



# Crime & Punishment

James Alan Fox on criminal behavior and the justice system

COURTS AND SENTENCING , YOUTH VIOLENCE

## Supreme Court got it (mostly) right

Posted by James Alan Fox, Crime and Punishment June 27, 2012 03:15 PM

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Monday's 5-4 Supreme Court decision disallowing mandatory life sentences without parole for defendants convicted of murder perpetrated before their 18th birthday moves us significantly closer to a rational system for punishing young offenders. It provides hope for hundreds of prisoners around the country, including more than 60 in Massachusetts, who until now saw no chance of ever walking free.

Massachusetts is one of 28 states impacted by the Court's decision in not considering mitigating factors and special circumstances that might warrant parole eligibility. Belying the undeserved reputation for being soft on crime, the Commonwealth arguably has the nation's stiffest sanction for juvenile murder. Anyone as young as 14 charged with murder is automatically tried as an adult, and if convicted of first degree murder, receives a mandatory sentence of life without parole.

The decision potentially opens the cell door someday for a prisoner like Joe Donovan, Jr., who was given a life sentence for his part in a mugging two decades ago during which an accomplice fatally stabbed the victim. The decision also could affect someone like Kentel Weaver who received an automatic life sentence for his involvement in a murderous joint venture, despite the fact that he voluntarily came forward and confessed to the police his role in the unsolved crime.

The ruling provides flexibility for exceptional cases like John Odgren, a developmentally challenged youngster who stabbed a schoolmate to death at Lincoln-Sudbury High. Upon condemning Odgren to his lifelong fate, the trial judge went on record bemoaning the lack of any alternative option for handling his special circumstances.

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For the growing network of legal experts and child advocates, the ruling is a partial victory, but falls short of the ultimate goal of bringing laws more in line with evolving standards around the world and developing science concerning adolescent brain development. In this struggle, change has come gradually.

In 1988, the Supreme Court ended the disgraceful practice of executing children under 16, and in 2005 extended the ban for all juveniles. In 2010, it eliminated life without parole for all juveniles convicted of

crimes other than homicide. Abolishing juvenile life without parole for murder was the last remaining challenge.

In earlier Supreme Court decisions as in the latest ruling, the justices recognized the distinctive nature of younger perpetrators, finding fundamental flaws in the popular and punitive adult time for adult crime approach. Speaking for the majority in Monday's ruling, Justice Kagan reaffirmed the view that juveniles should not be held to the same standard of responsibility as adults, regardless of how heinous the crime. Indeed, juveniles are less capable of fully contemplating the consequences of their actions for themselves, much less for their victims. Adolescents often act impulsively, spontaneously, and riskily.

The Court also rested its opinion on the fact that juveniles are more susceptible to external pressures to commit atrocious crimes that they otherwise would not consider. In fact, nearly a third of juvenile offenders act in concert with accomplices, three times more often than older assailants.

Additionally, the Court has recognized that youngsters can mature dramatically in their outlook, attitude and behavior. Young offenders hold the greatest potential for genuine rehabilitation.

Yet this same potential for change exposes an important deficiency to the latest ruling. The Court stopped short of banning juvenile life without parole altogether, instead allowing this extreme sentence under the most unusual circumstances. As a result, decision-making power is placed in the wrong hands and at the wrong stage of the punishment process.

The most sensible approach would be to make all juvenile offenders parole eligible, and postpone determination of who should be released and when. Change in behavior should be assessed by a parole board or other resentencing authority after the perpetrator has served many long years behind bars, rather than being anticipated by a judge or jury at trial when emotions are high and political pressure is intense.

It is impossible to say exactly how Massachusetts or the other states with mandatory juvenile life without parole will respond to comply with Monday's ruling. Whatever legal reforms come as a result will, however, do much to advance the cause of justice by making punishment fit the criminal and not just the crime.

*Note: This post appeared earlier on the op-ed page of the Boston Globe. Look for a follow-up piece tomorrow in this space about the next steps for complying with the Court decision.*