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# A More Just System of Juvenile Justice: Creating a New Standard of Accountability for Juveniles in Illinois

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# A MORE JUST SYSTEM OF JUVENILE JUSTICE: CREATING A NEW STANDARD OF ACCOUNTABILITY FOR JUVENILES IN ILLINOIS

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*For over a century, America's legal system has made substantial reforms to change its treatment of adolescents. Every day, we see that our legal system treats adolescents differently from their adult counterparts. With regards to driving privileges, voting rights, and the ability to drink, our laws recognize that adults and adolescents are different and therefore require a different set of standards. America extended this treatment to the realm of juvenile justice in 1899, when Cook County, Illinois, created the country's first juvenile court. Originating in this court was the overarching purpose of America's juvenile justice system—rehabilitation of juvenile offenders.*

*Though over a century has passed since the creation of America's first juvenile court, only recently has the law begun to treat juveniles differently from their adult counterparts. In the past decade, landmark Supreme Court decisions* Roper v. Simmons*,* Graham v. Florida*,* J.D.B. v. North Carolina*, and* Miller v. Alabama *have implemented constitutional shields for juveniles against the death penalty, life without parole, and improper* Miranda *waivers. In implementing these safeguards, the Supreme Court has employed new scientific understandings of juveniles, as well as common sense, to conclude that juveniles are different from adults and should be treated differently by the law.*

*Though the Supreme Court created safeguards for juveniles in death penalty and life without parole circumstances, situations still exist that*

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*threaten the lives of juvenile offenders. Illinois accountability theory is one such situation. In Illinois, accountability theory is the mechanism by which the State can convict an offender of a crime which they did not actually commit. In Illinois, an individual who exhibited more than "mere presence" at the scene of the crime can be convicted of the same crime and sentenced in the same manner as the individual who committed the crime. Given the recent landmark Supreme Court cases, new scientific findings relating to the psychological understanding of juveniles, as well as simple common sense, accountability theory should not be used to prosecute juvenile offenders in Illinois.*[1]

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## INTRODUCTION

It is not a new or innovative concept to say that juveniles are different from adults in a legal sense or even in common sense.[2] William Blackstone, the architect of common law, built his theory of criminal justice upon the foundation that only two types of people were incapable of committing crimes—those that were insane and those that were considered "infants."[3] Though in the present day, an infant may be defined as someone who is a baby or a young child in the most basic stage of life, Blackstone's definition

[1] Miller v. Alabama, 567 U.S. 460, 465 (2012); J.D.B. v. North Carolina, 564 U.S. 261, 264–65 (2011); Graham v. Florida, 560 U.S. 48, 82 (2010); Roper v. Simmons, 543 U.S. 551, 551 (2005).

[2] ABA DIVISION FOR PUBLIC EDUCATION, DIALOGUE ON YOUTH AND JUSTICE 4 (2007).

[3] *See generally* 4 WILLIAM BLACKSTONE, COMMENTARIES *22; Wilfrid Prest, *Blackstone as Architect: Constructing the Commentaries*, 15 YALE J. L. & HUMAN. 103 (2003).

was far wider reaching.[4] Blackstone believed that "infants," a category of people not capable of committing crimes, encompassed all young people possessing a "defect of the understanding."[5] The United States internalized this concept and expounded upon it through its legal system, establishing a separate criminal justice system altogether for juveniles.[6] In 1899, Cook County in Illinois created the country's first juvenile court, catalyzing a trend that spread to almost every state in less than three decades.[7] With this movement to separate juvenile criminal justice from adult criminal justice came an understanding that juveniles deserved different treatment in criminal law than their adult counterparts.[8] As such, juvenile courts across America adopted rehabilitation as their primary purpose.[9] This goal diverged from the punitive goals that characterize the adult criminal justice system.[10]

This rehabilitative treatment of young offenders has remained a component of the juvenile criminal justice system. However, in recent years, the Supreme Court has made a substantial effort to expand upon this, carving out distinct protections for juveniles.[11] In the past ten years, the Court has ruled that it is unconstitutional to subject juveniles to the death penalty, that juveniles deserve individualized consideration in life without parole sentences, and that a juvenile's age must be taken into consideration when analyzing *Miranda* waivers.[12] The Supreme Court has acknowledged, through these legal advancements, that a new body of psychological and physiological science has changed what we know about adolescents, the adolescent brain, and adolescent development—mainly that the brain is still developing in its adolescent years in many key areas that impact decision-making skills and foreseeability.[13]

While the Supreme Court has taken a multitude of steps to expand the

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[4] BLACKSTONE, *supra* note 3, at *22.

[5] *Id.*

[6] ABA DIVISION FOR PUBLIC EDUCATION, *supra* note 2, at 5.

[7] *Id.*

[8] *See id.*

[9] Samantha Buckingham, *Trauma Informed Juvenile Justice*, 53 AM. CRIM. L. REV. 641, 666–67 (2016).

[10] *Id.*

[11] Among those protections are protection from life without parole punishments, protections from the identical analysis of *Miranda* waivers that pertain to adults, and the protection from the death penalty. Miller v. Alabama, 567 U.S. 460, 465 (2012); J.D.B. v. North Carolina, 564 U.S. 261, 264–65 (2011); Graham v. Florida, 560 U.S. 48, 82 (2010); Roper v. Simmons, 543 U.S. 551, 578–79 (2005).

[12] *Miller*, 567 U.S. at 465; *J.D.B.*, 564 U.S. at 264–65; *Graham*, 560 U.S. at 82; *Roper*, 543 U.S. at 578–79.

[13] *Miller*, 567 U.S. at 465 n.5.

rights and protections of juveniles, courts in the state of Illinois have taken similar steps to substantially develop and expand the State's law of accountability.[14] Though the Supreme Court's developments in the areas of juvenile law are reasonably viewed as progressive in their protection of juveniles, changes in Illinois accountability law are increasingly expansive and broaden the reach of accountability law.[15] In Illinois, accountability law is not a separate crime but rather a method courts use to prosecute individuals when the individual was not the primary actor but provided some semblance of assistance.[16] Juveniles have not been so lucky to escape the grasp of this extraordinarily powerful law and are prosecuted in an identical manner as their adult counterparts.[17] While the law has changed in many areas to adeptly recognize the new psychological and physiological findings about young people, accountability law in Illinois remains a substantial challenge to overcome for juvenile offenders.[18]

This Comment argues that a new standard should be used to analyze the culpability of juveniles adjudicated under the Illinois accountability statute.[19] Part I.A begins with a brief survey of juvenile law in the United States. Then Part I.B highlights the recent advancements in science and psychology pertaining to adolescent brain development that were essential for the success of the aforementioned cases. This is followed in Part I. C by an in-depth analysis of the recent Supreme Court cases that have effectively established different standards and new protections for juveniles during the *Miranda* process and sentencing. Next, Part I. D presents the Illinois accountability law as it stands today, illustrating the history and purpose of accountability law and acknowledging the recent case law that has interpreted the statute expansively, leading to its wide reach. Finally, Part II argues that the same reasoning and understanding that the Supreme Court used to bolster its holdings in these recent landmark decisions surrounding juveniles should be used to inform an analysis of juvenile accountability in Illinois.

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[14] Michael G. Heyman, *Clinging to the Common Law in an Age of Statutes: Criminal Law in the States*, 99 MINN. L. REV. HEADNOTES 29, 33–34 (2014).

[15] *Id.*

[16] *Id.*

[17] *See* Michael G. Heyman, *Losing All Sense of Just Proportion: The Peculiar Law of Accomplice Liability*, 87 ST. JOHN'S L. REV. 129, 129–30 (2013).

[18] *Id.*

[19] 720 ILL. COMP. STAT. 5/5–2 (West 2017) (establishing when accountability exists in crimes).

## I. WHY THIS PROBLEM EXISTS

### A. BRIEF HISTORY OF JUVENILE JUSTICE IN THE UNITED STATES

The first pronounced element of America's juvenile justice system emerged through specialized institutions for juveniles, mainly those convicted of truancy in large urban areas.[20] These facilities, such as the Society for the Prevention of Juvenile Delinquency and the Chicago Reform School, were built upon the foundation of rehabilitating youth and separating youth from adult offenders.[21] In 1899, after 575 Chicago children were convicted of various offenses within Cook County, Illinois was propelled to establish a system of juvenile courts to adjudicate the children.[22] These courts did not serve a penal purpose.[23] In fact, the juvenile court's first chief probation officer explained, "[i]nstead of reformation, the thought and idea in the judge's mind should always be formation . . . and [the child] certainly cannot be reformed by punishing him."[24] Within twenty-five years, almost every state in America had created a similar institution with similar rehabilitative goals.[25] During that time, Illinois remained steadfast in its dedication to the reformation of young offenders.[26] As Judge Julian Mack, one of the first judges to preside over the juvenile court in Cook County, explained, "[t]he child who must be brought into court should . . . be made to feel that he is the object of [the state's] care and solicitude."[27] Thus, in its early years, the Illinois juvenile justice system sought to nurture and reform the juvenile offenders that found their way into its grasp.

Case law that emerged in the following century echoed the treatment of juveniles shown in the juvenile courts and sought to codify the appropriate treatment of juveniles in the law.[28] In 1984 in *Clay v. State*, three boys, all under the age of sixteen, were charged and convicted of first degree murder.[29] Though Florida's Supreme Court upheld the convictions, the court cautioned that all children under the age of seven possessed a conclusive presumption

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[20] ABA DIVISION FOR PUBLIC EDUCATION, *supra* note 2, at 5; *see generally* William W. Booth, *History and Philosophy of the Juvenile Court*, *in* FLORIDA JUVENILE LAW AND PRACTICE (The Florida Bar ed., 13th ed. 2013).

[21] ABA DIVISION FOR PUBLIC EDUCATION, *supra* note 2, at 5.

[22] Booth, *supra* note 20, at § 1.6 (2013).

[23] David S. Tanenhaus, *First Things First: Juvenile Justice Reform in Historical Context*, 46 TEX. TECH L. REV. 281, 282 (2013).

[24] *Id.*

[25] ABA DIVISION FOR PUBLIC EDUCATION, *supra* note 2, at 5.

[26] *Id.*

[27] *Id.*

[28] People v. Olsen, 36 Cal. 3d 638, 649 (1984); Clay v. State, 143 Fla. 204, 207 (1940).

[29] 143 Fla. at 207.

of innocence.[30] This meant that a child under the age of seven could not be found culpable regardless of the information provided by the prosecution.[31] In 1984, the California Supreme Court further extended this presumption of innocence in *People v. Olsen*, where the defendant allegedly raped a fourteen-year-old and tried to use a mistake-of-age defense to avoid a statutory rape conviction.[32] According to *Olsen*, criminal law maintains that all children between seven and fourteen have a rebuttable presumption of incapacity.[33] Though this presumption may be overcome, the burden to do so rests entirely with the prosecution.[34] In the same year that *Olsen* was decided, a sixteen-year-old in Oklahoma received the death penalty for murdering a police officer.[35] In this case, the U.S. Supreme Court spoke generally about the "condition" of youth rather than the specific implications of a certain age. The Court explained that youth is more than a "chronological fact" and creates a "condition of life when a person may be most susceptible to influence and to psychological damage."[36] Thus, *Olsen* opened the door for the Court to utilize age as a tool for reasoning in its holdings.

In 1988, in *Thompson v. Oklahoma*, the Supreme Court began using dicta from these previous cases to expand upon the rights and privileges of juveniles.[37] In *Thompson*, the Supreme Court overturned a fifteen-year-old's death sentence.[38] Though the Court upheld the child's conviction of first degree murder, the Court determined that a death sentence was inappropriate for Thompson.[39] The Court determined that the likelihood that a teenage offender has made the kind of "cold blooded," "cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually nonexistent," making a juvenile's "irresponsible conduct . . . not as morally reprehensible as that of an adult."[40] In 1989, in *Stanford v. Kentucky*,

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[30] *Id*. at 208.

[31] *Id.*

[32] 36 Cal. 3d at 649.

[33] *Id.* at 647. "Incapacity" in this sense means incapable of committing a crime. Because children aged seven to fourteen have a rebuttable presumption of incapacity, they are not always incapable of committing a crime. However, the term "rebuttable" means that the court begins by assuming the child is not capable of committing the crime and it then falls on the prosecution to present evidence to show why the child acted atypically.

[34] *Id.* at 651.

[35] Eddings v. Oklahoma, 455 U.S. 104, 105–06 (1982).

[36] *Id.* at 115.

[37] 487 U.S. 815 (1988).

[38] *Id*. at 816.

[39] *Id.*

[40] *Id.* at 835, 837–38.

an opinion by Justice Brennan recognized that juveniles are generally less criminally responsible for their actions than their adult counterparts.[41] However, though the *Thompson* Court held the sentence inappropriate for its teenage offender, the Court did not yet extend this assumption to provide a categorical ban on implementing the death penalty for all juvenile offenders.[42] Juveniles would need to wait fifteen years for the Court to provide that guarantee.[43]

### B. JUVENILES ARE DIFFERENT FROM ADULTS: A SCIENTIFIC APPROACH

Following *Stanford*, a great deal of scientific research helped establish that adults and adolescents differ in critical physical, mental, and emotional abilities.[44] For adolescents, these differences create obstacles in evaluating the long-term effects of actions, thereby making it more likely that adolescents will make poor decisions.[45] Recent advances in Magnetic Resonance Imaging ("MRI") and psychological research have focused on the frontal lobes of the adolescent brain.[46] Such research has found that the frontal lobe, which is responsible for planning and implementing behaviors that are goal-directed, is the last portion of the brain to mature during adolescence.[47] Because adolescents do not have the full capacity of their frontal lobe, this underdevelopment leads to challenges in decision-making, foresight, strategic thinking, and risk management.[48]

It has been shown that the frontal lobe is divided into two systems: the prefrontal cortex and the limbic system.[49] The prefrontal cortex controls

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[41] *See* 492 U.S. 361, 377–78 (1989).

[42] *Id.*

[43] The death penalty was abolished for juveniles in *Roper v. Simmons*, 543 U.S. 551 (2005).

[44] Barry C. Feld, *The Youth Discount: Old Enough to Do the Crime, Too Young to Do the Time*, 11 OHIO ST. J. CRIM. L. 107, 114 (2013) (citing Laurence Steinberg & Elizabeth Cauffman, *The Elephant in the Courtroom: A Developmental Perspective on the Adjudication of Youthful Offenders*, 6 VA. J. SOC. POL'Y & L. 389, 391 (1999)).

[45] Daniel Romer, *Adolescent Risk Taking, Impulsivity, and Brain Development: Implication for Prevention*, DEVELOPMENTAL PSYCHOBIOLOGY 263, 263 (2010).

[46] See ELKHONON GOLDBERG, THE EXECUTIVE BRAIN: FRONTAL LOBES AND THE CIVILIZED MIND 23 (2001).

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

[48] See *id.*; Antonio R. Damasio & Steven W. Anderson, *The Frontal Lobes*, *in* CLINICAL NEUROPSYCHOLOGY 404, 434 (Kenneth M. Heilman & Edward Valenstein eds., 4th ed. 2003); M.-Marsel Mesulam, *Behavioral Neuroanatomy*, *in* PRINCIPLES OF BEHAVIORAL AND COGNITIVE NEUROLOGY 1, 47–48 (M.-Marsel Mesulam ed., 2d ed. 2000).

[49] See GOLDBERG, *supra* note 46, at 23.

reasoning, planning, and impulsivity, while the limbic system controls instinctual behavior such as the fight-or-flight response.[50] Though these two systems are balanced in a normal adult brain, such that reasoning abilities are balanced with instinctual abilities, they are out of balance during the developmental and growth stages of adolescence.[51] The reason is that the development of these two systems occurs at different rates.[52] The limbic system matures faster than the prefrontal cortex, which creates a high level of instinctual behavior and leaves reasoning and planning for the final stages in development.[53] This imbalance creates emotionality and vulnerability, causing teenagers to more heavily rely on the instinctual cues provided by the limbic system than on rationality and reason provided by the prefrontal cortex.[54] As a result, these instinctual drives stimulate teenagers to "seek higher levels of novelty and to take more risks."[55]

The development of the adolescent brain causes juveniles to act "impulsively and without full appreciation of the consequences" because they possess a very limited amount of self-control.[56] As adolescents grow and mature, their cognitive abilities begin to rise to the level of adults; however, during the time of growth, they do not have an ability to assess risks and make decisions like a reasonable adult.[57] This inability to assess risks results in a "willingness to take physical, social, legal, and financial risks . . . for the sake of such experiences."[58]

This inherent risk-taking behavior, manifested in immature judgment, also reveals a decreased sense of foreseeability that provides an additional challenge to adolescent decision-making.[59] First, adolescents have a diminished ability to foresee consequences because they lack the experience that is necessary to properly anticipate the consequences of their actions.[60] Therefore, adolescents do not base their decisions on consequences they can anticipate based on experience, but based on the instinctual feelings

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[50] *Id.*

[51] Kevin Saunders, *The Role of Science in the Supreme Court's Limitations on Juvenile Punishment*, TEX. TECH L. REV. 339, 351 (2013).

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] Elizabeth S. Scott & Laurence Steinberg, *Blaming Youth*, 81 TEX. L. REV. 799, 822 (2003).

[56] Feld, *supra* note 44, at 109.

[57] Scott & Steinberg, *supra* note 55, at 813.

[58] *See* MARVIN ZUCKERMAN, BEHAVIORAL EXPRESSIONS AND BIOSOCIAL BASES OF SENSATION SEEKING 27 (1994).

[59] *See* Mesulam, *supra* note 48, at 47–48.

[60] Scott & Steinberg, *supra* note 55, at 813–14.

stemming from the limbic system.[61]

In addition to this lack of experience, adolescents are less efficient at processing information. Therefore, when they are calculating potential consequences of an action, adolescents are unable to quickly determine foreseeable consequences and then make a rational decision based upon those consequences.[62] Thus, adolescents make quick decisions that are impulsive and less reliable when compared to adults.[63] Furthermore, adolescents generally are less future-oriented in their thinking than adults. This makes adolescents less likely to even weigh the consequences of their actions in the first place.[64] Because children and teenagers tend to think short term, they may not think "realistically about what may occur" as a result of their actions.[65]

Adolescents simply cannot weigh the costs and benefits of an action in a way that reasonable adults can.[66] While juveniles may be capable of making rational decisions in a calm and patient setting, a stressful environment dramatically compromises their ability to make those same thoughtful decisions.[67] Furthermore, even though adolescents may be able to cursorily weigh consequences and benefits in stressful situations, they do so in a way that is much different than adults.[68] Adolescents strongly overvalue the gains from impulsivity, enjoyment, and peer approval.[69] Conversely, they undervalue the true consequences and potential for loss due to their inability to foresee the comprehensive and long-term consequences.[70]

While it is challenging for adolescents to make quick and rational decisions, they also have a psychological disposition towards certain sensation-seeking characteristics that cause adolescents "to undertake risky behaviors."[71] Compared with individuals at other ages and stages of

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[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] *Id.*

[65] Emily C. Keller, *Constitutional Sentences for Juveniles Convicted of Felony Murder in the Wake of* Roper, Graham *&* J.D.B., 11 CONN. PUB. INT. L.J. 297, 313 (2012).

[66] Franklin E. Zimring, *Penal Proportionality for the Young Offender: Notes on Immaturity, Capacity, and Diminished Responsibility*, *in* YOUTH ON TRIAL 271, 273 (Thomas Grisso & Robert G. Schwartz eds., 2000).

[67] Elizabeth Cauffman & Laurence Steinberg, *The Cognitive and Affective Influences on Adolescent Decision-Making*, 68 TEMP. L. REV. 1763, 1782 (1995).

[68] *See* LAURENCE STEINBERG, ADOLESCENCE 88 (6th ed. 2002).

[69] *Id.*

[70] *Id.*

[71] ABA JUVENILE JUSTICE CTR. ET AL., KIDS ARE DIFFERENT: HOW KNOWLEDGE OF ADOLESCENT DEVELOPMENT THEORY CAN AID DECISION-MAKING IN COURT 8 (2000).

development, adolescents "exhibit a disproportionate amount of reckless behavior, sensation seeking, and risk taking."[72] This behavior, however, is at least in part due to adolescents' inability to perceive and evaluate the costs and benefits of their actions in the same way that adults do.[73]

While adolescents attempt to navigate decision-making under a variety of inherent obstacles, they are also incredibly vulnerable and susceptible to negative influences and outside pressures.[74] Adolescents are uniquely vulnerable in peer pressure situations because they have less independence and experience with controlling their own environment, and thus are more likely to follow the actions of others.[75] This vulnerability stems from an inability to manage behavior in the "face of pressure from others to violate the law, or to extricate oneself from a potentially problematic situation."[76] The challenges adolescents face in removing themselves from problematic or dangerous circumstances result from both a physical inability to direct certain behavior and an inability to escape situations.[77] In many cases, adolescents are physically unable to leave their environment because they cannot move, drive, or leave and thus rely on adults to dictate choices that influence their environment.[78] Additionally, criminal activity is "sometimes rewarded with higher status" in groups of teenagers, thus encouraging adolescents to engage in such behavior.[79] Because youth may value certain social benefits differently than adults, they are likely to view approval from peers as incredibly valuable and eliciting of increased rewards.[80] This value system, in tandem with adolescents' decreased foreseeability, incites them to act for the immediate gains offered by peer approval, without proper evaluation of the criminal consequences.[81]

Though these psychological characteristics characterize the period of

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[72] L.P. Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 NEUROSCIENCE & BIOBEHAVIORAL REV 417, 421 (2000).

[73] *See* Jeffrey Arnett, Reckless Behavior in Adolescence: A Developmental Perspective, 12 DEV. REV. 339, 350–53 (1992).

[74] Spear, *supra* note 72, at 423 (explaining that the decision-making process of adolescents "may be more vulnerable to disruption by the stresses and strains of everyday living").

[75] Keller, *supra* note 65, at 314.

[76] Steinberg & Cauffman, *supra* note 44, at 407.

[77] Christopher Slobogin, *Treating Juveniles Like Juveniles: Getting Rid of Transfer and Expanded Adult Court Jurisdiction*, 46 TEX. TECH L. REV. 103, 132 n.161 (2013) (citing CHRISTOPHER SLOBOGIN & MARK R. FONDACARO, JUVENILES AT RISK: A PLEA FOR PREVENTIVE JUSTICE 26–27 (2011) ("[E]scape from risk-inducing environments is more difficult for dependent children than for adults.")).

[78] *Id.*

[79] Keller, *supra* note 65, at 314.

[80] *See* ZUCKERMAN, *supra* note 58, at 27.

[81] *Id.*

adolescence, the transient nature of the adolescent personality marks another important hallmark of this period of development.[82] Adolescent personalities are generally more dynamic because of a greater amount of perceived stress and drastic hormonal fluctuations.[83] This, in turn, causes teenagers to "experience emotional states that are more extreme, more variable, and less predictable than those experienced by children or adults."[84] These ranging and unpredictable emotions often account for the seemingly irrational criminal acts for which many juvenile offenders are adjudicated.[85] Conversely, this same malleable personality, which can be blamed for many of the delinquent acts of juvenile offenders, can also be credited as providing the potential for positive change.[86] Therefore, the actions, criminal or otherwise, that occur on one day do not necessarily reflect the permanent disposition of the juvenile offender.[87] In fact, malleability of the adolescent personality makes it far more likely for youth to positively change in a period of fewer months or years than it would an adult who committed the same crime.[88]

Psychological research also provides insight as to the influence of peers on brain activity, suggesting that the presence of peers neurologically stimulates the reward center of the brain.[89] The reward stimulation that comes as a result of peer interaction often leads to an increase in risk taking and reckless action that tends to ensue with a group of teenagers.[90] The sheer number of juvenile cases that have co-defendants illustrates this occurrence, exemplifying the fact that juveniles are more likely to commit crimes with their peers than alone.[91] This phenomenon, however, is better explained by using psychological research about the adolescent brain as a lens to view these crimes.[92] Differences in the adolescent brain, both psychologically and

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[82] Brief for A.B.A. as Amici Curiae Supporting Petitioner-Appellant at 11–12, Graham v. Florida, 560 U.S. 48 (2010) (Nos. 08-7412 and 08-7621), 2009 WL 2197339 (citing Roper v. Simmons, 543 U.S. 551, 570 (2005)).

[83] Spear, *supra* note 72, at 429.

[84] Cauffman & Steinberg, *supra* note 67, at 1782.

[85] *See, e.g.*, Jay D. Aronson, *Brain Imaging, Culpability and the Juvenile Death Penalty*, 13 PSYCHOL. PUB. POL'Y & L. 115, 117–19 (2007).

[86] Feld, *supra* note 44, at 148 (citing Barry C. Feld, *Juvenile and Criminal Justice Systems' Responses' to Youth Violence*, 24 CRIME & JUST.: AN ANN. REV. 189 (1998)).

[87] *Id.*

[88] Elizabeth Scott et. al., *Juvenile Sentencing Reform in A Constitutional Framework*, 88 TEMP. L. REV. 675, 679 (2016).

[89] *See, e.g.*, Jason Chein et al., *Peers Increase Adolescent Risk Taking by Enhancing Activity in the Brain's Reward Circuitry*, 14:2 DEVELOPMENTAL SCI. F1, F2.

[90] *Id.* at F7.

[91] *Id.* at F1, F7.

[92] *Id.*

biologically, from the adult brain lead to challenges in decision-making and obstacles in resisting peer pressure.[93] The normal adolescent brain, simply put, has limitations that not only encourage engagement in reckless activities but also limit an adolescent's ability to fight against such impulses.[94]

### C. JUVENILES ARE DIFFERENT FROM ADULTS: THE SUPREME COURT'S APPROACH

In the past decade, there has been a consistent trend by courts, including the Supreme Court, to evaluate juveniles differently than their adult counterparts.[95] Beginning in 2005, the Supreme Court in *Roper v. Simmons* declared it unconstitutional to sentence juveniles to the death penalty.[96] This was the case to finally provide a categorical ban on sentencing juveniles to death.[97] In this case, the Court overturned a seventeen-year-old defendant's death sentence that resulted from a conviction of first-degree murder.[98] The Supreme Court determined that because a juvenile possessed a degree of "diminished culpability," it rendered a death sentence unconstitutional for such an adolescent under the Eighth Amendment.[99] In its reasoning, the Court synthesized recent scientific findings about adolescent development.[100] Its synthesis established "three general differences between juveniles under 18 and adults," which were (1) "a lack of maturity and . . . responsibility . . . [that] often result in impetuous and ill-considered actions and decisions;" (2) increased vulnerability to negative influences and exposure to peer pressure; and (3) the distinct "personality traits of juveniles" which were "more transitory" resulting in the malleable personality of a juvenile.[101] *Roper* opened the door for a series of Supreme Court decisions that would dramatically safeguard the rights of juveniles.

Five years later, in *Graham v. Florida*, the Court held that a life without parole sentence for non-homicide juvenile offenders was also unconstitutional under the Eighth Amendment.[102] *Graham*, however, went

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[93] Scott & Steinberg, *supra* note 55, at 813; Steinberg & Cauffman, *supra* note 44, at 407–09.

[94] Scott & Steinberg, *supra* note 55, at 813.

[95] Miller v. Alabama, 132 S. Ct. 2455, 2460 (2012); J.D.B. v. North Carolina, 564 U.S. 261, 261 (2011); Graham v. Florida, 560 U.S. 48, 48 (2010); Roper v. Simmons, 543 U.S. 551 (2005).

[96] 543 U.S. at 568.

[97] *Id.* at 560.

[98] *Id.*

[99] *Id.* at 570–71.

[100] *Id.* at 569–70.

[101] *Id.*

[102] 560 U.S. 48, 81 (2010).

one step further than simply providing a categorical ban of life without parole sentences for such offenders.[103] In its reasoning, the Court affirmatively recognized that adolescents are deserving of a "meaningful opportunity" for rehabilitation.[104] This created the new standard to evaluate juvenile sentences: the "meaningful opportunity" standard.[105] This standard requires sentences to consider time for maturity and rehabilitation, thus a "meaningful opportunity."[106]

In 2011, just one year after *Graham*, the Court in *J.D.B. v. North Carolina* ruled that a child's age must be taken into account for the purposes of a *Miranda* analysis.[107] This holding effectively relied on *Eddings v. Oklahoma*, where the Court held that a child's age is "more than a chronological fact,"[108] in establishing how age "would have affected how a reasonable person" in police custody "would perceive his or her freedom to leave."[109] In *J.D.B.*, the Court's explanation of a child's perception during the *Miranda* process also relied upon the common understanding of children acknowledged in *Graham* as well as social science and cognitive science.[110]

In 2011, *Miller v. Alabama* extended the ruling in *Graham* even further, holding that mandatory life without the possibility of parole sentences for juveniles charged with homicide were unconstitutional under the Eighth Amendment of the Constitution.[111] The holding in *Miller* was confirmed and expanded in *Montgomery v. Louisiana*, where the Court's holding determined that the *Miller* decision applies retroactively to all cases nationwide.[112] This opened the door for all juveniles previously sentenced to life without parole to appeal and possibly receive a lesser sentence that would provide the opportunity to spend some portion of their lives outside prison.[113] Analyzing *Roper*, *Graham*, *J.D.B.*, *Miller*, and *Montgomery* in conjunction with one another establishes a new body of juvenile law that is premised on

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[103] *Id.* at 49.

[104] *Id.* at 50.

[105] *Id.*

[106] *Id.*

[107] 564 U.S. 261, 261 (2011).

[108] *Id.* at 271–72.

[109] Eddings v. Oklahoma, 455 U.S. 104, 115 (1982).

[110] *J.D.B.*, 564 U.S. at 273 n.5 ("Although citation to social science and cognitive science authorities is unnecessary to establish these commonsense propositions, the literature confirms what experience bears out."). *See, e.g.*, *Graham*, 560 U.S. at 67 ("[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds.").

[111] 560 U.S. 460, 487 (2012).

[112] 136 S. Ct. 718, 744 (2016).

[113] *Id.* at 723.

the understanding that juveniles are categorically different from adults.[114] Therefore, in order for courts to treat adolescents effectively and constitutionally under the law, courts must take into account the scientific and common sense understanding of adolescent behavior.[115]

These landmark cases throughout the past decade have established that juveniles are not only categorically different from adults but also that the law must treat juveniles differently from adults based on these stark differences.[116] The Supreme Court based this distinction, which is now accepted as law, by using "common sense . . . what 'any parent knows'" and by acknowledging advancements in psychology and social science that have led to an increased knowledge concerning the brain development of adolescents, which further informed our understanding of juvenile offenders.[117] These landmark cases also show that the Court not only acknowledges the advancements, but is willing to take into account new and cutting-edge psychological science that explains the difference between adults and adolescents if such research creates a more appropriate and just legal standard.[118] Moreover, the Court has accepted the understanding of the plasticity of the adolescent brain as well as the duration of adolescence to explain that choices made during that period of development do not necessarily reflect a permanent and lasting future of recidivism but rather the possibility for rehabilitation and positive change.[119] This understanding has come to play a key role in the Court's assessment of the criminal choices made by adolescents—both in assessing the level of moral culpability to assign to an adolescent who commits a delinquent act and in assessing the proportionate consequences that an adolescent should face as a result of such a choice.[120]

The characteristics of juveniles that the Court has specially noted in

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[114] *Montgomery*, 136 S. Ct. at 723; *Miller*, 560 U.S. at 487; *J.D.B.*, 564 U.S. at 261; *Graham*, 560 U.S. at 48; *Roper*, 543 U.S. at 551.

[115] *Montgomery*, 136 S. Ct. at 723; *Miller*, 560 U.S. at 487; *J.D.B.*, 564 U.S. at 261; *Graham*, 560 U.S. at 48; *Roper*, 543 U.S. at 551.

[116] *Miller*, 560 U.S. at 477 (explaining that a judge "misses too much if he treats every child as an adult" because the juvenile has such distinct characteristics that distinguish them from an adult, "among them, immaturity, impetuosity, and failure to appreciate risks and consequences").

[117] *Id.* at 470–71 (citing *Roper*, 543 U.S. at 570).

[118] *Id.* at 472 n.5 ("The evidence presented to us in these cases indicates that the science and social science supporting *Roper*'s and *Graham*'s conclusions have become even stronger.").

[119] *Id*. at 472 (explaining that the "rashness, proclivity for risk, and inability to assess consequences" are lessened "as the years go by and neurological development occurs so that 'deficiencies will be reformed'") (quoting *Roper*, 543 U.S. at 570).

[120] *Id.*

support of its holdings are (1) the immaturity of youth and failure to demonstrate mature judgment, (2) the susceptibility of youth to peer pressure, and (3) the potential for reform that adolescents exhibit because of the developmental phase that characterizes adolescence.[121] Together, these characteristics create a decision-making process distinctly different from adults, inhibited by cognitive differences, psychosocial senses, and neurological deficits.[122] Delving into these characteristics of juveniles and the developmental phase of their brains, the Court has understood that juveniles possess a diminished ability to accurately foresee and weigh risks and benefits.[123] This makes juveniles less adept at envisioning danger inherent in their conduct as well as anticipating consequences that are likely to result from their activity.[124] Therefore, adolescents are less able to discern whether the risks associated with their conduct are justified.[125]

### D. ACCOUNTABILITY LAW: ILLINOIS'S APPROACH

It has long been established through the foundation of criminal law that to be found guilty of a crime, there must have been a showing of actus reus, the criminal act, in addition to a showing of mens rea, the criminal mindset.[126] Accountability law side-steps this two-part requirement by resting upon the natural and probable consequences doctrine.[127] This doctrine allows a court to convict a defendant, who did not necessarily commit the end crime, in the same manner and magnitude as the court would convict the principal actor, the individual who committed the crime in question.[128] The doctrine is rooted in the premise that individuals should be held responsible if the "subsequent crime was a foreseeable consequence of the first, no matter how indistinct."[129] In so doing, the doctrine paves the road for the courts to convict individuals of a subsequent act or a different individual with only

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[121] *Roper*, 542 U.S. at 569–70.

[122] Graham v. Florida, 560 U.S. 48, 68 (2010).

[123] *Id.*

[124] *Id.*

[125] *Id.*

[126] *See generally* Evan Goldstick, *Accidental Vitiation: The Natural and Probable Consequence of* Rosemond v. United States *on the Natural and Probable Consequence Doctrine,* 85 FORDHAM L. REV. 1281 (2016).

[127] 720 ILL. COMP. STAT. ANN. 5/5–2 (West 2017); Michael G. Heyman, *The Natural and Probable Consequences Doctrine: A Case Study in Failed Law Reform*, 15 BERKELEY J. CRIM. L. 388, 395 (2010).

[128] Heyman, *supra* note 127, at 395.

[129] *Id.* This far-reaching relationship between the first act and the act for which the defendant is being convicted is known as the "common design" theory of accountability—the design is the path created between the first and last act. *Id.*

minimal regard to the necessary mental intent.[130] Essentially, the doctrine of natural and probable consequences allows a defendant to be found guilty without the necessary mens rea, through another individual's actus reus.[131] In this way, accountability theory stretches beyond the original requirements necessary to prove culpability and widens the net available to convict individuals.[132] Thus, accountability theory has created an avenue of criminal liability which is derived from another's actions, the principal actor.[133] While each state has crafted its own definition of accountability through legislation, many states have also relied upon case law to interpret the contours of this highly subjective area of law.[134]

Throughout the country, Illinois has been highlighted for upholding convictions that illustrated some of the most liberal and expansive uses of accountability theory.[135] Though the statute has undergone significant change since its inception, the most recent change to the accountability law statute in Illinois occurred in 2010,[136] enacting the following version of the statute which governs Illinois accountability law today:

> § 5–2. When accountability exists. A person is legally accountable for the conduct of another when:
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> (a) having a mental state described by the statute defining the offense, he or she causes another to perform the conduct, and the other person in fact or by reason of legal incapacity lacks such a mental state;
>
> (b) the statute defining the offense makes him or her so accountable; or
>
> (c) either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense.
>
> When 2 or more persons engage in a common criminal design or agreement, any acts in the furtherance of that common design committed by one party are considered to be the acts of all parties to the common design or agreement and all are equally responsible for the consequences of those further acts. Mere presence at the scene of a crime does

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[130] Goldstick, *supra* note 126, at 1310.

[131] *Id.*

[132] Michael G. Heyman, *Losing All Sense of Just Proportion: The Peculiar Law of Accomplice Liability,* 87 ST. JOHN'S L. REV. 129, 129 (2013).

[133] *Id.* (citing Sanford H. Kadish, *Complicity, Cause and Blame: A Study in the Interpretation of Doctrine,* 73 CAL. L. REV. 323, 337 (1985)).

[134] GEORGE P. FLETCHER, RETHINKING CRIMINAL LAW § 6.2, at 510–11 (1978).

[135] People v. Kessler, 315 N.E.2d 29, 30 (Ill. 1974); Heyman, *supra* note 127, at 397 (describing *Kessler* as a case of the man in the "wrong place at the wrong time" who was convicted of two counts of attempted murder); People v. Williams, 64 N.E.3d 1086, 1100 at ¶ 62 (Ill. App. Ct. 2016) (Hyman, J., concurring) (holding that an individual need not even commit any crime at all to be convicted of another crime under accountability theory).

[136] Ill. P.A. 96–710, § 25 (effective Jan. 1, 2010).

> not render a person accountable for an offense; a person's presence at the scene of a crime, however, may be considered with other circumstances by the trier of fact when determining accountability.[137]
>
> A person is not so accountable, however, unless the statute defining the offense provides otherwise, if:
>
> (1) he or she is a victim of the offense committed;
>
> (2) the offense is so defined that his or her conduct was inevitably incident to its commission; or
>
> (3) before the commission of the offense, he or she terminates his or her effort to promote or facilitate that commission and does one of the following: (i) wholly deprives his or her prior efforts of effectiveness in that commission, (ii) gives timely warning to the proper law enforcement authorities, or (iii) otherwise makes proper effort to prevent the commission of the offense.[138]

Accountability is not in and of itself a crime; rather, an accountability statute is a mechanism through which a criminal conviction may be reached.[139] Under the Illinois statute and established through case law, the prosecution can establish a defendant's intent by showing either that the defendant shared the criminal intent of the principal actor, or by showing that there was a common criminal design in which the defendant engaged.[140] The Illinois Supreme Court, in *People v. Fernandez*, clarified that the rule for common design remains that, "where one aids another in the planning or commission of an offense, he is legally accountable for the conduct of the person he aids[] and that the word 'conduct' encompasses any criminal act done in furtherance of the planned and intended act."[141] In *Fernandez*, the court compared accountability under common design to two prior cases: *People v. Taylor* and *People v. Dennis*. In both cases, the defendant was the driver of a car whose passenger, unbeknownst to the defendant, intended to commit a crime.[142] The Illinois Supreme Court classified these cases as belonging in the shared specific-intent category of accountability cases. This meant that the defendant shared the intent of the passenger with the actual

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[137] People v. Taylor, 646 N.E.2d 567, 571 (Ill. 1995).

[138] 720 ILL. COMP. STAT. ANN. 5/5–2 (West 2017).

[139] People v. Hicks, 693 N.E.2d 373, 376 (Ill. 1998). Person who commits offense under accountability principle can be charged and tried under indictment for substantive offense since accountability is not offense in itself but merely alternative to nature of proof required to convict for substantive offense. People v. Buffington, 366 N.E.2d 1099 (Ill. App. Ct. 1977); People v. Williams, 328 N.E.2d 682, 683–84 (Ill. App. Ct. 1975).

[140] People v. Fernandez, 6 N.E.3d 145, ¶ 13 at 149–50 (Ill. 2014) (citing *In re* W.C., 657 N.E.2d 908 (Ill. 1995)).

[141] *Id.*

[142] People v. Taylor, 712 N.E.2d 326 (Ill. 1999); People v. Dennis, 692 N.E.2d 325, 336 (Ill. 1998).

intent to commit the crime. Though the defendant did not know that any type of crime was going to be committed, the court used accountability theory to convict these defendants.[143]

In *Fenandez* and other cases, the court has consistently held that mere presence at a crime scene is not enough to render a person accountable for the acts of another.[144] However, Illinois courts have also held that active participation is unnecessary to impose guilt, and a defendant may aid and abet a crime without participating in the overt act.[145] This, however, has created a gray area of what pushes a defendant beyond "mere presence."[146] In an attempt to help clarify this, courts have enumerated six factors that may be considered in determining whether a person is accountable for the acts of the primary actor. These factors are: (1) the defendant's presence during the commission of the crime without any attempt to disassociate oneself from the crime, (2) acting as a lookout, (3) flight from the scene, (4) continued association with the perpetrator after the criminal act, (5) failure to report the incident, and (6) acceptance of illegal proceeds of the crime.[147] While these factors, in conjunction with the totality of the circumstances, can be considered in determining accountability, none is dispositive.[148] Beyond "mere presence" may also be proven by circumstantial evidence. Thus, while direct evidence may be helpful, it is not necessary.[149]

In September 2016, the Illinois Appellate Court solidified the expansive reach of the common design theory of accountability in *People v. Williams*.[150] In *Williams*, the Illinois Supreme Court upheld the conviction of Williams for first-degree murder through the accountability theory.[151] Williams was with a number of other gang members when he participated in an altercation on a train platform with members of a rival gang.[152] One member of the rival gang fell while running on the train tracks and died from electrocution.[153] The court determined that *Williams* could be found guilty through accountability by common design.[154] The court reasoned that "by attaching

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143 *Fernandez*, 6 N.E.3d, at ¶ 21.

144 Id. at ¶ 21; Dennis, 692 N.E.2d, at 336; *Taylor*, 646 N.E.2d at 57.

145 *Taylor*, 712 N.E.2d, at 328–29.

146 People v. McComb, 728 N.E.2d 503, 506 (Ill. App. Ct. 2000).

147 *Id.*

148 *Id.*

149 People v. Manley, 274 N.E.2d 373, 376 (Ill. App. Ct. 1971).

150 People v. Williams, 64 N.E.3d 1086, 1086 (Ill. App. Ct. 2016).

151 *Id.* at 1100.

152 *Id.* at 1088.

153 *Id*. at 1089.

154 *Id.* at 1098.

himself to a group bent on illegal action, defendant became accountable for all the crimes of his companions."[155] The court reasoned that proof of the common criminal design did not need to be supported by actual words of agreement, but could be drawn from the circumstances surrounding the commission of the act.[156] Thus, Illinois accountability theory, through a common design premise, expanded with *Williams* to encompass "any acts in the furtherance of that common design" committed by any party that was privy to the original plan.[157] In this way, the common design theory of accountability in Illinois provides an incredibly expansive mechanism for convicting offenders of criminal acts in which they did not partake and never intended to partake.[158]

## II. ARGUING FOR A DIFFERENT JUVENILE STANDARD OF ACCOUNTABILITY

Within the eleven years since *Roper* was decided, scientific and psychological advancements in the understanding of the adolescent brain have been used to assist the Supreme Court in both instituting categorical bans on various sentences for juveniles and in establishing a new standard to analyze *Miranda* waivers that requires age to be a factor considered in the analysis.[159] Through these landmark decisions, the Court has determined that the age of the accused, especially for young offenders, is essential to consider in two important stages of criminal procedure—interrogations and sentencing.[160] While the Court has made explicit the need to consider age in these stages, the Court has yet to address the consideration of age in the guilt phase.[161]

Justice Kennedy, using science and common sense, explained in *Roper* that "the qualities that distinguish juveniles from adults do not disappear when an individual turns 18."[162] Following Justice Kennedy's determination, the qualities that distinguish juveniles from adults do not disappear the moment they walk into a courtroom. The qualities that the Court has used to

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[155] *Id.*

[156] *Id.* at 1096.

[157] *Id.* at 1098.

[158] *See id*.

[159] J.D.B. v. North Carolina, 564 U.S. 261, 271–72 (2011); Graham v. Florida, 560 U.S. 48, 76 (2010); Roper v. Simmons, 543 U.S. 551, 574 (2005).

[160] *Roper, Graham, Miller*, and *Montgomery* all placed categorical bans on certain sentences based on youth while *J.D.B*. held that age is necessary for a proper *Miranda* analysis.

[161] For the purpose of this comment, I will be using "guilt phase" to refer to the phase beginning when a child is adjudicated for a specific crime and ending when he or she is determined guilty or innocent for said crime. Essentially, "guilt phase" encompasses the determination of whether or not an alleged offender is or can be guilty of said crime.

[162] *Roper*, 543 U.S. at 574.

dictate the treatment of juveniles during interrogation and during sentencing do not disappear during the guilt phase. A juvenile's age should continue to be used during the determination of his or her guilt and the culpability for the crime of which he or she has been accused.

Accountability law, specifically in Illinois, fails to do this. Illinois accountability law views the decision to engage in any crime, misdemeanor or otherwise, as the only necessary element to support a conviction on accountability theory.[163] Because accountability is derived from that first decision that a defendant makes to engage in a crime, it is important to assess the factors that go into that first decision. And because the Supreme Court has acknowledged the factors that make adolescents categorically different from adults, these factors should also be used in the assessment of that first decision. Therefore, analyzing accountability theory for juveniles should be categorically different than analyzing accountability theory for adults.

The factors and characteristics of juveniles that the Court has both accepted and emphasized in their previous landmark decisions establish a new body of law. By using this body of law to inform the analysis of accountability cases for juvenile offenders, it makes clear that accountability theory is unconstitutional when used to adjudicate juveniles. Accountability theory in Illinois, specifically the common design theory, holds every individual who engages in one single illegal act accountable for all illegal acts that result as a consequence, even if the consequences vary greatly from the initial act.[164] Individuals convicted under accountability theory are treated identically as the individuals who were the primary actors in the crime, regardless of the level of participation or the intent of the supporting actors.[165] While other states still maintain the term "accessory," allowing for various options to convict individuals as "accessory before the fact" or "accessory after the fact," and thus opening the door for different levels of culpability in accountability cases, Illinois has no such options.[166] All individuals convicted under accountability theory face the same consequences regardless of their degree of participation.[167]

The common design theory then expands this to disregard not only

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[163] "When two or more persons join together to commit an offense, even 'a minor offense which involves violence,' the parties are responsible for 'everything' that occurs as a result of the agreement." People v. Williams, 64 N.E.3d 1086, 1090 (Ill. App. Ct. 2016).

[164] *Id.*

[165] Joshua Dressler, *Reassessing the Theoretical Underpinnings of Accomplice Liability: New Solutions to an Old Problem*, 37 HASTINGS L.J. 97, 97 (1985).

[166] 1–3 Ill. Crim. Law § 3.03 (2015).

[167] *Id.*; Michael G. Heyman, *Due Process Limits on Accomplice Liability*, 99 MINN. L. REV. HEADNOTES 131, 132 (2015).

degree of participation but also to disregard the intent of the actor to commit the charged crime.[168] It is the common design theory of accountability that holds individuals vicariously liable for the actions of another.[169] A century ago, this particular mechanism of deriving guilt was used to hold those accountable in instances such as a tavern owner whose employee sells liquor to a minor.[170] While that conviction would still stand today, the more contemporary cases of common design accountability theory have been used for sweeping convictions of members of gangs who were either at the scene of a crime committed by their gang member or have involved themselves in some capacity in a criminal act.[171] Again, this common design theory of accountability is based on the very first decision made by a defendant. It may be a decision to engage in a criminal act or it may be the decision to attach oneself "to a group bent on illegal acts."[172] Whatever that decision may be, or however minor the decision, the courts in Illinois have determined that the first decision made by an actor carries with it the responsibility of all subsequent decisions, creating accountability theory.

For adult accountability convictions, this rationale makes sense. Adults, with fully developed brains, have the ability to foresee the consequences of their actions or to understand that their actions, no matter how minor, have consequences that may even be unintended.[173] Adults are capable of weighing the costs and benefits of a particular crime and can think realistically about the array of possibilities that attach themselves to a single crime.[174] In doing so, reasonable adults are capable of anticipating that one crime can lead to a completely different crime. Whether or not adults do actually consider the foreseeability of these potential crimes or go through the process of weighing costs and benefits is irrelevant; rather, it is their ability to consider such consequences that renders them guilty.[175] This is because capacity is the driving force behind a guilty verdict in all crimes.[176]

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[168] *Id.*

[169] *Id.*

[170] *Id.*

[171] People v. Williams, 64 N.E.3d 1086, 1086 (Ill. App. Ct. 2016).

[172] *Id*. at 1097. A group bent on illegal acts has been commonly used as a primary factor in convicting gang members in large groups from the act of one single individual.

[173] *See* Mesulam, *supra* note 48, at 47–48.

[174] Scott & Steinberg, *supra* note 55, at 812–13.

[175] The State must prove that "the accused had sufficient mentality to distinguish between right and wrong as to the particular act, and that he was capable of exercising the power to choose between the right and the wrong."

People v. Munroe, 154 N.E.2d 225, 229 (Ill. 1958).

[176] *Id.*

The decision-making abilities that exist in an adult brain and thereby weigh in favor of guilt in adult accountability cases are the same decision-making abilities that are in developmental stages in the brains of adolescents. Adolescent brains simply have not developed to the point where adolescents are able to fully appreciate the consequences of their actions in the same way as adults.[177] Because their decision-making process is simply incompatible with that of an adult, a theory of guilt justification, which relies so heavily on that decision-making process, is unjust when applied to juveniles. If a juvenile does not have the capacity for such decision-making, then the juvenile should be held less culpable for the crimes that ensue as a result of such decisions. This is particularly true in homicide cases, as the Court in *Graham* held that "when compared to an adult murderer, a juvenile offender who did not kill . . . has twice diminished moral culpability" and as such, "defendants who do not . . . foresee that life will be taken are categorically less deserving of such punishments than are murderers."[178] Because the traits of juveniles that make them categorically different from adults exist for the entire duration of their time in a courtroom, *Graham*'s determination of diminished culpability should be extended from consideration of punishment to determining guilt.

Some may argue that the punishment phase allows for this consideration of age, foreseeability, and decision-making and therefore provides juveniles with enough protection. However, the only way to ensure that juveniles are protected from accountability law is to categorically shield juveniles from accountability theory as it currently exists in Illinois. Accountability theory holds all actors as guilty as the individual who committed the act, which will have life-changing consequences to individuals. In many cases, like that in *People v. Williams*, it takes merely an intent to commit some offense for individuals to be held accountable for first degree murder.[179] Courts in Illinois have used this very mechanism to find juveniles guilty through accountability and in many cases, impose harsh punishments as a result.[180]

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[177] Feld, *supra* note 44, at 109.

[178] Graham v. Florida, 560 U.S. 48, 50 (2010).

[179] 64 N.E.3d 1086, 1088 (Ill. App. Ct. 2016); People v. Dukes, 263 Ill. App. 3d 765, 769–70 (1994).

[180] *Williams*, 64 N.E.3d at 1100 (upholding the conviction of a sixteen-year-old sentenced to twenty-one years of imprisonment through accountability theory); People v. Wilson, No. 09–CF–426, 2015 WL 6549597 (Ill. App. Ct. Oct. 28, 2015), *appeal denied* 48 N.E.3d 677 (Ill. 2016) (upholding the transfer of a fourteen-year-old to adult criminal court when charged with murder through accountability); People v. Miller, 781 N.E.2d 300, 309 (Ill. 2002) (overturning a sentence of life without parole for a fifteen-year-old who served as a lookout during a murder but explaining that the ruling "does not imply that a sentence of life imprisonment for a juvenile offender convicted under a theory of accountability is never

While *Graham* suggests that juveniles can be protected by more lenient punishments without necessarily altering the guilt phase, too many intangibles exist that can result in juveniles facing the same life-altering consequences.[181] For starters, judicial discretion presents the opportunity for judges to punish juveniles to the same extent as adults. Though this judicial power quite possibly could result in fairer treatment of juveniles, judicial discretion works both ways. Judges may treat juveniles fairer. However, judges may also treat juveniles the same as adults, delivering identical sentences. In *State v. Roby*, the Iowa Supreme Court determined that juveniles could be sentenced to a period of incarceration that would deny possibility of parole only after evaluating the juvenile using the mitigating factors of youth.[182] This is an instance where the judicial discretion rejected the understanding of juveniles and the intent behind this new body of law adopted in *Miller*.

Even though judicial discretion could, in some circumstances, alleviate the sting of the sentencing that accompanies convictions under accountability theory, sentencing guidelines make it impossible for judges to entirely erase the impact of accountability theory on a juvenile.[183] In *People v. Miller*, a fifteen-year-old gang member stood outside a home while his two fellow gang members searched the neighborhood for members of a rival gang.[184] After hearing gunshots, Miller ran to his girlfriend's house. Miller was charged with two counts of first degree murder, transferred to adult court, and sentenced to fifty years.[185] Though the judge's hands were tied in the conviction stage, he was able to comment on the effects of accountability theory. Judge Linn explained that he was "very concerned about what this meant . . . to society at large, to be part of a society where a fifteen-year-old child on a theory of accountability only, passive accountability, would suffer" because the child was only "passively acting as a look out for other people, never picked up a gun, never had much more than—perhaps a minute—to contemplate what this entire incident is about, and he is in the same situation as a serial killer . . . ."[186] In this case, while judicial discretion was helpful, it also had its limitations. The judge was required to follow the law of accountability and uphold the finding of guilt.[187] It is for this reason, among

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appropriate").

[181] People v. Miller, 781 N.E.2d 300, 309 (Ill. 2002).

[182] 897 N.W.2d 127, 148 (Iowa 2017).

[183] Benjamin Holley, *The Constitutionality of Post-Crime Guidelines Sentencing*, 37 WM. MITCHELL L. REV. 533, 550 (2011).

[184] 781 N.E.2d 300.

[185] *Id.* at 303.

[186] *Id.*

[187] *Id.*

many others, that the Court in *Graham v. Florida*, determined a categorical ban was necessary for the protection of juveniles. The Court reasoned that "a categorical rule avoids the risk that, as a result of these difficulties, a court or jury will erroneously conclude that a particular juvenile is sufficiently culpable," and thus using their discretion, will instill upon a juvenile the same consequences as an adult.[188]

The example in *People v. Miller* provides the exact rationale for implementing a categorical ban on convicting juveniles under accountability theory. In *Graham v. Florida*, a categorical ban was appropriate "because this case implicates a particular type of sentence as it applies to an entire class of offenders who have committed a range of crimes, the appropriate analysis is the categorical approach used in *Atkins*, *Roper*, and *Kennedy*."[189] Accountability theory also utilizes a particular method of conviction that implicates individuals who have committed a wide variety of crimes and just as in *Graham*, this ban should apply to an entire class of offenders—juveniles.

There are certainly concerns that derive from any categorical ban. In *Roper v. Simmons*, Justice Kennedy acknowledged, "[d]rawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules."[190] This is because it is difficult to draw a line in the sand because "the qualities that distinguish juveniles from adults do not disappear when an individual turns 18" and "[b]y the same token, some under 18 have already attained a level of maturity some adults will never reach."[191] Even with that concern however, the Court in *Roper* determined that the stark differences between juveniles and adults are so pronounced and have such overarching effects into the criminal justice system that "a line must be drawn."[192] More good is served by shielding the vast majority of adolescents from the sharp and irreparable sting of accountability theory than harm done by the miniscule number of adolescents that present those traits of an adult. The categorical approach was necessary in *Graham*, just like it is necessary in all accountability cases because "it does not follow that courts taking a case-by-case proportionality approach could with sufficient accuracy distinguish the few incorrigible juvenile offenders from the many that have the capacity for change."[193] Following this logic, it is more appropriate to implement a categorical rule protecting juveniles than to allow courts

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188 Graham v. Florida, 560 U.S. 48, 51 (2010).
189 *Id.* at 49.
190 543 U.S. 551, 573 (2005).
191 *Id.*
192 *Id.*
193 *Graham*, 560 U.S. at 77.

discretion to consider the facts of a case and a juvenile offender individually. This stance is congruent with numerous societal standards beyond the criminal justice system. Though society recognizes that not all adolescents mature and develop at the same rate, certain rules are uniformly applied to every adolescents.[194]

A categorical ban also increases efficiency and decreases the chance for error on the part of the Court. Accountability theory includes a vast array of factors that a court can choose to evaluate or ignore. Used in determining guilt, these factors range from fleeing the scene, to continuing to associate with the individuals involved, to acting as a lookout. Beyond these tangible factors, courts are free to interpret from the circumstances whether or not an individual is guilty under accountability theory. This, in turn, gives the court a great deal of discretion and becomes the basis of many appeals. Eliminating accountability theory for juveniles would save both time and resources in the courts, avoiding costly and time-consuming litigation.

## CONCLUSION

Simply put, juveniles are different from adults. This concept was a cornerstone of American common law and more recently has been the focus of a great deal of Supreme Court jurisprudence. These distinctions have built an entire criminal system solely for juveniles and have restricted juveniles from a myriad of privileges conferred upon adults—voting, drinking, serving in the military. In the past decade, landmark decisions have been handed down by the Supreme Court solidifying the legal importance of these distinctions. In sum, the Supreme Court has determined that juveniles are categorically different from adults, and the law must acknowledge that stark dissimilarity. Because juveniles are now provided protection from the death penalty, life without parole, and an age-inclusive *Miranda* analysis, it is vital to examine the Court's logic. Doing so leads one to an understanding that these differences between juveniles and adults do not dissipate during the conviction stage. In accountability cases, where the law seems as far reaching and all-encompassing as it could possibly be, it is vital for courts to utilize the same logic and body of law that has structured *Miller*, *Roper*, *Graham*, and *J.D.B.* This body of law will lead to only one just conclusion—the justifications for imposing accountability theory simply do not exist for juveniles due to the psychological factors that render them poor decision makers, easily influenced, and near-sighted. For this reason, accountability theory is unconstitutional as applied to juveniles and should be categorically abolished.

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[194] Feld, *supra* note 44, at 140.