological differences between children and adults.⁸⁶ In 1920, the superintendent of the Brooklyn Society for the Prevention of Cruelty to Children spoke in favor of raising the age of criminal culpability, recognizing that adolescence continues until the age of 25 and arguing that treating young teenagers the same as adults “flies in the face of present-day psychology and the hard facts.”⁸⁷

A comprehensive summary of more recent research on adolescent development and criminality can be found in the amicus brief filed by the American Psychological Association (“APA”) in the case of *Roper v. Simmons*.⁸⁸ The APA, a 157,000-member professional association of psychologists,⁸⁹ compiled findings from psychological studies to make three main arguments in support of the abolition of the juvenile death penalty.⁹⁰ These arguments are equally applicable in the context of juvenile sentencing.

First, the APA argued that the goals of retribution and deterrence are not accomplished through sentencing juveniles to death because adolescents are demonstrably less mature than adults and have difficulty controlling impulses and considering alternative actions.⁹¹ One study found that “adolescents are less likely to consider alternative courses of action, understand the perspective of others, or restrain impulses.”⁹² Further, adolescents have been found to exhibit lower decision-making competence⁹³ and higher susceptibility to peer influence.⁹⁴ At the neurological level, studies using MRI scanning technology have found that the frontal lobe—an area of

86. See MILLIKEN-BOYD & WINDELL, *supra* note 12, at 9.

87. *Id.*

88. See generally Brief for the American Psychological Ass’n & the Missouri Psychological Ass’n as Amici Curiae Supporting Respondent, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633) [hereinafter APA Brief].

89. About APA, AM. PSYCH. ASS’N (Jan. 2022), <https://tinyurl.com/mr3pebhp> [<https://perma.cc/BGM4-FLGH>].

90. APA Brief, *supra* note 88, at 2–3.

91. *Id.* at 2. To illustrate society’s acceptance of the idea that teens tend to lack maturity and impulse control, the brief referenced the widespread use of laws that place age limits on voting, entering into contracts, and serving on a jury. *Id.* at 4.

92. *Id.* at 7 (citing Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity and Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 BEHAV. SCI. & L. 741 (2000)).

93. Bonnie L. Halpern-Felsher & Elizabeth Cauffman, *Costs and Benefits of a Decision: Decision-Making Competence in Adolescents and Adults*, 22 J. APPLIED DEVELOPMENTAL PSYCH. 257, 268 (2001).

94. Peggy C. Giordano et al., *Changes in Friendship Relations Over the Life Course: Implications for Desistance from Crime*, 41 CRIMINOLOGY 293, 319 (2003).

the brain responsible for controlling decision-making—is one of the last areas to reach maturity.⁹⁵ These findings confirming adolescent immaturity suggest that young people are less blameworthy and unlikely to be deterred by the threat of serious punishment due to their developmentally normative propensity for risk-taking.⁹⁶

Second, the APA argued that individualized capital sentencing proceedings cannot adequately or reliably identify which juvenile defendants should be sentenced to death.⁹⁷ When making sentencing decisions, the jury is likely to consider the defendant's character and make predictions about their future dangerousness.⁹⁸ However, studies show that psychological professionals generally cannot make accurate predictions about a juvenile's future behavior.⁹⁹ Personality disorders and psychopathy are similarly difficult to diagnose in juveniles due to the transitory nature of their behavior,¹⁰⁰ and studies suggest that mock jurors are more likely to impose the death penalty when conditions like psychopathy are present.¹⁰¹ Additionally, "the maturation of an adolescent that occurs between the date of a crime and the time of a capital sentencing assessment further complicates efforts to capture accurately an adolescent's capacities and maturity at the time of an offense."¹⁰²

The APA's third argument against the juvenile death penalty was that adolescents' immature decision-making capabilities may unfairly interfere with their ability to meaningfully participate in the early stages of the criminal process and assist with their own defense at trial.¹⁰³ Specifically, adolescents may have difficulty deciding whether to remain silent or confess during an interrogation by the police.¹⁰⁴ One survey of proven false confession cases showed that teens were overrepresented in the sample of defendants who made false

95. Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 PROC. NAT'L ACAD. SCI. 8174, 8177 (2004).

96. APA Brief, *supra* note 88, at 13–14.

97. *Id.* at 15–16.

98. *Id.* at 16–17. Studies show that juries tend to take a defendant's future dangerousness into consideration even when it is not specifically mentioned during the sentencing phase of a capital trial. See John H. Blume et al., *Future Dangerousness in Capital Cases: Always "At Issue,"* 86 CORNELL L. REV. 397, 405–08 (2001).

99. Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCH. 1009, 1016 (2003).

100. APA Brief, *supra* note 88, at 19–21.

101. John F. Edens et al., *Psychopathic Traits Predict Attitudes Toward a Juvenile Capital Murderer*, 21 BEHAV. SCI. & L. 807, 822 (2003).

102. APA Brief, *supra* note 88, at 24.

103. *Id.* at 28.

104. *Id.*

confessions after being interrogated.¹⁰⁵ In other studies, some participants were found to respond to false evidence of guilt by confessing to an act they did not commit,¹⁰⁶ and juveniles are more susceptible to this type of suggestion.¹⁰⁷ In addition, adolescent immaturity is likely to influence how juvenile defendants interact with counsel, make decisions relating to their own defense, and experience other aspects of the criminal process like interrogations and plea agreement negotiations.¹⁰⁸

The psychological conclusions expressed in the APA's brief regarding juvenile culpability continue to be replicated and discussed today.¹⁰⁹ Modern research also promotes the development of a further understanding of juveniles' behaviors and interactions with the criminal legal system.¹¹⁰ One scholarly compilation suggests that juvenile justice systems should encompass offenders into their mid-twenties, citing research finding that psychosocial development continues until an individual is approximately 24 years old.¹¹¹ Connecting psychological findings and suggestions for improving the legal system in this way encourages legal policymaking that is supported by science.

D. What Are Second Look Laws?

Second look laws are mechanisms that promote rehabilitation and seek to address mass incarceration by reexamining long prison sentences and allowing individuals to have their sentences reduced in

105. Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 944 (2004).

106. Saul M. Kassin & Katherine L. Kiechel, *The Social Psychology of False Confessions: Compliance, Internalization, and Confabulation*, 7 PSYCH. SCI. 125, 127 (1996).

107. Allison D. Redlich & Gail S. Goodman, *Taking Responsibility for an Act Not Committed: The Influence of Age and Suggestibility*, 27 LAW & HUM. BEHAV. 141, 151 (2003). See also Allison D. Redlich, *The Susceptibility of Juveniles to False Confessions and False Guilty Pleas*, 62 RUTGERS L. REV. 943, 943–45 (2010) (suggesting that juveniles are at increased risk for false guilty pleas in addition to false confessions).

108. See Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 LAW & HUM. BEHAV. 333, 357 (2003).

109. See, e.g., Melissa Sarsten Polito, *Reforming the Methods Used for Obtaining Juvenile Confessions*, 27 BARRY L. REV. 170, 173 (2022); Barry C. Feld et al., *Adolescent Competence and Culpability: Implications of Neuroscience for Juvenile Justice Administration*, in A PRIMER ON CRIMINAL LAW AND NEUROSCIENCE 179 (Stephen J. Morse & Adina L. Roskies eds., 2013).

110. See generally Raymond Corrado & Jeffrey Mathesius, *Developmental Psycho-Neurological Research Trends and Their Importance for Reassessing Key Decision-Making Assumptions for Children, Adolescents, and Young Adults in Juvenile/Youth and Adult Criminal Justice Systems*, 2 BERGEN J. CRIM. L. & CRIM. JUST. 141 (2014).

111. *Id.* at 159.

certain circumstances.¹¹² These laws, which have been proposed in at least 25 states¹¹³ and at the national level,¹¹⁴ tend to allow incarcerated individuals who have served around 15 years of their prison term to be resentenced if they have made meaningful positive changes and no longer pose a threat to their community.¹¹⁵ Requirements relating to an offender's age vary among states' proposed and enacted statutes, with some focusing on the elderly population¹¹⁶ and others affording relief to those who were sentenced as juveniles or young adults.¹¹⁷

E. A State-by-State Comparison of Second Look Laws

This section examines recently-enacted second look laws from Washington, D.C., Oregon, California, Delaware, and Florida.¹¹⁸

1. Washington, D.C.

The Comprehensive Youth Justice Amendment, which went into effect on April 27, 2021 as part of a larger omnibus public safety and justice act,¹¹⁹ modified Washington, D.C.'s previous resentencing statute¹²⁰ to include a wider class of young offenders. While the prior statute offered an opportunity for resentencing to individuals who committed crimes before the age of 18, the amendment made resentencing available to anyone who committed an offense before their 25th birthday.¹²¹ Regarding this change, one councilmember commented:

This is about understanding how people, especially young people, can change as they grow into adulthood. . . . Many of the men and women who would be eligible under the Second Look provisions

112. See NAZGOL GHANDNOOSH, THE SENT'G PROJECT, A SECOND LOOK AT INJUSTICE 4 (2021), <https://tinyurl.com/bdem6tst> [<https://perma.cc/8RNR-KV3R>].

113. *Id.*

114. See Second Look Act of 2019, H.R. 3795, 116th Cong. (2019); see also Sarah's Law and the Preventing Unfair Sentencing Act of 2021, H.R. 2858, 117th Cong. (2021).

115. See GHANDNOOSH, *supra* note 112, at 4–5.

116. S.B. S15A, 2021–22 Leg. Sess. (N.Y. 2021) (proposing automatic parole hearings for long-term inmates over the age of 55).

117. D.C. CODE § 24-403.03 (2023) (allowing sentence review for offenders who were under 25 years old at the time they committed the crime for which they are incarcerated).

118. For tables comparing each state's second look eligibility and application requirements, see *infra* appendix.

119. Omnibus Public Safety and Justice Amendment Act of 2020, 68 D.C. Reg. 001034 (Jan. 22, 2021).

120. D.C. CODE § 24-403.03 (2019).

121. *Id.*

of the bill have been in federal prison longer than they were alive on the outside. They're completely different people. We should recognize the value of mercy and rehabilitation. . . .¹²²

In its present amended form, Washington, D.C.'s resentencing statute requires that an individual serve at least 15 years of their original sentence before becoming eligible to apply for sentence modification.¹²³ When a modification application is submitted, the court must hold a hearing and may modify the applicant's sentence if, after considering a list of factors,¹²⁴ it is found that they are no longer a danger to the community and that the interests of justice warrant a sentence modification.¹²⁵ If a defendant's application is denied, they may reapply two additional times and must wait at least three years between each attempt.¹²⁶

2. *Oregon*

Before 2020, Oregon's second look statute provided resentencing opportunities for individuals who were under the age of 18 at the time of the offense if they had been sentenced to 24 or more months of imprisonment and had served at least half of their original sentence.¹²⁷ An amendment that went into effect on January 1, 2020 provided another avenue for the reconsideration of sentences.¹²⁸ Under the amendment, individuals who were under the age of 18 at the time of their offense and have a projected release date between their 25th and 27th birthdays also become eligible for a resentencing hearing when they attain the age of 24 years and 6 months.¹²⁹

122. *DC Council Passes Second Look Amendment Act of 2019*, DC CORR. INFO. COUNCIL (May 19, 2021), <https://tinyurl.com/4ewv9ezh> [<https://perma.cc/687T-TJES>].

123. D.C. CODE § 24-403.03(a)(1) (2023).

124. *Id.* § 24-403.03(c). The factors provided in the statute are: (1) the defendant's age at the time of the offense; (2) the defendant's history and characteristics; (3) the defendant's compliance with institutional rules and participation in educational or other programs; (4) any report or recommendation received from the United States Attorney; (5) whether the defendant has demonstrated maturity, rehabilitation, and fitness to reenter society; (6) any statement, provided orally or in writing, by a victim or victim's family member; (7) any reports of physical, mental, or psychiatric examinations of the defendant conducted by licensed health care professionals; (8) the defendant's family and community circumstances at the time of the offense, including any history of abuse, trauma, or involvement in the child welfare system; (9) the extent of the defendant's role in the offense and whether and to what extent another person was involved in the offense; (10) the diminished culpability of juveniles and persons under age 25, as compared to that of older adults; and (11) any other information the court deems relevant to its decision. *Id.*

125. *Id.* § 24-403.03(a)(2).

126. *Id.* § 24-403.03(d).

127. OR. REV. STAT. § 420A.203 (2018).

128. 2019 Or. Laws Ch. 634; *see* OR. REV. STAT. § 420A.203 (2020).

129. *See* OR. REV. STAT. § 420A.203(1)(b) (2020).

When a person becomes eligible to begin second look proceedings, the court will hold a hearing and may appoint counsel if it is requested and the person is financially eligible.¹³⁰ Ultimately, the individual must prove “by clear and convincing evidence that [they have] been rehabilitated and reformed, and if conditionally released, [they] would not be a threat to the safety of the victim, the victim’s family or the community and . . . would comply with the release conditions.”¹³¹ If this burden is met, the court may order that the individual be conditionally released.¹³² An offender may not reapply for a second hearing following an unfavorable decision by the court, but does have the right to appeal the decision.¹³³

3. *California*

The California legislature has stated: “[T]he purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice.”¹³⁴ The state’s current process for juvenile resentencing went into effect on January 1, 2022.¹³⁵ Defendants who were sentenced to life in prison without the possibility of parole for crimes committed before the age of 18 are eligible to petition for resentencing after serving 15 years.¹³⁶ The defendant’s petition must include a statement of remorse, description of rehabilitative efforts, and affirmation that one of four mitigating circumstances applies.¹³⁷ The court may grant a defendant’s petition and hold a resentencing hearing where they will consider the defendant’s past convictions, potential cognitive limitations, past trauma, steps taken towards rehabilitation, family and community ties, and prison disciplinary record.¹³⁸ If the defendant’s petition fails or if they are resentenced to the same sentence, they may submit one additional petition after serving 20 years and one final petition after 24 years of incarceration.¹³⁹

130. *See* OR. REV. STAT. §§ 420A.203(2), (3)(b) (2023).

131. *See id.* § 420A.203(3)(k).

132. *Id.* § 420A.203(4)(a)(B).

133. *See id.* § 420A.203(6).

134. CAL. PENAL CODE § 1170(a)(1) (Deering 2023).

135. *See id.* § 1170(d).

136. *Id.* § 1170(d)(1)(A).

137. *Id.* § 1170(d)(2). At least one of the following must be true: (1) the defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law, (2) the defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the sentence is being considered for recall, (3) the defendant committed the offense with at least one adult codefendant, or (4) the defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation. *Id.*

138. *Id.* § 1170(d)(6).

139. *Id.* § 1170(d)(10).

4. *Delaware*

Under Delaware's 2013 second look provision, any offender sentenced to more than 20 years for an offense committed prior to their 18th birthday is eligible to petition for sentence modification after serving at least 20 years (or at least 30 years for first-degree murder).¹⁴⁰ Unlike many other states with similar statutes, the Delaware statute does not enumerate any specific factors for the court to take into account when considering an application for modification.¹⁴¹ If a defendant's petition is denied, they must wait at least five years to submit an additional petition.¹⁴²

There is no specific limit on the number of petitions a defendant may file, but the court is given discretion to prohibit subsequent petitions for a certain period of time if it is determined that there is no reasonable likelihood of a different result based on changed circumstances.¹⁴³ A synopsis of the second look policy written by the bill's sponsor specifically mentions an intent to comply with the then-recent decision in *Graham v. Florida*.¹⁴⁴

5. *Florida*

Florida's statute providing the opportunity for sentence review defines a juvenile offender as a person who committed a crime before the age of 18 and was sentenced on or after July 1, 2014.¹⁴⁵ The number of years a defendant must serve before becoming eligible for review varies from 15 to 25 years depending on the type of offense.¹⁴⁶ The Florida Department of Corrections must notify an offender of their upcoming eligibility for review 18 months before they are officially eligible.¹⁴⁷

Once an offender has served the number of years required for their specific offense, they may submit an application for a sentence review hearing.¹⁴⁸ The statute provides for a right to appointed counsel at this hearing¹⁴⁹ and enumerates factors for the court to consider when deciding whether the defendant is "rehabilitated

140. DEL. CODE ANN. tit. 11, § 4204A(d) (2023).

141. *See id.*

142. *Id.* § 4204A(d)(3).

143. *Id.*

144. S.B. 9, 147th Gen. Assemb., Reg. Sess. (Del. 2013) (amending DEL. CODE ANN. tit. 11, §§ 636(b), 4209, 4209A, 4204A).

145. FLA. STAT. § 921.1402(1) (2023). This statute went into effect on July 1, 2014, and does not apply retroactively. *See id.*

146. *Id.* § 921.1402(2).

147. *Id.* § 921.1402(3).

148. *Id.* § 921.1402(4).

149. *Id.* § 921.1402(5).

and . . . reasonably believed to be fit to reenter society.”¹⁵⁰ If the court chooses to modify the defendant’s sentence, it must impose a term of probation of at least five years.¹⁵¹ A person whose sentence is not modified may submit one final application for review ten years after their initial review hearing.¹⁵²

F. The Second Look Act of 2019

On July 17, 2019, Representative Karen Bass and Senator Cory A. Booker proposed the national Second Look Act of 2019.¹⁵³ The act aimed to enable people incarcerated in federal prisons to petition for a second look at their sentences.¹⁵⁴ Many common components from states’ enacted laws were incorporated into the proposal, including requiring a defendant to serve ten years before petitioning for review, providing a list of factors for the court to consider,¹⁵⁵ requiring a defendant who receives a reduced sentence to serve a term of supervised release, and allowing reapplication up to four times.¹⁵⁶ Additional safeguards provided for the defendant include notice of eligibility to petition for review, the right to counsel, and the right to be present at all hearings relating to their application.¹⁵⁷

While the bill did not focus on juveniles specifically, its proposed congressional findings have implications for any age group.¹⁵⁸ Notably, the bill says, “[w]ith the abolition of parole under the Sentencing Reform Act of 1984,¹⁵⁹ there are extremely limited options for review of Federal sentences, which differs greatly from the rest of the world.”¹⁶⁰ Ultimately, the bill was unsuccessful in both the House and the Senate,¹⁶¹ potentially because of its monumental scale.¹⁶²

150. *Id.* § 921.1402(7).

151. *Id.*

152. *Id.* § 921.1402(2)(d).

153. Second Look Act of 2019, H.R. 3795, 116th Cong. (2019); S. 2146, 116th Cong. (2019).

154. H.R. 3795, 116th Cong. (2019).

155. *Id.* The proposed factors were substantially similar to those listed in Washington, D.C.’s second look act. *See supra* note 124 and accompanying text.

156. H.R. 3795, 116th Cong. (2019).

157. *Id.*

158. *See* S. 2146, 116th Cong. (2019).

159. Sentencing Reform Act of 1984, H.R. 5773, 98th Cong. (1984).

160. *See* S. 2146, 116th Cong. (2019).

161. *Id.*

162. *See Booker, Bass to Introduce Groundbreaking Bill to Give “Second Look” to Those Behind Bars*, CORY BOOKER (July 15, 2019), <https://tinyurl.com/28x8nk37> [<https://perma.cc/Q9YN-7RPT>] (characterizing the bill as “ambitious”).

II. ANALYSIS

A. *The Adoption of a Federal Second Look Law Would Provide States with a Template to Follow*

Comparing the second look policies of Washington, D.C., Oregon, California, Delaware, and Florida reveals that while many themes and structures are common among state laws, a lack of consistency still exists. For example, an imprisoned person in Washington, D.C. is met with a more favorable age requirement than an identical person who is incarcerated in Delaware for the same crime.¹⁶³ An indigent defendant initiating resentencing proceedings in Florida has the right to counsel, while a similarly situated defendant in California is left to navigate the process without assistance.¹⁶⁴

Variations in law, both among the several states and between the federal and state governments, are to be expected.¹⁶⁵ Further, the Court specifically noted in *Graham* that states have individual responsibility to create their own procedures for considering the release of juvenile offenders.¹⁶⁶ Thus, a national second look law attempting to regulate state courts would be inconsistent with the principles of federalism and the *Graham* Court's intent. However, if Congress passed a federal second look law that applies to federal cases, it would provide a template for states to adopt to help ensure that juvenile offenders everywhere are afforded a similar "meaningful opportunity to obtain release."¹⁶⁷

B. *Components of a Model Second Look Law*

1. *Offender's Age*

Four out of five states surveyed have set the age limit for second look relief at 18 years or younger at the time of the crime.¹⁶⁸ Only Washington, D.C. has departed from this norm by providing

163. Compare D.C. CODE § 24-403.03(a) (2023), with DEL. CODE ANN. tit. 11, § 4204A(d)(1) (2023).

164. Compare FLA. STAT. § 921.1402(5) (2023), with CAL. PENAL CODE § 1170(d) (Deering 2023).

165. See U.S. CONST. amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."); see also Roger J. Miner, *The Consequences of Federalizing Criminal Law: Overloaded Courts and a Dissatisfied Public*, 4 CRIM. JUST. 16, 17 (1989) (stating that the constitution relegates the responsibility for "internal order" to the States).

166. *Graham v. Florida*, 560 U.S. 48, 75 (2010) ("What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.").

167. See *id.*

168. See Table 1, *infra* appendix.

for review of crimes committed before the age of 25.¹⁶⁹ A threshold age of 18 is consistent with American cultural conceptions of when adulthood begins. Indeed, a citizen of the United States gains a variety of rights at age 18, from voting and serving in the military to getting married and adopting a child.¹⁷⁰ Further, the Supreme Court has asserted that age “18 is the point where society draws the line for many purposes between childhood and adulthood,” and is thus the age below which a defendant may not be sentenced to death or life without parole for a nonhomicide crime.¹⁷¹

However, conditioning punishment-reduction mechanisms on the legal age of majority may not be the most effective or fair option when psychological science shows that diminished culpability for criminal offenses may extend beyond the age of 18. Given that the rationale for showing leniency to juveniles is partially predicated on underdeveloped maturity and character, using brain development as a guideline for setting age limits for second look relief is a more reliable approach than relying on the legal age of majority.

An ideal second look law would apply to individuals who committed an offense while under the age of 25. Scholars in the fields of criminology and psychology have suggested that “varying minimum and maximum age limits for juvenile justice jurisdiction are largely arbitrary and based on assumptions rather than systematic or scientific research.”¹⁷² When such research is considered, it reveals a “scientific consensus that most brains do not fully develop until age 25.”¹⁷³ One study found that low self-control, a trait highly correlated with risky and criminal behaviors, tends to persist into the mid-twenties.¹⁷⁴ Further, the neural process essential to the creation of mature patterns in decision-making known as synaptic pruning generally continues until the mid to late twenties.¹⁷⁵

169. See D.C. CODE § 24-403.03 (2023). Prior to 2021, Washington D.C. only considered relief for those 18 years or younger at the time of the crime. See D.C. CODE § 24-403.03 (2020).

170. See *What Can You Do at 18 Legally?*, LAW DICTIONARY, <https://tinyurl.com/a7jsemjr> [<https://perma.cc/H3QL-N85S>] (last visited Mar. 5, 2024).

171. *Graham*, 560 U.S. at 74 (citing *Roper v. Simmons*, 543 U.S. 551, 574 (2005)).

172. Corrado & Mathesius, *supra* note 110, at 143.

173. Maria Cramer, *When Are You Really an Adult?*, N.Y. TIMES (Jan. 19, 2020), <https://nyti.ms/3HuvJ7s> [<https://perma.cc/A3GK-JSNP>].

174. See Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 DEV. REV. 78, 83 (2008).

175. See Wendy Zukerman & Andrew Purcell, *Brain's Synaptic Pruning Continues Into Your 20s*, 211 NEWSCIENTIST 9, 9 (2011) (citing Zdravko Petanjek et al., *Extraordinary Neoteny of Synaptic Spines in the Human Prefrontal Cortex*, 108 PROC. NAT'L ACAD. SCI. 13281, 13284 (2011)). See also Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRIC DISEASE & TREATMENT 449, 451 (2013) (“It is well established that the brain undergoes a ‘rewiring’ process that is not complete until approximately 25 years of age.”).

Setting the second look eligibility limit for commission of a crime at age 25 ensures that all offenders whose brains were not yet fully developed at the time of the crime are afforded the same opportunities for rehabilitation. This limit creates a reasonable category of eligible people that is not overbroad like the all-encompassing federal proposal that failed in 2019.¹⁷⁶

2. *Amount of Time Served*

The minimum amount of time a person must serve before becoming eligible for resentencing varies from 15 to 30 years in four of the states examined here.¹⁷⁷ Unlike the states that set a specific numerical requirement, Oregon has implemented a more flexible option where an offender is required to serve half of their sentence before becoming eligible for a second look hearing.¹⁷⁸ This approach provides resentencing opportunities for a greater amount of people in the state of Oregon. For example, an offender sentenced to serve ten years in a state like California would never receive a chance to have their sentence reconsidered, while an offender given the same sentence in Oregon would be allowed to petition for release after serving five years. Another alternative approach is seen in Florida's model which conditions the requirements for time served on the nature of the crime.¹⁷⁹

A model federal second look law should allow for initial review after a defendant has served ten years of their sentence of incarceration. The Sentencing Project, an organization focused on advocating for humane responses to crime that minimize imprisonment and criminalization of youth, "recommends instituting an automatic sentence review process within a maximum of 10 years of imprisonment."¹⁸⁰ This recommendation is based on criminological research suggesting that lengthy prison terms are not necessary to promote public safety.¹⁸¹

Studies tracking individuals over time indicate that "most people who commit crime desist from criminal offending within four to 12 years after they begin."¹⁸² Essentially, offenders often "age out" of criminal activity during the first ten years of incarceration

176. See Second Look Act of 2019, H.R. 3795, 116th Cong. (2019).

177. See Table 1, *infra* appendix.

178. See OR. REV. STAT. § 420A.203(1)(b) (2023).

179. See FLA. STAT. § 921.1402(2)(a) (2023).

180. See GHANDNOOSH, *supra* note 112, at 5; see also *About Us*, THE SENT'G PROJECT, <https://tinyurl.com/yvbyrz3r> [<https://perma.cc/F7H6-9RC8>] (last visited Apr. 9, 2024).

181. GHANDNOOSH & NELLIS, *supra* note 2, at 8.

182. *Id.*

and thus present a reduced risk to their community if released after that point.¹⁸³ The U.S. Sentencing Commission found that recidivism rates were 29 percent lower for individuals released after serving 10 or more years in prison than for similarly situated individuals with shorter sentences.¹⁸⁴

The policy of reexamining juvenile sentences after ten years has garnered support from influential legal organizations including the American Bar Association¹⁸⁵ and the National Association of Criminal Defense Lawyers (“NACDL”).¹⁸⁶ The NACDL suggests that a ten-year review threshold offers incarcerated people a sense of hope.¹⁸⁷ In the juvenile offender context, ten years is an appropriate amount of time for a young person to “age out” of criminal activity as they complete the developmental process and reach mental maturity.

3. *Limits on Re-Application*

Each state surveyed has put unique limits on the number of applications an offender may file and, if multiple applications are permitted, the amount of time that must elapse between applications. All states allow for an individual to submit at least two applications (or one application with the right to an appeal).¹⁸⁸ The waiting period for re-application ranges from three to ten years.¹⁸⁹ In Delaware, a court may set a longer waiting period based on individual circumstances if it determines that an additional application has no reasonable likelihood of success in the near future.¹⁹⁰

A model second look law should provide opportunities for re-application every five to ten years. Having an offender wait for a number of years within this range would allow them the time to make meaningful steps toward rehabilitation while still maintaining a sense of optimism for future release. The most recent version of the *Model Penal Code: Sentencing* recommends: “After first eligibility,

183. *Id.*

184. RYAN COTTER, U.S. SENT’G COMM’N, LENGTH OF INCARCERATION AND RECIDIVISM 4 (2022), <https://tinyurl.com/ycyefuhb> [<https://perma.cc/2VWM-QB23>].

185. Amanda Robert, *ABA Provides 10 Principles for Ending Mass Incarceration and Lengthy Prison Sentences*, ABA J. (Aug. 8, 2022, 7:35 PM), <https://tinyurl.com/ytaae2aj> [<https://perma.cc/K4K7-CPUP>].

186. JANE ANNE MURRAY ET AL., NAT’L ASS’N OF CRIM. DEF. LAWS., SECOND LOOK = SECOND CHANCE: TURNING THE TIDE THROUGH NACDL’S MODEL SECOND LOOK LEGISLATION 3–5 (2021), <https://tinyurl.com/37nv58du> [<https://perma.cc/P333-VQZP>].

187. *Id.* at 5 (“A ten-year, universally applicable threshold will offer a meaningful opportunity for release in the most compelling cases and will offer a powerful incentive to those serving sentences for the most difficult crimes to remain steadfast in their rehabilitative efforts in prison. . .”).

188. See Table 2, *infra* appendix.

189. See Table 2, *infra* appendix.

190. See DEL. CODE ANN. tit. 11, § 4204A(d)(3) (2021).

a prisoner's right to apply for sentence modification shall recur at intervals not to exceed 10 years.”¹⁹¹ The NACDL's model legislation provides for re-application eligibility after five years “because even if a second look is denied after [serving] 10 years, hope should be kept alive.”¹⁹²

A model second look law should also allow an offender to submit a minimum of two applications for relief. Limiting individuals to one application would minimize the incentive for good behavior and personal development that comes with working towards a chance at relief. Providing the opportunity for re-application or appeal of a denial of release is a widely accepted concept among organizations who study second look policies.¹⁹³

4. *Factors Considered by the Court*

State statutes vary in their depth and specificity, with some including lists of factors for the court to consider during a second look proceeding and others leaving the specifics entirely up to the court's discretion. An ideal second look statute would provide a list of factors for the court to consider and allow the court to take other information it deems to be relevant into account. The NACDL's model legislation is instructive in this area.¹⁹⁴

Using a set of factors similar to those considered at initial sentencing when making resentencing decisions allows the court to “determine whether the factors that drove the original sentencing decision have changed with the passage [of] time.”¹⁹⁵ The NACDL's model legislation proposes that the following factors be included in every second look statute: (1) the offender's age at the time of the offense; (2) the offender's age at the time of their petition for relief; (3) the nature of the offense; (4) the offender's history and current characteristics; (5) the offender's role in the original offense; (6) input from health care professionals; (7) any statement from the victim; (8) whether the initial sentence penalized the exercise of any constitutional rights; (9) whether the sentence reflects ineffective assistance of counsel; (10) any evidence that the petitioner is innocent; and (11)

191. MODEL PENAL CODE: SENT'G § 11.02(2) (AM. L. INST., 2023).

192. MURRAY ET AL., *supra* note 186, at 5 n.26.

193. See, e.g., FAMS. FOR JUST. REFORM, THE HARMS OF EXTREME SENTENCES AND THE NEED FOR SECOND LOOK LAWS 3 (2022), <https://tinyurl.com/3apdtjvb> [<https://perma.cc/GLZ4-WSUV>] (“A right to appeal promotes fairness and consistency and helps ensure that the decision-making process aligns with the legislature's intent in enacting the second look law.”); MURRAY ET AL., *supra* note 186, at 16 (“An effective second look sentencing regime should include safeguards against arbitrary and unreasonable decision-making.”).

194. See MURRAY ET AL., *supra* note 186, at 9–13.

195. *Id.* at 9.

any other relevant information.¹⁹⁶ Many of these factors are similar to those listed in Washington, D.C.'s second look statute¹⁹⁷ and the proposed Second Look Act of 2019.¹⁹⁸

A model second look provision would include a list of factors like those above for courts to use when deciding the question of resentencing. Setting out a specific list of considerations will help guide the court's inquiry and confine it to what is most relevant. An additional provision for considering "other relevant information" would then allow judges to exercise discretion without being limited too strictly.

5. *Notice of Eligibility*

Some states require that offenders receive notice of their upcoming eligibility for second look review so that they can prepare their application. In Oregon, the Department of Corrections is responsible for filing a request for a second look hearing 60 to 120 days before the offender becomes eligible.¹⁹⁹ Once this hearing is scheduled, the Department must notify the offender of the time and place of the hearing.²⁰⁰ Florida also requires the Department of Corrections to send notice to an offender 18 months before they become eligible for a hearing.²⁰¹

A provision for giving notice to those who will soon be eligible for second look relief should be included in a model second look law. When the literacy issues²⁰² that are common among the adult incarcerated population are considered, providing notice of the opportunity to have a sentence reexamined is essential to ensuring that rights are not compromised. The modest administrative burden that is placed on the state by requiring notification is outweighed by the significant value of assisting people in asserting rights they might not otherwise know are available to them.

196. *Id.* at 9–13.

197. D.C. CODE § 24-403.03 (2023).

198. Second Look Act of 2019, H.R. 3795, 116th Cong. (2019).

199. OR. REV. STAT. § 420A.203(2)(a) (2023).

200. *Id.* § 420A.203(2)(c).

201. FLA. STAT. § 921.1402(3) (2023).

202. See Emily Herrick, *Prison Literacy Connection*, 16 CORR. COMPENDIUM 1, 1 (1991). One survey conducted to assess adult prison literacy found that 39 percent of adults in prison had "below basic" quantitative literacy skills. ELIZABETH GREENBERG ET AL., NAT'L CTR FOR EDUC. STAT., LITERACY BEHIND BARS: RESULTS FROM THE 2003 NATIONAL ASSESSMENT OF ADULT LITERACY PRISON SURVEY 29 (2007), <https://tinyurl.com/3zdp4hmz> [<https://perma.cc/7522-BTBC>]. Further, incarcerated individuals had lower average prose, document, and quantitative literacy scores than unincarcerated adults of the same gender living in typical households. *Id.* at 38.

Notice of eligibility for second look review can only be effective if it is understood by the receiver. Correctional administrators sending notice of second look eligibility should be required to draft all documents in plain language at an elementary reading level. The Plain Writing Act of 2010²⁰³ defines plain language as “[w]riting that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience.”²⁰⁴ Applying this standard to second look documents will help ensure that every eligible individual is fully aware of their rights even before talking to counsel.

6. *The Right to Counsel*

Of the states surveyed, only two guarantee offenders the right to counsel at second look proceedings. Florida and Oregon provide that a financially eligible defendant shall be appointed counsel at the expense of the state.²⁰⁵ Other states do not appear to affirmatively prohibit a defendant from hiring their own counsel to represent them at a second look hearing, but fail to provide counsel to indigent defendants.

A model second look statute should provide defendants with the right to counsel at resentencing proceedings. Ensuring the right to counsel during the second look process is supported by the NACDL,²⁰⁶ the drafters of the *Model Penal Code: Sentencing*,²⁰⁷ and other organizations focused on carceral reform.²⁰⁸ As the NACDL points out, “[c]ounsel is needed to ensure the most effective and focused presentation of the relevant issues, avoiding extraneous details, investigating and uncovering relevant ones, and giving voice to the applicant’s remorse and vision for their future.”²⁰⁹

7. *Summary of the Model Provision*

A federal second look law could serve as a valuable tool for states to use in creating and updating their sentence review policies relating to juvenile offenders. In sum, a model federal second look law should: (1) extend eligibility to all individuals who committed a crime under the age of 25; (2) require an offender to serve 10 years of

203. Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat. 2861 (2010).

204. *Id.* § 3.

205. See FLA. STAT. § 921.1402(5) (2023); OR. REV. STAT. § 420A.203(3)(b) (2023).

206. MURRAY ET AL., *supra* note 186, at 13–15.

207. MODEL PENAL CODE: SENT’G § 11.02(3) (AM. L. INST., 2023).

208. See, e.g., FAMS. FOR JUST. REFORM, *supra* note 193, at 3 (“A right to counsel helps ensure that cases are investigated and presented effectively and efficiently, particularly given the challenges of preparing a long-closed case from prison.”)

209. MURRAY ET AL., *supra* note 186, at 14.

incarceration before becoming eligible for review; (3) provide opportunities for re-application every 5 to 10 years and allow at least 2 applications; (4) include a list of factors for the court to consider when making its resentencing decision; (5) require that the state give notice of the second look policy to offenders before they become eligible; and (6) guarantee a right to counsel for indigent individuals.

C. Addressing Common Concerns

1. Impact on Victims and Community

A concern that policymakers and community members often voice in relation to second look laws is their potential to upset traumatized victims of crime. Some go so far as to describe second look policies as “anti-victim,” suggesting that knowing that an offender may be released will have a negative psychological impact on victims by forcing them to relive their victimization.²¹⁰ Additionally, many states’ statutes allow victims to provide impact statements to be considered during an offender’s resentencing hearing, which might be a particularly difficult experience for someone who already participated in a trial and expected the matter to be fully settled.

These concerns are legitimate, but not universal among survivors of crime. According to a 3,000-participant survey on crime victims’ views of safety and justice, “6 in 10 victims prefer shorter prison sentences and more spending on prevention and rehabilitation to prison sentences that keep people incarcerated for as long as possible.”²¹¹

Specific examples of crime survivors’ opinions on second look reform can be found among victims involved with Washington, D.C.’s Network for Victim Recovery (“NVR”).²¹² Melody Brown, the wife of a murder victim and member of the NVR, expressed support for giving a second chance to the man who killed her husband based on his demonstrated remorse and newfound maturity.²¹³ Referring victims to organizations that will work with them to process release-related anger, fear, or apprehension is a viable mechanism for maximizing support.

210. Safia Abdulahi, ‘*Second Look*’ Bill Would Allow Incarcerated to Petition for Resentencing, 12 ON YOUR SIDE NEWS (Feb. 7, 2022, 6:06 PM), <https://tinyurl.com/yceve6hx> [<https://perma.cc/HAQ5-SPBF>].

211. ALL. FOR SAFETY & JUST., CRIME SURVIVORS SPEAK: THE FIRST-EVER NATIONAL SURVEY OF VICTIMS’ VIEWS ON SAFETY AND JUSTICE 5 (2019), <https://tinyurl.com/55tz57dk> [<https://perma.cc/N76N-2TGJ>].

212. See Andrea Cipriano, *Second Look, Second Chance: Reevaluating Lengthy Sentences*, CRIME REP. (May 12, 2021), <https://tinyurl.com/yns779em> [<https://perma.cc/R9JY-WBFF>].

213. *Id.*

Washington, D.C. also encourages victim support during the second look process by offering an annual grant to organizations that work with victims impacted by post-conviction litigation.²¹⁴ This effort is consistent with the United Nations' Declaration of Principles of Justice relating to crime victims, which posits, "[v]ictims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means."²¹⁵ While the ability to award grants to charitable organizations will depend on a particular state's budget, a model second look law should include a provision similar to Washington, D.C.'s to promote victim support.

Difficulties that may result from sharing a victim impact statement at a second look hearing are mitigated by the availability of multiple options for submitting such a statement. For example, Florida's second look statute provides:

The court shall permit the victim or victim's next of kin to be heard, in person, in writing, or by electronic means. If the victim or the victim's next of kin chooses not to participate in the hearing, the court may consider previous statements made by the victim or the victim's next of kin during the trial, initial sentencing phase, or subsequent sentencing review hearings.²¹⁶

Under this type of statute, a survivor who wishes to present evidence at their victimizer's second look hearing does not have to appear in person and may instead provide a statement in another format or allow the court to rely on previous statements. This flexibility allows victims to share their story with the court without having to participate in a live hearing.

In addition to their impact on survivors, second look laws have implications for members of an offender's community who worry about the potential of being victimized.²¹⁷ A 2021 study of public support for early release mechanisms revealed that vulnerable populations, including older adults and women, are more likely to fear victimization and less likely to support releasing offenders into the

214. D.C. CODE § 24-403.03(i) (2023) ("Beginning in Fiscal Year 2022, the Office of Victim Services and Justice Grants shall, on an annual basis, issue a grant of \$200,000 to an organization that provides advocacy, case management, and legal services for the purpose of developing and offering restorative justice practices for survivors of violent crimes who seek such practices, such as for survivors impacted by post-conviction litigation.").

215. G.A. Res. 40/34, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Nov. 29, 1985).

216. FLA. STAT. § 921.1402(6)(c) (2023).

217. See generally Colleen M. Berryessa, *A Tale of "Second Chances": An Experimental Examination of Popular Support for Early Release Mechanisms that Reconsider Long-term Prison Sentences*, 18 J. EXPERIMENTAL CRIMINOLOGY 783 (2021).

community.²¹⁸ Public fears of increased danger may be assuaged by considering studies on recidivism. A 2018 U.S. Sentencing Commission study of an early release program found no difference in recidivism rates between individuals that received reduced sentences and those who did not.²¹⁹ As a whole, data has shown “moderate, consistent levels of general support for using a range of commonly available ‘second chance’ mechanisms that also extended to offenders convicted of both violent and non-violent offenses.”²²⁰

2. *Closing the “Second Chance Gap”*

Law Professor Colleen Chien defines the “second chance gap” as “the difference between eligibility [for] and delivery of” second chance relief.²²¹ Administrative data suggests that less than ten percent of people eligible for a petition-based second chance opportunity actually receive relief.²²² Chien argues that extensive structural, procedural, and bureaucratic barriers often prevent incarcerated people from successfully seeking relief.²²³

In the context of resentencing and release, reducing disparities between those who are eligible for relief and those who actually receive it would be aided by statutory provisions requiring notice of eligibility and the right to counsel. An individual who knows their rights and has a lawyer to assist them is likely to have a higher chance of success at receiving second look relief.

Implementing a system for providing notice and counsel during second look proceedings would likely require additional funding for administrative bodies and public defenders. However, these costs must be considered in conjunction with the significant financial benefits that second look programs may provide. According to the federal Bureau of Prisons’ most recent annual report, it costs \$39,158 to incarcerate one person in federal prison for one year.²²⁴ State costs

218. *Id.* at 811.

219. KIM STEVEN HUNT ET AL., U.S. SENT’G COMM’N, RECIDIVISM AMONG FEDERAL OFFENDERS RECEIVING RETROACTIVE SENTENCE REDUCTIONS: THE 2011 FAIR SENTENCING ACT GUIDELINE AMENDMENT 1 (2018), <https://tinyurl.com/469ns3nh> [<https://perma.cc/A22L-CPRV>].

220. Berryessa, *supra* note 217, at 783.

221. Colleen Chien, *America’s Paper Prisons: The Second Chance Gap*, 119 MICH. L. REV. 519, 531 (2020).

222. *Id.* at 528.

223. *Id.* at 541.

224. Annual Determination of Average Cost of Incarceration Fee (COIF), 86 Fed. Reg. 49060 (Sept. 1, 2021). \$39,158 per year is equivalent to \$120.59 per day. *Id.*

vary, but in 2021 the full annual cost of incarceration grew to an astounding \$556,539 per person in New York City.²²⁵

When compared to the funds that could be saved by reducing the prison population, the cost of promoting meaningful engagement with second look programs through providing notice and counsel becomes more palatable. Additionally, a portion of the government funds saved can be redistributed to public defenders' offices to reduce case overload and offset the impact of having to provide assistance to indigent offenders seeking second look relief.

D. Extending Second Look Opportunities to Adult Offenders

While the states surveyed here have limited the availability of second look relief to individuals who committed crimes as juveniles, some other states have placed fewer restrictions on eligibility. In Illinois, for example, a prosecutor who feels that a sentence no longer serves the interests of justice may petition the court for resentencing regardless of the offender's age at the time of the crime.²²⁶ The District Attorney can do the same in Washington state.²²⁷

Expanding second look relief to encompass all incarcerated people could certainly decrease the United States' uniquely high incarceration rate and create opportunities for rehabilitation. However, instituting a large-scale second look policy would likely be a monumental task. The time, resources, and coordinated effort that would be necessary may not yet be available.

State-by-state adoption of second look programs for juvenile offenders is a first step that may lead to later gradual growth. By starting with the incarcerated individuals who have historically been considered to be the least culpable, states that adopt juvenile second look policies are prioritizing release of those who may deserve it most. After a stable juvenile system of resentencing is established and accepted by a majority of United States jurisdictions, expansion of second look programs for adults can then be considered.

225. See N.Y.C. COMPTROLLER'S OFF. BUDGET BUREAU, NYC DEPARTMENT OF CORRECTION FYs 2011–21 OPERATING EXPENDITURES, JAIL POPULATION, COST PER INCARCERATED PERSON, STAFFING RATIOS, PERFORMANCE MEASURE OUTCOMES, AND OVERTIME 3 (2021), <https://tinyurl.com/mr46ae89> [<https://perma.cc/TG5V-R9ZJ>]. \$556,539 per year is equivalent to \$1,525 per day. *Id.*

226. See 725 ILL. COMP. STAT. 5/122-9 (2023).

227. WASH. REV. CODE § 9.94A.730 (2021).

CONCLUSION

Implementing second look policies providing juvenile offenders with opportunities for release is a logical step following the Supreme Court's recognition of juveniles' reduced culpability and the advancement in psychological knowledge relating to young people's underdeveloped ability to self-regulate. Implementing a second look policy at the national level would promote consistency by providing states with a model to adopt. This model should: (1) extend eligibility to all individuals who committed a crime under the age of 25; (2) require an offender to serve 10 years of incarceration before becoming eligible for review; (3) provide opportunities for re-application every 5 to 10 years and allow at least 2 applications; (4) include a list of factors for the court to consider when making its resentencing decision; (5) require that the state give notice of the second look policy to offenders before they become eligible; and (6) guarantee a right to counsel for indigent individuals.

Concerns about second look policies' impact on crime victims and community safety are valid given the relatively new nature of these policies. However, evidence suggests that many crime victims support giving criminal offenders a second chance and that juvenile offenders are likely to age out of criminal behavior during the first decade of imprisonment. Juvenile offenders who demonstrate increased maturity in the years following their offense should be afforded the opportunity for rehabilitation through second look relief.

Second look policies recognize the ineffectiveness of long sentences and the reality that people change over time, especially between adolescence and adulthood. Allowing reformed juvenile offenders to reenter their communities after serving a portion of their sentence would provide those who committed crimes in their youth with a meaningful chance at redemption.

APPENDIX

TABLE 1: ELIGIBILITY FOR SECOND LOOK REVIEW

State	Age at the Time of the Offense	Amount of Time Served Before Eligibility
Washington, D.C.	Under 25 ²²⁸	15 years ²²⁹
Oregon	Under 18 ²³⁰	Half of sentence (or attain 24.5 years old) ²³¹
California	Under 18 ²³²	15 years ²³³
Delaware	Under 18 ²³⁴	20 years (or 30 for first degree murder) ²³⁵
Florida	Under 18 ²³⁶	15–25 years (depending on the type of crime) ²³⁷

TABLE 2: APPLICATION LIMITS

State	Re-Application Waiting Period	Total Number of Applications Allowed
Washington, D.C.	3 years ²³⁸	3 applications ²³⁹
Oregon	No re-application ²⁴⁰	1 application (with the right to an appeal) ²⁴¹
California	4–5 years ²⁴²	3 applications ²⁴³
Delaware	5 years (or longer if the court requires) ²⁴⁴	No specific limits ²⁴⁵
Florida	10 years ²⁴⁶	2 applications ²⁴⁷

228. D.C. CODE § 24-403.03(a) (2023).

229. *Id.* § 24-403.03(a)(1).

230. OR. REV. STAT. §§ 420A.203(1)(a)(A)–(B) (2023).

231. *Id.* § 420A.203(1)(b).

232. CAL. PENAL CODE § 1170(d)(1)(A) (Deering 2023).

233. *Id.*

234. DEL. CODE ANN. tit. 11, § 4204A(d)(1) (2023).

235. *Id.* §§ 4204A(d)(1)–(2).

236. FLA. STAT. § 921.1402(1) (2023).

237. *Id.* §§ 921.1402(2)(a)–(d).

238. D.C. CODE § 24-403.03(d) (2023).

239. *Id.*

240. OR. REV. STAT. § 420A.203(4)(a) (2023).

241. *Id.* § 420A.203(6).

242. CAL. PENAL CODE § 1170(d)(10) (Deering 2023).

243. *Id.*

244. DEL. CODE ANN. tit. 11, § 4204A(d)(3) (2023).

245. *Id.*

246. FLA. STAT. § 921.1402(2)(d) (2023).

247. *Id.*
